

## PURCHASE AGREEMENT

This Purchase Agreement (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between the City of Marshall, a Minnesota municipal corporation (“Seller”), and 2<sup>nd</sup> Avenue Investments, LLC., a Minnesota corporation (“Buyer”).

**1. PROPERTY.** Seller is the owner of certain real estate located in the City of Marshall, Lyon County, Minnesota (PID No. 27-485012-0), legally described as follows:

Outlot A, LEGION FIELD ROAD 2ND ADDITION, according to the recorded plat thereof

(the “Property”).

**2. OFFER/ACCEPTANCE.** In consideration of the mutual agreements herein contained, Buyer offers and agrees to purchase, and Seller agrees to sell and hereby grants to Buyer the exclusive right to purchase the Property. Buyer acknowledges that no items of personal property are included in the sale of the Property.

**3. CONTINGENCIES.** This Agreement is subject to the following contingencies:

- A. Approval of this Agreement by Seller’s governing body.
- B. Approval by Seller of Buyer’s intended use of the Property.
- C. Buyer having determined that it is satisfied with the results of and matters disclosed by Buyer’s investigations, surveys, soil tests, engineering inspections, and hazardous substance and environmental reviews of the Property, if any.

If the above contingencies are satisfied in a timely manner, then Buyer and Seller shall proceed to close the transaction as contemplated herein. If, however, any of the contingencies at subparagraphs A, B, or C above is not satisfied, this Agreement shall be void and Buyer and Seller shall execute and deliver to each other the termination of this Agreement. As a contingent purchase agreement, the termination of this Agreement is not required pursuant to Minnesota Statutes Section 559.21, et seq.

**4. PURCHASE PRICE AND TERMS:**

- A. **PURCHASE PRICE:** The total Purchase Price for the Property is \$10,000.00.
- B. **TERMS:**
  - (1) **BALANCE DUE SELLER.** Buyer agrees to pay the Purchase Price to Seller by certified or cashier’s check or by wire transfer on the Closing Date according to the terms of this Agreement.

- (2) **DEED/MARKETABLE TITLE.** Subject to performance by Buyer, Seller agrees to execute and deliver a Quit Claim Deed conveying marketable title to the Property to Buyer, subject only to the following exceptions:
  - a. Building and zoning laws, ordinances, state, and federal regulations; and
  - b. Reservation of minerals or mineral rights to the State of Minnesota, if any.
- (3) **DOCUMENTS TO BE DELIVERED AT CLOSING.** In addition to the Quit Claim Deed required at Paragraph 4(B)(2) above, Seller shall deliver to Buyer:
  - a. Standard form Affidavit of Seller;
  - b. FIRPTA affidavit that Seller is not a “foreign person” as such term is defined within Section 1445 of the Internal Revenue Code.
  - c. Such other documents as may be reasonably required by Buyer’s title examiner or title insurance company.

**5. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.**

- A. General real estate taxes applicable to the Property due and payable in the year of closing, if any, shall be prorated between Seller and Buyer on a daily basis with Seller paying those allocable to the period prior to the closing date and Buyer being responsible for those allocable to the closing date and thereafter.
- B. Seller shall be responsible for paying any levied or pending special assessments as of the date of closing, if any. Buyer shall be responsible for any special assessments levied or pending after the date of closing, if any.

**6. SURVEY AND TITLE MATTERS.** Buyer may order a survey of the Property at Buyer’s expense. If Buyer orders a survey, Buyer will provide a copy of the survey to Seller at no cost to Seller. Buyer may obtain at Buyer’s sole cost, a commitment for an owner’s policy of title insurance for the Property, naming Buyer as the proposed insured. Buyer shall have 10 days following the receipt of the title commitment and the survey, whichever is later, to make its objections in writing to Seller. If the title to the Property or any part thereof, shall be found to be unmarketable, Seller agrees to cure such defects and render the title marketable by the closing date; provided, that nothing in this Agreement shall require Seller to exercise its power of eminent domain to make title marketable. It is further understood and agreed that if the title to the Property or any part thereof is found to be unmarketable at date of closing, Buyer may, at its option: (a) waive the title defects and proceed to closing; or (b) declare this Agreement null and void and neither Buyer nor Seller shall be liable for damages hereunder. If the title to the Property is found marketable and Buyer shall default in any of the covenants or agreements herein provided, then

and in that case, Seller may at its option, deem this Agreement terminated by giving written notice thereof to Buyer. Neither party may enforce this Agreement by specific performance.

**7. CLOSING DATE.** The closing of the sale of the Property shall take place on a date to be mutually agreed upon by Seller and Buyer, but no later than September 29, 2023. The closing shall take place at Marshall City Hall, located at 344 Main Street West, Marshall, Minnesota, or such other location as mutually agreed upon by the parties.

**8. CLOSING COSTS AND RELATED ITEMS.** Seller will be responsible for paying: a) recording fees of instruments required to establish marketable title in Seller; b) any special assessments, pending or levied, prior to the Closing Date; c) one-half of the Closing fee charged by the Title Company. Buyer shall be responsible for paying: a) the costs of any reports and for any surveys, testing, or inspections conducted by Buyer on and of the Property; b) the state deed tax and the recording fee for the Quit Claim Deed transferring title to the Property to Buyer; and c) one-half of the Closing fee charged by the Title Company. In the event that Buyer orders a title commitment and title insurance, Buyer shall be responsible for payment of the costs of the title commitment, including all title search and examination fees, and the payment of the title insurance premium, if any. Each party shall be responsible for its own attorneys' fees and costs.

**9. APPROVALS.** Buyer shall be responsible for obtaining any governmental approvals that are necessary for its intended use of the Property. Seller agrees that it will cooperate with Buyer in providing any information or authorization needed in order for Buyer to apply for any governmental approvals. Seller acknowledges that it will allow access to the Property off of 10<sup>th</sup> Street. This acknowledgment shall survive Closing.

**10. "AS-IS" SALE.** 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, contractor, or agent of Seller with respect to the physical condition of the Property, including but not limited to, the existence or absence of petroleum, 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.

**11. POSSESSION/CONDITION OF PROPERTY.** Seller shall deliver possession of the Property to Buyer on the closing date, in the same condition as existed on the date of this Agreement.

**12. DISCLOSURE; INDIVIDUAL SEWAGE TREATMENT SYSTEM.** Seller discloses that there is not an individual sewage treatment system on or serving the Property.

**13. WELL DISCLOSURE.** Seller certifies that Seller does not know of any wells on the Property.

**14. BROKER COMMISSIONS.** Seller represents and warrants to Buyer that Seller has not involved a broker in this transaction or agreed to pay a broker commission to any broker. Buyer represents and warrants to Seller that Buyer has not involved a broker in this transaction or agreed to pay a broker commission to any broker. Each party agrees to indemnify, defend, and hold each other harmless for any and all claims for brokerage commissions or finders' fees in connection with negotiations for purchase of the Property.

**15. SURVEYING, ENVIRONMENTAL INSPECTION AND SOIL TESTS.** Buyer and its contractors shall have the right to enter upon the Property after the date of this Agreement for the purpose of surveying and inspecting the Property and conducting such environmental examination and soil tests as Buyer deems necessary. Buyer agrees to indemnify and defend Seller against any liens, claims, losses, or damage directly attributable by Buyer's exercise of its right to enter and work upon the Property. Buyer agrees to provide Seller with a copy of any report or survey prepared as a result of such surveying, inspection, examination, or testing, upon request by Seller.

**16. NO MERGER OF REPRESENTATIONS, WARRANTIES.** All representations and warranties contained in this Agreement shall not be merged into any instruments or conveyance delivered at Closing, and the parties shall be bound accordingly.

**17. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire agreement between the parties, and no other agreement prior to this Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. Any purported amendment shall not be effective unless it shall be set forth in writing and executed by both parties or their respective successors or assigns.

**18. BINDING EFFECT; ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. Buyer shall not assign its rights and interest hereunder without the written approval of Seller.

**19. NOTICE.** Any notice, demand, request, or other communication which may or shall be given or served by the parties shall be deemed to have been given or served on the date the same is deposited in the United States Mail, registered or certified, postage prepaid and addressed as follows:

- A. If to Seller: City of Marshall  
Attn: City Administrator  
344 West Main St.  
Marshall, MN 56258
- With a copy to: Kennedy & Graven, Chartered  
Attn: Sarah Sonsalla  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402
- B. If to Buyer: Service Restoration Inc.  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**20. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

**21. GOVERNING LAW.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

**22. SEVERABILITY.** If any provision of this Agreement is held to be unenforceable or void by a court of competent jurisdiction, such provision shall be deemed severable and shall not affect the validity of the remaining terms of this Agreement.

**23. PARTNERSHIP OR JOINT VENTURE.** Nothing in this Agreement shall be construed or interpreted as creating a partnership or joint venture between Seller and Buyer relative to the Property.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date written above.

**SELLER**

**CITY OF MARSHALL**

By: \_\_\_\_\_  
Robert J. Byrnes, Mayor

By: \_\_\_\_\_  
Sharon Hanson, City Administrator

**BUYER**

**2<sup>ND</sup> AVENUE INVESTMENTS LLC**

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

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