

REAL ESTATE PURCHASE AGREEMENT

This REAL ESTATE PURCHASE AGREEMENT (the “**Agreement**”) is made and entered into this ___ day of _____, 2023 (the “**Effective Date**”), by and between the City of Harrisburg, located in Lincoln County, South Dakota, (the “**Buyer**”); and Mydland Estates, LLC, a South Dakota limited liability company located at 2571 S. Westlake Drive, Sioux Falls, SD 57106 (the “**Seller**”).

WITNESSETH:

WHEREAS, Seller is the fee simple owner of those certain parcels of real property located in Lincoln County, South Dakota, the principal use of which is drainage and retention of storm water consisting of all of Tract 1 (the “**Pond**”) of Mydland Estates Addition to the City of Harrisburg, Lincoln County, South Dakota, as more fully shown on Exhibit A, attached hereto and incorporated herein by this reference, together with all structures and improvements located thereon, and any appurtenances attached thereto (collectively the “**Property**”);

WHEREAS, Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer, subject to the terms and conditions herein contained.

NOW, THEREFORE, for good and reasonable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Conveyance. On the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell, convey, transfer and assign to Buyer, and Buyer agrees to purchase, acquire, and assume from Seller, Seller’s fee simple ownership and all of Seller’s interest in and to the Property, together with all structures and improvements located thereon, and any appurtenances attached thereto.

2. Purchase Price. In consideration of the conveyance of the Property by Seller to Buyer, Buyer agrees to pay Seller as follows a purchase price of \$479,354.00 for the Property, in cash or other immediately available funds (the “**Purchase Price**”), subject to adjustments for prorations and allocations as provided herein.

3. Closing. The “**Closing**” shall be held within fifteen (15) days after Buyer’s time for Title Objections under Section 5(c) has expired. Closing shall be held at Getty Abstract & Title Company or such other place as the parties agree as mutually acceptable. At Closing, Seller shall transfer the Property to Buyer by a warranty deed subject only to exceptions approved by Buyer as contemplated herein.

4. Real Estate Taxes; Assessments. Seller shall be responsible for and shall pay all real estate taxes against the Property which were assessed for the year 2022 (payable in 2023) and all prior years. Real estate taxes for 2023 (payable in 2024) shall be prorated to Closing. Buyer shall be responsible for all real estate taxes assessed against the Property, if any, for the year 2024 (payable in 2025) and for all subsequent years. Seller shall be responsible for and shall pay for any and all assessments which are legally levied upon the Property, or which will be levied upon the Property, for improvements or betterments which are completed but not entered on the books of the local assessing authority as of the Closing of this Agreement. Other than those that have already been paid in full by Seller, Seller has received no notice of actual or threatened assessments or reassessments whatsoever of the Property.

5. Title Commitment.

a. *Title Insurance*. Seller shall promptly order and have delivered to Buyer, from Getty Abstract and Title Company (the “**Title Company**”), a current commitment (the “**Title Commitment**”) for an ALTA owner’s policy of title insurance, which shall:

- (i) be in the amount of the Purchase Price;
- (ii) show Seller as fee owner of the Property, subject only to the following title exceptions:
 - (a) current taxes not yet due and payable; and
 - (b) 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 (ii) shall herein be referred to as "***Allowable Exceptions***";

- (iii) insure the interest of Buyer as owner, and insure the interest of Buyer's lender, if any; and
- (iv) if requested by Buyer, provide for extended coverage over the standard printed exceptions contained in the general form of such title policy and such specific endorsements and coverages as Buyer may deem necessary for its use of the Property; provided, however, that notwithstanding anything to the contrary contained in this Agreement, any such premiums or additional costs related to obtaining an extended coverage policy or specific endorsements shall be borne by the Buyer, at the Buyer's sole expense.

The cost of the Title Commitment, and the title policy itself, shall be split equally between Buyer and Seller.

- b. *Survey/Replating.* As of the Effective Date the Pond is platted. Seller shall, within fifteen (15) days after the Effective Date, furnish Buyer a plat survey (the "***Survey***") prepared by a registered land surveyor licensed to practice in the State of South Dakota certified to Buyer and Title of the Property showing the exact legal description boundary lines of the Pond.
- c. *Review of Title Commitment, Title Documents and Survey.* Buyer shall be allowed ten (10) days after: (i) the Effective Date, (ii) receipt of the Commitment, or (iii) receipt of the Survey, whichever event occurs later, to examine title to the Property and the results of the Survey, and to make any objections thereto in Buyer's sole and absolute discretion (the "***Title Objections***"), which Title Objections may be based upon Buyer's review of the Survey as well as upon the Title Commitment. If such Title Objections are made by Buyer, Seller shall be allowed fifteen (15) days to insure over or to remove such Title Objections.
- d. *Correction of 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:** Seller states and represents as follows:

- a. On the date of the Closing, Seller will own and have fee title to the Property;
- b. Seller, including those corporate representative(s) executing documents on Seller's behalf, has full right and authority to convey the Property, and in regard thereto to execute this Agreement and to execute and deliver the documents required of Seller for the performance of this Agreement;
- c. Seller is not a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control; that Seller is not listed in the annex to, and is not otherwise subject to the provisions of, Executive Order No. 13224 (the "Executive Order"); that the Seller is not acting 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;
- d. The Property shall be free of undisclosed tenancies prior to the date of Closing; and
- e. Seller has no actual knowledge of any violations of city, county, state, federal, building, land use, fire, health, safety, environmental, hazardous materials or other governmental or public agency codes, ordinances, regulations, or orders with respect to the Property.

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

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

- a. Seller shall deliver to Buyer the following executed documents:
 - (i) A good and sufficient Warranty Deed and Certificate of Real Estate Value for the Property;
 - (ii) Such other documents as reasonably deemed necessary by Buyer or its counsel 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 at Closing:
 - (i) Seller's payment of the transfer tax to the Lincoln County Register of Deeds;
 - (ii) Buyer's payment of the recording fee for the Warranty Deed to the Lincoln County Register of Deeds;
 - (iii) Any Closing fees shall be split equally between Buyer and Seller;

- (iv) Settlement statements showing the Purchase Price, and any adjustments thereto; and
- (v) Any other documents as required effectuating the transfer of the Property, including any other documents required by a title company or closing agent.

9. Specific Performance. Each party agrees and acknowledges that monetary damages would be an inadequate remedy for breach of this Agreement, and that breach of this Agreement will result in immeasurable and irreparable harm to the other party. Therefore, in addition to any other remedy to which the non-breaching party may be entitled by reason of the breaching party's breach of this Agreement, the non-breaching party shall be entitled to seek specific performance of this Agreement as a remedy for breach of this Agreement. This clause shall survive any termination of this Agreement.

10. Conditions Precedent. Buyer's obligation to proceed with the purchase of the Property is specifically subject to and contingent upon satisfaction or Buyer's waiver of each of the following conditions precedent by Closing:

- a. Buyer shall have received from Seller the Title Commitment and Survey and all Buyer's Title Objections pursuant to this Agreement have been satisfied or waived; provided, however, that the Survey form and type, and any Title Objections, shall be consistent with the provisions of this Agreement.
 - b. The delivery of the documents referenced in Section 9, above, sufficient to the satisfaction of Buyer.
 - c. The representations, warranties and covenants of Seller being true and correct as of the Closing of this Agreement.
- a. Seller shall have surveyed and platted the Property in a satisfactory and recordable manner.

If any of the above-specified conditions remain unsatisfied at the Closing of this Agreement, then Buyer 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 shall have been satisfied; or (iii) upon written notice to Seller, 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.

11. Indemnification. Seller hereby agrees to indemnify and hold Buyer harmless from and against any loss, liability, cost, expense or other damages (including, without limitation, reasonable attorney's fees and expenses) resulting from, arising out of or incurred with respect to Seller's breach of the agreements, covenants, terms, provisions and conditions set forth in this Agreement, including but not limited to the breach of any representations, warranties or covenants of Seller set forth in this Agreement, any obligations of Seller not specifically assumed by Buyer in writing, and any other claims, causes of action, damages, loss, etc., arising out of, or occasioned by, the Seller's acts or omissions, prior or subsequent to Closing. Seller further agrees to indemnify, defend, and hold Buyer harmless from any claims or causes of action by any of Seller's creditors or other parties having claims against Seller's interest in the Property. Buyer hereby agrees to indemnify and hold Seller harmless from and against any loss, liability, cost, expense or other damages (including, without limitation, reasonable attorney's fees and expenses) resulting from, arising out of or incurred with respect to Buyer's breach of the agreements, covenants, terms, provisions and conditions set forth in this Agreement, including but not limited to the breach of any representations, warranties or covenants of Buyer set forth in this Agreement, and any other claims, causes of action, damages, loss, etc., arising out of, or occasioned by, the Buyer's acts or omissions, prior or

subsequent to Closing. Nothing contained in this Agreement shall require that Seller indemnify Buyer for breaches of agreements or covenants caused by, or related to, the acts or omissions of Buyer, and nothing contained in this Agreement shall require that Buyer indemnify Seller for breaches of agreements or covenants caused by, or related to, the acts or omissions of Seller.

12. Declaration of Drainage Easements and Pond Maintenance Agreement. Upon Closing, Buyer agrees to enter into that Declaration of Drainage Easements and Pond Maintenance Agreement in the form attached hereto as Exhibit B and such Declaration shall be recorded at Closing against the Property to protect the surrounding parcels right to drain to the Pond and across the Drainage Channel.

13. 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.

14. No Warranties or Representations. **Buyer warrants that it shall have inspected the Property prior to closing, will be acquainted with its condition, and will take the Property "AS IS" WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED.** Except as provided in this Agreement, neither Seller nor any agents, representatives, or employees of Seller have made any representations or warranties, direct or indirect, oral or written, express or implied, to Buyer or Buyer's agents with respect to the square footage of the Property or the improvements thereon, the condition of the Property, its fitness for any particular purpose, or its compliance with any laws, and Buyer is not aware of and does not rely upon any such representation of any other party.

Buyer represents, warrants and covenants to Seller that Buyer has had the opportunity to independently and personally inspect the Property, and the improvements, entitlements, plans and specifications related to the Property, and that Buyer has elected to go forward with the purchase of the Property based upon such personal examinations and inspections as Buyer has deemed appropriate to make.

Buyer agrees that Buyer will accept the Property in its then condition at Closing as-is and with all its faults including, without limitation, any faults and conditions specifically referenced in this Agreement.

Buyer further acknowledges and agrees that having been given the opportunity to inspect the Property and to review information and documentation affecting the Property, Buyer is relying solely on its own investigation of the Property and review of such information and documentation, and not on any information provided or to be provided by Seller. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property or the operation thereof furnished by any of the foregoing entities and individuals or any other individual or entity, except as specifically set forth in this Agreement. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS-IS" condition and basis, with all faults, and that Seller has no obligations to make repairs, replacements or improvements, and no liability whatsoever for damages and without relying on any warranties, representations, or statements made to it by Seller, except as specifically set forth in this Agreement.

15. Miscellaneous.

- a. *Possession.* Buyer shall be entitled to sole, exclusive and immediate possession of the Property upon the Closing.
- b. *Governing Law.* This Agreement is subject to and shall be governed by and construed and enforced in accordance with the laws of the State of South Dakota without regard to conflict of

laws principles. All actions or proceedings arising directly or indirectly from this Agreement shall be brought in Lincoln County, South Dakota.

- c. *Expenses.* Except as specifically provided herein, Buyer and Seller will bear their own expenses in connection with this transaction.
- d. *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.
- e. *Counterparts.* This Agreement may be executed in any number of counterparts as deemed appropriate by the parties, all of which taken together shall constitute one and the same instrument. This Agreement may be executed by facsimile or email, meaning signature pages received via facsimile or email shall constitute a binding obligation on the parties.
- f. *Time is of the Essence.* It is expressly understood and agreed by the parties that time is of the essence in this Agreement.
- g. *Benefit.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and also upon their respective heirs, representatives, successors and assigns. This Agreement does not and is not intended to confer any rights or remedies upon any person, persons, or entity other than the parties.
- h. *Further Assurances.* Each party, upon the request of the other, agrees to perform any further acts, and to execute and deliver any other documents, which are reasonably necessary to carry out the provisions of this Agreement.
- i. *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.
- j. *Drafting Presumption.* Buyer and Seller agree that they participated in the drafting of this Agreement and, in the event that any dispute arises in the interpretation or construction of this Agreement, no presumption shall arise that either one party or the other drafted this Agreement.
- k. *Captions.* The captions and title utilized in this Agreement are for convenience of reference only, and shall not be deemed to define or limit any of the terms, conditions, or provisions of this Agreement.
- l. *Incorporation.* The WHEREAS paragraphs and any attached exhibits, schedules, and other documents referenced herein, shall be deemed an integral part of this Agreement and incorporated herein by this reference.
- m. *Risk of Loss.* Prior to Closing, Seller has the responsibility to insure and maintain the Property so that the Property can be delivered to Buyer in the same or comparable condition as it is in at the time of the execution of this Agreement. If there is any major damage to the Property during the pendency of this Agreement, Buyer have the option to terminate this Agreement or to request Seller to restore the Property to its condition at the time of the execution of this Agreement.
- n. *Attorneys' Fees.* The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs.

- o. *Notice of Real Estate Purchase Agreement.* The parties agree that they will not record this Agreement, but either party may record a Notice of Contract outlining the substantive provisions contained herein.
- p. *Legal Representation.* Buyer and Seller represent that they each have read every provision of this Agreement in its entirety, and that each has been afforded an opportunity to obtain legal representation. Buyer and Seller each understand that this Agreement will create a binding contract enforceable under South Dakota law.

IN WITNESS WHEREOF, Buyer and Seller have hereunto executed this REAL ESTATE PURCHASE AGREEMENT on this ____ day of _____, 2022.

SELLER

Mydland Estates, LLC

By: MVB Properties, LLC
Its: Managing Member

By: Steven Van Buskirk
Its: Vice President

BUYER

City of Harrisburg

Derick Wenck, Mayor

(SEAL)

Attest:

Deb Harris, Finance Officer

EXHIBIT A

**Tract 1 =
The Pond**

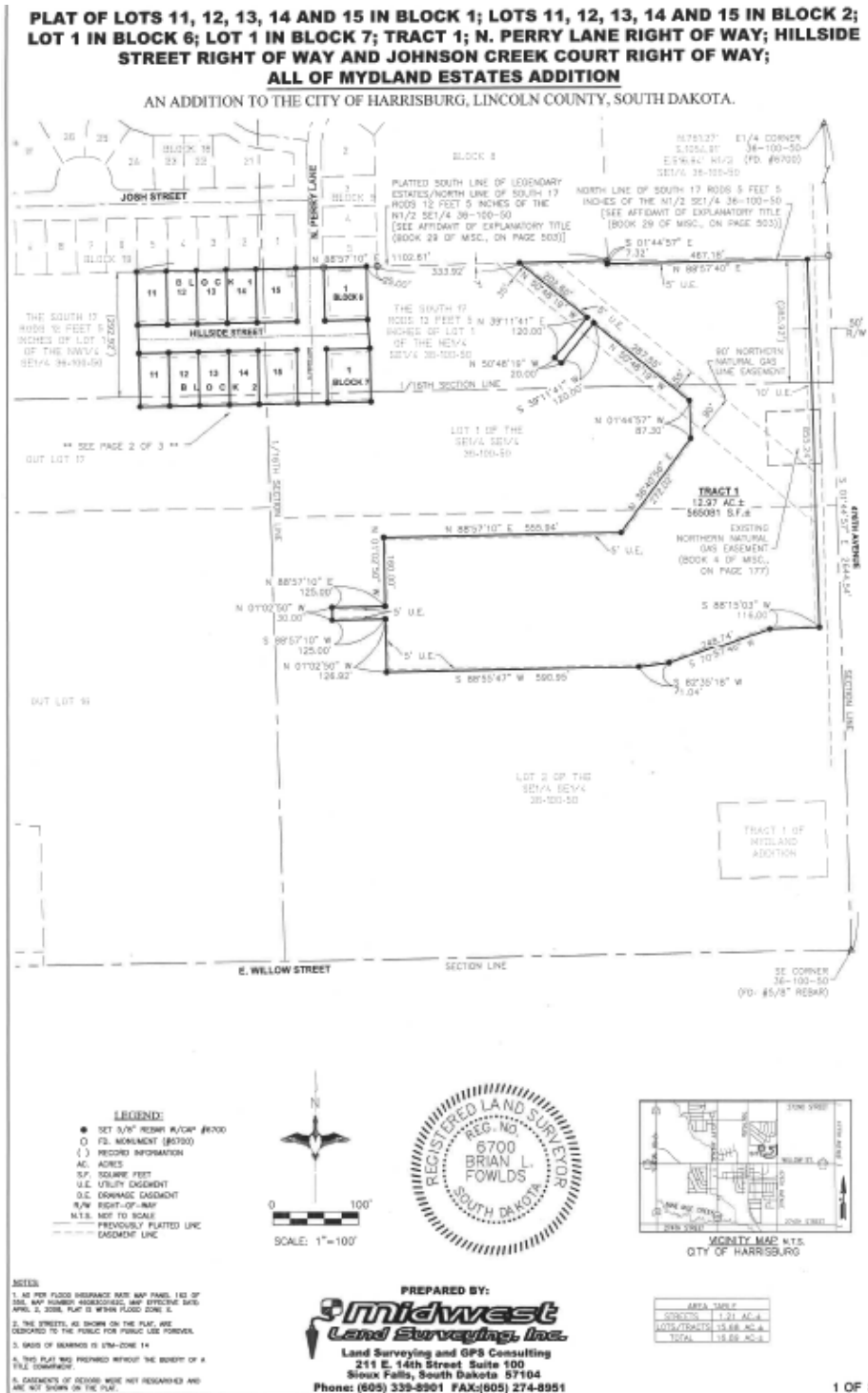


EXHIBIT B

**Declaration of Drainage Easement & Pond Maintenance Agreement
(to be attached)**