

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ___ day of _____, 2022 ("Effective Date") by and between the **HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MARSHALL, MINNESOTA**, a Minnesota municipality ("Seller") and **JIM BROCK TRUCKING REAL ESTATE LLC, SOUTH DAKOTA LIMITED LIABILITY COMPANY**, or its assigns ("Buyer").

RECITALS

WHEREAS, the Seller owns real property located in described as follows:

Lot Two (2), Block One (1), Sonstegard Subdivision II to the City of Marshall, Lyon County, Minnesota.

Tax Parcel No. 27-804002-0

WHEREAS, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Real Property pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree, for themselves, their successors and assigns as follows

1. **SALE OF PROPERTY.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, fee title in the Real Property, together with all easements, rights benefiting or appurtenant to the Real Property.

2. **PURCHASE PRICE AND MANNER OF PAYMENT.** The total purchase price ("Purchase Price") to be paid by Buyer for the Property will be Twenty-five Thousand and No/100 Dollars (\$25,000.00), and payable as follows:

A. **Earnest Money.**

- (i) Five hundred and No/100 Dollars (\$500.00.) as earnest money ("Earnest Money"). The Earnest Money shall be delivered to Seller on the date as hereof, the receipt of which is hereby acknowledged.

B. **Balance of Purchase Price.** The balance of the Purchase Price (\$24,500.00) (Additional Cash") in immediately available funds to Seller on the Closing Date.

3. **REPRESENTATIONS AND WARRANTIES BY SELLER.** Seller represents and warrants to Buyer as follows:

A. **Authority.** The terms of this Agreement have been properly approved by the Seller, including, without limitation, as evidenced by the adoption of any requisite City Council resolutions, and the parties executing this Agreement on behalf of the seller have been duly authorized to execute this Agreement and to bind the Seller to the terms hereof. All documents executed by Seller which are to be delivered at the Closing are

duly authorized, executed, and delivered by the Seller, are legal, valid, and binding obligations of Seller, are sufficient to convey title and do not violate any provisions of any agreement to which Seller is a party or to which it is subject.

B. **Title to Real Property.** Seller owns fee title to the Real Property, free and clear of all encumbrances and there are no leases or other agreements granting third parties any right to possess or purchase any portion of the Real Property being sold.

C. **Environmental Laws.** To Seller's knowledge, the Real Property does not contain any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitations, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601.9657, as amended) ("Hazardous Substances") have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Real Property in violation of applicable laws or regulations, nor to the best knowledge of Seller, has any activity been undertaken on the Real Property that would cause or contribute to (i) the Real Property becoming a treatment, storage or disposal facility within the meaning of and in violation of the Resource Conservation and Recovery Act of 1976, ("RCRA"), 42 U.S.C. § 6901 et seq., or any similar state law or local ordinance, (ii) a release or threatened release of Hazardous Substances from the Real Property within the ambit of CERCLA or any similar state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Act, 33 U.S.C. § 1251 et seq., or the Clean Air Act, 42 U.S.C. §7401, et seq., or any similar state law or local ordinance.

D. **Rights of Others to the Real Property.** Seller has not entered into any other contracts for the sale of the Real Property, nor are there any rights of first refusal or options to purchase the Real Property or any other rights of others that might prevent the consummation of this Agreement. As of the date of this Agreement and the Closing Date, there are no agreements or understandings between Seller and any other parties which materially affect the operation or financing of the Real Property as currently operated by Seller that have not been disclosed to Buyer pursuant to this Agreement.

E. **Seller's Defaults.** Seller is not in default concerning any of its obligations or liabilities regarding the Real Property.

F. **FIRPTA.** Seller is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

G. **Proceedings.** There is no action, litigation, investigation, condemnation, or proceeding of any kind pending or to the best knowledge of Seller, threatened against Seller or any portion of the Real Property.

H. **Insurance.** As of the date of this Agreement and the Closing Date, Seller has received no notice or complaint from any insurance underwriter relating to the

condition of or operations of the Real Property, and Seller represents that Seller has maintained adequate general liability and worker's compensation insurance.

I. **Well Disclosure/Storage Tanks.** There are no wells, monitoring wells or storage tanks on the Real Property within the meaning of Minn. Stat. § 103.1. This warranty is given pursuant to Minn. Stat. § 103.1.

J. **Documents.** Seller has or will promptly provide Buyer accurate and complete copies of all of the Documents in Seller's possession regarding the Real Property.

The Seller's representations and warranties survive Closing. Furthermore, Seller will defend, indemnify and hold Buyer harmless from any claims arising out of Seller's breach of the representations and warranties.

4. **CONDITIONS PRECEDENT.**

A. Unless otherwise set forth herein, the obligations of Buyer under this Agreement are expressly contingent upon the satisfaction of each of the following conditions.

(i) **Access.** Seller will allow Buyer, and Buyer's agents, access to the Real Property without charge and at all reasonable times for the purpose of Buyer's inspection of the Real Property. Buyer will pay all costs and expenses of such investigation and testing and will hold Seller and the Real Property harmless from all costs and liabilities relating to Buyer's activities, except arising out of any existing environmental conditions. Buyer will further repair and restore any damage to the Real Property caused by or occurring during Buyer's testing and return the Real Property to substantially the same condition as existed prior to Buyer's entry. Seller will fully cooperate with Buyer to enable Buyer to satisfy the Buyer's Conditions.

(ii) **Due Diligence.** Buyer may perform, at its sole cost and expense, examinations and inspections relative to the economic and physical feasibility of the Real Property as Buyer determines in its sole and absolute discretion, including, without limitation, engineering studies, wetland delineation, market analysis, financial feasibility analysis including the availability of financing, and environmental assessments of the Real Property ("Tests"). Buyer shall promptly commence and diligently proceed with its Tests. Seller agrees to promptly provide Buyer with all readily available property information to assist in the conduct of Buyer's due diligence, including without limitation the Documents (as that term is defined herein). Buyer and its duly authorized agents will, pursuant to Section 4(i), have the right during the period from the Effective Date until the Closing Date, to enter in and upon the Real Property to complete its due diligence, including without limitations, completing the Tests. If such Tests reveal any condition or circumstances which Buyer finds objectionable for any reason, in Buyer's sole and absolute discretion, Buyer has the right and option to terminate this Agreement by written notice delivered to Seller on or before the Condition Date as set forth herein, at which time the Earnest Money will be refunded to Buyer, and this Agreement will be of no further force or effect.

Within five (5) days of the Effective Date, Seller will provide to Buyer all documents in Seller's current possession or reasonable control, relevant to the Real Property, including, without limitation, any municipal or governmental approvals for the Real Property, any notices or correspondence from any governmental agency, resolutions, agendas, staff reports, studies, analysis, tax statements, permits, soil reports, environmental assessment, leases, surveys, appraisals, or any other documents relevant to the Real Property ("Documents"). The Condition Date will be extended one (1) day for every day the Documents are not delivered to Buyer beyond the five (5) day period set forth herein.

B. The following conditions are conditions precedent to Buyer's obligations to Close on the purchase of the Real Property:

(i) **Representations and Warranties by Seller.** The representations and warranties of Seller contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date.

(ii) **Performance of Seller's Obligations.** Seller has performed all of the obligations required to be performed by Seller under this Agreement, as and when required by this Agreement.

(iii) **Approvals (and the lapsing of any rights of appeal).** The City's adoption of resolutions granting the Approvals, in form acceptable to the Buyer, in its sole discretion.

(iv) **Closing Documents.** Delivery of all Seller's documents, pursuant to Section 6.A.

5. **CLOSING.** Closing shall occur on or before August 1, 2022. The Closing will take place at the office of the Marshall City Attorney's office or at such other date and time as the parties may mutually agree upon in writing.

A. **Seller's Closing Documents.** On the Closing Date(s), Seller will sign and/or deliver to Buyer the following (collectively, "Seller's Closing Documents") at such Closing for the respective Lot, if Buyer elects to close in phases:

(i) **Warranty Deed.** A Warranty Deed in recordable form acceptable to Buyer conveying the Real Property from Seller to Buyer, free and clear of any encumbrances except the Permitted Encumbrances.

(ii) **Seller's Affidavit.** An Affidavit by Seller indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Real Property; that there has been no skill, labor or material furnished to the Real Property for which payment has not been made or for which mechanic's liens could be filed; and that there are no other unrecorded interests in the Real Property together with any standard indemnity agreement required by Title to issue the Title Policy.

(iii) **FIRPTA Affidavit.** A non-foreign affidavit, properly executed and in recordable form containing such information as is required by IRC § 1445(b)(2) and its regulations.

(iv) **Additional Documents.** Such other documents as Buyer may reasonably request to carry out the transactions contemplated under this Agreement.

B. **Buyer's Closing Documents.** On the Closing Date, Buyer will sign and/or deliver to Seller the following (collectively, "Buyer's Closing Documents") at such Closing:

(i) **Additional Cash.** The Additional Cash due at Closing by wire transfer of U.S. Federal Funds, cashier's check, cash or by certified check on the Closing Date payable to the Seller.

(ii) **Additional Documents.** Such other documents as Seller may reasonably request to carry out the transactions contemplated under this Agreement.

6. **PRORATIONS.** Seller and Buyer agree to the following prorations and allocations of costs regarding this Agreement:

A. **Real Estate Taxes and Special Assessments.** The real estate taxes due and payable in all years prior to the year of Closing will be paid in full by the Seller. The Seller is also responsible for paying any interest and penalties due thereon. The real estate taxes due and payable in the year of Closing, will be prorated as of the Closing Date, based on the calendar year. Special assessments, levied or pending will be the responsibility of the Buyer. Seller represents that the Property will be non-homestead classification. Seller will pay any and all Green Acre Recapture at Closing. If the real estate taxes and special assessment are estimated due to the subdivision of the Real Property a larger parcel(s), the real estate taxes and special assessments will be estimated on per square foot basis as reasonably agreed to between the Buyer and the Seller.

B. **State Deed Tax.** Seller will pay any State Deed Tax necessary to record the Warranty Deed.

C. **Recording Costs.** Buyer will pay the cost of recording the Warranty Deed, and Seller will pay the cost of recording all additional documents necessary to place record title in the condition warranted by Seller in this Agreement. The Buyer will pay the costs of recording all other documents.

D. **Other Costs.** All operating costs of the Real Property will be allocated between Seller and Buyer as of the Closing Date, so that Seller pays that part of such operating costs payable before the Closing Date, and the Buyer pays that part of such operating costs payable from and after the Closing Date.

7. **OPERATION PRIOR TO CLOSING.** During the period from the date of Seller's acceptance of this Agreement to the Closing Date, Seller will operate and maintain the Real Property in the ordinary course of business in accordance with prudent, reasonable business

standards, including the maintenance of adequate liability insurance Seller will execute no contracts, leases or other agreements regarding the Real Property pending closing.

8. **DAMAGE.** If, prior to the Closing Date, all or any part of the Real Property is substantially damaged by fire or other casualty, the elements or any other cause, the Seller will immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within twenty (20) days after Seller's notice), this Agreement will terminate, in which event neither party will have any further obligations under this Agreement and the Earnest Money will be refunded to Buyer or Buyer may elect to Close, in which case Seller shall assign to Buyer all unused proceeds related to such damage.

9. **NOTICES.** 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 delivered in person, the next business day after being sent by reputable overnight commercial courier (e.g. U.P.S. or Federal Express), sent by facsimile (with verification of receipt) or three (3) business days after having been deposited in any U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows (or sent to such other address as any party shall specify to the other party pursuant to the provisions of this Section):

If to Seller:

Sharon Hanson, City Administrator
City Hall
344 W. Main St.
Marshall, MN 56258

Phone: 507-537-6760
Facsimile: 507-537-6830
Email: Sharon.hanson@ci.marshall.mn.us

With a copy to:

Dennis H. Simpson, City Attorney
109 S. 4th St.
Marshall, MN 56258

Phone: 507-537-1441
Facsimile: 507-537-1445
Email: dsimpson@qdplm.com

If to Buyer:

Jim Brock Trucking Real Estate LLC
660 4th St SW
Huron, SD 57350
Phone: 605-354-7437

In the event either party delivers a notice by facsimile, as set forth above, such party agrees to deposit the originals of the notice in a post office, branch post office, or mail depository maintained by the U.S. Postal Service, postage prepaid and addressed as set forth above. Such deposit in the U.S. Mail shall not affect the deemed delivery of the notice by facsimile, provided that the procedures set forth above are fully complied with.

Any party, by notice given as aforesaid, may change the address to which subsequent notices are to be sent to such party. Attorneys for each party are authorized to give notices for each such party.

10. **POSSESSION.** Possession of the Real Property will be delivered by the Seller to the Buyer on the Date of Closing.

11. **REMEDIES.** If Buyer defaults under this Agreement and fails to cure such default within the time period allowed by Minn. Stat. § 559.21, subd. 4(a) (30 days), this Agreement will terminate, and upon such termination, Seller will retain the Earnest Money as liquidated damages. The termination of this Agreement and the retention of the Earnest Money will be the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages or specific performance.

If Seller defaults under this Agreement, Buyer may; (i) terminate this Agreement; (ii) seek and recover specific performance, provided, that such action for specific performance is commenced within six (6) months after such cause of action arises; and (iii) seek and recover from Seller damages for non-performance, which will be limited to actual out-of-pocket expenditures by Buyer. If Buyer terminates this Agreement following Seller's default (or otherwise as set forth herein) all Earnest Money and any interest accrued thereon will be immediately released to Buyer.

12. **CONDEMNATION.** If, prior to the Closing Date, (a) all or any part of the Real Property is condemned or appropriated by public authorities or any party exercising the right of eminent domain, or is threatened thereby, or (b) access to the Real Property is reduced or restricted by condemnation or appropriation by public authorities or any party exercising the right of eminent domain, or is threatened thereby, Seller shall immediately give written notice to Buyer of such fact and Buyer may, at its sole option (to be exercised within fifteen (15) days after Seller's notice) (i) terminate this Agreement, in which event neither party will have any further obligations under this Agreement and the Earnest Money, shall be refunded to Buyer, or (ii) close the transaction upon the terms and conditions contained herein and Seller shall assign to Buyer all of their right, title and interest in and to any award made or to be made in the condemnation proceedings.

13. **ENTIRE AGREEMENT, MODIFICATION AND WAIVER.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth in this Agreement. No supplement, modification or waiver of this Agreement shall be binding unless it is executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

14. **SUCCESSORS AND ASSIGNS.** This Agreement will be binding upon and inure to the benefit of the parties, their successors and assigns, provided that Buyer is permitted to assign its interest hereunder, with notice to, but without Seller's consent.

15. **GOVERNING LAW.** This Agreement was executed in Minnesota, and shall be governed by the laws of the State of Minnesota.

16. **MUTUAL DRAFTING.** This Agreement is the mutual product of the parties and each provision hereof has been subject to the mutual consultation, negotiation and agreement of each of the parties, and shall not be construed for or against any party to this Agreement.

17. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

18. **HEADINGS.** Headings contained herein are for reference only and are not a part of this Agreement.

19. **ABSENCE OF THIRD PARTY BENEFICIARY RIGHTS.** No provision of this Agreement is intended, nor is any provision to be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, shareholder, employee or partner of any party to this Agreement or any other person or entity.

20. **SURVIVAL.** Except as otherwise provided herein, all of the terms (including, without limitation, warranties and representations) of this Agreement will survive and be enforceable after the Closing.

21. **PROJECT SIGNAGE.** Commencing from the Effective Date, until the Closing or termination of this Agreement, Seller grants Buyer a license to post a project sign on the Real Property. The Buyer will pay for the cost of the fabrication, installation and removal of the sign. Project sign must comply with City Building Code.

22. **AUTHORITY APPROVAL.** This Purchase Agreement is subject to and contingent upon the approval by the Housing and Redevelopment Authority in and for the City of Marshall, Minnesota.

23. **OTHER TERMS.**

- (a) Buyer shall acquire property subject to all existing easements and covenants of record. Buyer shall honor all existing easements and covenants.
- (b) The property subject to this Purchase Agreement is located within Zone C according to the Marshall Airport Zoning Ordinance. Restrictions associated with Zone C provide that subsequent/future land use must not cause radio or electronic interference with Airport operations and any lighting used on site must not make it difficult for airplane pilots to distinguish airport lights or result in glare for pilots.
- (c) Existing/future FARpart 77 or departure surface airspace restrictions should not be a concern for building or structure height limitations of less than 60 feet (assuming ground elevation of 1,160 feet MSL).

- (d) In accordance with 14CFR Part 77.9, notice to FAA will need to be filed by the project proponent for any development greater than 10 feet in height. This can be accomplished by completing FAA Form 7460, which needs to be submitted at least 45 days prior to construction.
- (e) The Deed for the HRA conveying the property shall provide that the HRA's conveyance of the property to the Buyer is subject to a right of re-entry for breach of terms of condition subsequent in favor of the HRA. A copy of the proposed Deed is attached hereto and made a part hereof.
- (f) The Water Access Charge (WAC) is \$1,273.00 per acre and is to be paid by the buyer upon the development of property.

IN WITNESS WHEREOF, the parties have executed this Real Estate Purchase Agreement as of the later of the dates set forth below:

SELLER:

HOUSING AND REVELOPMENT AUTHORITY IN AND FOR THE CITY OF MARSHALL, MINNESOTA

By _____

Its _____

BUYER:

JIM BROCK TRUCKING REAL ESTATE LLC

By: _____

Its: Managing Member