



**CITY COUNCIL AGENDA
SPECIAL CITY COUNCIL MEETING
October 30, 2023 5:30 P.M.**

The City of Montrose is committed to maintaining a safe, welcoming, family-friendly community, with affordable housing, where parents can raise their families; to ensuring our skilled, motivated employees provide high quality public services at a value; to sound stewardship and fiscal responsibility to ensure our city remains strong and prosperous, both now and into the future; to nurturing business-friendly partnerships to promote economic development and local jobs; to thoughtfully address community needs and plan for growth, innovation and sustainable development; and to ethical leadership that is responsive and accountable to our citizens.

Montrose Community Center
200 Center Avenue South
Montrose, Minnesota 55363

1. CALL TO ORDER

2. ROLL CALL

3. BUSINESS

A. First Children's Finance Childcare Opportunities Discussion with Public

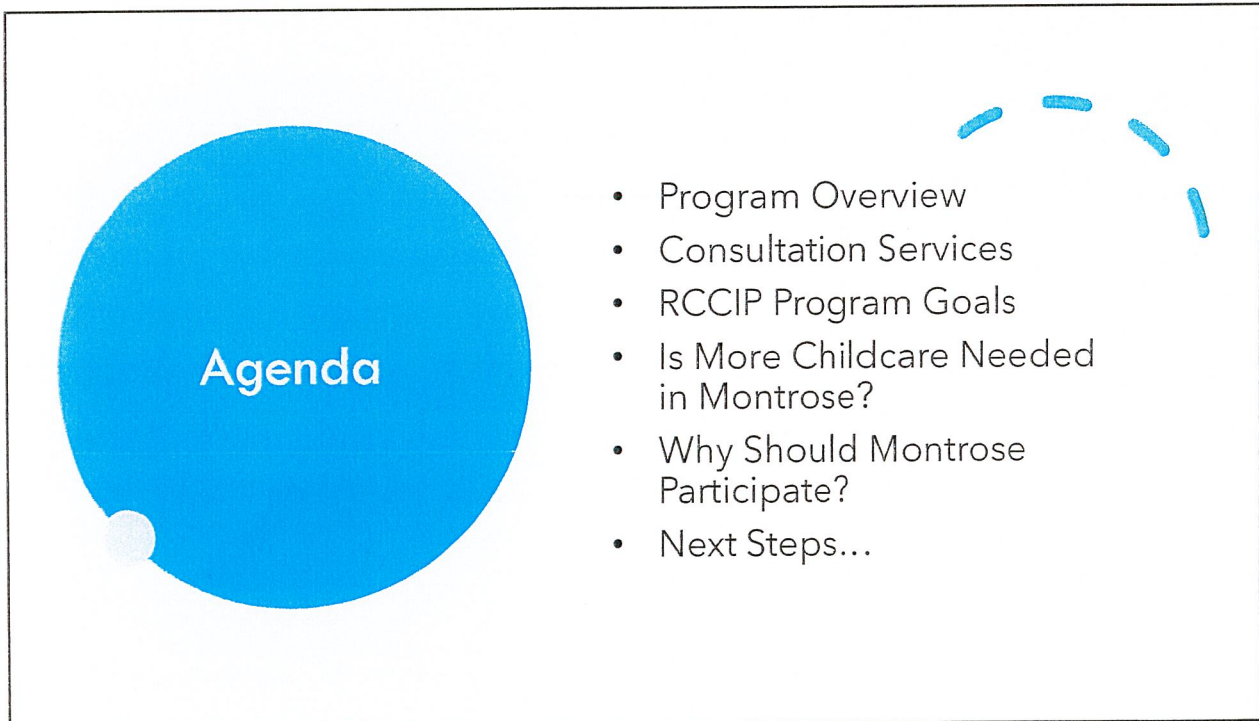
B. Purchase Agreement for Preserve

- i. Resolution 2023-34 – *A Resolution Approving a Purchase and Sale Agreement for the Sale of City-Owned Property to JPB Land, LLC*

4. ADJOURNMENT



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Program Overview

- First Children's Finance offers financing and education opportunities to communities and rural areas based on need
- Childcare is essential to community health and FCF partners with communities using local policy, local assets and local funding to create a robust supply of childcare
- FCF offers programs such as the Rural Childcare Innovation Program (RCCIP)
- FCF offers consulting services to create community-based solutions to develop strategic childcare supply plans



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Consultation Services Available for Communities

- Childcare Supply Analysis
- Strategic Supply Plan for Communities
- Recommendation of Sustainable Childcare Business Models
- Technical Expertise on Local Policy and Financial Incentives
- Childcare Market Analysis with Strategic Plan
- Guidance for Public-Private Partnerships to Build and Maintain Supply

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RCCIP Program Goals

1. Strengthen existing early care and education businesses, ensuring that children have continuity of care that prepares them for success
2. Expand the availability of quality childcare by creating new and innovative community solutions
3. Increase the regional and statewide public awareness of early care and education's role in rural economic development

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Is More Childcare Needed in Montrose?

According to 2016-2020 U.S. Census Data, Montrose is short almost 200 spots for childcare available in the community

First Children's Finance and the RCCIP Program Impact:

- The RCCIP program is funded by the MN Department of Human Services to address the challenges of rural childcare through the lens of Economic Development
- As of 2020, 31 Communities have participated in the RCCIP process
- 1,001 new childcare slots have been created as of June 2020
- Over 83% of existing childcare programs that participated in the RCCIP Business Leadership Cohorts improved their business practices

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Why Should Montrose Participate?

Communities with identified childcare challenges impacting economic development in their community should consider applying for the Rural Childcare Innovation Program.

Childcare shortages have a broad impact beyond the family, and communities need to address these issues with right-sized solutions that meet the unique aspects of the community.

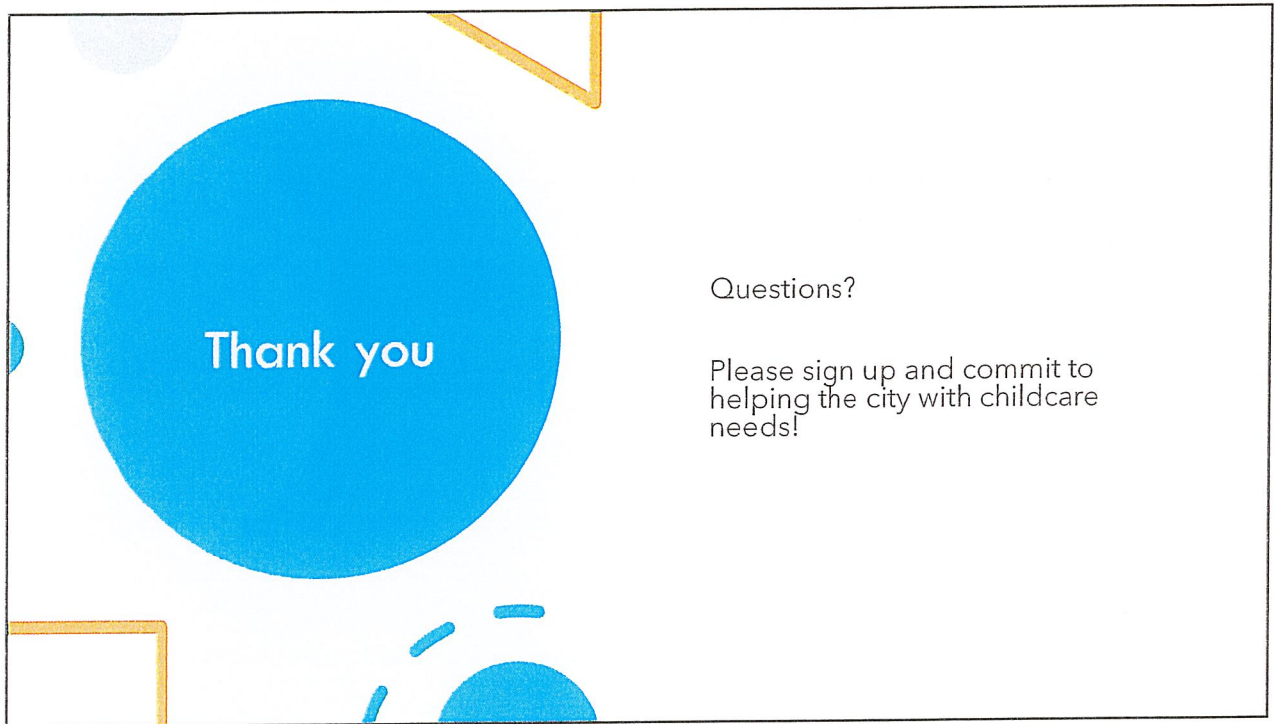


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Next Steps...

- 1 Development of a Core Team to Drive Change
- 2 A thorough analysis of the community's current childcare gaps and needs
- 3 Use of First Children's Finance's expertise, resources and tools, including research and financial modeling
- 4 Development of a Community Solution Action Plan that includes innovative solutions to increase the supply of high quality and affordable childcare
- 5 Educational and/or financial support and business improvement services to existing family childcare providers and childcare centers through consulting resources

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PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made and entered into as of the Effective Date (defined below) by and between the City of Montrose, a Minnesota municipal corporation ("Seller"), and JPB Land, LLC, a Minnesota limited liability company ("Buyer"). For purposes of this Agreement, the term "Effective Date" shall mean the date on which both parties hereto have delivered to the other a fully executed original of the Agreement. For purposes of delivery a signed facsimile or pdf transmission shall be deemed acceptable delivery.

1. **Property.** Subject to fulfillment of the terms and conditions of this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller (A) the real property consisting of one hundred seventy-four townhome lots contained in the plat of The Preserve of Montrose; (B) Outlot F in the plat of The Preserve of Montrose and contained in PID# 112048000060; (C) Outlot G in the plat of The Preserve of Montrose and contained in PID# 112048000070; and (D) Outlot H in the plat of The Preserve of Montrose, contained in PID# 112048000080, each of which parcels is located in the City of Montrose (the "City"), County of Wright, and State of Minnesota, and each of which is legally described on the attached Exhibit A, together with all easements, tenements, hereditaments, and appurtenances belonging thereto and all buildings, structures, fixtures and improvements presently affixed, attached to, placed or situated thereon, if any, and all right, title and interest, if any, of Seller, in and to any land lying in the bed of any street, road or access way, opened or proposed, in front of, at a side of or adjoining the land, which would accrue to the land upon vacation of any such adjoining street, road or access way (collectively, the "Property").

2. **Purchase Price: Payment.**

2.1 **Purchase Price.** The purchase price to be paid by Buyer for the Property shall be Seventy-Five Thousand and no/100 Dollars (\$75,000.00) (the "Purchase Price").

2.2 **Payment.** The Purchase Price shall be paid as follows:

2.2.1. **Earnest Money.** Within three (3) business days after the execution and delivery of this Agreement between Buyer and Seller, Buyer shall deposit with CHBT, LLC ("Title Company") earnest money in the amount of Ten Thousand and no/100 Dollars (\$10,000.00) (the "Earnest Money"), which Earnest Money shall be applied to the Purchase Price at Closing. The Earnest Money shall be held by Title Company in its account and disbursed in accordance with the terms of this Agreement. Any and all interest, if any, accruing on the Earnest Money pursuant to this Agreement shall be paid to Buyer and shall accrue solely for Buyer's benefit, provided, however, at Closing, Buyer may instruct Title Company to release any and all interest, if any, accruing on the Earnest Money to Seller and Buyer shall be entitled to an additional credit against the balance of the Purchase Price due at Closing in an amount equal to the accrued interest released to Seller. Wherever this Agreement provides for return or refund of the Earnest Money to Buyer, Title Company shall promptly return or refund the Earnest Money to Buyer upon receipt of written notice from Buyer to the Title Company and Seller and no consent or writing shall be required from Seller. The Earnest Money shall be refundable to Buyer in accordance with the terms of this Agreement until the Contingency Date.

2.2.2 **Cash.** The balance of the Purchase Price of Sixty-Five Thousand and no/100 Dollars (\$65,000.00) (subject to prorations, reductions and credits as provided below) shall be paid by wire transfer or cashier's check at closing.

3. **Title To Be Delivered: Commitment: Survey: Title Objections.**

3.1 **Title To Be Delivered.** At Closing, Seller agrees to convey Marketable Fee Simple Title to the Property. For purposes of this Agreement, the term "Marketable Fee Simple Title" means marketable fee simple title to the Property, as determined by Minnesota Statutes, the Minnesota Supreme Court and Court of Appeals decisions and Minnesota Title Standards and White Pages that, when acquired by Buyer, will be insurable by Title Company under its standard ALTA (Form 2006) Owner's Title Insurance Policy, at standard rates and free and clear of all of all liens, encumbrances, easements, covenants, conditions, and restrictions other than Permitted Exceptions (defined in Section 3.3 below).

3.2 **Commitment: Survey.**

3.2.1. **Commitment.** Within a reasonable time after the Effective Date hereof, Buyer, at its expense, shall obtain a title insurance commitment ("Commitment") covering the Property issued by Title Company

wherein Title Company agrees to issue to Buyer upon the recording of the Deed (defined in Section 9.1 below) and the conveyance documents described herein an ALTA (Form 2006) Owner's Title Insurance Policy, with standard coverage, in the full amount of the Purchase Price. The Commitment shall have an effective date after the date of this Agreement (the "Updated Commitment"), shall be accompanied by copies of all recorded documents affecting the Property, and shall include searches for real estate taxes and pending and levied special assessments. Buyer may deliver a copy of the Survey (defined in Section 3.2.2 below) to Title Company so that the initial Commitment may be amended or supplemented to contain any survey exceptions to title. Seller shall promptly notify Buyer of any material changes in any of the items contained in Schedule A, Schedule B-PART I, or Schedule B-PART II of the Commitment occurring prior to the Date of Closing, and the Commitment shall be updated accordingly.

- 3.2.2. Survey. Prior to the Contingency Date, as may be extended, Buyer, at its expense, may obtain a current ALTA/NSPS Land Title Survey ("Survey") of the Property prepared by Minnesota licensed surveyor containing such Table A Requirements as may be required by Buyer. Buyer may deliver to said surveyor a copy of the Commitment obtained by Seller as provided above, so that the Survey will include and identify the location of any encroachments, easements, encumbrances or other restrictions that are identified or disclosed in the Commitment.

3.3 Title Objections. For purposes hereof, the term "Title Evidence" shall mean the Commitment, the Updated Commitment, copies of recorded documents referred to in the Commitment or the Updated Commitment, and the Survey (if any), or any update or supplement to any of the foregoing. Buyer shall have until the date that is twenty (20) business days after receipt of the Title Evidence to make written objection to matters disclosed in the Title Evidence which adversely affect Marketable Fee Simple Title to the Property or Buyer's intended use and development of the Property (collectively, "Objections"). Any exceptions disclosed in the Title Evidence (other than Liens (defined below) for which Buyer is not required to make any Objections) not timely objected to by Buyer by written notice delivered to Seller on or before the Title Objection Deadline shall be deemed a "Permitted Exception" hereunder. Seller will use best efforts to cure the Objections on or before the date that is twenty (20) days after receipt of Buyer's Objections ("Cure Period"), and the Closing Date shall be extended if necessary to accommodate such Cure Period.

If Seller fails to have all such Objections cured by the expiration of the Cure Period or fails to notify Buyer that Seller has cured all such Objections prior to expiration of the Cure Period, then without limiting any other remedies Buyer may have at law or in equity, Buyer may, in its sole discretion, elect any of the following remedies:

(a) terminate this Agreement without any liability on its part by written notice to Seller in which event this Agreement shall be deemed to be cancelled and terminated, without further notice or action required of either party, the Earnest Money shall be returned to Buyer, and Buyer and Seller shall thereafter be released from any liability or obligation hereunder; provided, however, that Buyer's indemnification obligations under Section 4.1 of this Agreement shall survive such termination, or

(b) waive such remaining Objections in writing and proceed to Closing, subject to fulfillment of the other terms and conditions hereof, in which event the Objections that have not been cured shall be deemed Permitted Exceptions at Closing, but shall not be deemed a waiver of Buyer's conditions to Closing pertaining to matters of title and survey set forth in Section 7 below, or

(c) extend the Cure Period for Seller's correction of the remaining Objections for a period of time determined by Buyer not to exceed an additional sixty (60) days, and if Seller is not successful in curing such Objections or fails to notify Buyer that is has successfully cured such objections prior to expiration of the extended Cure Period, then Buyer shall then have the right to either terminate this Agreement pursuant to clause (a) above and the Earnest Money shall be returned to Buyer, or waive such Objections pursuant to clause (b) above.

Whether or not Buyer has delivered to Seller any notice of Objections pursuant to the foregoing terms, Buyer may, at or prior to the Closing, notify Seller in writing of any Objections to title exceptions first raised by Title Company or the surveyor that prepared the Survey between the original effective date of the Commitment or Survey, as the case may be, and the Closing. Any such Objections made by Buyer shall be resolved in the same manner and within the same time frames as set forth above, and the Closing Date shall be extended as necessary to accomplish the same.

4. Property Information: Inspections: Covenants of Cooperation.

4.1 Property Information; Inspections; Covenants of Cooperation. Within twenty (20) days of the Effective Date hereof, Seller shall provide to Buyer all pertinent property information that Seller has in its possession ("Property Information") related to the Property. Buyer and Buyer's agents, contractors and advisors (the "Authorized Parties") may conduct such physical inspections of the Property as Buyer deems necessary in Buyer's sole discretion. Buyer agrees to indemnify, defend, and hold Seller harmless from any claims, injuries, or damage caused by such inspections. Seller agrees to promptly provide to Buyer any new or additional Property Information obtained or located by Seller at any time. Seller agrees to cooperate with Buyer and its Authorized Parties with respect to Buyer's intended development and use of the Property and any efforts to obtain any private, governmental or quasi-governmental approvals, permits, authorizations or agreements required for Buyer's intended development or use of the Property (including, without limitation, signing applications, plats, and the like, site plan approval and a plat or re-plat of the Property); provided, however, Buyer shall be solely responsible for any and all costs of such approvals, permits, authorizations or agreements.

5. Control of Property; Condemnation.

5.1 Control of Property. Until the Closing, except for Buyer's indemnification obligations set forth in Section 4.1. above, Seller shall have full responsibility and the entire liability and risk of loss for any and all damages or injury of any kind whatsoever to the Property and all persons, whether employees or otherwise, and all property from and connected to the Property, except to the extent caused by Buyer's inspection activities pursuant to Section 4.1 and Buyer's negligent acts or willful misconduct. Seller will, between the date hereof and the Closing Date, maintain the Property in compliance with the terms of all applicable federal, state and local laws, rules, regulations, directives, and ordinances. From and after the Effective Date, Seller will not enter into or permit any new leases, licenses, contracts, agreements, easements, covenants, conditions, restrictions, liens, mortgages, or other encumbrances whatsoever upon the Property, or any amendments or modifications of any such existing agreements or encumbrances, without Buyer's prior written consent. The condition of the Property at Closing shall be substantially the same as of the Effective Date of this Agreement, reasonable wear and tear excepted and except as otherwise provided herein. Seller shall keep and preserve the Property in the condition existing as of the date of this Agreement and shall not alter or improve the Property in any manner including without limitation, installation of structures, removal of trees, mining, removal of minerals, dewatering, grading, borrow pits, or allowing placement of fill on the Property, and shall not deposit or permit to be deposited thereon any garbage, hazardous waste, solid waste, or other refuse material without Buyer's prior written consent.

5.2 Condemnation. If, prior to the Closing, the Property shall be the subject of an action in eminent domain or a proposed taking by a governmental authority, whether temporary or permanent, Buyer, in its sole discretion, shall have the right to terminate this Agreement upon written notice to Seller, and upon termination, the Earnest Money shall be delivered to and retained by Buyer, and thereafter, neither party shall have any further liability or obligation under this Agreement, except that Buyer's indemnification obligations under Section 4.1 above shall survive such termination. If Buyer does not exercise its right of termination, then (i) any and all proceeds arising out of any such eminent domain or taking shall be held in trust by Seller for the benefit of Buyer and paid to Buyer at Closing; (ii) the "Property" shall thereafter be defined to mean the Property less the portion taken by eminent domain or condemnation, and (iii) the Purchase Price shall not be adjusted.

6. Representations and Warranties of Seller. Seller represents and warrants to Buyer that:

6.1 No Code Violations, Litigation or Condemnation. To Seller's knowledge, there are no outstanding violations of laws, codes, ordinances, orders, rules, or regulations relating to the Property which remain uncured, and Seller has no actual knowledge of and has not received notice of any such conditions that could constitute such a violation. All notices (delivered or issued by any governmental authority having jurisdiction over the Property) of violations of laws, codes, ordinances, orders, rules, or regulations affecting the Property have been complied with or will be complied with by the Closing Date. There is no actual, or to Seller's knowledge, threatened, action, litigation, or proceeding by any organization, person, individual or governmental agency (including governmental actions under condemnation authority or similar proceedings) affecting the Property. No action in condemnation or eminent domain proceedings are now pending or, to the best of Seller's knowledge, contemplated against the Property.

6.2 FIRPTA. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and regulations issued pursuant thereto).

6.3 Marketable Title. Seller has good and marketable fee simple title interest in the Property subject only to the

exceptions to title disclosed in the Commitment or Survey.

6.4 Liens and Encumbrances; No Unpaid Services. The Property will, as of the Closing Date, be free and clear of all liens, security interests, all encumbrances, leases, unrecorded agreements, or other restrictions or objections to title except as permitted by this Agreement. All services, labor or material which have been furnished to the Property by or for Seller have been fully paid for or will be fully paid for prior to the Closing Date so that no lien for services or materials rendered can subsequently be asserted against the Property.

6.5 Business Authorization. Seller is a Minnesota municipal corporation. Seller is duly organized, existing, and qualified to do business under the laws of the State of Minnesota; Seller has duly and validly authorized and executed this Agreement, and has full power to enter into and perform this Agreement pursuant to its terms; the persons signing this Agreement are authorized by Seller to do so; the execution and delivery of this Agreement, and the consummation of the transaction contemplated hereby, will not constitute a default under Seller's governing documents, or under any agreements, mortgages, or other instruments to which Seller is a party, and is not in contravention of law, order, ordinance, or regulation by which Seller is bound or subject. Neither the execution and delivery of this Agreement, nor the consummation of the transaction contemplated hereby, nor the compliance with or fulfillment of the terms and conditions hereof, will conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under any agreements, mortgages, or other instruments which Seller is a party or by which Seller is otherwise bound, and Seller possesses the present right, legal power, and full authority to enter into and perform this Agreement according to its terms.

6.6 Well and Private Septic System Disclosures. Seller represents that there are no wells or private septic systems located on the Property.

6.7 "AS IS, WHERE IS". Buyer acknowledges that it has inspected or has had the opportunity to inspect the Property and agrees to accept the Property "AS IS" with no right of set off or reduction in the Purchase Price. Such sale shall be without representation of warranties, express or implied, either oral or written, made by Seller or any official, employee or agent of Seller with respect to the physical condition of the Property, including but not limited to, the existence or absence of petroleum, asbestos, hazardous substances, pollutants or contaminants in, on, or under, or affecting the Property or with respect to the compliance of the Property or its operation with any laws, ordinances, or regulations of any government or other body, except as stated above. Buyer acknowledges and agrees that Seller has not made and does not make any representations, warranties, or covenants of any kind or character whatsoever, whether expressed or implied, with respect to warranty of income potential, operating expenses, uses, habitability, tenant ability, or suitability for any purpose, merchantability, or fitness of the Property for a particular purpose, all of which warranties Seller hereby expressly disclaims, except as stated above.

6.8 Tenants; Unrecorded Instruments. There are no tenants or third parties in possession of any portion of the Property. There are no leases, licenses, purchase agreements, purchase options, rights of first offer, rights of first refusal, or other unrecorded agreements in existence which affect the Property.

6.9 Flood Plain. Seller is unaware of any floodplain designation on the Property.

6.10 Taxes; Special Assessments. There are either (i) no delinquent, deferred, or "Green Acres" taxes against the Property, or (ii) there are delinquent, deferred, or "Green Acres" taxes against the Property, and Seller shall be responsible to pay such taxes on or before the date of Closing. No ordinance or hearing is now before any local governmental body which either contemplates or authorizes any public improvements or special tax levies, the cost of which may be assessed against the Property.

6.11 Access. The Property abuts or has lawful direct access to a public right of way.

6.12 Improvements. There are not any improvements on the Property.

6.13 Methamphetamine. Seller is not aware of any methamphetamine production that has occurred on the Property.

6.14 City Sewer and Water. Seller represents and warrants that the Property is either directly or indirectly connected to the City sewer system and the City water system.

The representations and warranties set forth in this Section 6 shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time, and all such representations or warranties shall survive Closing and shall not merge with Seller's Deed delivered to Buyer at Closing and shall not be affected by any investigation, verification or approval by any party hereto or by anyone on behalf of any party hereto, nor affected by any documents obtained by or delivered to Buyer hereunder. For a period of six months from the Closing Date, Seller agrees to indemnify and hold Buyer harmless from and against, and to reimburse Buyer with respect to any and all claims, investigations, demands, causes of action, loss, damage, liabilities, and costs asserted against or incurred by Buyer, including reasonable attorneys' fees, by reason of or arising out of the breach of any representation or warranty as set forth in this Section 6. If, at any time prior to the Closing Date, Seller acquires knowledge of events or circumstances which render the representations set forth in this paragraph inaccurate in any respect, Seller shall immediately notify Buyer, in writing and in addition to any other remedy it may have, Buyer may terminate this Agreement by written notice to Seller and receive a full refund of the Earnest Money.

7. **Buyer's Conditions to Closing.** The Closing of the transaction contemplated by this Agreement and all the obligations of Buyer under this Agreement are subject to fulfillment, on or before the date which is ninety (90) days after the Effective Date of this Agreement (the "Contingency Date"), of the following conditions precedent:

- (a) Buyer shall have determined in its sole discretion that the physical status or condition of the Property, including without limitation, buildability, environmental, geotechnical (soil), wetland, floodplain, drainage and availability of adequate access and utilities, and the status or condition of title and survey of the Property shall be satisfactory to Buyer.
- (b) Buyer shall have determined in its sole discretion that the Property is acceptable to Buyer in all respects, including without limitation, economic feasibility of development, market feasibility, and availability of utilities and access. Buyer may determine the same from review of the Property Information and the Inspections performed pursuant to Section 4, and any other inquiries or other examinations, studies or evaluations of the Property, if any, which Buyer elects to perform or to have performed, and by taking into consideration such facts as Buyer deems relevant.
- (c) Buyer shall have approved of and/or obtained all comprehensive plan amendment, zoning, rezoning, variance, permits, approvals, licenses, building permitting ability, easements and agreements, including without limitation, tax increment financing plan approval acceptable to Buyer, homeowner association approval and consent, an approved site plan and plat for the Property (collectively, "Approvals") from private parties under recorded instruments, the City, State of Minnesota, Wright County, or any other such municipal authority or government authority having jurisdiction over the Property deemed necessary by Buyer to permit Buyer's intended use and development of the Property.
- (d) Buyer shall have qualified for and obtained such written commitments for financing of Buyer's purchase of the Property on terms and conditions acceptable to Buyer in its sole discretion. Further, Buyer shall have obtained an appraisal of the Property by an appraiser acceptable to both Buyer and, if applicable, Buyer's lender in an amount greater than or equal to the purchase price herein.

Buyer shall have the right to extend the Contingency Date for up to one (1) thirty (30) day extension. The foregoing conditions precedent described in this Section 7 are for the sole benefit of Buyer.

If Buyer determines, in its sole discretion, that the Property is not suitable or acceptable to Buyer or that the foregoing conditions have not been fulfilled or satisfied to the satisfaction of Buyer, then Buyer shall have the right to terminate this Agreement by delivering written notice of its election to terminate to Seller at any time prior to 5:00 p.m. Central Time on the Contingency Date. If Buyer delivers said written notice of termination to Seller on or before the Contingency Date, this Agreement shall be deemed to be cancelled and terminated, without further notice or action required of either party, the Earnest Money shall be refunded to Buyer, and Buyer and Seller shall thereafter be released from any liability or obligation hereunder; provided, however, that Buyer's indemnification obligations under Section 4.1 of this Agreement shall survive such termination. If requested by either party hereto, the other party shall execute a termination of purchase agreement, though no such termination of purchase agreement shall be required in order for the Title Company to refund the Earnest Money to Buyer.

8. **Closing Date.** The term "Closing" shall mean and refer to the act of the execution and settlement of the purchase and sale of the Property, and the delivery of the Closing documents and monies subject to the terms and

conditions set forth in this Agreement. The Closing shall be held at the offices of Title Company, or at such other place as Seller and Buyer may mutually determine, including by means of an escrow closing. The Closing of the purchase and sale shall take place on or before the date which is five (5) days after the expiration of the Contingency Date (the "Closing Date"). Buyer's obligation to consummate the Closing is conditioned upon (i) all representations and warranties of Seller contained herein being true and correct, in all material respects, as of the date made and as of the Closing, (ii) Seller having delivered its closing documents as required in Section 9 below, and (iii) on the Closing Date, Title Company is irrevocably committed to issue to Buyer at both Closings a 2006 ALTA Extended Coverage Owner's Policy of Title Insurance with respect to the Property in the amount of the Purchase Price showing fee simple title to the Property vested in Seller, subject to only the Permitted Exceptions, consistent with a pro forma Owner's Policy of Title Insurance issued by Title Company and approved by Buyer pursuant to the terms of this Agreement. If any of the conditions to the Closing set forth in the immediately preceding sentence have not been satisfied and have not been waived in writing by Buyer by the Closing Date, then Buyer may terminate this Agreement upon written notice to Seller, in which event the Earnest Money, and all interest earned thereon, shall be refunded or paid to Buyer and neither party shall have any further obligations hereunder except for those obligations which expressly survive the termination of this Agreement. The parties shall cooperate and use reasonable efforts to effect an escrow style closing or in such other fashion as may be reasonably acceptable to the parties and settlement agent that will not require personal attendance at Closing.

9. Seller's Obligations at Closing. At or prior to the Closing Date, Seller shall:

9.1 Delivery of Deed. Deliver to Buyer Seller's duly recordable Quit Claim Deed (the "Deed") to the Property (in a form reasonably satisfactory to Buyer) conveying to Buyer Marketable Fee Simple Title to the Property and all easements, tenements, hereditaments, and appurtenances belonging thereto.

9.2 FIRPTA Affidavit. Deliver to Buyer Title Company's standard affidavit of Seller confirming that Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and regulations issued pursuant thereto).

9.3 Seller's Affidavit. Deliver to Buyer Title Company's standard affidavit of Seller confirming that there are no bankruptcies or dissolutions affecting the Seller, and no outstanding or unsatisfied, judgments, tax liens, mechanic's liens against or involving Seller or the Property nor any actions pending in any courts, which affect the Property, that there has been no labor or materials furnished to the Property for which payment has not been made, and that there are no unrecorded contracts, leases, easements or other agreements or interest relating to the Property and no parties in possession or encroachments or boundary line disputes of which Seller has knowledge.

9.4 Bring Down Certificate. Deliver to Buyer a certificate at Closing confirming that the representations and warranties of Seller set forth in this Agreement are true and correct as of the Closing Date as though made as of such date.

9.5 Storage Tanks. If Seller knows the Property contains or contained an underground or aboveground storage tank that had a release for which no corrective action was taken, or if required by the applicable governmental agency as a condition of a correction action under Minn. Stat. Chapter 115C, an affidavit with respect thereto, as required by Minn. Stat. § 116.48, Subd. 6.

9.6 Additional Documents. Deliver to Buyer or Title Company such other documents as may be reasonably required to consummate the Closing (including, without limitation, a closing statement and authorizing resolutions of Seller), all in a form reasonably satisfactory to Title Company.

9.7 Removal of Property. Remove from the Property all personal property, equipment and machinery (collectively, "Personal Property") located thereon. In the event there is any Personal Property remaining on the Property as of the Closing Date, then upon request of Buyer Seller agrees to execute and deliver to Buyer a warranty bill of sale to all such Personal Property free of all encumbrances, or alternatively, Buyer may cause such Personal Property to be removed and disposed of and Seller shall reimburse Buyer for all out-of-pocket costs of removing and disposing such Personal Property. The provisions of this Section 9.7 shall survive the Closing and shall not merge with delivery of Seller's Deed to Buyer.

9.8 Possession. Deliver exclusive possession of the Property to Buyer on the Closing Date, free of the possessory interest of Seller or any tenants, licensees or occupants thereof. Further, all utility services furnished to the Property shall be paid by Seller through the Closing Date.

10. **Buyer's Obligations at Closing.** At Closing, subject to the terms, conditions, and provisions hereof and the performance by Seller of its obligations as set forth herein, the Earnest Money payment previously made by Buyer shall be credited against the Purchase Price and the Earnest Money shall be released from escrow to Seller as set forth on the closing statement, and Buyer shall deliver the balance of the Purchase Price to Seller as provided in Section 2 above. Buyer shall also deliver to Seller or Title Company such other documents as may be reasonably required to consummate the Closing (including, without limitation, authorizing resolutions of Buyer), all in a form reasonably satisfactory to Title Company.

11. **Closing Costs.** The following costs and expenses shall be paid as follows in connection with the Closing:

11.1 **Seller's Costs.** Seller shall pay (i) all fees to record all of the documents necessary to permit Seller to convey Marketable Fee Simple Title to the Property to Buyer (other than the recording fee to record the Deed); (ii) the cost of any title endorsements necessary to convey Marketable Fee Simple Title to Buyer; (iii) one-half (1/2) of the closing fee and/or escrow fee charged by Title Company in connection with the escrow of Earnest Money or the Closing; (iv) Minnesota State Deed Tax and any other state, county or municipal deed tax, excise tax or transfer fee imposed on the conveyance, (v) any deferred (e.g. "Green Acres") real estate taxes and any delinquent real estate taxes (including without limitation, interest or penalties thereon), and (vi) Seller's pro-rata share of real estate taxes due and payable in the year of Closing as provided in Section 12 below and the entire portion of any special assessment certified for payment with the real estate taxes in the year of Closing, and (vii) all unpaid special assessments levied or pending as of the Closing Date. Seller shall pay its own attorneys' fees.

11.2 **Buyer's Costs.** Buyer shall pay (i) the recording fee necessary to record the Deed, (ii) the cost of the title commitment and any title search and examination fees; (iii) the premium for the owner's title insurance policy and any optional endorsements; and (iii) one-half (1/2) of the closing fee and/or escrow fee charged by Title Company in connection with the escrow of Earnest Money or the Closing. Buyer shall pay its own attorneys' fees.

12. **Proration of Real Estate Taxes.**

12.1 **Prorations.** Seller shall pay all real estate taxes for the Property, green acres taxes, and installments of all special assessments certified for payment with the real estate taxes due and payable in all years prior to the year of Closing. Seller shall also pay the unpaid balance of any special assessments levied or pending as of the Closing Date. Seller and Buyer shall pro-rate real estate taxes due and payable in the year of the Closing, to the Date of Closing. Buyer shall pay all real estate taxes and assessments of any kind for the Property in any years after the date of Closing.

12.2 **No Separate Tax Statement.** If, as of the Closing Date, the Property is not assessed for purposes of real property taxation separately from all other real property, then the real estate taxes and assessments certified for payment therewith for the total tax parcel shall be paid in full by Seller at Closing, and the amount of real estate taxes and assessments certified for payment therewith allocable to the Property shall be determined based upon the ratio that the square footage of the Property bears to the square footage of all the real property within the total tax parcel. Seller has not received a notice regarding any new improvement project from any assessing authorities, the costs of which project may be assessed against the Property, and in the event Seller receives such a notice, after the Effective Date of this Agreement, Seller agrees to provide such notice to Buyer immediately.

13. **Brokerage.** Seller shall pay any brokerage commission for which Seller is responsible. Buyer's President is a licensed real estate broker in the State of Minnesota. Buyer shall pay any brokerage commission for which Buyer is responsible. Each party hereby agrees to indemnify, defend, and hold harmless the other party for any claim (including reasonable expenses incurred in defending such claim) made by a broker, sales agent or similar party claiming to be entitled to a commission in connection with this transaction by reason of the acts of the indemnifying party. These obligations of Seller shall survive Closing or any termination of this Agreement.

14. **Remedies.** If Buyer defaults in any of the agreements herein, Seller may cancel this Purchase Agreement, and the Earnest Money shall be retained by Seller as liquidated damages and Buyer and Seller shall affirm the same by a written cancellation agreement. Seller agrees that Seller's damages related to such default would be difficult or impossible to calculate and that such liquidated damages represent fair and adequate compensation and shall be Seller's only remedy in the event of Buyer's default. In the event Seller defaults under this Agreement then, in addition to any other remedies at law or in equity, including the right to specific performance, Buyer shall be entitled to a refund of the Earnest Money payment made previously hereunder.

15. **Escrow.** Title Company is authorized and agrees by acceptance thereof to promptly disburse the Earnest Money in accordance with the terms and conditions of this Agreement. If Buyer and Seller execute any separate escrow instructions or an escrow agreement with Title Company, then in the event of a conflict between the terms of such escrow instructions or escrow agreement and the terms of this Agreement, the terms of this Agreement shall control.

16. **Signage.** Immediately after Closing, Seller, at its sole expense, shall remove any existing marketing signs that are located on the Property, if any.

17. **Acceptance.** This Agreement, when duly executed and delivered by all of the parties hereto, shall be binding upon the parties hereto, their heirs, legal administrators, representatives, successors and assigns.

18. **Calculation of Time Periods.** Unless otherwise specifically provided herein, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday, legal holiday observed by the government of the State of Minnesota, or day on which commercial banks in the State of Minnesota are required by law to be closed, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of such period shall be deemed to end at 5:00 p.m., Central Time. The term "business day" or "business days" means every day other than Saturdays, Sundays, legal holidays observed by the government of the State of Minnesota, or days on which commercial banks in the State of Minnesota are required by law to be closed.

19. **Attorneys' Fees.** If any dispute arises between the parties regarding this Agreement or the subject matter the prevailing party in any court action, administrative proceeding or alternative dispute resolution commenced or maintained to resolve such dispute, shall be entitled to an award of reasonable arbitration or court costs in addition to any other remedy to which the parties are entitled.

20. **1031 Exchange.** Buyer and Seller acknowledge that the other may elect to consummate the purchase or sale of the Property as "like-kind exchange" within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended. All costs associated with same shall be paid by the party effecting such exchange and such party shall indemnify and hold the other party harmless from any loss or liability as a result of the other party's participation in same. Subject to the foregoing, Buyer and Seller agree to cooperate with regard to the 1031 Exchange.

21. **Notices.** Except as otherwise provided in this Agreement, all notices and demands given or required to be given by any party hereto to any other party shall be deemed to have been properly given if and when (i) hand delivered (in person or by courier), (ii) after having been deposited with a reputable overnight commercial courier (e.g. UPS or Federal Express) for delivery the following business day, (iii) after having been deposited in any U.S. Postal Service and sent by registered or certified mail, postage prepaid, or (iv) sent via email transmission (provided the sender does not receive a notice of transmission failure), addressed as follows (or addressed to such other address as any party shall specify by written notice to the other party pursuant to the provisions of this Section):

TO SELLER:

City of Montrose ATTN: City Administrator
311 Buffalo Ave. S.
Montrose, MN 55363-0025
Email: jbonniwell@montrose-mn.com

with copy to:

Sarah Sonsalla/Mary Tietjen
Kennedy & Graven, Chartered
Fifth Street Towers, Suite 700
150 South Fifth Street

TO BUYER:

JPB Land, LLC ATTN: Art Plante
13700 Reimer Drive N.
Maple Grove, Minnesota 55311
Email: art@jpbrooks.com

with copy to:

Michael A. Broback
Broback Law Firm
2708 Autumn Woods Drive
Chaska, MN 55318

Minneapolis, MN 55402

Email: ssonsalla@kennedy-graven.com

mtietjen@kennedy-graven.com

Email: mbroback@gmail.com

Notices hereunder to be sent by Seller to Buyer may be sent by Seller's legal counsel and shall be deemed valid notices by Seller to Buyer. Notices hereunder to be sent by Buyer to Seller may be sent by Buyer's legal counsel and shall be deemed valid notices by Buyer to Seller. Any party, by notice as given as aforesaid, may change the address to which subsequent notices are to be sent to each party

22. Miscellaneous. The waiver by either party hereto of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. No waiver shall be binding upon either party unless made by written notice to the other party. Time is of the essence of this Agreement. This Agreement is made and executed under and in all respects to be governed and construed by the laws of the State of Minnesota and the parties hereto hereby agree and consent and submit themselves to any court of competent jurisdiction situated in the State of Minnesota. If for any reason any term or provision of this Agreement shall be declared void and unenforceable by any court of law or equity it shall only affect such particular term or provision of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto. This Agreement may be executed in one or more counterparts each of which when so executed and delivered shall be an original, but together shall constitute one and the same instrument. All of the warranties, covenants, and representations made herein by either Seller or Buyer shall survive Closing (and shall not merge with the delivery of the Deed to Buyer) or the earlier termination of this Agreement. All understandings and agreements heretofore had between the parties are merged into this Agreement which alone fully and completely expresses their agreement. Further, when duly executed by the parties, this Agreement supersedes and renders null and void any letter of intent or letter of understanding between the parties pertaining to the Property. This Agreement may be changed only in writing signed by both of the parties hereto and shall apply to and bind the successors and assigns of each of the parties hereto and shall not merge with the Deed delivered to Buyer at Closing. This Agreement may not be assigned by Buyer without the written permission of Seller. The parties agree that signatures upon this Agreement, as may be amended or modified in writing, may be executed in hand or by electronic signature and may be transmitted by electronic means including email or facsimile, which suffice and be binding upon the respective parties the same as execution and delivery of an original copy.

23. Blocked Persons. Neither Seller nor Buyer, nor, to the actual knowledge of Seller and Buyer, any of their affiliates, is in violation of any laws relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56. Neither party hereto nor, to the knowledge of the parties, any of their affiliates, or their respective brokers or other agents acting or benefiting in any capacity in connection with the transaction contemplated hereby, is any of the following: (a) a person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (b) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (c) a person or entity with which either party is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or (e) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list. Neither party, nor to the knowledge of either party, any of its brokers or other agents acting in any capacity in connection with the transaction contemplated hereby (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in this Section 23; (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. This Agreement may be terminated by either party if the other party is determined to be a blocked person within the meaning of the Executive Order.

[Signature page to Purchase Agreement follows on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SELLER:

City of Montrose,
a Minnesota municipal corporation

By: _____
Kirby Moynagh

Its: Mayor

DATE: _____, 2023

By: _____
Jessica Bonniwell
Its: City Administrator

BUYER:

JPB Land, LLC,
a Minnesota limited liability company

By: Josh Pomerleau
Josh Pomerleau

Its: Chief Manager

DATE: October 20, 2023

JOINDER OF TITLE COMPANY

The undersigned hereby agrees to act as title agent and escrow agent pursuant to the foregoing Purchase Agreement ("Agreement") by and between the City of Montrose, a Minnesota municipal corporation, as Seller, and JPB Land, LLC, a Minnesota limited liability company, as Buyer. The undersigned acknowledges receipt of Earnest Money from Buyer in the amount of TenThousand and no /100 Dollars (\$10,000.00) and has established Escrow No. _____ pursuant to the terms thereof. The undersigned agrees to comply with the instructions to the undersigned Title Company contained in the Agreement.

TITLE COMPANY:
Custom Home
Builders Title, LLC

By: _____
(Signature)

Name: _____
(Print Name)

Title: _____
(Print Title)

Executed on: _____, 2023
(Print Date)

EXHIBIT A
LEGAL DESCRIPTION OF THE
PROPERTY

Lots 1, 2, 3, and 4, Block 1, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, and 4, Block 2, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, and 4, Block 3, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, and 6, Block 4, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 5, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 6, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, and 6, Block 7, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 8, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, Block 9, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 10, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, Block 11, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 12, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, Block 13, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 14, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, Block 15, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, and 6, Block 16, The Preserve of Montrose, Wright County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 17, The Preserve of Montrose, Wright County, Minnesota.

Outlots A, B, C, D, E, F, G, and H, The Preserve of Montrose, Wright County, Minnesota.

Abstract Property.



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11/01/2023 10:35:47 AM

Activity

 Jennifer Upegui	created the document	11/01/2023 10:35:47 AM
 Jennifer Upegui	sent the document to jp@jpbrooks.com	11/01/2023 10:35:47 AM
 Josh Pomerleau	first viewed document	11/01/2023 10:35:47 AM
 Josh Pomerleau	signed the document	11/01/2023 10:35:47 AM

RESOLUTION NO. 2023-34

**RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT FOR THE
SALE OF CITY-OWNED PROPERTY TO JPB LAND, LLC**

WHEREAS, the City of Montrose (the “City”) is the fee owner of certain real property consisting of one hundred seventy-four townhome lots within the plat of The Preserve of Montrose, located in the City, County of Wright, and legally described on the attached Exhibit A (the “Property”); and

WHEREAS, the City desires to convey the Property to JPB Land, LLC, a Minnesota limited liability company (the “Buyer”); and

WHEREAS, the City and the Buyer desire to enter into a purchase and sale agreement, pursuant to which the City will convey the Property to the Buyer (the “Purchase Agreement”); and

WHEREAS, the Montrose City Council finds it is in the public’s interest to approve the Purchase Agreement for the purposes described above.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Montrose as follows:

1. The Purchase Agreement is approved in substantially the form presented to the City Council, subject to modifications and addenda that do not alter the substance of the transaction and that are approved by the Mayor and the City Administrator.
2. The Mayor and City staff are authorized to take all actions necessary to perform the City’s obligations under the Purchase Agreement as a whole, including, without limitation, execution of any documents to which the City is a party referenced in or attached to the Purchase Agreement, and any other documents necessary for the Property to be conveyed by the City to the Buyer, all as described in the Purchase Agreement.

Adopted by the City Council of the City of Montrose, Minnesota, this 30th day of October, 2023.

Kirby Moynagh, Mayor

ATTEST:

Jessica Bonniwell, City Administrator

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Abstract Property.