

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: Laura Qualey, Economic Development Specialist
SUBJECT: Markid Properties II, LLC dba Paradise Products, Inc.
DATE: March 2, 2021

BACKGROUND:

The Economic Development Authority (“EDA”) has been working with Rishikesh (Ram) Motilall, of Markid Properties II, LLC, dba Paradise Products, Inc. to secure additional land that is needed to accommodate construction of a new facility. The two parcels of interest are owned by the City of Cannon Falls and lie directly north of the Robinson Outdoors building which Mr. Motilall has recently purchased. Paradise Products, Inc. produces a product line called “Sauces in a Hurry” and are anticipating growth potential of the business within two-three years.

The proposed recommendation of terms to secure this land is a two year “Option to Purchase” with an additional year extension to the agreement. The Council approved the terms of the Option to Purchase at the January 19, 2021 meeting, however, Mr. Motilall felt the language had too much ambiguity and asked for the document to be redrafted.

The revision and new language states in the Provision section:

3. Option for Lot 1.

A. Upon exercise of the Option for Lot 1, Buyer shall pay to Seller a purchase price for Lot 1 in the amount of \$180,000; provided that Seller, in Seller’s sole discretion, may agree to reduce the purchase price based upon the value of the Building to be constructed. Seller hereby agrees that if the taxable market value of the Building to be constructed is at least \$3,750,000, the purchase price shall be \$1 and the purchase price for the Option for Lot 2 described below shall also be \$1.

The EDA has reviewed and discussed the proposed terms above and made a recommendation for the City Council to enter into an Option to Purchase contract with Markid Properties II, LLC dba Paradise Products, Inc. and Rishikesh (Ram) Motilall.

PROPOSED COUNCIL ACTION:

A motion for the City Council to enter into the amended Option to Purchase Agreement contract with Markid Properties II, LLC dba Paradise Products, Inc.

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2539

**A RESOLUTION RELATING TO MARKID PROPERTIES II, LLC AND THE
OPTION TO PURCHASE LAND FROM THE CITY OF CANNON FALLS**

WHEREAS, Rishikesh (Ram) Motilall of Markid Properties II, LLC (“Markid”) has been cooperating with the Economic Development Authority (“EDA”) to develop a plan that will facilitate the growth and expansion of the company Paradise Products, Inc. in Cannon Falls; and

WHEREAS, Markid proposes to purchase property from the City of Cannon Falls that is located immediately north and adjacent to the current facilities of Robinson Outdoors thereby providing the opportunity to construct new and expanded warehouse space for Paradise Products, Inc.; and

WHEREAS, the EDA has reviewed the Terms of the Option to Purchase (February 4, 2021) and recommends its approval by the City Council.

Proposed Terms:

Phase 1

Construction or paid permit for construction for the Parcel 52.399.0030 adjacent to the existing Robinson Outdoors property must occur within the first two years of the signed agreement;

Phase 2

Expansion/development for the Parcel 52.399.0041 must occur within the third year of the signed agreement;

To secure the two lots, three years of property taxes (\$13,675) for both lots will be considered paid up front in a lump sum at time of the signed agreement; these funds will be used by the City to pay the property taxes for years 2021, 2022 and 2023;

Both parcels will remain in the City of Cannon Falls’ name during the three-year period;

At any time, Markid and the City may negotiate a purchase price for the sale of the parcel(s).

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF CANNON FALLS, MINNESOTA that the “Option to Purchase” between Rishikesh (Ram) Motilall

of Markid Properties II, LLC and the City of Cannon Falls is recommended to enter into an Option to Purchase Agreement relating the aforementioned terms.

Adopted this 2nd day of March, 2021.

BY: _____
John O. Althoff, Mayor

ATTEST: _____
Neil L. Jensen, City Administrator

OPTION PURCHASE AGREEMENT

THIS OPTION PURCHASE AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 2021, by and between the City of Cannon Falls, a Minnesota municipal corporation ("Seller"), and Markid Properties II, LLC, a Minnesota limited liability company ("Buyer").

RECITALS:

WHEREAS, Seller intends to grant Buyer the option to purchase certain land in Cannon Falls, Minnesota legally described as Lot 1, Block 2, North Park Drive Addition ("Lot 1") and Lot 2, Block 2 North Park Drive Addition except the north 107.00 feet thereof ("Lot 2") and all rights, privileges, easements, tenements, hereditaments and appurtenances belonging thereto (collectively Lot 1 and Lot 2 are the "Lots").

PROVISIONS:

In consideration of the mutual covenants of the parties contained herein and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The Recitals hereto are true and correct and are incorporated herein.
2. Option Payment. Buyer shall pay to Seller \$13,675 ("Option Payment") upon execution of this Agreement in consideration for the options set forth below. The Option Payment shall not be refunded regardless of whether the option(s) are exercised or not.
3. Option for Lot 1.
 - A. Option. Buyer shall have the option to purchase Lot 1 pursuant to the terms of this Agreement on the condition that Buyer has obtained a permit to construct a commercial building with an estimated value of at least \$5,000 ("Building") on Lot 1. Once Buyer obtains said permit Buyer may notify the Seller that Buyer desires to exercise the Option for Lot 1 by providing the "Notice to Purchase" set forth in attached Exhibit A for Lot 1. If Buyer has not provided the Notice to Purchase for Lot 1 to Seller by January 31, 2023, this Option, and the Option for Lot 2 set forth below, shall automatically terminate and Buyer shall have no more rights or interests in Lot 1 or Lot 2.
 - B. Purchase Price. Upon exercise of the Option for Lot 1, Buyer shall pay to Seller a purchase price for Lot 1 in the amount of \$180,000; provided that Seller, in Seller's sole discretion, may agree to reduce the purchase price based upon the value of the Building to be constructed. Seller hereby agrees that if the taxable market value of the Building to be constructed is at least \$3,750,000, the purchase price shall be \$1 and the purchase price for the Option for Lot 2 described below shall also be \$1.
 - C. Right of Entry. After the execution of this Agreement and prior to exercise of the Option for Lot 1, Buyer shall have the right to enter upon Lot 1 in order to inspect Lot 1 and perform tests and measurements needed to design the Building to be constructed

on Lot 1. Buyer shall not have the right to perform any work on Lot 1, including but not limited to grading, tree removal, and construction, until title to Lot 1 has been transferred to Buyer. Buyer shall pay all costs and expenses of such investigation and testing and shall hold Seller and the Lot harmless from all costs and liabilities caused by the Buyer's activities involving such investigation and testing. Buyer shall further repair and restore any damage to the Lot caused by Buyer's testing and return the Lot to substantially the same condition as existed prior to such entry. Seller and Buyer may agree to additional rights of entry or easements to allow Buyer additional access to Lot 1 prior to exercise of the Option for Lot 1 provided that such rights shall be in writing and executed by Seller.

4. Option for Lot 2.

- A. Option. If Buyer exercises the Option for Lot 1 and has begun construction of the Building on Lot 1, then Buyer shall have the option to purchase Lot 2 pursuant to the terms of this Agreement on the condition that Buyer has obtained a permit to construct a new building or to complete an expansion of its operations onto Lot 2 ("Expansion"). Once Buyer obtains such a permit Buyer may notify the Seller that Buyer desires to exercise the Option for Lot 2 by providing the "Notice to Purchase" set forth in attached Exhibit A for Lot 2. If Buyer has not provided the Notice to Purchase for Lot 2 by January 31, 2024, this Option shall automatically terminate and Buyer shall have no more rights or interests in Lot 2.
- B. Purchase Price. Upon exercise of the Option for Lot 2, Buyer shall pay to Seller a purchase price for Lot 2 in the amount of \$180,000; provided that Seller, in Seller's sole discretion, may agree to reduce the purchase price based upon the value of the Expansion to be constructed. Seller hereby agrees that if the taxable market value of the Building to be constructed is at least \$3,750,000, the purchase price shall be \$1 and the purchase price for the Option for Lot 2 described below shall also be \$1.
- C. Right of Entry. After the execution of this Agreement and prior to exercise of the Option for Lot 2, Buyer shall have the right to enter upon Lot 2 in order to inspect Lot 2 and perform tests and measurements needed to design the Expansion to be constructed on Lot 2. Buyer shall not have the right to perform any work on Lot 2, including but not limited to grading, tree removal, and construction, until title to Lot 2 has been transferred to Buyer. Buyer shall pay all costs and expenses of such investigation and testing and shall hold Seller and the Lot harmless from all costs and liabilities caused by the Buyer's activities involving such investigation and testing. Buyer shall further repair and restore any damage to the Lot caused by Buyer's testing and return the Lot to substantially the same condition as existed prior to such entry. Seller and Buyer may agree to additional rights of entry or easements to allow Buyer additional access to Lot 2 prior to exercise of the Option for Lot 2 provided that such rights shall be in writing and executed by Seller.

- 5. Real Estate Taxes. The party holding title to each respective Lot shall be responsible for payment of the Lot's real estate taxes. If title transfers during the year, the real estate taxes shall be prorated as set forth below.

6. Purchase of Lots. Pursuant to Buyer's option to purchase granted herein, Seller hereby agrees to sell, and Buyer hereby agrees to purchase, each Lot free and clear of all liens and encumbrances except the permitted exceptions ("Permitted Exceptions"), including all of Seller's interests in all permits, licenses and governmental registrations, filings, authorizations or approvals regarding the Lots; and
7. Prorations. Seller and Buyer agree to the following pro-rations and allocation of costs for each option:
- (a) Title Insurance and Closing Fee. Buyer will pay all costs of the Title Evidence (as defined below). Buyer shall pay all premiums required for the issuance of any owner's and/or mortgagee's title insurance policy. Buyer shall pay any closing fee or charge imposed by any closing agent or title company ("Title").
 - (b) Minnesota Deed Tax. Buyer shall pay the Minnesota Deed Tax payable in connection with the recording of the deed.
 - (c) Real Estate Taxes and Special Assessments. All real estate taxes which are due and payable in the year in which Closing occurs shall be prorated to the Closing Date and Seller's portion shall be paid by Seller at Closing. This proration shall result in Seller's payment of real estate taxes from January 1 to the date immediately prior to the Closing Date and Buyer's payment of real estate taxes from the Date of Closing to December 31. Seller shall pay all special assessments levied, pending or constituting a lien against the Lots as of the date of this Agreement. Buyer shall pay all special assessments which may become payable with respect to the Lots after execution of this Agreement.
 - (d) Recording Costs. Seller will pay the cost of recording all documents necessary to place record title in Seller in the condition required by this Agreement. Buyer will pay the cost of recording all closing documents.
 - (e) Other Costs. All other operating costs of the Lots shall be allocated between Seller and Buyer as of the Closing Date, so that Seller pays that part of operating costs payable before the Closing Date, and Buyer pays that part of operating costs payable on and after the Closing Date.
 - (f) Attorney's Fees. Each of the parties will pay its own attorney's fees, except that a party defaulting under this Agreement or any Closing Document will pay the reasonable attorney's fees and court costs incurred by the non-defaulting party to enforce its rights hereunder.
8. Evidence of Title and Title Examination. Buyer and Seller shall obtain the following relating to each Lot (collectively the "Title Evidence"):
- (a) Buyer shall, within twenty (20) days after delivering the Notice to Purchase a Lot to Seller, obtain an ALTA commitment ("Title Commitment") for an Owner's Policy of Title Insurance committing to insure title to the Lot in Buyer, in the amount of the Purchase Price, and issued by Title.

- (b) Within thirty (30) days after delivering the Notice to Purchase, Buyer may obtain at Buyer's cost and deliver to Title a survey of the Lot ("Survey"). Within twenty (20) days following receipt of the Commitment and the Survey, if a Survey is obtained within the time allowed, Buyer may make written objections ("Objections") to any encumbrances disclosed by the Title Evidence that cause title to the Lot to be unmarketable. Buyer's failure to timely make Objections will constitute waiver of the Objections. Those matters not objected to by Buyer within twenty (20) days following receipt of the Title Evidence shall be "Permitted Exceptions".
- (c) If title is not acceptable for closing, Buyer shall notify Seller in writing of Objections to title by the time set for the closing. In such event Seller shall have a reasonable time, but not exceeding ninety (90) days, to remove the Objections and the time for closing shall be extended as necessary for this purpose. In the event Seller is unable to remove the Objections within the time specified, Buyer shall have fifteen (15) days from receipt of notice thereof to deliver notice that Buyer will take one of the following actions:
 - i. Waive the exceptions and proceed with the transaction, in which case the transaction will be closed within fifteen (15) days of said notice; or
 - ii. Terminate the Notice to Purchase the Lot.

9. Conditions Precedent to Buyer's Obligations. Once Buyer has provided a Notice to Purchase to Seller, Buyer is obligated to purchase the Lot identified in the Notice to Purchase contingent upon satisfaction of each of the following conditions:

- (a) Buyer shall have determined, on or before the Closing Date, that it is satisfied with the results of and matters disclosed by soil tests, well tests, engineering inspections, and hazardous waste and environmental reviews of the Lot, all such tests, inspections and reviews to be obtained at Buyer's sole cost and expense.
- (b) Buyer shall have determined, on or before the Closing Date, that Buyer is satisfied with the physical condition of the Lot.
- (c) The representations and warranties of Seller contained in this Agreement must be materially true upon Buyer's exercise of the option granted herein and on the Closing Date as if made on the Closing Date.
- (d) Seller shall have performed all of the obligations required to be performed by Seller under this Agreement, as and when required by this Agreement.

If any of the contingencies set forth in this Section have not been satisfied on or before the Closing Date, then, at Buyer's option, the Notice to Purchase the Lot may be terminated by written notice delivered from Buyer to Seller at any time on or before the Closing Date or Buyer may waive in writing the contingencies as satisfied and proceed to closing.

10. Seller's Representations and Warranties. Seller shall represent and warrant to Buyer for each Lot that:

- (a) Seller owns the Lot free and clear of all encumbrances, except for the Permitted Exceptions.
- (b) Seller has received no notice of any current violation of any zoning, building, health and safety, fire safety and environmental codes and laws from any Governmental Entity.
- (c) Seller has received no notice of any current violation of any statutes, ordinances, regulations, judicial decrees or orders, or the pending of any lawsuits, administrative or arbitration hearings or governmental investigations or proceedings affecting the Lot.
- (d) Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.
- (e) All labor or materials which have been furnished to the Lot by Seller have been fully paid for or will be fully paid for prior to the Closing Date so that no lien for labor or materials rendered can be asserted against the Lot.

Seller makes no warranties other than those set forth in this Agreement.

11. Closing. The closing for each Lot ("Closing") shall be held at a location agreeable to both parties, no later than twenty (20) days following the date Buyer delivers to Seller written notice of Buyer's readiness to close ("Closing Date"). Seller agrees to deliver possession of the Lot to Buyer on the Closing Date.

(a) Seller's Closing Documents. On the Closing Date, Seller shall execute and deliver to Buyer the following (collectively, "Seller's Closing Documents"):

- (i) A Warranty Deed conveying the Lot to Buyer, free and clear of all encumbrances, except the Permitted Exceptions;
- (ii) A Seller's Affidavit indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Lot; that there has been no skill, labor or material furnished to the Lot for which payment has not been made or for which mechanics' liens could be filed; and that there are no other unrecorded interests in Lot, together with whatever standard owner's affidavit and/or indemnity which may be required by Title to issue an Owner's Policy of Title Insurance with the standard exceptions waived.
- (iii) A non-foreign affidavit, properly executed and in recordable form, containing such information as is required by IRC Section 1445(b) (2) and its regulations.

(iv) Any and all certificates, affidavits, real estate transfer returns or other documents required of the Seller under Minnesota law for transfer of the Lot to Buyer.

(v) All other documents reasonably determined by Buyer and Seller or Title to be necessary to transfer the Lot to Buyer, subject to the Permitted Exceptions.

(b) Buyer's Closing Documents. On the Closing Date, Buyer shall execute and/or deliver to Seller the following (collectively, "Buyer's Closing Documents"):

(i) The Purchase Price.

(ii) All other documents reasonably determined by

Buyer and Seller or Title to be necessary to record the applicable Seller's Closing Documents.

12. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Seller and Buyer, and their respective successors and assigns; provided, however, that Seller and Buyer's rights and obligations hereunder may not be assigned without the written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

13. Remedies. Time is of the essence of this Agreement. If Buyer defaults in the performance of its obligations under this Agreement, and Buyer fails to cure such default within thirty (30) days after written notice from Seller specifying the default, Seller may, in addition to any other rights and remedies available to Seller at law or in equity, terminate this Agreement and retain the Option Payment as liquidated damages. If Seller defaults in the performance of its obligations under this Agreement, and Seller fails to cure such default within thirty (30) days after written notice from Buyer specifying the default, Buyer may terminate this Agreement. Termination of the Agreement shall be Buyer's sole remedy.

14. Notices. Any notice required or permitted hereunder shall be in writing and shall be either personally served or mailed by US Mail, postage prepaid, return receipt requested, or by overnight courier service such as Federal Express, addressed:

If to Seller, at: City of Cannon Falls
918 River Road
Cannon Falls, MN 55009

If to Buyer, at: Markid Properties II, LLC

or, in any case, such other address as Seller or Buyer as any of the above-named persons may from time to time designate by written notice to the other persons listed above. Mailed notice shall be deemed to have been given one day following the date it is mailed

as herein provided. Personally delivered notice shall be deemed given on the date the same is delivered.

15. Fees and Commissions. Buyer represents and warrants to Seller and Seller represents and warrants to Buyer that each will deal with no broker, agent, finder or other intermediary in connection with the sale contemplated by this Agreement. Seller agrees to indemnify, defend and hold Buyer harmless from and against the claims of any and all brokers and other intermediaries claiming a commission in connection with the sale contemplated by this Agreement. Buyer agrees to indemnify, defend and hold Seller harmless from against any brokers and other intermediaries claiming a commission in connection with the sale contemplated by this Agreement.
16. Mutual Indemnification. Seller and Buyer agree to indemnify each other against, and hold each other harmless from, all liabilities (including reasonable attorneys' fees in defending against claims) arising out of the ownership, operation or maintenance of the Lots for their respective periods of ownership. Such rights to indemnification will not arise to the extent that (a) the party seeking indemnification actually receives insurance proceeds or other cash payments directly attributable to the liability in question (net of the cost of collection, including reasonable attorneys' fees), or (b) the claim for indemnification arises out of the wrongful act or neglect of the party seeking indemnification. If and to the extent that the indemnified party has insurance coverage, or the right to make a claim against any third party for any amount to be indemnified against as set forth above, the indemnified party will, upon full performance by the indemnifying party of its indemnification obligations, assign such rights to the indemnifying party or, if such rights are not assignable, the indemnified party will diligently pursue such rights by appropriate legal action or proceeding and assign the recovery and/or right of recovery to the indemnifying party to the extent of the indemnification payment made by such party.
17. Recording of Option. The parties hereto agree that this Agreement shall be recorded with the County Recorder or Registrar of Deeds, whichever is applicable, of Goodhue County, Minnesota. Upon the termination or expiration of the Buyer's option rights hereunder, Buyer agrees to execute any documentation required by Seller to reflect the termination of all such rights.
18. Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of Minnesota. Seller and Buyer hereby consent to the personal jurisdiction of the courts of the State of Minnesota and agree that such courts shall have exclusive jurisdiction over any dispute hereunder.
19. Entire Agreement. This Agreement embodies the entire agreement between Seller and Buyer in relationship to the transaction contemplated hereby, and there have been and are no covenants, agreements, representations, warranties or undertakings of any sort or kind between the parties hereto with respect thereto other than those specifically set forth herein and in the attached exhibits. This Agreement may be amended only by a written instrument executed by both Seller and Buyer.
20. Headings. The headings of the paragraphs of this Agreement are for convenience of reference only and do not form a part hereof and are not to be taken into account in any way in

interpreting or construing the text of this Agreement or any part thereof.

21. Grammatical Adjustments. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural and vice versa, unless the context requires otherwise.
22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and together which shall constitute one and the same Agreement. This Agreement may be delivered by facsimile transmittal of signed original counterparts.
23. Patriot Act. Buyer and Seller represent and warrant that they are not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity, or nation. Each party hereby agrees to defend, indemnify, and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representation and warranty.

Seller and Buyer have executed this Agreement as of the date first set forth above.

(signatures on following pages)

BUYER: Markid Properties II, LLC

Dated: _____ By _____
Its

STATE OF MINNESOTA)

) ss.

COUNTY OF GOODHUE)

This instrument was acknowledged before me this ____ day of _____, 2021, by
_____ as _____ of Markid Properties II, LLC, a Minnesota limited liability
company, on behalf of the company.

Notary Public

SELLER: CITY OF CANNON FALLS

Dated: _____
John O. Althoff, Mayor

Dated: _____
Neil L. Jensen, City Administrator

STATE OF MINNESOTA)

) ss.

COUNTY OF GOODHUE)

This instrument was acknowledged before me this ____ day of _____, 2021, by John O. Althoff as Mayor and Neil L. Jensen as City Manager, of the City of Cannon Falls, a Minnesota municipal corporation, by and on behalf of the corporation.

Notary Public

Drafted by:
Hoff Barry PA
100 Prairie Center Drive, Suite 200
Eden Prairie, MN 55344

EXHIBIT A

Notice to Purchase

DATE:

Attention: _____

Dear _____:

Pursuant to the provisions of that certain Option Agreement dated _____, 2021 (the "Option Agreement," a copy of which is attached hereto for your convenience) you are hereby notified that Markid Properties II, LLC elects to purchase Lot ____ as defined in the Option Agreement, all in accordance with the terms and provisions thereof.

Very truly yours,

By:

Its: