

REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT (the “Agreement”) dated this _____ day of _____, 2023, by and between the City of Marshall, a Minnesota municipal corporation (the “Seller”) and CenterPointe Real Estate Group, LLC, an Arizona limited liability company (the “Purchaser”).

1. **Conveyance:** Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller that certain real property consisting of approximately 30,000 square feet of land located at the northeast corner of Main and Boyer in City of Marshall, Lyon County, Minnesota (PID 27-60536-0), together with all rights, title and interest, if any, of Seller in and to (i) all adjacent streets, alleys and rights-of-way lying between such real property and adjacent properties, (ii) all rights (but excluding mineral, water and irrigation rights), privileges, leases, tenements, hereditaments, access rights, common area rights, and easements appurtenant to, benefitting, or belonging to such real property; and (iii) all buildings and improvements located on the real property (collectively, the "Property"). The Property is shown on the attached Exhibit A.

2. **Price:** Purchase agrees to pay Seller **\$55,000.00** (the “Purchase Price”) for the Property at closing. The Purchase Price, less any Earnest Money shall be payable by either a certified check or by wire transfer.

3. **Earnest Money:** Purchaser shall deposit with the Escrow Agent referred to in Section 4, within fifteen (15) business days after the Escrow Agent receives a fully executed copy of this Agreement, (the date Escrow Agent receives a fully-executed copy of this Agreement being the “Opening Date”) \$1,000.00 (the “Earnest Money”), to be credited against the Purchase Price at Closing and refundable as set forth herein. The Earnest Money shall be refundable until expiration of the Due Diligence Period (defined below) and all exercised extensions.

4. **Due Diligence:** This Agreement is subject to the following conditions:

A. Within fifteen (15) business days after the Opening Date, Purchaser shall obtain a title commitment for an ALTA extended coverage owner’s title insurance policy in the amount of the Purchase Price (the “Title Policy”) from Kari Hollencamp, Tri-County Abstract and Title Guaranty, 122 12th Ave N., St. Cloud, MN 56303; karih@tricityabstract.com; 320-253-2096 (the "Escrow Agent") and deliver a copy thereof, together with all documents listed in Schedule B of the title commitment to Purchaser. At least ten (10) business days prior to expiration of the Due Diligence Period (“Title Objection Date”), Purchaser shall deliver written notice to Seller of any objections to matters set forth in the title commitment, any survey obtained by Purchaser and/or the Schedule B documents (collectively, the "Title Objection Notice"). Within five (5) business days after receipt of the Title Objection Notice, Seller shall advise Purchaser in writing ("Title Response Notice") whether: (i) Seller will remove or endorse over (at Seller’s expense) the objectionable exceptions on or before the Closing (in which case, such exceptions shall not be Permitted Encumbrances and shall be either removed or endorsed over by Seller on or before the Closing); or (ii) Seller elects not to cause such exceptions to be removed or endorsed over. Seller’s failure to timely and properly give notice to Purchaser on or before such date shall

be deemed to be Seller's election not to cause such exceptions to be removed or endorsed over. If Seller gives Purchaser notice or is otherwise deemed to have elected not to cause such exceptions to be removed, Purchaser shall, prior to expiration of the Due Diligence Period, elect to: (i) proceed with the purchase and accept title to the Property subject to the exceptions to title to which Purchaser objected, or (ii) terminate this Agreement. If Purchaser shall fail to give Seller notice of its election on or before the end of the Due Diligence Period, Purchaser shall be deemed to have elected to proceed with the purchase and to have waived its objections to such exceptions. Any exceptions to title contained approved by Purchaser are referred to in this Agreement as the "Permitted Encumbrances." Notwithstanding anything to the contrary set forth herein, any and all monetary liens (including mechanics' liens) shown on the title commitment, and any delinquent taxes and assessments, shall be removed by Seller from title on or before the Closing and shall not constitute Permitted Encumbrances (regardless of whether or not Purchaser objects to such exception). If Purchaser opts to terminate this Agreement pursuant to this paragraph, the Earnest Money shall be refunded to Purchaser.

- B. Within fifteen (15) business days after the Opening Date, Seller shall deliver all leases encumbering the Property and other reports, surveys, and inspections, if any, in Seller's possession (the "Seller Due Diligence Materials"). If Purchaser is not satisfied with Purchaser's investigations and inspections with respect to the Property, including Purchaser's ability to obtain all governmental approvals and permits related to Purchaser's proposed development of the Property and the lot split creating the Property, within one hundred twenty (120) days following the Opening Date (the "Due Diligence Period"), Purchaser will have the absolute right to cancel this Agreement for any reason whatsoever or no reason, in Purchaser's sole and absolute discretion. In the event of such cancellation, the Earnest Money shall be returned to Purchaser. Unless Purchaser gives notice of cancellation prior to expiration of the Due Diligence Period (as may be extended as set forth below), then Purchaser will be deemed to have elected not to cancel the Agreement under this provision and the Earnest Money shall become non-refundable to Purchaser except due to a Seller default or as otherwise provided hereinafter. Notwithstanding the foregoing, Purchaser shall have the option to extend the Due Diligence Period for three (3) thirty (30) day periods with notice to Seller prior to expiration of the then expiring Due Diligence Period and deposit with Escrow Agent within three (3) business days after such expiration the amount of \$500.00 per extension, which amounts shall be applicable to the Purchase Price and shall be non-refundable (except as to a Seller default).
- C. During the Due Diligence Period Purchaser shall be entitled to obtain boring, percolation, and other soil tests determining the physical characteristics of the sub-strata of the Property and showing that the soil and ground water are not contaminated and that the Property is satisfactory, in Purchaser's sole judgment. Seller hereby grants to Purchaser, its agents and contractors, the right to enter upon the Property for such testing. Purchaser hereby agrees to indemnify, defend, and hold Seller harmless from and against any and all losses, claims, causes of action, liabilities and costs of defense incurred by Seller arising out of the actions of Purchaser, its agents, employees, contractors, or invitees in carrying out Purchaser's investigations of the Property, unless due to the negligence or willful misconduct of Seller or its agents, employees, or contractors.

5. **Closing:** This sale shall be closed in escrow with the Escrow Agent listed in Section 4, sixty (60) days after the expiration of the Due Diligence Period, as may be extended (the "Closing"). All real estate taxes are to be paid through the date of Closing by Seller. If the amount of such taxes for the year Closing occurs are not then ascertainable, the amount of taxes shall be pro rated between Seller and Purchaser based on the amount of the most recent ascertainable taxes. All transfer and conveyance taxes or documentary stamps and special real estate taxes and assessments existing on the date of Closing shall be paid for by Seller. Seller agrees to pay all costs related to preparation of the Deed (defined below) and commissions to Seller's broker. Purchaser agrees to pay the cost of the title commitment and any title search and examination fees, the premium for the title insurance policy and any extended coverage and any title endorsements desired by Purchaser, and for any lender's policy of title insurance. Purchaser shall be responsible for the recording costs of the Deed. Purchaser shall be responsible for commissions to Purchaser's broker. Seller shall be responsible for the recording costs for recording any documents necessary to make title marketable. All monthly prorations (including rental income and expenses, if any) will be made on the basis of a thirty (30) day month. All escrow fees, recording fees and other escrow-related charges are to be paid by the Purchaser. Each party shall be responsible for its own attorneys and accounting fees.

In addition to the foregoing, at Closing, Seller shall execute and/or deliver to Escrow Agent the following: (i) a limited warranty deed ("Deed") conveying all of Seller's right, title and interest in and to the Property to Purchaser, free and clear of all encumbrances, except the Permitted Encumbrances; (ii) an Affidavit of Seller indicating that on the date of Closing, to the best of Seller's knowledge, there are no outstanding, unsatisfied judgments, tax liens (other than the lien of real estate taxes not yet due and payable) or bankruptcies against or involving Seller or the Property; (iii) a non-foreign affidavit properly containing such information as is required by IRC Section 1445(b)(2) and its regulations; (iv) a closing and disbursement statement showing the Purchase Price, the costs and expenses of the Closing attributable to each of Purchaser and Seller, and the disbursement of funds; and (v) such other documents required by the Escrow Agent required to record the Deed and issue the Title Policy.

As Closing Purchaser will execute and/or deliver or cause to be executed to Escrow Agent the following: (i) the Purchase Price, by wire transfer of immediately available funds; (ii) a closing and disbursement statement showing the Purchase Price, the costs and expenses of the Closing attributable to each of Purchaser and Seller; and (iii) such other documents, instruments and affidavits as shall be necessary to consummate the transaction contemplated hereby.

6. **Possession:** Seller promises to deliver sole and actual possession of the Property to Purchaser, free and clear of all tenancies and parties in possession at Closing.

7. **Brokerage:** Each party warrants and represents to the other that no real estate sales or brokerage commissions or like commissions are or may be due in connection with this transaction. Each party agrees to indemnify, defend (with legal counsel reasonably acceptable to the indemnitee) and hold harmless the other party for, from and against any claims by third parties made by or through the acts of such party, for real estate or brokerage commissions, or a finder's fee, in connection with the transactions provided herein, and all costs and expenses incurred by the indemnitee in connection therewith including, but not limited to, reasonable attorneys' fees. Seller

acknowledges that J. Clint Jameson, who is a member and/or manager of Purchaser is a real estate agent or broker licensed in the State of Arizona.

8. **Default.** (a) If Purchaser defaults in its obligations hereunder, Seller shall deliver written notice of such default and Purchaser shall have ten (10) business days from the receipt of written notice of default, to cure the default. Should Purchaser fail to cure the default timely, Seller, as its sole and exclusive remedy, shall be entitled to terminate this Agreement and the Earnest Money shall be forfeited to Seller; (b) if Seller defaults in its obligations hereunder, Purchaser shall deliver written notice of such default and Seller shall have ten (10) business days to cure the default. Should Seller fail to cure the default timely, Purchaser shall be entitled to terminate this Agreement and have the Earnest Money returned.

9. **Notices.** Any notice or other communication in connection with this Agreement shall be in writing and shall be sent by United States certified mail, return receipt requested, postage prepaid, by nationally recognized overnight courier guarantee next day delivery, by email, or by personal delivery, properly addressed as follows:

If to Seller: City of Marshall Minnesota
344 W. Main Street
Attn: Sharon Hanson
Marshall, MN 56258
Email: Sharon.Hanson@ci.marshall.mn.us

If to Purchaser: CenterPointe Real Estate Group, LLC
Attn: J. Clint Jameson
4526 E. Calle Tuberia
Phoenix, AZ 85018
clint@centerpointe-dev.com
amy@centerpointe-dev.com

All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to certified or registered letters, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery, and on the same day if sent by personal delivery or email. Attorneys for each party shall be authorized to give notices for each such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

10. **Counterparts; Entire Agreement/Modification:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It is understood that there are no oral or written agreements or representations between Seller and Purchaser affecting this contract, and this contract supersedes and cancels any and all previous negotiations, arrangements and understandings between the parties. This Agreement may be modified or altered only by an agreement in writing between the parties.

11. **Assignment.** At any time prior to the Closing, Purchaser may assign its rights under this Agreement to an assignee, who is a related entity or under common control of Purchaser or a

member of Purchaser. All other assignments shall require Seller's prior written permission, which permission shall not unreasonably be withheld.

12. Representations, Covenants and Warranties by Seller. In addition to the express warranties under the Deed and other conveyance, assignment, and transfer documents to be delivered to Purchaser at Closing, Seller hereby represents and warrants to, and covenants with, Purchaser that:

- a. Authority and Binding Agreement. Seller has full right, power, and authority to execute and deliver this Agreement and to consummate the purchase and sale transactions provided herein, subject to approval of this Agreement by the City Council for the City of Marshall. Upon obtaining said approval, this Agreement, when executed and delivered by Seller and Purchaser, will constitute the valid and binding agreement as Seller and enforceable against Seller in accordance with its terms.
- b. Operation of the Property. From the date hereof until the Closing Date, Seller covenants to: (i) maintain and operate the Property in the same manner as Seller has heretofore done; and (ii) and not, without the prior written consent of Purchaser, enter into any agreement or instrument or take any action that would encumber the Property after Closing, that would bind Purchaser or the Property after Closing, or that would be outside the normal scope of maintaining and operating the Property.
- c. No Litigation; No Notice of Violation. There is no litigation or proceeding pending or threatened against or relating to any portion of the Property. Seller has not received any notice of violation of any law, rule or ordinance concerning any portion of the Property or the business being operated thereon.
- d. No Undisclosed Liens or Assessments; All Assessments Paid. There are no: (i) assessments (special, general, or otherwise) or benefits of any nature affecting the Property, or any portion thereof; and (ii) except as disclosed by the Title Commitment, there are no unrecorded liens or encumbrances. All obligations applicable to the Property under any declaration, easement agreement, restriction agreement or similar agreement of record are paid current.
- e. Bills Paid. All bills and other payments due with respect to the ownership, operation, construction, and maintenance of the Property are paid in the ordinary course of the operation of the Property.
- f. Leases; Rights of First Refusal or Rights of First Offer. Other than the Leases, there are no leases in effect on the Property and no party has a first of first refusal or right of first offer to purchase the Property.
- g. Encumbrances. Seller will not place (and will not allow to be placed) any encumbrances on the Property.
- h. "AS IS, WHERE IS." Purchaser acknowledges that it has inspected or will have 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 the Seller or any official, employee or agent of the Seller with respect to the physical condition of the Property, including, but not limited to, the existence of or absence of petroleum, asbestos, lead, hazardous substances, pollutants, or contaminants in, on, or under, or affecting the Property except as otherwise set forth within this Agreement. Other than as expressly stated herein, or expressly stated in any closing document delivered by Seller at Closing, Purchaser 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. Purchaser expressly assumes, at closing, all environmental and other liabilities with respect to the Property. Except for the representations herein, Purchaser is solely relying upon information and knowledge obtained from its own investigation, experience, and knowledge obtained from its own investigation, experience, or personal inspection of the Property. The foregoing provision shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

- i. Wells. Seller certifies that Seller does not know of any wells on the Property
- j. Sewage Systems. Seller does not know of any individual sewage treatment systems on or serving the Property.
- k. Underground Tanks. To the best of Seller's knowledge, the Property does not contain any underground storage tanks of any size or description.

All representations and warranties of Seller contained in this Agreement are true and correct in all material respects as of the date hereof and will be true and correct in all material respects on the date of the Closing. Warranties of Seller shall survive Closing for a period of six months.

13. **Time of the Essence; Binding Effect; Calculation of Time Periods.** Time is of the essence of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Unless otherwise specified herein, in computing any period of time described herein, 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 or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

14. **Controlling Law.** This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

15. **Severability.** The unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

16. **Condemnation and Casualty.** If, prior to the Closing, a casualty occurs on the Property or eminent domain proceedings are commenced against all or any substantial part of the Property, Seller shall immediately give notice to Purchaser of such fact and at Purchaser's option Purchaser may terminate this Agreement and the Earnest Money shall be returned to Purchaser; or, if no termination, Seller shall assign to Purchaser at the Closing all of Seller's right, title and interest in and to any insurance proceeds or award made or to be made in the condemnation proceedings.

17. **Exchange Facilitation.** At the option of either party, upon not less than five calendar (5) days written notice to the other party prior to Closing, a party may require the Closing to be achieved pursuant to an escrow created to effectuate an exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. In such event, the other party agrees to cooperate with the party giving such notice; provided, however, that (a) the Closing will not be delayed thereby, (b) the other party will not incur any liability, undertake any additional obligation or have any obligation to acquire or convey any other property as a result of any such tax deferred exchange, and (c) the party making the exchange will pay all costs and expenses associated with effectuating such tax deferred exchange.

18. **Electronic Signatures; Execution in Counterparts.** The electronic signature of the parties to this Agreement shall be as valid as an original signature of such party and shall be effective to bind the parties hereto. For purposes hereof, (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SELLER AND PURCHASER, by their execution below, indicate their consent to the terms of this Agreement as of the date set forth above.

PURCHASER:

CENTERPOINTE REAL ESTATE GROUP, an
Arizona limited liability company

By: _____
J. Clint Jameson, Manager

SELLER:

CITY OF MARSHALL

By: _____
Robert Byrnes
Its: Mayor

By: _____
Sharon Hanson
Its: City Administrator

**Exhibit A
Depiction of the Property**

