

## PURCHASE AGREEMENT

THIS AGREEMENT made and entered into this 31<sup>st</sup> day of October, 2018, by and between Palmer Miller, whose post office address is 105 6TH ST NE, Minot, ND 58703-3226, hereinafter called "Seller", and the City of Minot, a North Dakota municipal corporation, whose post office address is P.O. Box 5006, Minot, ND 58702-5006, hereinafter called "City."

WITNESSETH, that the Seller agrees to sell and the City agrees to purchase, upon the terms and conditions hereinafter set forth, the following described real property and all appurtenances thereunto belonging, owned by the Seller and located in the County of Ward, State of North Dakota, to-wit:

TORBENSONS ADDITION LOT 13 BLOCK 2

Street Address: 105 6TH ST NE  
Tax Parcel ID: MI24.449.020.0130  
File No.: 4438

Notwithstanding any other provision of this Purchase Agreement, City shall have no obligation to purchase the Property, and no transfer of title to the City may occur, unless and until the City has received a written determination, on the basis of a federally required environmental review and an approved request for release of federal funds, that purchase of the Property by City may proceed. Upon receipt of the written determination and approved release of funds and subject to other terms and conditions of this Purchase Agreement, the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property. City shall use its best efforts to ensure environmental review of the property is concluded expeditiously.

In further consideration of the covenants and obligations contained herein, the parties agree as follows:

**PURCHASE PRICE.** The purchase price for all of the Seller's right, title and interest in the Property shall be Two Hundred Twenty One Thousand and 0/100 Dollars (\$221,000) (\$198,500 Structure(s), \$22,500 Land) payable at Closing, which sum shall be reduced by any amounts paid by the City on behalf of the Seller for the purposes set forth in paragraph 9. Except as otherwise provided herein, the Seller shall receive no other compensation from the City for the Seller's right, title, and interest in the Property. Notwithstanding the foregoing, Seller may be entitled to benefits and assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and/or *N.D.C.C.* § 54-01.1.

2. ABSTRACT AND TITLE INSURANCE. Prior to Closing, Seller shall provide the City possession of an abstract of title or title insurance policy showing marketable title of the Seller to the real estate described in this agreement. The cost of any abstract continuation or provision of title insurance shall be paid by the City. In the event that Seller is unable to deliver an existing abstract or title insurance policy to the City, the cost of creating a new abstract or acquisition of title insurance shall be paid by the City. Seller shall pay all costs required to perfect its title to the property. Seller agrees to cooperate with the City and to execute all documents necessary to demonstrate or obtain marketable title to the property. Upon Closing, all abstracts and title insurance policies shall become the property of the City.

If Seller's title is not insurable or free of defects and cannot be made so within sixty (60) days after notice containing a written statement of defects delivered to the Seller, then this agreement may be terminated at the option of the City, except that the City may waive defects and elect to close the purchase.

3. DEED. Seller shall, on full compliance by City with the promises herein, execute and deliver to City a Warranty Deed, in recordable form, conveying marketable title free from all encumbrances, except the following:

- A. Conditions, covenants, restrictions, limitations, terms, easements, and declarations of record;
- B. Taxes, general and/or special assessments, not yet certified for collection;
- C. Facts that a survey or personal inspection of the property will disclose;
- D. All zoning regulations and ordinances;
- E. Covenants required by federal, state or local authorities as a result of the acquisition of the property.

4. CLOSING DATE. This transaction shall be finally closed and a Warranty Deed as required herein delivered to the City at a date mutually agreed to by the parties but in no event later than 90 days after the date thereof.

5. POSSESSION. City shall be entitled to possession of the Property at the Closing. The City shall be entitled to receipt of all rents and profits from the Property after closing.

6. INSPECTION OF PROPERTY. City shall have the right to conduct such investigations, inspections and inventories of the Property as it deems reasonable or necessary prior to Closing. Seller hereby grants the City, its officers, agents, employees and independent contractors, the right to enter upon the Property at reasonable times upon reasonable notice, oral or written, from time to time after the date of this agreement for the purposes of investigating, inspecting and performing inventories of the Property and for other purposes consistent with City's interest under this agreement.

7. REMOVAL OF PERSONAL PROPERTY. Prior to the Closing Date, Seller at its own expense shall remove all personal property which Seller wishes to retain. Also, prior to or on the Closing Date, Seller shall execute and deliver to the City the Certificate of Removal of Personal Property attached as Exhibit "A." Any personal property remaining in the structure at the time of Closing will become the property of the City.

8. NO HOLDOVER PERIOD FOR OCCUPANTS. Seller shall ensure that it and all other current occupants vacate the Property at the Closing Date.

9. PURCHASE PRICE DEDUCTIONS. Prior to disbursing payment to the Seller, City may use a portion of the Purchase Price to satisfy the Seller's obligations under this document, to pay taxes, assessments, mortgages, liens and acquisition of other parties' outstanding interests in the Property.

10. STATUS QUO MAINTAINED. Except as otherwise authorized by City, the Property shall be preserved in its present condition and Seller shall deliver it intact at the time of closing. In the event salvage is authorized, the replacement value of the salvaged items will be deducted from the Purchase Price stated in paragraph 1. All risk of loss or damage to the Property is on Seller until closing. Prior to closing, Seller shall promptly give written notice to the City of any salvage, loss or damage to the Property. In the event of salvage, loss, damage or destruction of all or part of the Property, City shall have the option to terminate this agreement effective immediately. However, in the case of salvage, loss, damage or destruction of all or part of the Property, City shall have the option to: (1) take possession of the Property upon completion of the terms and obligations of this Purchase Agreement; (2) terminate this agreement effective immediately; or (3) renegotiate the Purchase Price.

11. UTILITIES. Seller shall be responsible for payment of all utility expenses incurred by it or incurred by any other occupants, prior to the date of possession by City.

12. TAXES. Seller shall pay a pro-rata share of taxes on the Property through date of closing and all unpaid taxes for prior years.

13. SPECIAL ASSESSMENTS. Seller agrees to pay any and all unpaid special assessments including but not limited to any uncertified balance of special assessments.

14. TIME IS OF THE ESSENCE. Time is of the essence of this agreement.

15. LEASES. Seller represents and warrants to City that, except as stated herein, there are no leases, tenancies or other rights of occupancy for use for any portion of the Property. The foregoing representation and warranty shall survive the Closing Date. Seller shall hold harmless and indemnify City from and against any claims which may arise or be based upon any alleged leasehold interest, tenancy or other right of occupancy or use of any portion of the Property except as listed below:

<u>Tenant Name</u>	<u>Tenant Phone #</u>	<u>Lease Date</u>	<u>Lease Beginning Date</u>	<u>Lease Ending Date</u>
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- 1.
- 2.
- 3.
- 4.

If the Property or any portion thereof is leased to a third party, such third party tenant or occupant may be eligible for benefits or assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and/or *N.D.C.C.* § 54-01.1. The City and/or its agents, contractors or representatives will be contacting tenants or occupants to provide information and notices as may be required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and/or *N.D.C.C.* § 54-01.1, including, but not limited to, notices that the tenant or occupant must permanently relocate from the Property. Consequently, tenants or occupants might move from the Property prior to the Closing Date. Seller agrees to allow such tenants to move from the Property without penalty and will not consider such move as a breach of any lease, rental or occupancy agreement which Seller may have with the tenant or occupant.

Sellers Initials

P. M.

-5-

**If any tenant or occupant should move out of the Property after the date of this agreement, Seller agrees not to lease or rent such vacated unit to**

**any other person or otherwise allow any occupancy of such vacated unit. Other than the consideration stated in paragraph 1, Seller shall not receive any additional payment, consideration or compensation for loss of rent or reimbursement of any expenses related to any vacancies.**

16. APPROVAL OF COURT. If the Property is an asset of any estate, trust or guardianship, this document shall be subject to court approval prior to payment of Purchase Price, unless declared unnecessary by the City. If court approval is necessary, the appropriate fiduciary shall proceed promptly and diligently to bring the matter on for hearing to enable the issuance of an order approving the sale.

17. ENVIRONMENTAL MATTERS.

- A. Environmental Representations and Warranties. For purposes of this agreement, the terms "hazardous waste" or "hazardous substance" shall include every material, waste, contaminant, chemical, toxic pollutant or other substance listed or described in any of the following sources, as amended from time to time: (i) the Resource Conservation and Recovery Act to 1976, 42 U.S.C. 6901 et.seq. (RCRA); (ii) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (Pub. Law. 96-510) (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub.L. 99-499) (SARA) codified at 42 U.S.C. 9601 et.seq.; (iii) Federal Environmental Protection Agency Regulations at 40 C.F.R. Parts 122-124 and 260-265; (iv) North Dakota Code Chapter 19-21; (v) any other federal, state, or local statute or ordinance which defines "hazardous waste" or "hazardous substance" or similar terms, and which could create liability in the City or the City's successors in interest; and (vi) any federal, state or local regulations, rules or orders issued or promulgated under or pursuant to any of the foregoing or otherwise by any department, agency or other administrative regulatory or judicial body having jurisdiction over the Property (hereinafter collectively referred to as "Environmental Laws"). Without limiting the foregoing, the terms "hazardous waste" and "hazardous substance" shall also include all substances or materials containing asbestos, PCBs, or hydrocarbons. To the best of Seller's knowledge, Seller hereby represents and warrants to City that:

- (1) There are no abandoned wells, agricultural drainage wells, solid waste disposal sites or underground storage tanks located in, on or about the Property;
- (2) There is and has been no hazardous waste or hazardous substance stored, generated, treated, transported, installed, dumped, handled or placed in, on or about the Property;
- (3) At no time have any federal or state hazardous waste or hazardous substance cleanup funds been expended with respect to any of the Property;
- (4) There has never been any solid waste disposal site or underground storage tank located in, on, or about the Property, nor has there been any release from any underground storage tank on real property contiguous to the Property which has resulted in any hazardous waste or hazardous substance coming in contact with the Property;
- (5) Seller has not received any directive, citation, notice, letter or other communication, whether written or oral, from the Environmental Protection Agency, the North Dakota Department of Health, or any other governmental agency with authority under any environmental laws, or any other person or entity regarding the release, disposal, discharge, or presence of any hazardous waste or hazardous substance on the Property, or any violation of any environmental laws; and
- (6) Neither the Property, nor any real property contiguous to the Property, nor any predecessors in title to the Property, are in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any removal or remedial obligations under any environmental laws.

The foregoing representations and warranties, and the Environmental Indemnifications set forth in the following subparagraph B shall survive the Closing. In addition, the foregoing representations and warranties and the indemnification provisions in this agreement shall not be

affected by any study, investigation, or inspection of the property by the City or any agent of the City.

- B. Environmental Indemnification. Seller agrees to indemnify and hold harmless the City from and against any and all claims, demands, fines, penalties, causes of action, losses, damages, liabilities, expenses, and costs (including court costs and reasonable attorney's fees incurred by the City to enforce this provision) asserted against or incurred by the City by reason of or arising out of the breach of any representation or warranty of the Seller set forth above.
- C. Additional Environmental Provisions. Seller shall not store, generate, treat, transport, install, dump, handle, or place in, on or about any portion of the Property any hazardous waste or hazardous substance. If Seller receives any notice from any governmental authority or any other party regarding the release or presence of any hazardous waste or hazardous substance on any portion of the property, or otherwise learns of any release or presence of any hazardous waste or hazardous substance on any portion of the Property, Seller shall immediately notify the City of such fact. In addition, the City or its agents shall have the right to enter upon the Property at any time to perform additional environmental studies. If at any time the City in its sole and unrevocable discretion determines that hazardous wastes or hazardous substances are present on any portion of the Property, the City may terminate this agreement effective immediately.

Seller's Initials

P. M.

18. LIQUIDATED DAMAGES FOR SELLER DEFAULT. Should the Seller default in completing the terms and conditions of this Purchase Agreement, Seller agrees to pay the sum

of Two Thousand Five Hundred and no/100 dollars (\$2,500.00) as liquidated damages or the City, at City's option, may pursue an action for specific performance of this agreement. In establishing the amount of liquidated damages, the undersigned Seller and City specifically acknowledge that actual damages resulting from Seller's breach are impractical or extremely difficult to ascertain. Seller and City have made a reasonable endeavor to fix a fair and reasonable compensation for Seller's breach and that the amount thus established is acknowledged by both Seller and City to bear a reasonable relation to probable damages and is not disproportionate to any damages that could reasonably be anticipated to be suffered by City in event of Seller's default.

19. CONTRACT BINDING ON SUCCESSORS IN INTEREST. The document shall apply to and bind the heirs, executors, administrators, partners, assigns and successors in interest of the respective parties.

20. INTENTION OF USE OF WORDS AND PHRASES. Words and phrases contained herein, including the acknowledgment clause, shall be construed as in the singular and plural number, and as masculine, feminine or neuter gender, according to the context.

21. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this document.

22. NO COMMISSION. Each party hereto represents to the other that no real estate commission shall be due on the conveyance contemplated by this agreement.

23. ENTIRE AGREEMENT. This Purchase Agreement contains the entire agreement between the parties, and neither party has relied upon any verbal or written representations, agreements, or understandings not set forth in this agreement.

24. MODIFICATION. No modification of this agreement shall be valid or binding unless the modification is in writing, duly stated and signed by both parties.

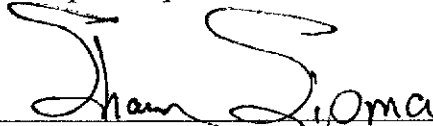
25. EXHIBITS. Exhibit "A" (Certificate of Removal of Personal Property), Exhibit "B" (Bill of Sale), Exhibit "C" (Affidavit of Sellers) are attached hereto and by this reference made a part hereof.

26. SURVIVAL. The obligations and covenants of this Purchase Agreement, specifically, but not limited to, paragraphs 15, 17, 18, 23 and 25 shall survive the closing of the sale and any transfer of title to the property to the City.



The City hereby agrees to purchase the Property described in this agreement for the price and on the terms and conditions set forth in this agreement.

CITY OF MINOT, a North Dakota  
municipal corporation




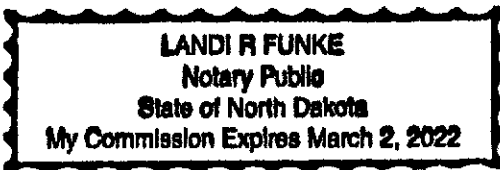
By: Shaun Sipma, Its Mayor



By: David Lakefield, Its Finance Director

STATE OF NORTH DAKOTA    )  
  )ss  
COUNTY OF WARD            )

On this 5 day of November, 2018, before me, a Notary Public within and for said County and State, personally appeared Shaun Sipma, Mayor and David Lakefield, Finance Director, known to me to be the persons described in and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same on behalf of the City of Minot.

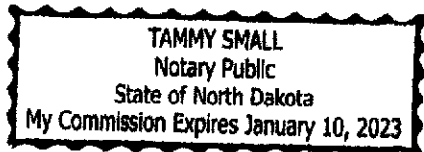
  
Notary Public

Seller hereby agrees to sell the above-described Property at the price and on the terms and conditions set forth in this agreement.

Palmer Miller  
Palmer Miller  
Social Security No. ~~XXXXXXXXXX~~

STATE OF NORTH DAKOTA )  
  )ss  
COUNTY OF WARD )

On this 31<sup>st</sup> day of October, 2018, before me, a Notary Public, in and for the State of North Dakota, personally appeared Palmer Miller, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that such persons executed the instrument as their voluntary act and deed.



T Small  
Notary Public

**CERTIFICATE OF REMOVAL OF PERSONAL PROPERTY**

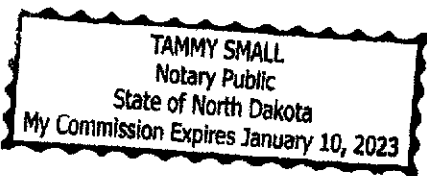
Palmer Miller, hereby state(s) that I/we have removed all wanted personal property, equipment, furnishings and appliances from the site at 105 6TH ST NE, Minot, ND. I/we further declare that any and all personal property remaining on the premises is hereby abandoned and I/we relinquish any further claim or interest thereto.


This document shall be effective as of the date of closing.

  
\_\_\_\_\_  
Palmer Miller

STATE OF NORTH DAKOTA    )  
  )ss  
COUNTY OF WARD         )

On this 31<sup>st</sup> day of October, 2018, before me, a Notary Public, in and for the State of North Dakota, personally appeared Palmer Miller, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that such persons executed the instrument as their voluntary act and deed.



  
\_\_\_\_\_  
Notary Public

**EXHIBIT "B"**

**BILL OF SALE**

Palmer Miller, hereinafter the "Seller", for good and valuable consideration, receipt of which is hereby acknowledged, do hereby sell, convey, assign, transfer and release to the City of Minot, North Dakota, all the Seller's right, title and interest in all fixtures, improvements, furnishings, appliances and personal property located on the premises at , Minot, ND and legally described as:

TORBENSONS ADDITION LOT 13 BLOCK 2 to the City of Minot,  
Ward County, North Dakota

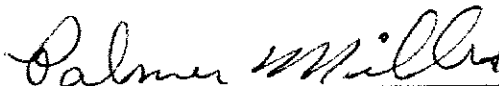
free and clear of all liens, encumbrances, reservations, exceptions and modifications.

For the purposes of this document, said fixtures, improvements and personal property includes, but is not limited to, all property that integrally belongs to or is part of the above-described real estate, whether attached or detached, such as light fixtures, shades, rods, blinds, awnings, storm windows, storm doors, storm sashes, screens, attached linoleum, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning equipment other than window type, door chimes, built-in items on electrical service cable, and all equipment within the building improvements, fencing, gates and other attached fixtures, trees, bushes, shrubs and plants except:

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This document shall be effective as of the date of closing.

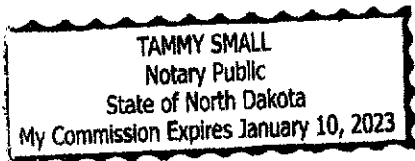
DATED this 30<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
Palmer Miller

STATE OF NORTH DAKOTA    )  
  )ss  
COUNTY OF WARD            )

On this 31<sup>st</sup> day of October, 2018, before me, a Notary Public, in and for the State of North Dakota, personally appeared Palmer Miller, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that such persons executed the instrument as their voluntary act and deed.

Tammy Small  
Notary Public



-14-  
EXHIBIT "C"

AFFIDAVIT OF SELLER(S)

STATE OF NORTH DAKOTA     )  
  )ss  
COUNTY OF WARD             )

I/We, being first duly sworn on oath, depose and say:

That I am of legal age and am the Seller (or one of the Sellers) of that real property described as:

TORBENSONS ADDITION LOT 13 BLOCK 2 to the City of Minot,  
Ward County, North Dakota

That I am now (together with other Sellers, if any) in possession of said property (or was in possession of said property until possession was delivered by the Purchaser(s) in this transaction, and no other persons (except other Sellers or the Purchaser(s)) are in possession of said property, except as disclosed below;

That there are no unrecorded contracts for deed, leases, rental agreements, repair or construction orders or agreements, or any other contracts or agreements affecting that property, except the listing and sale agreements which are a part of this transaction, and those further agreements disclosed below;

That there have been no labor or materials furnished to said premises during the last ninety (90) days for which full payment has not been made, and there are no contested or unpaid bills for materials or labor for improvements or repairs to the property, except as stated below;

That I have inspected the property and to the best of my knowledge and belief, there are no easements, or claims of easements which are not shown by the public records, and that there are no discrepancies, conflicts in boundary lines, shortages in area or encroachments which are not shown by the public records, except as stated below;

That there are no bankruptcy or divorce proceedings, nor any other actions in county, state or federal courts, nor any tax lien proceedings, pending or in progress against or involving me (nor, to my knowledge, any other buyer), except as stated below;  
and,

That any judgments, bankruptcy proceedings, or tax liens of record against parties with the same or similar names are not against me, except as stated below.

Statement of exceptions: [list all exceptions here] \_\_\_\_\_

This Affidavit is made for the purpose of inducing a title insurance company to issue an Owner's Policy of Title Insurance on the premises without exception to rights of parties in possession, mechanics' and materialmen's lien claims, easements or claims of easements, discrepancies, conflicts in boundary lines, shortages in area, or encroachments, which do not appear of record.

*Palmer Miller*

Palmer Miller

STATE OF NORTH DAKOTA    )  
  )ss  
COUNTY OF WARD                    )

On this 31<sup>st</sup> day of October, 2018, before me, a Notary Public, in and for the State of North Dakota, personally appeared Palmer Miller, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that such persons executed the instrument as their voluntary act and deed.

*T. Small*

Notary Public

