

Pursuant to due call and notice thereof, a North Mankato Port Authority Commission meeting was held in the Council Chambers of the Municipal Building on Monday, June 5, 2023.

President Olenius called the meeting to order at 5:30 p.m. The following were present: Commissioners Oachs, Kaus, Peterson, Whitlock, Steiner, Carlson, Executive Vice President McCann, Assistant Treasurer Ryan, and Secretary Van Genderen.

#### Approval of the Minutes

Commissioner Oachs moved, seconded by Commissioner Steiner, to approve the minutes of the Port Authority meeting of March 20, 2023. Vote on the motion: Oachs, Kaus, Peterson, Whitlock, Carlson, Olenius, and Steiner, aye, no nays. Motion carried.

#### Approval of Bills

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

#### Receive Information on a Proposed TIF District and TIF Plan.

Executive Vice President McCann reported the information included in the packet would be acted on at the Council Meeting later in the evening. A Public Hearing Notice is included to set a Public Hearing for July 17, 2023, on a proposed Tax Increment Financing District 2-2 Hotel Redevelopment. The project will assist with financing certain project costs for the redevelopment of the property located at 1111 Range Street in the City. Executive Vice President McCann reviewed the schedule for the TIF Plan and noted that the Public Hearing and approval of the TIF District is scheduled for July 17, 2023.

#### Termination Notice-Lease of Norwood Inn

Executive Vice President McCann reported the City received the notice of termination of the HyLife Lease for the 1111 Range Street, Norwood Inn property. He noted that materials and junk had been deposited outside the Norwood, and the City is working with the remaining staff to have the junk hauled away. HyLife is currently in bankruptcy, and the City is working with its attorneys to work through the remaining issues. Executive Vice President McCann noted that the Port Authority may need to hold a closed session to discuss pending litigation. Commissioner Oachs requested clarification on if the cost of the removal of junk is the responsibility of HyLife. Executive Vice President McCann stated it is, but with the bankruptcy, it may be difficult to recoup the money. But the City is prepared to ensure the materials are all removed and the property is cleaned. Commissioner Steiner requested clarification on if HyLife was up to date on the lease. Assistant Treasurer Ryan stated that the lease was paid through May.

Discuss COVID-19 Loans in Default

Assistant Treasurer Ryan reported that the two businesses, Blue Sky Mercantile and Southern Minnesota Martial Arts, still have not contacted the City to work on repayment of their COVID-19 Loans. Attorney Chris Kennedy reported a letter was sent from his office on March 21, 2023, to both companies informing them that litigation may begin if they do not work with the Port Authority to begin or continue repayment of their loans. Neither company has responded. Attorney Kennedy stated the City could continue with no action or begin litigation with a summons and complaint. While the City may win the case, it may be difficult to collect on the judgment. President Olenius requested clarification on the last contact from either business. Assistant Treasurer Ryan stated Blue Sky Mercantile had been in contact with the City in April, stating they were working on a plan to begin repayment, but they have not been in further contact. Assistant Treasurer Ryan stated that Southern Minnesota Martial Arts has not been in contact with the City. A question was asked concerning if the Federal Government would require a callback of the funds. Executive Vice President McCann clarified that the funds were not made from Federal COVID-19 funds but were Port Authority Funds, and the Federal Government could not call those funds back. Executive Vice President McCann requested clarification on whether the Port Authority could consider taking the businesses to small claims court since the Southern Minnesota Martial Arts loan was \$12,500 and the Blue Sky Mercantile loan was \$7,000, below the threshold for small claims court. Attorney Kennedy stated that the City could proceed with small claims court. A discussion was held, and it was determined to take Southern Minnesota Martial Arts to small claims court because they had not paid on their loan and had not been in contact with the Port. The Port Authority would reach out to Blue Sky Mercantile again to see if a payment plan could be arranged because the business owners have been in contact with the Port and seem interested in working with the Port.

Other Business

None

Open Meeting to the Public

None.

There being no further business, Commissioner Steiner moved, seconded by Commissioner Whitlock, to adjourn. Vote on the motion: all eyes. Motion carried. The meeting was adjourned at 5:49 p.m.

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President

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Secretary

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(Above Space Reserved For Recording Data)

**ASSIGNMENT AND ASSUMPTION OF PROMISSORY NOTE, MORTGAGE AND  
CONSENT**

THIS ASSIGNMENT AND ASSUMPTION OF PROMISSORY NOTE, MORTGAGE AND CONSENT, (“**Assignment**”) is made and entered into as of June \_\_\_\_\_, 2023, (the “**Effective Date**”) by and between **WW Land Company, LLC**, a Minnesota limited liability company ( “**Assignor**”), **AH Hermel Properties LLC**, a Minnesota Limited Liability Company (“**Assignee**”), and the **North Mankato Port Authority** (“**NMPA**”), a Minnesota municipal corporation.

RECITALS

- A. Assignor as “Seller” and Assignee as “Buyer” have entered into a Purchase Agreement dated April 25, 2023, as amended and assigned (the “**Purchase Agreement**”) pursuant to which Assignee has agreed to purchase certain real property more particularly described on attached **Exhibit A** (the “**Property**”).
- B. Assignor entered into a Promissory Note dated February 1, 2021 payable to NMPA in the Principal Amount of \$118,600.00 (“**Note**”), a copy of which is attached as **Exhibit B**. The Note is secured by a mortgage from Assignor to NMPA on the Property, dated February 1, 2021, filed April 12, 2022 with the Nicollet County Recorder as Document No. 342581 (“**Mortgage**”), a copy of which is attached as **Exhibit C**.
- C. As of June 23, 2023, there remains on the Note a principal balance of \$71,160.00, together with interest of \$9,646.57 for a total of \$80,806.57, (“**Note Balance**”).

D. In connection with the transactions contemplated by the Purchase Agreement, (i) the Assignor has agreed to assign to the Assignee all of its right, title, interest, and obligations under the Note and Mortgage to Assignee; (ii) Assignee accepts all right, title, interest, and obligations of the Note and Mortgage; and (iii) NMPA consents to the Assignment of the Note and Mortgage to Assignee as of the Effective Date.

## C O V E N A N T S

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee and NMPA agree:

1. **Recitals; Exhibits.** The above Recitals and Exhibit A, Exhibit B, and Exhibit C are incorporated.

2. **Assignment.** Effective as of the Effective Date, Assignor hereby assigns, transfers, conveys and sets over to Assignee all of Assignor's right, title, interest and obligations, in and to the Note and Mortgage.

3. **Acceptance.** Assignee hereby accepts the assignment of the Note and Mortgage and agrees to assume all obligations of Assignor under the Note and Mortgage which arise from and after the Effective Date.

4. **Consent.** NMPA hereby consents to Assignor assigning it's interest in the Note and Mortgage to Assignee as of the Effective Date, and further consents to Assignee's Assumption of Assignor's obligations arising on or after the Effective Date under the Note and Mortgage. NMPA agrees to the Note Balance.

5. **Indemnification by Assignor.** Assignor agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all losses, claims, obligations, actions, suits, damages, liabilities, costs and expenses (including attorneys' fees) ("**Losses**") relating to or arising out of any default or obligation of Assignor with respect to the Note or Mortgage occurring before the Effective Date, including, without limitation, Losses relating to the failure of Assignor to comply with or perform any obligation under any of the Note or Mortgage, and any Losses of any nature, type, kind, or category under any of the Note or Mortgage.

6. **Indemnification by Assignee.** Assignee agrees to indemnify, defend, protect and hold Assignor harmless from and against any and all losses, claims, obligations, actions, suits, damages, liabilities, costs and expenses (including attorneys' fees) relating to or arising out of any default or obligation of Assignee with respect to the Note or Mortgage occurring on or after the Effective Date, including, without limitation, any claims arising out of the failure of Assignee to comply with or perform any obligation under any of the Note or Mortgage, and any claims of any nature, type, kind, or category under any of the Note or Mortgage.

7. **Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**8. No Modification.** This Assignment shall not be altered, amended or otherwise modified, except as set forth in a written document executed by the parties hereto.

**9. Governing Law.** This Assignment and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of the state in which the Property is located.

**10. Counterparts; Facsimiles.** This Assignment may be executed in two or more counterparts, all of which shall be read together and be construed as one instrument. A facsimile copy of a signature shall be as binding as an original signature.

*[Remainder of page intentionally left blank. Signature pages and Exhibits to follow.]*





NMPA:

NORTH MANKATO PORT AUTHORITY

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

Its: \_\_\_\_\_

STATE OF MINNESOTA )

) ss

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ of **North Mankato Port Authority**, the municipal corporation named in the foregoing instrument, and that said instrument was signed on behalf of said municipal corporation by authority of its managers and they acknowledged said instrument to be the free act and deed of said municipal corporation.

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

*[Signature page 3 of 3 of Assignment and Assumption of Promissory Note, Mortgage and Consent]*



**EXHIBIT A  
TO  
ASSIGNMENT AND ASSUMPTION OF PROMISSORY NOTE, MORTGAGE AND  
CONSENT**

**PROPERTY**

The West 25 feet of Lot 7 in Block 6 of Subdivision of Block 1 and part of Block 6 of North Mankato, according to the plat thereof on file in the office of the register of Deeds in and for Nicollet County, Minnesota.

**EXHIBIT B  
TO  
ASSIGNMENT AND ASSUMPTION OF PROMISSORY NOTE, MORTGAGE AND  
CONSENT**

## PROMISSORY NOTE

\$118,600.00

February 1, 2021

For Value Received, WW Land Company LLC, a Minnesota limited liability company ("Borrower"), promises to pay to the order of North Mankato Port Authority, a municipal corporation ("Lender"), at 1001 Belgrade Avenue, North Mankato, MN 56003, or at such other location as Lender may direct, in lawful money of the United States of America, the principal amount of One Hundred Eighteen Thousand Six Hundred and 00/100ths Dollars (\$118,600.00), with interest at the Stated Rate computed on the principal balance of this promissory note ("Note") outstanding from time to time. The principal balance and all accrued interest are fully due and payable on the Maturity Date, unless sooner required under the terms hereof.

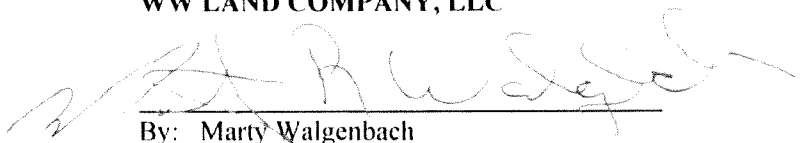
1. **Definitions.** The following terms have the following meanings as are used in this Note:
  - (a) "Lender" means the Lender named in the first paragraph and each subsequent holder of this Note, and their respective heirs, personal representatives, successors and assigns.
  - (b) "Loan" means all amounts advanced hereunder and pursuant to the Loan Agreement, plus all interest, charges and fees due to Lender hereunder.
  - (c) "Loan Agreement" means the Loan Agreement (Sales Tax – Riverfront Redevelopment) between Lender and Borrower dated February 1, 2021.
  - (d) "Maturity Date" means February 1, 2026.
  - (e) "Stated Rate" means four percent (4%) per annum.
2. **Payments.** Subject to any forgiveness pursuant to Section 5 below, on the Maturity Date, the entire outstanding principal, together with all accrued interest, shall be due and payable in one lump sum.
3. **Application of Payments.** All payments and prepayments shall be applied first to any costs of collection, second to accrued interest on this Note, and third to principal.
4. **Prepayment.** This Note may be prepaid in full or in part at any time without premium or penalty. Prepayments shall apply to Borrower's indebtedness last incurred.
5. **Forgiveness.** Provided Borrower is not in Default, Lender shall forgive Twenty-Three Thousand Seven Hundred Twenty and 00/100ths Dollars (\$23,720.00) of the principal balance on the first, second, third, and fourth anniversary dates. Provided Borrower is not in default, on the Maturity Date, the remaining principal balance and all interest accrued thereon shall be forgiven.
6. **Defaults.** If Borrower fails to pay any sum to Lender as and when the same becomes due, or breaches any provision contained herein, in the Loan Agreement, or in any supporting loan documents, and such failure continues for five (5) days or more after written notice from Lender to Borrower ("Default"), then Lender shall have, besides any and all other rights, remedies, and recourse available to Lender, the right and option to declare the unpaid principal balance and accrued interest on this Note immediately due and payable without notice, demand or presentment for payment to Borrower or others, and to foreclose all liens and security interests securing the payment of the same and to invoke all rights, remedies, and recourse relating thereto. The remedies of Lender may be pursued singly, successively, or together, at the sole discretion of Lender, and may be exercised as often as occasion arises. No act of omission or

commission of Lender, including any failure to exercise any right, remedy or recourse, shall be deemed a waiver or release of same, such waiver or releases to be effective only as set forth in a written document executed by Lender and then only to the extent specifically recited. A waiver or release for one event or occurrence shall not be construed as continuing as a bar to, or as a waiver or release of, any subsequent right, remedy, or recourse as to any subsequent event or occurrence.

7. **Lender's Costs.** If Lender engages legal counsel for advice to Lender regarding Lender's rights and remedies under, or enforcement of, this Note, Borrower shall pay all legal expenses incurred by Lender, irrespective of whether any suit or other proceeding has been or is filed or commenced. Any such expenses, costs and charges will constitute additional indebtedness of Borrower to Lender, payable upon demand, accruing interest at the time of such expenditure by Lender at the Stated Rate.
8. **Interest Limitation.** All agreements between Borrower and Lender are limited so that in no contingency or event (whether by acceleration of maturity of the indebtedness evidenced by this Note or otherwise) shall the amount paid or agreed to be paid to Lender for the Loan exceed the maximum permissible under applicable law. If from any circumstances: (a) fulfillment of any provisions of this Note cause the interest to be paid to exceed the maximum permitted under applicable law, then the obligation to be fulfilled shall automatically be reduced to an amount that complies with applicable law; or (b) Lender should ever receive as interest an amount that would exceed the highest lawful rate of interest, such amount over such lawful rate shall apply to the reduction of the principal balance of this Note and not to the payment of interest.
9. **Joint and Several Obligation.** All obligations of Borrower herein are fully joint and several. Lender may exercise its rights completely against any or all Borrower, so long as there is no double recovery.
10. **Waivers.** Borrower waives presentment for payment, protest, notice of nonpayment, and notice of dishonor.
11. **Governing Law and Venue.** This Note shall be governed by, interpreted, and enforced under the laws of Minnesota, without giving effect to its conflict of laws provisions. Any litigation between the Parties shall be conducted exclusively in the state and federal courts in Minnesota, and any arbitration or similar proceeding shall be conducted exclusively at a location within such county and state. Each Party consents to the jurisdiction and venue of the courts described above.
12. **Security.** This Promissory Note is secured by a Real Estate Mortgage of even date herewith, given by Borrower in favor of Lender, securing the sum of \$118,600.00.

**Borrower:**

**WW LAND COMPANY, LLC**



By: Marty Walgenbach  
Its: Owner

**EXHIBIT C  
TO  
ASSIGNMENT AND ASSUMPTION OF PROMISSORY NOTE, MORTGAGE AND  
CONSENT**

Nicollet County, Minnesota No. U22.641  
Mortgage Registration Tax hereon of \$272.78



**Jaci Kopet**  
Property & Public Services Director  
Office of the County Recorder

**Document No. 342581**

Certified Recorded on 04-12-2022 at 08:00 AM

Paid this **12th** day of **April, 2022**  
*Jaci Kopet, Property & Public Services Director*  
*Nicollet County, Minnesota, by Deputy PZ*

Fee: \$46.00  
Pkg: 160917

Rec'd: CITY OF NORTH MANKATO

(Top 3 Inches reserved for recording data)

**MORTGAGE** Minnesota Uniform Conveyancing Blanks  
**by Business Entity** Form 20.1.2 (2011)

MORTGAGE REGISTRY TAX DUE: \$ 272.78

DATE: February 1, 2021

**CHECK IF APPLICABLE:** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ENFORCEMENT OF THIS MORTGAGE IN MINNESOTA IS LIMITED TO A DEBT AMOUNT OF \$118,600 UNDER CHAPTER 287 OF MINNESOTA STATUTES.

THIS MORTGAGE ("Mortgage") is given by WW Land Company LLC, a Minnesota limited liability company, as the mortgagor (the "Borrower") to North Mankato Port Authority, a municipal corporation, as mortgagee ("Lender").

In consideration of the receipt of credit in the amount of \$118,600.00 (the "Indebtedness") issued by Borrower to Lender, Borrower hereby mortgages, with power of sale, the real property in Nicollet County, Minnesota, legally described as follows:

See attached Exhibit A.

Check here if all or part of the described real property is Registered (Torrens)

together with all hereditaments and appurtenances belonging thereto (the "Property"), subject to the following exceptions:

- (a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record;
- (b) Reservations of minerals or mineral rights by the State of Minnesota, if any;
- (c) Utility and drainage easements which do not interfere with present improvements;
- (d) Applicable laws, ordinances, and regulations;
- (e) The lien of real estate taxes and installments of special assessments not yet due and payable; and
- (f) The following liens or encumbrances, if any: \_\_\_\_\_

Borrower covenants with Lender as follows:

1. **Repayment of Indebtedness.** If Borrower (a) pays the Indebtedness to Lender according to the terms of the promissory note, dated even date herewith, that evidences the Indebtedness and all renewals, extensions, and modifications thereto (the "Note"), final payment of which is due on February 1, 2026; (b) pays interest on the Indebtedness as provided in the Note; (c) repays to Lender, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, if any; and (d) keeps and performs all the covenants and agreements contained in the Note and herein, then Borrower's obligations under this Mortgage will be satisfied, and Lender will deliver an executed satisfaction of this Mortgage to Borrower. It is Borrower's responsibility to record any satisfaction of this Mortgage at Borrower's expense.

Borrower

WW LAND COMPANY LLC, a Minnesota limited liability company

By: \_\_\_\_\_  
Name: Marty Walgenbach  
Its: owner

State of MINNESOTA, County of Blue Earth

This instrument was acknowledged before me on March 31, 2022, by Marty Walgenbach the owner of WW Land Company LLC, a Minnesota limited liability company, on behalf of the limited liability company.



Kristen Duenes  
(signature of notarial officer)  
Title (and Rank): Office Mgr.  
My commission expires: 1/31/27  
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:

Fredrikson & Byron, P.A. (ASO)  
111 South 2nd Street, Suite 400  
Mankato, MN 56001

Note: Failure to record or file this mortgage may give other parties priority over this mortgage.

**EXHIBIT A**

The East Twenty-five (25) feet of Lot Eight (8) in Block Six (6) of plat entitled "Subdivision of Block 1 and part of Block 6, North Mankato", now on file and of record in the office of the Register of Deeds in and for said County of Nicollet, subject to an easement, running to premises abutting on the West, of the right to use and benefit of a two story party wall on the North Fifty (50) feet of the West One (1) foot of said East Twenty-five (25) feet of said Lot Eight (8), according to a party wall agreement now of record in the said office of the Register of Deeds against said premises. AND West 25 feet of Lot 7, Block 6 of Subdivision of Block 1 and part of Block 6 of North Mankato; also described as: The West 25 feet of Lot 7 in Block 6 of Subdivision of Block 1 and part of Block 6 of North Mankato, according to the plat thereof on file in the office of the Register of Deeds in and for Nicollet County, Minnesota.