

**WILLMAR PLANNING COMMISSION
CITY OF WILLMAR, MN
WEDNESDAY, JULY 6, 2022**

MINUTES

1. The Willmar Planning Commission met on Wednesday, July 6, 2022, at 6:30 p.m. at the Willmar City Offices Conference Room #1.

****Members Present:** Jonathan Marchand, Stacy Holwerda, Jeff Kimpling, and Stephanie Carlson.

****Others Present:** Justice Walker - Planning and Development Director, Kayode Adiatu – City Planner, Matthew Smith – Planning Intern, Jennifer Kotila – WC Tribune, Benjamin Krsnak – Eden Prairie, Josh Bloom – Eden Prairie, and Justin Paffrath – Spicer.

2. MINUTES: The Planning Commission approved the minutes from June 15, 2022 meeting as presented.
3. CHANGES OR ADDITIONS TO THE AGENDA: Item number 3 (Slim Chicken Plan Review) and 4 (Unique Opportunities Rezone) were removed from the agenda.

4. JOSH BLOOM PLAN REVIEW FILE NO 22 – 06: Planner Adiatu presented the Josh Bloom Plan Review of the old office max building located at 1901 1st Street S. The applicant's request is to remodel the building for a soft goods retail store to occupy the building. Planner Adiatu informed the Commission that the Board of Zoning Appeals granted a setback and parking variance on the property that triggers a new Plan Review of the property if the use changes. The BZA denied a sign variance to allow for 300 SF of wall sign on the west side of the building. Commissioner Carlson asked if the applicant is requesting to reverse the sign variance that was denied. The applicant was not seeking to overturn the sign variance decision.

Chairman Marchand called for a motion to approve the application and read the findings of facts. Commissioner Carlson motioned to approve the application and Commissioner Holwerda seconded the motion. There being no further discussion, all voted in favor and the motion carried.

5. ROCKSTEP PLAZA REZONE FROM SC-GB – INTRODUCTION: Planner Adiatu introduced the proposed rezone of the Uptown Mall, and informed the Commission that the applicant has agreed to the proposed rezone of the property to the General Business District. He further informed them that staff has approached the representatives of the Skylark Mall to discuss the proposed rezone to the General Business should they also be open to rezoning their property. Planner Adiatu also notified the Commission that staff has already sent a notice of hearing to all property owners who live 350 feet from the property. Commissioner Kimpling asked if staff would consider the rezone of the Skylark mall if they respond in the middle of the process. Director Walker responded that that is a possibility.

Planner Adiatu informed the Commission that the next meeting would be a public hearing where members of the public would be able to speak for or against the rezone.

With no further discussion on the matter, the hearing was closed.

6. PAFFRATH LAND SALE - INTRODUCTION: Director Walker introduced the proposed land sale to the Commission and mentioned that they are required to review all City-owned land sales, hence the purchase agreement submitted by staff. He further mentioned that the agreed to price listed in the purchase agreement was the City Council's recommendation. Commissioner Kimpling asked if there is going to be a review of the plat after the review of the purchase agreement. Director Walker responded that staff would extensively work on the PUD and the standards for it, and bring it back to the Commission for consideration. Mr. Paffrath expressed his concern about the timeline of the project. Director Walker responded that it is the understanding of the City that the project may take a year and that the timeline maybe adjusted. The Commission expressed their delight concerning the project.

With no further discussion on the matter, the hearing was closed.

7. MISCELLANY: Director Walker introduced Matthew Smith, the new Planning Intern. Mr. Smith addressed the Commission and stated that he is looking forward to working with them in the coming weeks. Director Walker informed the Commission about reviewing the parking minimums, as it is becoming a recurring issue. He further explained that staff would be conducting a traffic analysis to ensure proposed parking spaces are only suitable for the business for which they are built.

Commissioner Kimpling pointed out an issue in the staff recommendation and asked staff to consider determining a project start date to avoid arbitrary timelines. He also mentioned that the Commission should consider how each of the "findings of facts" affects the project when they are being read.

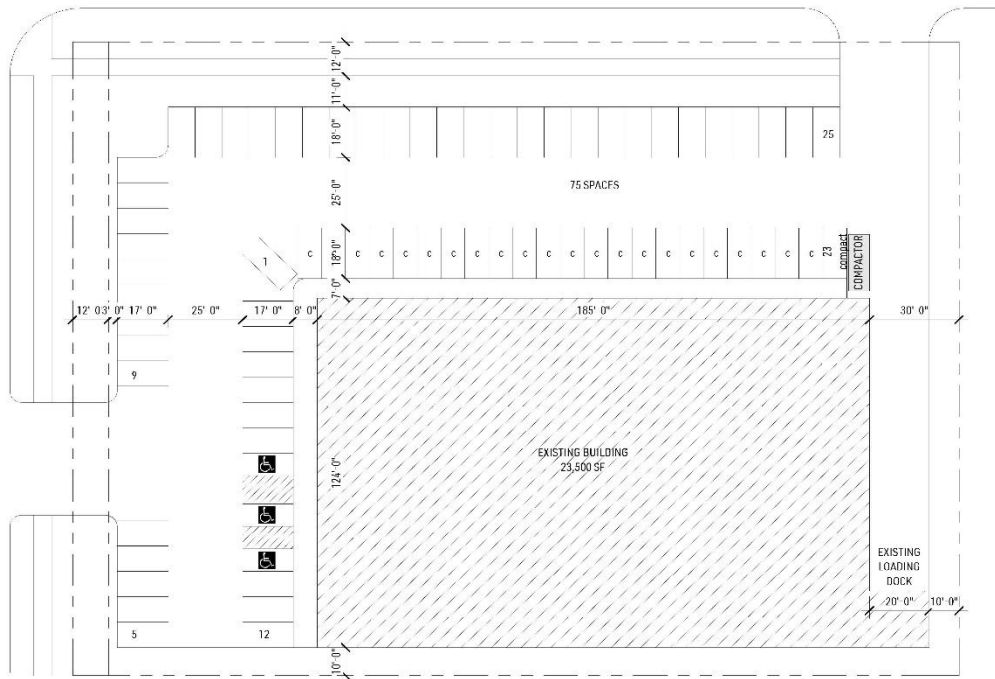
There being no further discussion, the meeting was adjourned at 7:45 p.m.

Best Regards



Kayode Adiatu

JOSH BLOOM SITE PLAN



1 SITE PLAN
1" = 30'-0"



Copyright 2021 DJR Architecture, Inc.

Site Plan
06/22/22
TJ MAXX - WILLMAR
0111.MSR.141
22-034

ROCKSTEP PLAZA REZONE



PAFFRATH LAND SALE



COMMERCIAL PROPERTY PURCHASE AGREEMENT

This Commercial Property Purchase Agreement is made this ____ day of _____, 2022, by and between Justin Paffrath, hereinafter referred to as “Buyer”, and the City of Willmar, a municipal corporation under the laws of Minnesota, hereinafter referred to as “Seller.”

RECITALS

1. Seller is the owner of certain real estate located at Pleasant View Dr. SE in the City of Willmar, Kandiyohi County, Minnesota, as legally described on the attached Exhibit A, together with all improvements thereon (the “Property”).
2. Buyer desires to acquire Seller’s interest in the Property by voluntary sale.
3. Seller is willing to sell its interest in the Property “as is” without making any representations or warranties as to the condition of the Property or its suitability to Buyer’s purposes.

AGREEMENT

In consideration of the mutual covenants and agreements of the parties hereto contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Offer/Acceptance. Buyer agrees to purchase and Seller agrees to sell the Property under the terms and conditions set forth in this Agreement.
2. Purchase Price. The purchase price for the Property shall be thirty-two thousand Dollars (\$32,000.00), payable as follows:
 - a. One Thousand Dollars (\$1,000.00) as earnest money (“Earnest Money”), which Earnest Money shall be held by Seller, the receipt of which Seller hereby acknowledges; and
 - b. The full balance, Thirty-One Thousand Dollars (\$31,000.00), in immediately available funds, to be paid on the Closing Date.
3. No Representations or Warranties. Seller agrees to quit claim the Property to Buyer on the Closing Date without making any representations or warranties about the condition of the Property, and Buyer agrees to accept the Property “as is”, subject to the terms and conditions herein contained.
4. Seller’s Reserved Interests; Restrictions and Covenants. Seller’s conveyance of the Property to Buyer shall be subject to interests reserved to the Seller and restrictions and covenants as follows:

- a. Option to Repurchase. Seller and its successors and assigns shall retain a conditional option to repurchase the Property valid for a period of two (2) years from and after the Closing Date for an amount equivalent to the Purchase Price. Seller's option shall only vest upon Buyer's failure to commence construction of a tiny home community on the Property within one (1) year after the Closing Date. For purposes of this section, construction is considered to be commenced upon the beginning of physical improvements beyond grading. Seller may, in its sole discretion and judgment, at any time after the vesting of such option and before the earlier of (i) Buyer's commencement of construction on the Property, or (ii) the expiration of Seller's option, exercise the option to repurchase as provided herein.
- b. Permanent Easements. Seller and its assigns shall retain, for the use and benefit of the public, the following easement(s): **INSERT**

5. Closing Date. The closing shall take place at Willmar City Hall, 333 Sixth Street Southwest, Willmar, Minnesota, 56201, or at such other place as may be agreed to mutually by the parties, on a date mutually agreed to by the parties, but no later than thirty (30) days after the Inspection/Due Diligence Period described in Section 13 has expired or is waived in writing by Buyer, subject to extension for title curative matters pursuant to Section 10 (the "Closing Date"). Seller agrees to deliver possession of the Property to Buyer on the Closing Date.

6. Seller's Closing Documents. On the Closing Date, Seller shall deliver to Buyer the following:

- a. Quit Claim Deed. A duly executed quit claim deed, conveying the entirety of Seller's interest in the Property to Buyer.
- b. Seller's Affidavits. Seller shall provide a standard owner's affidavit and/or indemnity which may be reasonably required by the Title Company to issue an owner's policy of title insurance conforming to the requirements of Section 10 of this Agreement.
- c. Well Certificate. If there are wells on the Real Property, a Well Certificate in the form required by Minn. Stat. § 103I.
- d. Other Affidavits. Any other affidavits or certificates that may be required under Minn. Stat. § 116.48, Subd. 6, or Sect. 115B.16 or other provisions of law.
- e. Abstract. The abstract of title or the owner's duplicate certificate of title for the Real Property, if the same is in the Seller's possession.

- f. Other. Such other documents as may reasonably be required to transfer fee title to the Property to Buyer and to enable the Title Company to provide the Title Policy as required by this Agreement.
- 7. Buyer's Closing Obligations. On the Closing Date, Buyer will deliver to Seller the Purchase Price (less the Earnest Money previously paid to Seller), by check or wire.
- 8. Contingencies.
 - a. Buyer's Contingencies. The obligation of the Buyer to perform under this Purchase Agreement is contingent upon the timely occurrence or satisfaction of each of the following conditions:
 - i. On the Closing Date, title to the Property shall be acceptable to Buyer in accordance with the provisions of Section 10.
 - ii. The Inspection Period described in Section 13, shall have expired without Buyer's termination of the Purchase Agreement.
 - iii. Buyer has obtained financing or otherwise obtained funds sufficient to enable it to pay the Purchase Price.
 - iv. The contingencies in this section are solely for the benefit of, and may at any time be waived by, the Buyer. If any approval as provided herein is not obtained by the Closing Date, this Agreement shall be null and void, and in this event Seller may retain the earnest money paid by Buyer.
 - b. Seller's Contingencies. The obligation of the Seller to perform under this Purchase Agreement is contingent upon the timely occurrence or satisfaction of each of the following conditions:
 - i. The City Planning Commission shall review the sale and provide a recommendation on the proposed conveyance as required by City Charter, Section 4.02, subd. 8.
 - ii. The Willmar City Council shall pass an ordinance authorizing the sale of the Property to Buyer consistent with the terms of this Agreement as required by Section 2.12, subdivision 1(G) of the City's Home Rule Charter.
 - iii. Buyer shall have performed all of its obligations required to be performed by Buyer under this Agreement as and when required under this Agreement.

9. Prorations. Seller and Buyer agree to the following prorations and allocation of costs regarding this Agreement.
- a. Title Insurance and Closing Fee. Buyer will pay all costs of the Title Commitment and all premiums required for the issuance of the Title Policy. Buyer will pay all costs relating to the title examination of the Property. Seller and Buyer will each pay half of any closing fee imposed by the Title Company. All other costs charged by the Title Company will be prorated as is normal and customary in the county in which the Property is located.
 - b. Deed Tax. Buyer shall pay the state deed tax as required in order to convey the Property to Buyer.
 - c. Real Estate Taxes and Special Assessments. General real estate taxes and installments of special assessments payable therewith payable in the year prior to the year of Closing and all prior years will be paid by Seller. General real estate taxes and installments for special assessments payable in the year of closing shall be prorated such that Seller shall pay such portion of such taxes and assessments attributable to the period beginning on January 1 of the year in which the Closing Date takes place and continuing through and including the Closing Date and Buyer shall pay such portion of such taxes attributable to the period beginning on the first day after the Closing Date takes place. If general real estate taxes due and payable during the year in which the Closing Date takes place have not yet been determined as of the Closing Date, Buyer and Seller shall prorate based on the last tax statement available.
 - d. Recording Costs. Buyer will pay the cost of recording Seller's quit claim deed and Well Certificate, if any. Seller shall pay the cost of recording any documents necessary to perfect its own title or which release encumbrances other than Permitted Encumbrances.
 - e. Other Costs. All other operating costs of the Property will be allocated between Seller and Buyer as of the Closing Date, so that Seller pays that part of such other operating costs accruing on or before the Closing Date, and Buyer pays that part of such operating costs accruing after the Closing Date.
 - f. Attorneys' Fees. Each of the parties will pay its own attorneys', accountants', and consultants' fees.
10. Title. Seller shall quit claim the entirety of its interest in the Property to Buyer, and Buyer shall have the opportunity to satisfy itself that Seller's interest in the Property is free of encumbrances other than easements and restrictions of

record which do not materially interfere with Buyer's intended use of the Property and Permitted Exceptions as provided herein.

- a. Title Commitment. Buyer may at any time during the Inspection Period, obtain at its sole cost and expense, a title commitment ("Title Commitment") covering the Property and binding the title company ("Title Company") to issue at closing a current form ALTA Owner's Policy of Title Insurance ("Title Policy") in the full amount of the purchase price hereunder. Within thirty (30) days of the effective date of this Agreement, Seller shall deliver to Buyer one or more Abstracts of Title, if the same are in Seller's possession, covering all parcels that make up the Property.
- b. Objections. Within fifteen (15) business days after delivery of the Title Commitment to Buyer from its Title Company, Buyer may deliver to Seller such written objections as Buyer may have to the form and content contained therein. Seller shall make commercially reasonable efforts to satisfy such objections prior to the Closing Date.
- c. Buyer's Rights if Seller Fails to Cure Objections. If Seller delivers written notice to Buyer on or before the Closing Date that Seller is unable to satisfy any objection or if, for any reason, Seller is unable to convey title satisfactory to Buyer in accordance herewith, Buyer may, as Buyer's exclusive remedies, waive such objections and accept such title as Seller is able to convey or terminate this Agreement by written notice to Seller and receive a refund of the earnest money, provided that such termination notice must be delivered on or before the Closing Date.
- d. Permitted Exceptions. The following shall be deemed to be permitted exceptions:
 - (1) Building and zoning laws, ordinances, state and federal regulations; and
 - (2) The lien of real property taxes payable in the year of Closing which by the terms of this Agreement are to be paid or assumed by Buyer.
 - (3) Matters contained in any title commitment or survey which Buyer is in possession of and for which Buyer does not make any objection to or waives any objection to and proceeds to closing on the Property.

11. Operation Prior to Closing. During the period from the date of Seller's acceptance of this Agreement to the Closing Date (the "Executory Period"), Seller shall operate and maintain the Property in the ordinary course of business in

accordance with prudent, reasonable business standards, including the maintenance of adequate liability insurance and any currently-maintained insurance against loss by fire, windstorm and other hazards, casualties and contingencies, including vandalism and malicious mischief, provided, that Seller will not enter into any new leases, or renew any lease terms (other than on a month-to-month basis), or modify or terminate any lease, or accept the surrender of any leased premises, without the written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

12. Damage. If, prior to the Closing Date, all or any part of the Property is substantially damaged by fire casualty, the elements or any other cause, Seller shall immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within fifteen (15) days after Seller's notice), this Agreement shall terminate. In the event Buyer does not terminate this Agreement during the said fifteen (15) day period, Seller shall have the right, during the succeeding five (5) day period to terminate this Agreement by giving written notice thereof to Buyer. In the event either Buyer or Seller so terminates this Agreement, the parties will have no further obligations under this Agreement and any Earnest Money, together with any accrued interest, shall be refunded to Buyer.

13. Inspection/Due Diligence Period. Buyer shall have thirty (30) days from the effective date of this Purchase Agreement, subject to a reasonable extension if necessary pursuant to Section 12.c. below (the "Inspection/Due Diligence Period"), to (i) conduct such surveys, reviews, inspections and tests of the Property as Buyer in its sole discretion deems necessary or advisable, (ii) conduct a Phase I environmental site assessment of the Property and, if recommended in the Phase I assessment, a Phase II environmental site assessment of the Property, and (iii) obtain such federal, state and local governmental approvals and permits as Buyer in its sole discretion deems necessary or advisable for Buyers proposed development and use of the Property. Such inspection/due diligence by Buyer shall include, but not necessarily be limited to, the following:

- a. Seller shall allow Buyer and its agents, upon 24 hours advance verbal or written notice from Buyer to Seller, the right of any ingress and egress over and through the Property for the purpose of inspecting and testing the same and making other observations as Buyer deems prudent, necessary or advisable, all however, at Buyer's expense. Buyer agrees to indemnify and hold Seller harmless from all expense, injury, death, or property damage or claims of any kind whatsoever arising out of or in any way incidental to Buyer's presence on the Property for the purposes aforesaid, which indemnity and hold harmless obligation of Buyer shall survive termination of this Purchase Agreement for any reason. Buyer will return the Property to its original condition after any inspections and testing.
- b. If prior to the end of the Inspection/Due Diligence Period, Buyer finds any information or conditions relating to the Property or Buyer's proposed

development and use thereof that are objectionable to Buyer in Buyer's sole discretion, Buyer shall have the right to terminate this Purchase Agreement by giving written notice of termination to Seller no later than the end of the Inspection/Due Diligence Period and in such case, any Earnest Money shall be promptly refunded to Buyer. For purposes of this Section, objectionable information or conditions means: (1) that the item or component being inspected is not fit for its intended purpose, that it is in violation of a public law, code or regulation, that it needs replacement, cleaning, repairs or service, or that it is missing essential parts; or, (2) that an environmental condition (such as for example radon, mold, well water contamination, asbestos, soil contamination, noise or vibration) exists at levels that are unacceptable to Buyer. However, an item or component is not in objectionable condition if its only imperfections are cosmetic or signs of wear and tear or diminished effectiveness associated with an item or component of its age, or because it is not new or perfect, or because it is legally nonconforming under current law.

- c. In the event that the Phase I environmental site assessment of the property conducted by Buyer recommends that a Phase II environmental site assessment of the property be completed, the parties shall agree to extend of the Inspection/Due Diligence Period as reasonably necessary to allow such Phase II environmental site assessment to be completed, and any other applicable time periods established herein shall be extended by the same amount of time as the Inspection/Due Diligence Period extension.

14. Purchase "As-Is". Subject to Buyer's right to terminate this Agreement during the Inspection/Due Diligence Period (Section 13), Buyer agrees to accept the condition of the Property, including specifically without limitation, the environmental and geological condition of the Property, in an "AS-IS" and with "ALL FAULTS" condition. Buyer's acceptance of title to the Property shall represent Buyer's acknowledgment and agreement that, except as expressly set forth in this Agreement: (i) Seller has not made any written or oral representation or warranty of any kind with respect to the Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose), (ii) Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Property, (iii) Buyer has had an adequate opportunity to inspect the condition of the Property, including without limitation, any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing, and (iv) the condition of the Property is fit for Buyer's intended use. Buyer agrees to accept all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including

without limitation, the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated or will migrate from or to the Property.

For purposes of this Section, the following terms have the following meanings:

“Environmental Law” means the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §9601 et seq. the Federal Water Pollution Control Act, 33 U.S.C. §1201 et seq., the Clean Water Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Toxic Substances Control Act, 33 U.S.C. §1251 et seq., and the Minnesota Environmental Response and Liability Act, all as amended from time to time, and any other federal, state, local or other governmental code, statute, regulation, rule, law, permit, consent, license, order or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and

“Hazardous Substance” means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

“Claim” or “Claims” means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgment, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney’s fees, consultant’s fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

15. Notices. Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if it is directed to Seller by delivering it personally to a representative of Seller; or if it is directed to Buyer, by delivering to a representative of Buyer; or if mailed by United States registered or certified mail; return receipt requested, postage prepaid; or if transmitted by facsimile copy followed by mailed notice as above required, or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Buyer: Justin Paffrath
ADDRESS

If to Seller: City Administrator
City of Willmar

333 Sixth Street Southwest
Willmar, MN 56201

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, that the time for response to any notice by the other party shall commence to run two (2) business days after any such deposit. Any party may change its address for the service of notice by giving advance written notice of such change to the other party, in any manner above specified.

16. Entire Agreement; Amendments. This Agreement represents the complete and final agreement of the parties and supersedes any prior or contemporaneous oral or written understanding between the parties. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties. This Agreement may be amended only in writing, signed by both parties.

17. Binding Effect; Assignment. This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. Each party agrees to give the other party notice prior to assigning its interest in the Property or this Agreement.

18. Controlling Law. The Parties acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of this Agreement. The Parties have equal bargaining power, and intend the plain meaning of the provisions of this Agreement. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, the ambiguity or dispute shall not be resolved by application of any rule that provides for interpretation against the drafter of the Agreement. This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.

19. Remedies. If Buyer defaults under this Agreement and fails to cure such default within thirty (30) days after receipt of written notice from Seller identifying such default, then Seller has the right to immediately terminate this Agreement and retain the Earnest Money as liquidated damages, time being of the essence of this Agreement. The termination of this Agreement and 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. If Seller defaults under this Agreement and fails to cure such default within thirty (30) days after receipt of written notice to from Buyer identifying such default, then Buyer has the right to immediately terminate this Agreement and have the Earnest Money returned to it. The termination of this Agreement will be Buyer's sole remedy for default by Seller, and Seller will not be liable for damage.

20. Counterparts. This Purchase Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute a single, integrated contract.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed on the date above written.

BUYER:

SELLER:

CITY OF WILLMAR

By: _____
Justin Paffrath

By: _____
Marvin Calvin, Mayor

By: _____
Leslie Valiant, City Administrator

EXHIBIT A
LEGAL DESCRIPTION

Lots 3, 2, 1 & Outlot A Block 1 Fourth Addition Pleasant View