



City Attorney

DATE: March 15, 2022

FROM: Jannelle Combs, City Attorney

ITEM: Approval of Purchase Agreement for 2830 N 19th St property

REQUEST:

Consider review and approval of purchase agreement for the property at 2830 N 19th Street.

Please place this item on the March 22, 2022 City Commission meeting consent agenda.

BACKGROUND INFORMATION:

Previously the Commission had directed negotiating authority regarding the sale of approximately 22,999 square feet of land which is contained within Basin Electric 4th Addition at the corner of Century Avenue and 19th Street for \$149,493.50. All language changes requested for negotiation were accepted by the Buyer.

RECOMMENDED CITY COMMISSION ACTION:

Approve entering into the attached purchase agreement with CJ Schorsch for the property at 2830 N 19th Street in the City of Bismarck.

STAFF CONTACT INFORMATION:

Jannelle Combs | City Attorney, 355-1340 or jcombs@bismarcknd.gov

PURCHASE AGREEMENT



THIS PURCHASE AGREEMENT is made and entered into on March _____, 2022 (the "Effective Date") by and between CJ Schorsch or assignee hereinafter called "Buyer", and City of Bismarck hereinafter called "Seller". Seller agrees to sell and Buyer agrees to purchase, upon the terms and conditions hereinafter set forth, the following described real property, thereunto belonging, owned by Seller and located in the City of Bismarck, Burleigh County, State of North Dakota, to-with the legal description is:

Street Address: 2830 N 19th Street Bismarck ND (see exhibit A)

Legal Description: Addition Name: CITY LANDS 139-80 BLK:27 CITY LANDS 139-80 Block: 27 PT NE1/4NW1/4 SEC 27, BEG @ PT ON NE COR OF NW1/4 TH S225' W200' N225' E200' TO PT BEG LESS .

PID#: 0160-027-040 approximately 22,999sf

together with all mineral, oil, gas, development rights, air rights, and water rights owned by Seller relating to the real property, and any improvements owned by Seller on the real property, and any appurtenance, or the operation, use or enjoyment of any of the foregoing, all rights of Seller in and to the sidewalks, alleys, driveways, parking areas, and areas adjacent thereto or used in connection therewith; any and all buildings, fixtures, structures, landscaping and other improvements located on the real property, if any. The real property, improvements, and personal property described herein are collectively referred to herein as the "Property". Any City right of ways, streets and utility easements and improvements are expressly exempted from the Property.

- 1. PURCHASE PRICE:** Buyer hereby agrees to purchase the above-described Property for **\$6.50psf based on 22,999 sf for a sum of One Hundred Forty-Nine Thousand four hundred ninety-three dollars and fifty cents (\$149,493.50) Dollars** (the "Purchase Price"), subject to the Buyer's right to terminate this Purchase Agreement by the Contingency Date as set forth in Section 10 of this Purchase Agreement. The Purchase Price will be paid in US Dollars to Seller at Closing.
- 2. EARNEST MONEY:** The sum of **Two Thousand Five Hundred (\$2,500.00) Dollars** from Buyer as earnest money (the "Earnest Money") will be deposited within five (5) business days after the Effective Date in the trust account of The CRA Group. The Earnest Money is part payment for the purchase of the Property. If the Buyer determines before the Contingency Date, it will not move forward with the purchase of the Property Buyer shall receive a full refund of the Earnest Money and this Purchase Agreement shall be null & void.
- 3. GOVERNING LAW:** This Purchase Agreement shall be governed by, construed and interpreted in accordance with the laws of and under the jurisdiction of the State of North Dakota and any actions shall be venued in the state district court for Burleigh County, North Dakota. If any case, suit or proceeding shall be brought by one party to this Purchase Agreement against the other, the prevailing party shall be entitled to recover all reasonable, out-of-pocket costs actually incurred by the prevailing party related thereto, including reasonable attorney's fees and the costs of appeal.
- 4. PRORATIONS.** Real estate taxes and installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing, based on the most current certified tax information available, shall be paid by Buyer as Seller is exempt from taxation as of date of closing. All prior year's real estate taxes and installments of special assessments shall be paid by the Seller. Real estate taxes and special assessments payable in the years

subsequent to closing shall be paid by Buyer. No representations have been made concerning the amount of subsequent real estate taxes and special assessments. Rents from the property, if any, shall be prorated to the date of the closing. Any operating expenses or vendor contracts assumed by the Buyer and prepaid by the Seller shall be prorated to the date of closing.

5. CLOSING AND POSSESSION: The closing of the transaction contemplated by this Purchase Agreement (the "Closing") shall be on or before July 27, 2022 (the "Closing Date"). Seller shall deliver possession of Property at the time of Closing. At the time of Closing, Buyer and Seller agree Closing shall take place at **The title team** Bismarck North Dakota (the "Title Company"). Closing company settlement fee to be split equally between the Seller one-half (1/2) and Buyer one-half (1/2). As a condition to Closing, Buyer and Seller shall (i) deliver executed closing documents and forms, and (ii) pay all closing costs, taxes and fees, all in accordance with custom as between sellers and buyers of real estate of a type similar to the Property and located in the same geographic area as the Property.

a. **DEED/MARKETABLE TITLE:** Upon performance by Buyer of all requirements under this Purchase Agreement, Seller shall deliver a Warranty Deed, conveying marketable title, subject only to: (A) building and zoning laws, ordinances, state and federal regulations; (B) restrictions of record relating to use or improvement of the Property; (C) installments of special assessments or assessments for completed special improvements which have not been certified to the County Auditor for collection; (D) prior reservation of any mineral rights; and (E) utility and drainage easements and all other matters of record.

b. **TITLE AND EXAMINATION:** Seller shall promptly arrange for and shall promptly provide Buyer with a title commitment to the Property. Seller shall use commercially reasonable efforts to cause the Title Company to deliver such title commitment to Buyer no **later 30 days after the execution date** or such other time period as agreed to by Buyer, in writing. **Seller shall pay the entire cost of obtaining a title commitment and title policy.** If Buyer's lender requires a lender's title insurance policy, Buyer shall be solely responsible for the incremental cost thereof. If Seller(s)'s title is not insurable, marketable and free of defect, other than the permitted encumbrances set forth in Section 5(a) or such exceptions to title Buyer waives pursuant to this Section 5(b), and cannot be made so by the Closing Date, or, if after examination of the title commitment, Buyer determines that easements, restrictions, encumbrances or any other defects of title interfere with the Buyer's intended use of the property, Buyer, at Buyer's option, shall be authorized to terminate this Purchase Agreement and all Earnest Money shall be refunded to Buyer. Buyer shall notify Seller of Buyer's objection to the title within fourteen (14) days following the date Seller delivers a title commitment to Buyer. Buyer may waive defects and proceed to Closing, at Buyer's sole discretion. If Buyer does not object to the title defects in a writing delivered to Seller within the time period described herein, Buyer shall be deemed to have waived its right to so object. Seller shall have until the Closing Date to eliminate any title objections identified in writing by the Buyer to the satisfaction of the Buyer and the satisfaction of the Title Company in such a manner as to permit the Title Company to delete title defects from the final standard owner's policy of title insurance, it being agreed that the Seller is not obligated or required to undertake any cure of any title objections identified by the Buyer; however, if Seller determines not to attempt to cure any title defects, Seller shall so advise Buyer within seven (7) days of the date Seller receives Buyer's written notice of the title defects. If Seller shall in fact eliminate any and all title objections identified in writing by the Buyer, the Closing shall take place on the Closing Date, subject to the Buyer's right to terminate as provided for in Section 9 of this Purchase Agreement. If Seller does not eliminate title objections identified by the Buyer, or Seller notifies Buyer that it will not attempt to eliminate any such objections, the Buyer may elect (as its sole remedy) to terminate this Purchase Agreement and have the

Earnest Money returned within five (5) days of Buyer's written notice of termination of this Purchase Agreement to the Seller, which Buyer shall deliver within five (5) days of receipt of Seller's notice that Seller shall not attempt to eliminate such objections or, alternatively, the Buyer may waive the title objections and may elect to Close the purchase of the Property and accept the conveyance of the Property subject to all title objections which were identified by the Buyer, in which event the Closing shall take place on the Closing Date with no reduction to the Purchase Price. If by giving written notice to the Seller within the time allowed under the provisions of this Purchase Agreement, the Buyer elects to terminate this Purchase Agreement because the existence of uncured title objections identified by the Buyer, then Buyer shall have its sole remedy the return of the Earnest Money and upon the disbursement of the Earnest Money to the Buyer, this Purchase Agreement and all rights and obligations of the parties hereunder shall terminate and be null and void, subject to the survival of any provisions of this Purchase Agreement as set forth herein.

6. **RISK OF LOSS:** If there is any loss or damage to the Property between the date hereof and the Closing Date for any reason, including fire, vandalism, flood, hail, wind, earthquake, or act of God, the risk of loss shall be on the Seller. If the Property is destroyed or substantially damaged before the Closing Date, this Purchase Agreement shall become null and void and the Earnest Money shall be refunded to Buyer.
7. **SQUARE FOOTAGE AND/OR ACREAGE:** Buyer is aware that any reference to the square footage and/or acreage of the Property, both the real property (land) and improvements thereon, is approximate. If square footage and/or acreage is a material matter to the Buyer(s), it must be verified by the Buyer prior to closing.
8. **CONDITION OF PROPERTY:** Seller and Buyer agree that the Property, and all, fixtures, equipment, and other personal property located upon the Property and used in connection with the operation of the Property and conveyed hereby, shall be conveyed, on the Closing Date, "AS IS, WHERE IS, WITH ALL FAULTS", with no right of setoff or reduction of the Purchase Price, and that, except for the warranty of title to be given in the Warranty Deed, shall be without representation or warranty of any kind or nature whatsoever by the Seller, whether express, implied, statutory, or otherwise, including without limitation, warranty of income potential, operating expenses, uses, merchantability, or fitness for a particular purpose, and Seller does hereby disclaim and renounce any and all such representations or warranty. By entering into this Purchase Agreement, Buyer represents and warrants that as of the Contingency Date, Buyer shall have satisfied itself as to the condition of the Property and its suitability for the purposes intended by the Buyer. The Property and personal property are sold in "AS IS" condition, including without limitation, as to any hazardous materials. In purchasing the Property and personal property, Buyer is relying solely upon Buyer's own inspection and investigation of the Property and personal property, including without limitation, as to hazardous materials contamination and geological conditions and not upon any representation, warranty, statement, study, report, description, guideline, or other information or materials made or furnished by Seller or any of Seller's agents or representatives, whether written or oral, express or implied, of any nature whatsoever. Buyer acknowledges that neither the Seller nor any agent or representative of the Seller has made any representation, warranty, or agreement as to any matters concerning the Property or the personal property. Any statement not expressly contained in this Purchase Agreement shall not bind the Seller, and Buyer expressly waives any right of rescission and/or claim for damages against the Seller or the Seller's agents or representatives by reason of any statement, representation, warranty, and/or promise not contained in this Purchase Agreement. Buyer's agreement to purchase the Property in its "AS IS" condition is a material inducement to the Seller to agree to sell the Property at the purchase price provided for herein.

- 9. DEFAULT:** If all contingencies have been met and Buyer, contrary to this Purchase Agreement, fails, neglects or refuses to complete the purchase of the Property on the Closing Date set forth in Section 5, then, as Seller's sole remedy, the Earnest Money shall be forfeited to Seller as liquidated damages, and this Purchase Agreement shall be of no further force or effect, subject to the survival of any provisions of this Purchase Agreement as set forth herein. The parties agree the calculation of damages to Seller would be difficult to ascertain with certainty and since parties further agree that the amount of liquidated damages is a reasonable attempt to estimate damages which will be suffered by the Seller, if the Buyer fails, neglects, or refuses to perform, contrary to this Purchase Agreement. If the Seller, contrary to this Purchase Agreement, fails, neglects or refuses to perform as agreed, Buyer may terminate this Purchase Agreement and receive a full refund of the Earnest Money or demand and pursue specific performance of this Purchase Agreement. Any claim by Buyer for specific performance, or any demand by Seller for payment to Seller of the Earnest Money as liquidated damages, shall be commenced or made within three (3) months after scheduled Closing Date set forth in Section 6; further, unless the Seller delivers copies of documents evidencing the Seller's demand for payment to Seller of the Earnest Money within such 3- month period, the Earnest Money shall be returned to the Buyer, free of any claim by the Seller. Retention of earnest money in any Broker's trust account pending resolution of the default shall not constitute an election of remedies by either party or prejudice their rights to pursue any and all other remedies permitted in this Purchase Agreement.
- 10. CONTINGENCIES / DUE DILIGENCE:** Buyer has One Hundred Twenty (120) calendar days from the Effective Date (the "Contingency Date") to perform any and all due diligence, and inspections to Buyer's sole satisfaction. Such due diligence and inspections may include, but shall not be limited to, review of Seller's disclosure statement, governmental site usage approval, governmental approval of site plans known as civil engineering, financing approval, survey of the property, physical property inspections, title review, and environmental assessments. Upon reasonable prior written notice from Buyer to Seller, and with a representative of Seller at Seller's sole discretion, Buyer shall be provided with full unrestricted access to the entire Property for purposes of conducting investigations and inspections as deemed appropriate by Buyer, at Buyer's sole cost and risk. Buyer shall make reasonable efforts to not disrupt any ongoing operations at the Property, including the operations of any tenants or other occupants. Additionally, Buyer shall repair any damage to the Property caused by Buyer or its inspectors, agents, or employees. Buyer shall indemnify Seller for any losses or damages that Seller actually suffers as a result of Buyer's or its inspectors', agents', or employees' actions on the Property, which indemnification and repair obligations shall survive the termination of this Purchase Agreement. If Buyer gives written notice to Seller that Buyer is not satisfied with results of Buyer's due diligence/inspections on or before 5pm CDT on the Contingency Date, all Earnest Money shall be promptly returned to Buyer within no later than two (2) days, and this Purchase Agreement will be of no further force or effect. If Buyer fails to deliver timely notice of objection to Seller, then Buyer's due diligence contingency pursuant to this Section 10 shall be deemed waived and the Earnest Money shall be non-refundable to the Buyer, but such earnest money shall be applied to the Purchase Price at closing.
- 11. SPECIAL BUYER AND SELLER CONDITIONS:** Seller shall cooperate with the Buyer in providing access to information reasonably necessary and in Seller's actual possession to complete any portion of due diligence/feasibility review.

- 12. COUNTERPARTS / FACSIMILE / ELECTRONIC SIGNATURES:** This Purchase Agreement may be executed in any number of counterparts, all of which taken together shall constitute one, complete Agreement. A copy of this Purchase Agreement delivered as or by .pdf, facsimile or other electronic means containing a party's signature shall be deemed such party's original, binding signature.
- 13. ASSIGNMENT:** No less than three (3) days prior to Closing, Buyer may, with simultaneous written notice to Seller but without the need for Seller's consent, assign this Purchase Agreement to any person or entity owned and controlled by Buyer (a "Buyer Affiliate"). Buyer shall not assign this Purchase Agreement to any party other than a Buyer Affiliate without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. In no event shall the original Buyer shall be relieved from any obligations as Buyer under this Purchase Agreement and the assignee shall be bound by any and all such obligations.
- 14. REPRESENTATION OF AUTHORITY OF PARTIES/SIGNATORIES:** Each of Buyer and Seller represents and warrants that he or she is duly authorized and validly existing under the laws of North Dakota and the person signing this Purchase Agreement has legal capacity to execute and deliver this Purchase Agreement. Each party represents and warrants to the other that the execution and delivery of the Purchase Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Purchase Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
- 15. TAX-FREE EXCHANGE:** Both parties reserve the right to transfer their respective interests in and to this Purchase Agreement to a Qualified Intermediary or other appropriate party pursuant to a 1031 tax-free exchange. Both parties agree to cooperate with the other to fully effectuate a 1031 tax-free exchange provided that such cooperation will not increase the expenses or obligations of the party attempting to facilitate and effectuate an electing party's 1031 tax-free exchange, nor shall such facilitating party be obligated to take title to any other property.
- 16. REAL ESTATE COMMISSIONS:** Seller shall be responsible for a sales commission equal to 3% of the sale price. The full and timely payment of any and all real estate commissions associated with the sale of the Property described in this Purchase Agreement shall be paid at the time of closing.
- 17. ADDITIONAL TERMS:** The term "day" or "days" in this Purchase Agreement shall be construed as calendar days.
- 18. TIMING:** Time is of the essence as to all dates and time periods set forth in this Purchase Agreement. With respect to computation of time periods provided in this Purchase Agreement, the day of the act or event on which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, and any time period provided in this Purchase Agreement that ends on a day other than a Business Day shall automatically extend to, and end on, the next Business Day thereafter. "Business Day" means a day other than (i) a Saturday, Sunday or legal holiday on which banking institutions in the State of North Dakota are authorized to remain closed, or (ii) a day on which the New York Stock Exchange is closed. "Acceptance Date" shall mean the last day Buyer or Seller signs this Purchase Agreement, as reflected on the last page of this Purchase Agreement.
- 19. ENTIRE AGREEMENT:** This Purchase Agreement, and any addenda or amendments signed by the parties, and any attached exhibits shall constitute the entire agreement between Seller and Buyer and supersedes any other written or oral agreements between Seller and Buyer. The Purchase Agreement can be modified only in writing signed by Seller and Buyer.

20. CONSTRUCTION: The parties acknowledge they have both had the opportunity to have this Purchase Agreement reviewed by their respective attorneys, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document shall be operative against either party.

21. BROKERAGE: Kye Holwagner with The CRA Group real estate broker represents the Buyers. The Seller is a customer in in this real estate transaction and is not represented by the CRA Group.

DUAL AGENCY REPRESENTATION:

Dual agency representation **does** Not apply in this transaction

BUYER ACCEPTANCE:

[Signature] 3-15-2021
Buyer Signature Date

Buyer
Title

2185 15th Street
Address

Bismarck ND 58504
City, State, Zip

SELLER ACCEPTANCE:

Seller Signature Date

Title

Address

City, State, Zip

THIS IS A LEGALLY BINDING CONTRACT. FOR LEGAL, TAX, STRUCTURAL OR ENVIRONMENTAL ADVICE CONSULT AN APPROPRIATE PROFESSIONAL.

