

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2022, by and between the **City of Harrisburg**, a South Dakota municipal corporation ("Buyer"), and **MV Enterprises, LLC**, a South Dakota limited liability company ("Seller").

RECITALS

WHEREAS, Seller is the owner of that certain parcel of real property located in Lincoln County, South Dakota which is legally described as:

Tract 1, Harrisburg Willow Estate Addition to the City of Harrisburg, Lincoln County, South Dakota, according to the recorded plat thereof;

Parcel ID # 270.95.00.A100

together with all buildings and improvements located thereon (if any) and all of the right, title and interest in and to any easements, privileges, rights of way, appurtenances or right to the same belonging thereto or inuring to the benefit thereof (hereinafter collectively referred to as the "Property");

WHEREAS, Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, and covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do agree as follows:

1. Conveyance. On the terms and subject to the conditions set forth in this Agreement, Seller shall sell, convey, transfer and assign to Buyer, and Buyer shall purchase, acquire, and assume from Seller, Seller's fee simple ownership and all of Seller's interests in and to the Property together with all improvements located thereon and all appurtenances attached thereto.
2. Purchase Price and Sale Terms. In consideration for the purchase and sale of the Property, Buyer shall pay to Seller the sum of ONE HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$147,500.00) in immediately available funds (the "Purchase Price"), payable at Closing.
3. Closing. The closing of the transaction contemplated in this Agreement shall occur on or before August 5, 2022 at First Dakota Title (the "Title Company"), or at such other time and place as the parties may reasonably agree (the "Closing" or the "Closing Date"), **but in no event earlier than 20 days after publication of the minutes of the City of Harrisburg City Council minutes approving the transaction.**

4. Real Estate Taxes and Assessments. Seller shall be responsible for and shall pay all real estate taxes of record which were assessed for the year Seller was in possession of the property (payable in subsequent year), and for all prior years. Real estate taxes assessed for the year the Buyer takes possession (payable in in the following year) shall be prorated to the date of closing and Buyer shall receive a credit to the Purchase Price for such prorated taxes. Buyer shall be responsible for and shall pay all real estate taxes assessed for the year following Buyer taking possession and for all subsequent years. It is agreed that the proration of the real estate taxes shall be based upon the real estate taxes assessment available at the time of Closing.

5. Title Insurance. Buyer shall promptly order within ten (10) days of the execution of this Agreement, from First Dakota Title, a current title commitment (the "Title Commitment") for an ALTA owner's policy of title insurance, which shall:

- (a) be in the amount of the Purchase Price;
- (b) show Seller as fee owner of the Property, subject only to the following title exceptions:
 - (i) current taxes not yet due and payable; and
 - (ii) easements, covenants and restrictions which are approved in writing by Buyer, in Buyer's sole and absolute discretion.

The title exceptions contained within this subsection (b) shall herein be referred to as "Allowable Exceptions"; and

- (c) insure the interest of Buyer as owner.

Buyer shall be allowed ten (10) days after receipt of the Title Commitment to examine title to the Property, and to make any objections thereto in Buyer's sole and absolute discretion (the "Title Objections"). If such Title Objections are made by Buyer, Seller shall be allowed ten (10) days to insure over or to remove such Title Objections. In the event the Seller fails to satisfy or correct any such Title Objections of which Seller is so notified prior to Closing, then the Buyer shall, by written notice to the Seller, elect one of the following prior to or at Closing: (i) To waive such Title Objections, in which event such Title Objections shall become one of the Allowable Exceptions, and to complete the transaction in accordance with the terms of this Agreement; or (ii) To terminate this Agreement and in such event the parties hereto shall have no further rights, duties or obligations under this Agreement.

6. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants the following to Buyer, each of which representations, warranties and covenants shall be true and effective as of the date hereof and as of the date of Closing:

- (a) Ability to Contract. Seller has the authority to enter into this Agreement and this Agreement shall be a valid and binding obligation on Seller, subject to the terms and conditions contained herein; and

(b) Ownership. Seller owns and shall sell, transfer, convey and assign to Buyer fee simple ownership in the Property free and clear of any and all liens, mortgages, encumbrances, security interests, pledges, restrictions, covenants, easements or other interest or obligations of whatever kind and nature, except as otherwise disclosed in the Commitment and accepted by Buyer pursuant to this Agreement, or as the parties may otherwise agree in writing;

7. Buyer's Representations, Warranties and Covenants. Buyer represents, warrants, and covenants as follows:

(a) Ability to Contract. Buyer has the authority to enter into this Agreement and this Agreement shall be a valid and binding obligation on Buyer, subject to the terms and conditions contained herein; and

(b) Payment. Subject to the terms and conditions of this Agreement, Buyer agrees to pay Seller the Purchase Price.

(c) As Is/Where Is. Buyer acknowledges, represents and warrants that as of the Closing Date, Buyer is familiar with the Property and will have made such independent investigations as Buyer deems necessary or appropriate concerning the Project. Except as expressly provided in Section 6 above, Seller makes no representations or warranties and specifically disclaims any representation, warranty or guaranty, oral or written, past, present or future with respect to the physical condition or any other aspect of the Property, including, without limitation, the state of repair or lack thereof of any of the Property and the conformity of the Property to past, current or future building code requirements.

8. Obligations at Closing. At Closing, the following shall occur:

(a) Seller shall deliver to Buyer (i) a good and sufficient warranty deed for the Property; and (ii) such other documents as deemed necessary by Buyer, Title Company, or closing agent to transfer the Property to Buyer or as may be required pursuant to this Agreement.

(b) Buyer shall deliver to Seller the Purchase Price;

(c) In addition to the items set forth above, Buyer and Seller shall cause the following deliveries to be made; (i) Seller's payment of the transfer tax and Buyer's payment of recording fee to the Lincoln County Register of Deeds; (ii) **any Closing fees or other regular and usual fees not expressly addressed herein shall be paid by the Buyer**; (iii) settlement statements showing the Purchase Price, and any adjustments thereto; and (iv) any other documents as required effectuating the transfer of the Property, including any other documents required by the Title Company or closing agent; and

(d) If any of the above-specified conditions remain unsatisfied at the Closing of this Agreement, or any representation, warranty, or covenant of either party has been breached, then Buyer or Seller may, at its election: (i) waive such unsatisfied

conditions and proceed to Closing; (ii) extend the Closing to such date, mutually agreed upon by Buyer and Seller, upon which all conditions precedent, representations, and warranties shall have been satisfied; or (iii) upon written notice to the other party, terminate this Agreement and in such event the parties hereto shall have no further rights, duties or obligations under this Agreement. The parties hereto agree to use their commercially reasonable best efforts and agree to mutually cooperate to satisfy all of the conditions precedent contained herein.

9. **Delayed Effectiveness.** Notwithstanding any other provision contained herein, the effectiveness of this Agreement is contingent upon Buyer obtaining all necessary approvals of the governmental bodies with jurisdiction over the matters set forth herein, including without limitation any applicable referral process.

10. Miscellaneous.

- (a) Survival of Representations, Warranties and Covenants. The representations, warranties and covenants contained herein, and all other rights, duties and obligation hereunder, shall survive Closing and are and shall be deemed to be continuing representations, warranties, covenants, rights, duties and obligations.
- (b) Assignment. Buyer may assign this Agreement, in its sole discretion, to the Harrisburg Economic Development Corporation.
- (c) Brokers. In the event that Seller has entered into an agreement with a broker for the payment of commissions associated with the sale of the Property of the negotiation of this Agreement, Seller agrees to compensate broker with respect to such services, and to indemnify and hold harmless Buyer with respect to such commissions that arise under the agreement between Seller and Broker.
- (d) Entire Agreement; Waiver. This Agreement contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought. A waiver of any term or provision shall not be construed as waiver of any other term or provisions or as waiver of subsequent performance of the same provision of this Agreement.

[Signatures begin on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the purposes herein contained as of the date first written above.

BUYER:

CITY OF HARRISBURG

By: _____
Mayor

(SEAL)

ATTEST:

Deb Harris, Finance Officer

SELLER:

MV ENTERPRISES, LLC

By: _____
Its: _____