

Pursuant to due call and notice thereof, a meeting of the North Mankato Port Authority Commission was held in the Council Chambers of the Municipal Building on Tuesday, January 17, 2023.

President Olenius called the meeting to order at 5:45 p.m. The following were present: Commissioners Steiner, Oachs, Peterson, Whitlock, Carlson, Executive Vice President McCann, Assistant Treasurer Ryan, and Secretary Van Genderen. Absent Commissioner Kaus.

#### Approval of the Minutes

Commissioner Steiner moved, seconded by Commissioner Oachs, to approve the minutes of the Port Authority meeting of September 6, 2022. Vote on the motion: Steiner, Oachs, Whitlock, and Olenius, aye, abstain; Peterson and Carlson, no nays. Motion carried.

#### Approval of Bills

Commissioner Steiner moved, seconded by Commissioner Whitlock, to approve the bills. Vote on the motion: Steiner, Oachs, Peterson, Whitlock, Carlson, and Olenius, aye, no nays. Motion carried.

#### Consider Setting a Public Hearing for 5:30 pm on February 6, 2023 to Consider the Sale of Real Estate.

President Olenius stated the meeting would set a public hearing for 5:30 on February 6<sup>th</sup> to consider the sale of land identified as Block 1 Lot 1 DDD SUBDIVISION, or 1111 Range Street. Commissioner Steiner stated the property is also known as the Norwood Inn. Executive Vice President McCann reported there were interested parties in purchasing the property. Staff will forward the purchase agreement to the commissioners once it is ready for viewing. Commissioner Steiner moved, seconded by Commissioner Whitlock, to Set a Public Hearing for 5:30 pm on February 6, 2023, to Consider the Sale of Real Estate. Vote on the motion: Steiner, Oachs, Peterson, Whitlock, Carlson, and Olenius, aye, no nays. Motion carried.

#### Other Business

None

#### Open Meeting to the Public

Barb Church, 102 Wheeler Avenue, appeared before the Port Authority and stated the public will be able to speak during the public hearing and not just submit written public comments.

There being no further business, Commissioner Steiner moved, seconded by Commissioner Whitlock, to adjourn. Vote on the motion: all ayes. Motion carried. The meeting was adjourned at 5:55 p.m.

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President

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Secretary



City of North Mankato, MN

Port Authority Claims

By Fund

Payment Dates 1/18/2023 - 2/6/2023

Vendor Part Number	Vendor Name	Payment Date	Amount
Fund: 371 - PORT AUTH TAX GO TIF REV BONDS 2011B	COMPUTERSHARE	01/25/2023	15,000.00
	COMPUTERSHARE	01/25/2023	8,095.00
	Fund 371 - PORT AUTH TAX GO TIF REV BONDS 2011B Total:		23,095.00
Grand Total:			23,095.00

Authorization Signatures

Port Authority

The above claims list for 2-6-23 is approved by:

SCOTT CARLSON - COMMISSIONER

JAMES WHITLOCK - COMMISSIONER

WILLIAM STEINER - COMMISSIONER

SANDRA OACHS - COMMISSIONER

MATT PETERSON - COMMISSIONER

DUANE OLENIUS - COMMISSIONER

BENJAMIN KAUS - COMMISSIONER

# The Free Press MEDIA

# THE LAND

P.O. Box 3287, Mankato, MN 56002

www.mankatofreepress.com phone: (507) 344-6314, fax: (507) 625-1149

## Affidavit of Publication

### STATE OF MINNESOTA, COUNTY OF BLUE EARTH, SS.

Steve Jameson, being duly sworn, on oath states as follows:

1. I am the publisher of The Free Press, or the publisher's designated agent. I have personal knowledge of the facts stated in this Affidavit, which is made pursuant to Minnesota Statutes §331A.07.

2. The newspaper has complied with all of the requirements to constitute a qualified newspaper under Minnesota law, including those requirements found in Minnesota Statutes §331A.02.

3. The dates of the month and the year and day of the week upon which the public notice attached/copied below was published in the newspaper are as follows:

The printed notice which is attached was cut from the columns of said newspaper, and was printed and published the following dates: 01/25/23, and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice:

abcdefghijklmnopqrstuvwxyz

4. The Publisher's lowest classified rate paid by commercial users for comparable space, as determined pursuant to §331A.06, is as follows: 47.00.

5. Pursuant to Minnesota Statutes §580.033 relating to the publication of mortgage foreclosure notice: The newspaper's known office is located in Blue Earth County. The newspaper complies with the conditions described in §580.033, subd. 1, clause (1) or (2). If the newspaper's known office of issue is located in a county adjoining the county where the mortgaged premises or some part of the mortgaged premises described in the notice are located, a substantial portion of the newspaper's circulation is in the latter county.

FURTHER YOUR AFFIANT SAITH NOT.

By: \_\_\_\_\_

Steve Jameson, Publisher

Sworn to and subscribed before me, this day  
01/25/2023

\_\_\_\_\_  
Notary Public

### Public Notice

January 25, 2023

#### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the North Mankato Port Authority Commission will meet at the Municipal Building, 1001 Belgrade Avenue, North Mankato, Minnesota at 5:30 p.m. on Monday, February 6, 2023, to consider the sale of real estate described as Block 1 Lot 1 DDD SUBDIVISION, or 1111 Range Street. The terms and conditions of the agreement may be viewed upon request at the Port Authority Office, located at 1001 Belgrade Avenue, North Mankato, Minnesota. Following the Public Hearing, the Port Authority will determine if the property will be sold.

Such persons as desire to be heard with reference to the proposed sale of real estate will be heard at this meeting. Written testimony will also be accepted at the public hearing. Written comments must be received by February 2, 2023, at 1001 Belgrade Avenue. Contact North Mankato City Hall 507-625-4141 or visit [www.northmankato.com](http://www.northmankato.com) for additional information.

Dated this 17th day of January 2023

BY ORDER OF THE NORTH  
MANKATO PORT AUTHORITY

By: April Van Genderen  
Secretary



NORTH MANKATO PORT AUTHORITY COMMISSION

RESOLUTION NO. 1-23

RESOLUTION CONVEYING CERTAIN PROPERTY LOCATED IN  
THE CITY OF NORTH MANKATO TO 1111 HOLDINGS OF MANKATO, LLC

WHEREAS, the North Mankato Port Authority Commission (the "Authority") was created pursuant to Minnesota Statutes, Sections 469.048 through 469.068, as amended, and Section 469.079 (the "Act") and was authorized to transact business and exercise its powers by resolution of the City Council of the City of North Mankato, Minnesota (the "City"); and

WHEREAS, pursuant to the Act, the Authority is authorized to cause the purchase, sale, and development of property located in the City for the purpose of promoting the economic development of the City; and

WHEREAS, the Authority is the owner of certain real property located in the City commonly known as 1111 Range Street, as more particularly described in Exhibit A attached hereto (the "Property"); and

WHEREAS, 1111 Holdings of Mankato, LLC (the "Developer") wishes to acquire the Property for redevelopment purposes, which redevelopment is intended to result in a mixed-use development that includes, without limitation, both commercial and residential uses (the "Project"); and

WHEREAS, the sale and conveyance of the Property to the Developer for the Project is recommended and advisable because such would be in the best interest of the City and its people due to the creation of jobs, increases to the City's tax base, and other advantages of development that are similarly beneficial to the City and the quality of life of its people; and

WHEREAS, after due published notice thereof, the Authority held a public hearing at 5:30 p.m. on Monday, February 6, 2023, at the Municipal Building located at 1001 Belgrade Avenue, North Mankato, Minnesota, to consider the sale and conveyance of the Property; and

WHEREAS, the Developer has signed an Agreement of Purchase and Sale (the "Agreement") for the Property, which is attached hereto, contingent on approval of the Authority.

NOW THEREFORE BE IT RESOLVED, BY THE NORTH MANKATO PORT AUTHORITY COMMISSION, as follows:

1. The Authority hereby determines that the sale of the Property to the Developer is in the best interest of the City and its people and furthers its general improvement and development plans.
2. The Authority hereby finds that the sale of the Property to the Developer is advisable and approves the sale on the terms and conditions articulated in the Agreement.

3. The Authority hereby authorizes the proper officers of the Authority to execute the Agreement, including any necessary amendments thereto and any other documents necessary to complete the sale of said Property and carry out this Resolution.
4. The Authority hereby authorizes the officers, staff, and legal counsel for the Authority to take other actions necessary to carry out the terms of the sale, the Agreement, and this Resolution.

Approved by the Board of Commissioners of the North Mankato Port Authority Commission this 6<sup>th</sup> day of February 2023.

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President

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Secretary

EXHIBIT A

Lot 1, Block 1, DDD Subdivision

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_, 2023 ("Effective Date"), by and between North Mankato Port Authority Commission, a body politic and corporate of the State of Minnesota ("Seller"), and 1111 Holdings of Mankato, LLC, a Minnesota limited liability company ("Buyer"). Seller and Buyer are each a "Party" and collectively the "Parties."

### RECITALS

WHEREAS, Seller owns that certain Property located at 1111 Range Street, in the City of North Mankato, County of Nicollet, State of Minnesota, as more particularly described and defined herein; and

WHEREAS, Seller is successor-of-interest to Twin City Lodging LLC, a Minnesota limited liability company, as original Landlord to Commercial Lease Agreement effective as of December 15, 2020 ("Original Lease"), as amended by that certain amendment to Commercial Lease dated February 10, 2021 ("First Amendment"), as further amended by that certain second amendment to Commercial Lease dated September 1, 2021 ("Second Amendment") as further amended by that certain third amendment to Commercial Lease dated May \_\_, 2022 ("Third Amendment," together with Original Lease, First Amendment and Second Amendment collectively the "Lease"); and

WHEREAS, HyLife Foods Windom, LLC (the "Company"), as tenant under the Lease, currently uses the Property as long-term corporate housing for approximately 150-200 of the Company's employees who work at the Company's meat processing plant in Windom, Minnesota;

WHEREAS, Seller desires to sell and transfer to Buyer, and Buyer desires to purchase and accept from Seller, for the purpose of redevelopment, all of Seller's right, title, and interest in and to the Property, upon the terms and conditions set forth herein; and

WHEREAS, redevelopment of the Property will result in a mixed-use development that includes, without limitation, both commercial and residential uses (the "Project").

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

**1. Property.** Seller hereby agrees to convey to Buyer and Buyer hereby agrees to purchase from Seller the real property commonly known as 1111 Range Street, in the City of North Mankato, County of Nicollet, State of Minnesota, as more particularly described on Exhibit A attached hereto and incorporated herein, together with all improvements located thereon and all appurtenances thereto (the "Real Property"), and the personal property owned by Seller situated in or about the Real Property utilized in operating a hotel or related services (the "Personal Property"). The Real Property and the Personal Property are collectively the "Property".



**2. Purchase Price.** The purchase price for the Property shall be Three Million Two Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000.00) (the "Purchase Price") and shall be paid as follows:

(a) Earnest money in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (the "Earnest Money") shall be deposited by Buyer with the Title Company (as such term is defined in Section 5 below) within five (5) business days after the Effective Date. The Earnest Money shall only be refundable as set forth in this Agreement. At Closing, the entire Earnest Money amount will be disbursed to Seller and applied to the Purchase Price, and will be reflected as a closing statement credit to Buyer. Seller and Buyer agree to execute an Earnest Money Escrow Agreement if requested by the Title Company, which shall be in form and content reasonably acceptable to Buyer, Seller, and the Title Company.

(b) The balance of the Purchase Price, subject to closing prorations and credits, shall be paid in cash or cash equivalent at closing.

**3. Seller's Representations and Warranties.** Except as expressly set forth in this Agreement, Seller makes no representations, warranties or guarantees whatsoever including, but not limited to, any representations, warranties or guarantees as to the condition of or title to the Property or any portion thereof. Seller hereby represents and warrants to Buyer that:

(a) Seller has the corporate authority necessary to enter into this Agreement and comply with Seller's obligations hereunder;

(b) To Seller's actual knowledge, there are no pending or threatened condemnation or eminent domain proceedings which affect the Property; and

(c) To Seller's actual knowledge, there is no litigation pending or threatened which affects the Property or the use thereof by Buyer.

**4. Survey Contingency.** Buyer, at its sole expense, may obtain a survey of the Real Property prepared by a land surveying company registered in the state in which the Real Property is located. Buyer shall have a period of sixty (60) days after the Effective Date in which to deliver to Seller written notice of any objection to a matter shown on the survey which materially affects the Real Property or Buyer's use of the Real Property ("Survey Objections"). If Buyer fails to timely deliver notice to Seller of any Survey Objections (or elects not to obtain a survey), then Buyer is deemed to have waived all rights to object to any matters shown on the survey (or that would be shown on a current survey). If Buyer timely delivers its notice of Survey Objections, Seller shall have a period of fifteen (15) days after receipt of Buyer's objection notice in which to notify Buyer in writing as to what, if anything, Seller shall do to cure the Survey Objections. Seller may elect in Seller's sole discretion whether or not to attempt a cure of any or all such Survey Objections. Failure of Seller to respond within said period shall indicate that Seller elects not to cure the Survey Objections. Upon receipt of notice from Seller indicating that Seller elects not to pursue a cure of a Survey Objection (or upon Seller being deemed to have elected not to cure a Survey Objection), Buyer shall have a period of five (5) business days in which to deliver notice to Seller terminating this Agreement. Upon such

termination, the Earnest Money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive termination. In the event Buyer does not terminate this Agreement within such five (5) business day period, then Buyer shall be deemed to have accepted any such Survey Objections and waived any rights against Seller relating thereto. If Seller pursues a cure and is unable to cure the Survey Objections on or before the Closing Date, then Buyer shall have the option to either terminate this Agreement (in which event the Earnest Money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive termination), or close on the purchase of the Property with no Purchase Price reduction, in which case Buyer shall be deemed to have accepted any uncured Survey Objections and waived any rights against Seller relating thereto.

**5. Title Contingency.** Promptly after the Effective Date, Seller shall deliver or cause to be delivered to Buyer a current commitment (the "Commitment"), at Seller's expense, for an ALTA owner's title insurance policy for the Real Property issued by Premier Title Services, LLC (the "Title Company"). Buyer shall have until the later of thirty (30) days after the Effective Date or fifteen (15) business days after receipt of the Commitment, whichever is later, to deliver to Seller in writing any objection to a matter shown on the Commitment which materially affects the Real Property or Buyer's use of the Real Property ("Title Objections"). If Buyer fails to deliver timely notice of any Title Objections to Seller, Buyer shall be deemed to have fully accepted the Commitment and all matters disclosed therein. If Buyer timely delivers its notice of Title Objections, Seller shall have a period of fifteen (15) business days after receipt of Buyer's objection notice in which to notify Buyer in writing as to what, if anything, Seller shall do to cure the Title Objections. Failure of Seller to respond within said period shall indicate that Seller elects not to cure the Title Objections. Seller shall have no obligation to cure any Title Objection or incur any expense with respect thereto. If Seller elects not to cure one or more of the Title Objections, Buyer shall have a period of five (5) business days in which to deliver notice to Seller terminating this Agreement. Upon such termination, the Earnest Money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive termination. In the event Buyer does not terminate this Agreement within such five (5) business day period, then Buyer shall be deemed to have accepted any such Title Objections and waived any rights against Seller relating thereto. If Seller pursues a cure and is unable to cure a Title Objection on or before the Closing Date, then Buyer shall have the option to either terminate this Agreement (in which event the Earnest Money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive termination), or close on the purchase of the Property with no Purchase Price reduction, in which case Buyer shall be deemed to have accepted any uncured Title Objections and waived any rights against Seller relating thereto.

Upon closing, Seller shall cause the Title Company to issue a current ALTA owner's title insurance policy ("Title Policy") in the amount of the Purchase Price allocated to the Real Property insuring Buyer as the fee simple owner of the Real Property as of the date of recording the deed, subject to all encumbrances set forth in the Commitment not objected to or waived by Buyer (the "Permitted Exceptions").

## **6. Disclosure Documents; Inspection Contingency.**

(a) To the extent not previously delivered to Buyer, within ten (10) days of Buyer's request thereof, Seller shall deliver or make available to Buyer copies of non-confidential, non-proprietary documents and materials with respect to the Property by (all such documents and materials and all other documents and materials previously provided or made available to Buyer pursuant to or in connection with this Agreement or with respect to Seller or the Property, together with any copies or reproductions of such documents or materials, or any summaries, abstracts, compilations or other analyses made by or for Buyer based on the information in such documents or materials are collectively the "Disclosure Documents"). Buyer acknowledges that the Disclosure Documents are being delivered as a convenience to Buyer and shall not be deemed a representation or warranty by Seller of any kind, including, without limitation, as to the completeness or accuracy thereof.

(b) Buyer, at its sole expense, shall have the right to perform such inspections, reviews and investigations of the Property as Buyer deems necessary or desirable including, but not limited to, a physical inspection of all buildings and related improvements located on the Real Property. Notwithstanding the foregoing, Buyer shall not have the right to conduct any sampling of the water, soil, air or building improvements without Seller's express prior written consent, which consent may be withheld in Seller's sole discretion. Buyer shall repair any damage caused by Buyer's entry onto the Property so as to restore the Property, to the extent reasonably possible, to substantially the same condition that existed prior to its entry. Buyer shall have a period of one hundred twenty (120) days after the Effective Date (the "Inspection Period") to perform such inspections, investigations and review of the Property. If any such inspection, investigation or review discloses any matter or fact that materially adversely affects the value of the Property or Buyer's intended use thereof, Buyer shall have the right to terminate this Agreement upon delivery of written notice to Seller delivered prior to the expiration of the Inspection Period. If Buyer does not terminate the Agreement hereunder, then Buyer is deemed to have waived its inspection contingency hereunder and any right to object to the condition of the Property or any improvements located thereon. After the expiration of the Inspection Period, the Earnest Money shall be non-refundable to Buyer, except as otherwise provided in this Agreement. In no event shall Seller be required to cure any matter to which the Buyer objects relating to the condition of the Real Property or any improvements located thereon.

**7. Lease Contingency.** As of the Effective Date, the Property is leased to the Company for use as long-term corporate housing. Seller's obligation to close on the transaction contemplated under this Agreement is conditioned, for the sole benefit of Seller, upon the expiration or termination of the Lease as such may be amended from-time-to-time. Such Lease shall not be amended to extend the term without the prior written consent of Buyer prior to Closing.

**8. Planned Unit Development Contingency.** Seller's obligation to close on the transaction contemplated under this Agreement is conditioned, for the sole benefit of Seller, upon Buyer: (i) receiving a conditional use permit (the "PUD Permit") pursuant to Chapter 156

of the North Mankato Code of Ordinances (the “PUD Ordinance”); and (ii) entering into a development agreement (the “Development Agreement”) with the City of North Mankato, Minnesota (the “City”) pursuant to the PUD Ordinance, all in accordance with the following:

(a) Buyer shall submit application for the PUD Permit to the City, with copy to Seller, on or before May 1, 2023 (the “PUD Application”);

(b) Buyer shall obtain Seller’s prior written approval, which may be given or withheld in Seller’s sole discretion, of the Development Agreement terms and conditions, together with associated development plans and specifications; and

(c) Buyer shall bear all costs, of whatever nature, associated with application, review, and other processes required under the PUD Ordinance necessary for Buyer to obtain the PUD Permit and enter into the Development Agreement.

In the event Buyer does not submit the PUD Application or before May 1, 2023, or if the PUD Application is thereafter withdrawn or denied, either Party may terminate this Agreement by delivery of written notice to the other Party. Upon such termination the Earnest Money shall be disbursed to Buyer and the Parties shall have no further obligations hereunder except those provisions that expressly survive termination.

**9. Financing Contingency.** Buyer’s obligation to close on the transaction contemplated under this Agreement is conditioned upon Buyer securing, or Buyer determining to Buyer’s satisfaction that Buyer will be able to secure, Project financing on terms and conditions satisfactory to Buyer. Buyer shall have the right to terminate this Agreement pursuant to this Section 9 upon delivery of written notice to Seller delivered prior to the expiration of the Inspection Period. Upon such termination the Earnest Money shall be disbursed to Buyer and the Parties shall have no further obligations hereunder except those provisions that expressly survive termination. If Buyer does not terminate the Agreement pursuant to this Section 9, then Buyer is deemed to have waived its financing contingency hereunder.

**10. Tax Increment Financing.** Buyer’s obligation to close on the transaction contemplated under this Agreement is contingent upon Buyer obtaining, or Buyer determining to Buyer’s satisfaction that Buyer will be able to obtain, Tax Increment Financing (“TIF”) for the Project upon terms and conditions agreeable to Buyer. Buyer shall have the right to terminate this Agreement pursuant to this Section 10 upon delivery of written notice to Seller delivered prior to the expiration of the Inspection Period. Upon such termination the Earnest Money shall be disbursed to Buyer and the Parties shall have no further obligations hereunder except those provisions that expressly survive termination. If Buyer does not terminate the Agreement pursuant to this Section 10, then Buyer is deemed to have waived its TIF contingency hereunder.

**11. No Representations or Warranties; AS-IS Condition.**

(a) Buyer is hereby purchasing the Property in “**AS-IS, WHERE-IS**” condition and “**with all faults**”, and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons acting by or on behalf of Seller, in entering into this Agreement or in closing the transactions described herein, except for the express representations and warranties set forth in Section 3 hereof.

Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and that Buyer has waived or satisfied the survey, title and inspection contingencies set forth in Sections 4 through 6 above. In closing and completing this transaction, Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of Seller or its agents or employees except those expressly set forth in Section 3 above.

(b) Except for the express representations, warranties and obligations of Seller set forth in Section 3 hereof, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Property, including without limitation: the income or expenses of the Property; zoning and building codes and other similar restrictions; availability or cost of utilities; the environmental condition of the Property; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Property; compliance of the Property with any law, regulation, ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Property or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for or on behalf of Seller.

(c) Buyer acknowledges and agrees that any Personal Property to be conveyed in this transaction from Seller to Buyer will be transferred by quit claim bill of sale, with no representation, warranty or guaranty, expressed or implied, regarding the condition of or the title to such Personal Property, and Buyer further agrees to accept such Personal Property in its **"AS-IS, WHERE IS"** condition at closing.

(d) Buyer (and any party claiming through or under Buyer) hereby agrees that following the closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Property, including without limitation, any matters specifically referenced in this Agreement, except for the express representations, warranties and obligations of Seller set forth in Section 3. This Section 11(a) through (d) shall survive the closing of the transactions contemplated by this Agreement or the earlier termination of this Agreement.

**12. Closing.** The closing of this transaction shall take place within ten (10) days after expiration of all Buyer and Seller contingencies set forth in this Agreement (the **"Closing Date"**), at the offices of the Title Company, or at such other time and place as may be agreed upon by Buyer and Seller. Buyer's contingencies include only the survey, title, inspection, financing, and TIF contingencies set forth in Sections 4, 5, 6, 9, and 10 above. Seller's contingencies include the Lease and Planned Unit Development contingencies set forth in Sections 7 and 8 above. At closing, Buyer shall deliver to the Title Company immediately available funds in the amount of the Purchase Price, as adjusted by any prorations and closing costs provided for herein, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Real Property is located or otherwise required by the Title Company to issue the Title Policy.

At closing, Seller shall deliver to the Title Company a Limited Warranty Deed with Permitted Exceptions, containing a covenant as required by Minnesota Statutes Section 469.065, Subd. 6, conveying the Real Property to Buyer, a Quit Claim bill of sale conveying the Personal Property to Buyer, if applicable, an assignment of leases for any existing leases effecting the Real Property, and such affidavits, resolutions and other documents agreed between the Parties, required for a legal conveyance of real estate in the state where the Real Property is located or otherwise reasonably requested by the Title Company to issue the Title Policy. All prorations required hereunder shall be computed as of the date of closing. Possession of the Property shall be delivered to Buyer on the Closing Date. Seller shall pay any cost to record the Limited Warranty Deed. Buyer shall pay the title insurance premium for the Title Policy to be issued to Buyer. Buyer shall pay for all title endorsement charges and the title insurance premium for any loan policy, including all title endorsement charges related thereto. All escrow fees and title company closing charges shall be shared equally by Seller and Buyer. All other closing costs, including without limitation transfer taxes and other recording fees, shall be allocated as customary in the state in which the Real Property is located.

**13. Taxes.** Seller shall pay in full all general taxes and all installments of special assessments of whatever kind, due and payable with respect to the Real Property prior to the Closing Date. All general real property taxes and all installments of special assessments payable with respect to the Real Property for the year of closing shall be prorated between Buyer and Seller as of the Closing Date. If the precise amount of taxes and assessments payable for the year of closing cannot be ascertained, the proration shall be computed on the basis of the taxes and assessments on the Real Property for the immediately preceding tax year.

**14. Casualty.** If the Real Property is damaged by fire or other casualty after the Effective Date of this Agreement but prior to the Closing Date such that the cost to restore the Real Property to its condition immediately prior to the casualty is in excess of ten percent (10%) of the Purchase Price, Buyer shall have the option to:

(a) proceed to close this transaction on the terms contained herein and receive an assignment of the insurance proceeds (or the right to receive the same, if they are not received before closing) payable to Seller as a result of the casualty; or

(b) terminate this Agreement by written notice delivered to Seller within ten (10) days after Buyer receives notice of the casualty, in which event the Earnest Money shall be refunded to Buyer.

If the Real Property is damaged by fire or other casualty prior to the Closing Date and the cost of restoration does not exceed ten percent (10%) of the Purchase Price, this Agreement shall remain in full force and effect upon the terms stated herein and at closing Seller shall assign to Buyer the insurance proceeds (or the right to receive the same, if they are not received before closing) payable to Seller as a result of the casualty.

**15. Condemnation.** If any portion of the Real Property is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, Seller shall notify Buyer in writing of the threat, condemnation or conveyance within five (5) business days of its occurrence. Buyer shall, within

ten (10) days after receipt of such notice, have the option of: (a) proceeding with the closing and receiving the award or condemnation payment (or an assignment thereof, if the same is not received by closing); or (b) terminating this Agreement, in which case the earnest money shall be refunded to Buyer.

**16. Access to Property.** From the Effective Date through the Inspection Period, Buyer and Buyer's authorized agents shall be permitted access to the Property at reasonable times for the purpose of conducting such inspections, reviews and investigations of the Property as permitted pursuant to Sections 4 and 6 hereof. This Section 16 does not authorize Buyer or Buyer's authorized agents to conduct any sampling of the water, soil, air or building improvements.

**17. Indemnification.** Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, claims, actions, liabilities, damages, liens, costs and expenses, including reasonable attorneys' fees, incurred by Seller (or its agents, consultants or affiliates) arising out of or related to: (i) any activities conducted upon the Property by Buyer, its agents, contractors or employees; or (ii) the failure by Buyer to observe or perform any of its covenants, representations or obligations under this Agreement. This Section shall survive the closing or earlier termination of the Agreement.

**18. Notices.** All notices required or permitted to be given hereunder shall be given by certified mail, postage prepaid, or by overnight delivery service, or shall be personally served, to Buyer and Seller at the following addresses:

BUYER: 1111 Holdings of Mankato, LLC  
210 E. Walnut Street  
Mankato, MN 56001  
Attention: Maxwell DeMars  
Email: max@demarsgc.com

With a copy to: Jones Law Office  
212 Madison Ave. Suite 100  
Mankato, MN 56001  
Attention: Stacey Jones  
Email: stacey@joneslawmn.com

SELLER: North Mankato Port Authority Commission  
1001 Belgrade Avenue  
North Mankato, MN 56003  
Attention: Kevin McCann  
Email: KMcCann@northmankato.com

With a copy to: Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402  
Attention: Justin P. Weinberg

Email: jweinberg@taftlaw.com

All notices shall be deemed received three (3) days after posting (if mailed), one (1) business day after deposit with the delivery service (if sent by overnight delivery), or when delivered (if personally delivered). Either party may change the above addresses by written notice to the other.

**19. Default.** If Buyer defaults in the full and timely performance of any of its obligations hereunder, Seller shall be entitled to terminate this Agreement and retain the Earnest Money deposited hereunder as liquidated damages. The parties acknowledge and agree that in the event of a default by Buyer hereunder, actual damages would be impossible to calculate. If Seller defaults in the full and timely performance of any of its obligations hereunder, Buyer, as its only remedy, may elect to either terminate this Agreement and receive a refund of the Earnest Money or seek specific performance.

**20. Real Estate Commissions.** Seller hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the sale of the Property or this real estate transaction. Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all loss, cost or expense resulting from any claim for real estate commission made by any agent, broker or firm engaged by Seller in connection with the Property or this transaction. Buyer hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the purchase of the Property or this real estate transaction. Buyer hereby agrees to defend, indemnify and hold Seller harmless from any and all loss, cost or expense resulting from any claim for real estate commission made by any agent, broker or firm engaged by Buyer in connection with the Property or this transaction.

**21. Entire Agreement.** This Agreement contains the entire agreement between Seller and Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. This Agreement may be amended only by a further written document signed by each of the parties. Time is of the essence of this Agreement.

**22. Assignment.** Except to an entity that is owned or controlled by Buyer, Buyer shall not have the right to assign this Agreement without Seller's prior written consent, which consent may be withheld in Seller's reasonable discretion. Notwithstanding the foregoing, if this Agreement is assigned by Buyer hereunder, Buyer shall remain jointly and severally liable, along with the assignee, for Buyer's obligations under the Agreement through closing. Buyer shall cause any permitted assignee to acknowledge in writing that it will be bound by all of the terms and conditions of this Agreement, with said acknowledgement set forth in a form subject to Seller's reasonable approval.

**23. Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.



**24. Captions.** The captions of the paragraphs in this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.

**25. Severability.** If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.

**26. Counterparts and Transmittal of Signatures.** This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of this Agreement transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.

**27. Confidentiality.** All information acquired by Buyer or any of its Representatives (as hereinafter defined) with respect to the Property, whether delivered by Seller or any of its Representatives or obtained by Buyer as a result of its inspection of the Property, the examination of Seller's files or otherwise shall be used solely for the purpose of determining whether or not the Property is suitable for Buyer's purpose and for no other reason. All such information and the business terms of the transaction contemplated by this Agreement shall be kept in strict confidence and shall not be disclosed, except as required by law, to any individual or entity other than those Representatives of Buyer (as defined below) who need to know the information for the purpose of assisting Buyer in making such determination. Buyer will indemnify and hold Seller harmless from and against any and all loss, liability, cost, damage or expense Seller may suffer or incur as a result of any such disclosure to any individual or entity other than an appropriate Representative of Buyer. As used herein, "Representative" shall mean any employee, officer, director, shareholder, member, owner, affiliate, attorney, architect, engineer, lender, agent or representative of a party. If Buyer shall elect to terminate this Agreement in accordance with the terms of this Agreement or if the Closing shall fail to take place for any other reason whatsoever, Buyer will, promptly following Seller's request, destroy all copies, notes or extracts thereof as well as all copies of any analyses; compilations, studies or other documents prepared by Buyer or for its use (whether in written form or contained in database or other similar form) containing or reflecting any such confidential information. It is understood and agreed that, with respect to any provision of this Agreement which refers to the termination of this Agreement and the return of the Earnest Money to Buyer, such Earnest Money shall not be returned to Buyer unless and until Buyer has fulfilled its obligation to return to Seller the materials described in the preceding sentence. In the event of a breach or threatened breach by Buyer or its Representatives of this Section, Seller shall be entitled to an injunction restraining Buyer or its Representatives from disclosing, in whole or in part, any such confidential information. Nothing herein shall be construed as prohibiting Seller from pursuing any other available remedy at law or in equity for such breach or threatened breach. The provisions of this Section shall not survive the Closing, but shall continue in full force and effect notwithstanding the prior termination of this Agreement pursuant to any right of termination granted herein or otherwise.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

**BUYER:**

1111 HOLDINGS OF MANKATO, LLC

By: Maxwell DeMars  
Maxwell DeMars 11/08/2015 04:05:51  
Name: Maxwell DeMars  
Title: Manager

**SELLER:**

NORTH MANKATO PORT AUTHORITY  
COMMISSION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature page to Agreement of Purchase and Sale by and between North Mankato Port Authority Commission, a body politic and corporate of the State of Minnesota ("Seller"), and 1111 Holdings of Mankato, LLC, a Minnesota limited liability company ("Buyer")*

**EXHIBIT A**

**REAL PROPERTY**

LOT ONE (1), BLOCK ONE (1), D D D SUBDIVISION, CITY OF NORTH MANKATO,  
NICOLLET COUNTY, MINNESOTA.

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the North Mankato Port Authority Commission will meet at the Municipal Building, 1001 Belgrade Avenue, North Mankato, Minnesota at 5:30 p.m. on Tuesday, February 21, 2023, to consider the sale of real estate described as Lot 2, Block 1, Northport No. 22. The terms and conditions of the sale may be viewed upon request at the Port Authority Office, located at 1001 Belgrade Avenue, North Mankato, Minnesota. At the Hearing, the Port Authority will meet to decide if the sale is advisable.

Such persons as desire to be heard with reference to the proposed sale of real estate will be heard at this meeting. Written testimony will also be accepted at the public hearing. Written comments must be received by February 16, 2023, at 1001 Belgrade Avenue. Contact North Mankato City Hall 507-625-4141 or visit [www.northmankato.com](http://www.northmankato.com) for additional information.

Dated this 6<sup>th</sup> day of February 2023

BY ORDER OF THE NORTH MANKATO  
PORT AUTHORITY

By: /s/ April Van Genderen  
Secretary