

TO: MAYOR AND CITY COUNCIL

FROM: Neil Jensen, City Administrator

SUBJECT: Purchase Agreement Sandstone Ridge

MEETING DATE: August 1, 2023

BACKGROUND

The City has been in discussions with Endres Canon Falls, LLC (Leon Endres) about developing the Endres property located south of the Sandstone Ridge Development. With those discussions Mr. Endres was interested in purchasing the Sandstone Ridge Development. He has put together a concept plan for both parcels of land (attached) for your review and consideration.

The purchase agreement will be for \$1 if the development comes to fruition. They are also asking for some help with the old development. The request is for \$50,000 in city only tax abatements to help clean up the old curb and gutter that remains on the property. The tax abatement will be for 10 years, City only, interest bearing at current rate upon signing the developer's agreement. Mr. Endres will bring the Sandstone portion of the development up to city specifications according to our City Engineer. This information will be in the developer's agreement when the final plat is approved.

With the sale of the property City Council will hold a public hearing and consider an ordinance at the August 15th meeting. The Developer will proceed with the Preliminary Plat and a Planned Unit Development / Rezone and this will be reviewed at the August 14th Planning Commission meeting and they will have a recommendation to City Council on August 15th. The Park Board has reviewed the park dedication land proposed for the development at their special meeting on July 25th and has made a recommendation to approve to the City Council. The Finance Committee has reviewed the above financial proposal and has made a recommendation to City Council to approve.

City Council is asked to review the above items and preliminarily approve the purchase agreement and set a public hearing for August 15th for the sale of the parcel(s) of Sandstone Ridge.

Mr. Endres is working diligently to get this development moving for fall groundbreaking.

STAFF RECOMMENDATION

Please approve the purchase agreement of Sandstone Ridge to Endres Canon Falls LLC and hold a public hearing on August 15th for the sale of the land.

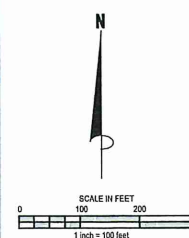
REQUESTED COUNCIL ACTION

Please approve the purchase agreement of Sandstone Ridge to Endres Canon Falls LLC and hold a public hearing on August 15th for the sale of the land.



LEGEND

- PREVIOUSLY PLATTED LOTS (8)
- NEW PLATTED 60' LOTS (34)
- NEW PLATTED VILLA LOTS (7)
- NEW PLATTED BLUFF LOTS (18)
- ESTATE LOTS (4)
- TOTAL OF 71 SF LOTS



TIMBER RIDGE | CANNON FALLS, MN

REAL ESTATE PURCHASE AGREEMENT
(Cannon Falls, Minnesota)

THIS REAL ESTATE PURCHASE AGREEMENT (the “**Agreement**”) is made and effective as of the ____ day of _____, 2023 (the “**Effective Date**”) by and between the City of Cannon Falls (the “**City**”), and Endres Canon Falls, LLC (the “**Purchaser**”). The City and Purchaser are each a “**Party**” and collectively the “**Parties**” to this Agreement.

WHEREAS, the City owns certain property located within the City of Cannon Falls, Goodhue County, Minnesota and legally described on the attached Exhibit A (the “**Property**”);

WHEREAS, the City has agreed to sell, and the Purchaser has agreed to purchase, the Property on the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of the Parties’ mutual covenants and representations in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation**. The above Recitals are a material part of this Agreement and are incorporated herein.

2. **Sale of Property**. Subject to the terms and conditions stated in this Agreement, the City agrees to sell to the Purchaser, and the Purchaser agrees to purchase from City, the Property.

3. **Purchase Price**. In consideration for the purchase of the Property and subject to the terms and conditions set forth in this Agreement, the Purchaser shall pay to the City at Closing the amount of One Dollar and No/100 (\$1.00) (the “**Purchase Price**”) in cash or otherwise immediately available funds.

4. **Title Examination**. Title examination will be conducted as follows:

a. **Title Insurance Commitment**. The Purchaser shall, within thirty (30) days following the Effective Date, obtain a Title Commitment (the “**Title Commitment**”) for a standard ALTA (Form 2006) owner’s title insurance policy issued by the Title Company in the full amount of the Purchase Price insuring an undivided 100% marketable and insurable fee simple title to the Property to be in good and marketable condition, free and clear of all liens and encumbrances, except the Permitted Encumbrances, certified to the date of recording the Deed (the “**Title Policy**”) deleting standard exceptions, including affirmative endorsements, searches and other matters as may be identified by the Purchaser covering title to the Property and including complete legible copies of all exception documents (the “**Title Evidence**”).

b. **Survey**. The Purchaser may obtain and deliver to the Title Company, at its sole cost and expense, a current survey certified to and satisfactory to the Purchaser and the Title Company, showing the Property and all matters required by the Purchaser and the Title Company (the “**Survey**”).

c. **Purchaser's Objections.** Within twenty (20) business days after receiving the Title Evidence and Survey, if the Survey is obtained within the time allowed, the Purchaser may make written objections (the "**Objections**") to any encumbrances disclosed by the Title Evidence that causes title to the Property to be unmarketable. The Purchaser's failure to timely make Objections will constitute a waiver of the Objections. Any matters not objected to within twenty (20) days following receipt of the Title Evidence shall be a "**Permitted Encumbrance.**"

d. **City's Opportunity to Cure.** If title to the Property is not acceptable for Closing, the Purchaser shall notify the City in writing of the Objections by the time set for Closing. In such event, the City shall have a reasonable time not exceeding thirty (30) days to remove the Objections, during which period the Closing will be postponed as necessary. The City will use its commercially reasonable efforts to correct any Objections. In the event the City is unable to remove the Objections within the time specified, the Purchaser shall have fifteen (15) days from receipt of notice from the City thereof, to deliver notice that the Purchaser will take one of the following options:

(1) Terminate this Agreement; or

(2) Waive the Objections and proceed to Closing, in which case the transaction will be closed within fifteen (15) days of such notice.

e. **Title Policy.** At the Closing, the Title Company will irrevocably commit to issue the Title Policy subject only to the Permitted Encumbrances.

5. **Operation Prior to Closing.** During the period from the Effective Date to the Closing Date, the City shall, at its expense, operate and maintain the Property in the ordinary course of business in accordance with prudent, reasonable business standards and will not enter into or consent to any agreement, contract, lease or other obligation regarding the Property without the Purchaser's prior written consent. The City shall not enter into or amend any contract or agreement affecting the Property that will be binding upon the Purchaser or the Property after the Closing without the Purchaser's prior, written consent. The City shall cooperate in good faith with the Purchaser and assist the Purchaser in obtaining any governmental approvals relating to its proposed use of the Property, promptly execute and return to the Purchaser an application and other documentation reasonably necessary to obtain any such approvals, and will promptly give written notice to the Purchaser upon the City obtaining knowledge of any of the City's representations or warranties in this Agreement becoming untrue or inaccurate. The City shall not take any action or fail to take any action that would result in any of the City's representations or warranties under this Agreement becoming untrue or inaccurate.

6. **Purchaser's Representations and Warranties.** The Purchaser represents and warrants to the City that the Purchaser is duly organized under Minnesota law and has the requisite power and authority to enter into this Agreement. This Agreement and the transactions contemplated hereunder have been duly authorized by all necessary action on the Purchaser's part and will have been duly executed and delivered. The Purchaser's execution, delivery and

performance of this Agreement does not conflict with or result in violation of any contract or agreement, or any judgment, order or decree of any court or arbiter to which the Purchaser is a party. This Agreement is binding on the Purchaser, its successors and permitted assigns, and is enforceable against the Purchaser in accordance with its terms.

7. **City's Representations and Warranties.** The City represents and warrants to the Purchaser as of the Effective Date and the Closing Date as follows:

a. **Title to Property.** The City owns the Property free and clear of all encumbrances, except for the Permitted Exceptions.

b. **Compliance Notices.** The City has not received notice of any current violation of any zoning, building, health and safety, fire safety and environmental codes and laws from any governmental entity. The City has not received 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 Property.

c. **FIRPTA.** The City 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.

d. **Construction Liens.** All labor or materials which have been furnished to the Property by the City 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 Property.

e. **Pending Improvements.** There are no public improvements which have been commenced or completed and for which assessment has been or may be levied against the Property, and City has no knowledge of any planned improvements which may result in assessment against the Property.

f. **Pending Proceedings.** There is no litigation, suit, arbitration, mediation, proceeding, claim or investigation, including without limitation any environmental, zoning or land use regulation proceeding, pending or threatened, relating to any aspect of the Property which might create or result in a lien on, or otherwise have a material adverse impact on, the Property or any part thereof or interest therein and there is presently no real estate tax protest or similar tax abatement proceeding pending with respect to the Property.

g. **Leases.** There are no leases affecting the Property.

h. **Unpaid Labor and Materials.** City is not indebted for labor or material that might give rise to the filing of notice of mechanic's lien against the Property.

Except for the representations and warranties expressly made by the City in this Agreement, the Purchaser agrees that it is taking title to the Property "AS IS," "WHERE IS," and

without any covenant (including soil and environmental conditions), fitness for purpose or any other matter.

8. **Purchaser's Contingencies.** The Purchaser's obligations under this Agreement are expressly contingent upon and subject to the satisfaction, as determined in the Purchaser's sole discretions, of each of the following contingencies (each a "**Contingency**" and collectively, the "**Contingencies**");

a. **Representations and Warranties.** All of the City's representations and warranties contained in this Agreement must be materially true now and on the Closing Date as if made on the Closing Date.

b. **Performance of the City's Obligations.** The City shall have performed all of the obligations required to be performed by the City as and when required by this Agreement.

c. **Investigation.** The Purchaser 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 Property, all such tests, inspections, and reviews to be obtained at the Purchaser's sole cost and expense.

d. **Property Condition.** The Purchaser shall have determined, on or before the Closing Date, that it is satisfied with the physical condition of the Property.

e. **Governmental Approvals.** The Purchaser shall have obtained all governmental approvals and permits, including any preliminary plat approvals, zoning changes, or other approvals required for the Purchaser's intended use of the Property, which are necessary in the Purchaser's sole judgment for its intended use of the Property.

f. **Property Information.** The Purchaser shall have determined that it is satisfied, in its sole discretion, with the terms, and the Purchaser's review and analysis, of all Property Information. The City shall, within five (5) days after the Effective Date, deliver to the Purchaser true, correct and complete copies of all documents in the City's possession or control related to the Property, including, without limitation, any surveys, plats, title insurance policies, property tax statements, zoning information, contracts, plans, licenses, permits, governmental approvals, easements, leases, licenses, covenants, restrictions, environmental, engineering, wetland, soils, geotechnical, physical condition, and all other reports, studies, records and documents relating to the Property (collectively, the "**Property Information**").

If any of the above Contingencies has not been satisfied on or before the Closing Date, then, at the Purchaser's option, this Agreement may be terminated by written notice delivered by the Purchaser to the City at any time on or before the Closing Date or the Purchaser may waive in writing any Contingency as satisfied and proceed to Closing.

9. **Closing.**

a. **Timing.** The closing of the purchase and sale of the Property contemplated by this Agreement (the “**Closing**”) shall occur on a date selected by Purchaser and reasonably acceptable to the City within twenty (20) days following the Purchaser’s written notice to the City of the Purchaser’s readiness to close, but no later than the date that is twelve (12) months after the Effective Date (the “**Closing Date**”). The Closing shall take place at the offices of a mutually agreeable title company (the “**Title Company**”); provided, however, that in lieu of personal attendance at Closing, the Parties may provide to the Title Company written closing instructions, along with delivery to the Title Company of all closing documents required to be delivered by the Party in accordance with the terms of this Agreement. The City agrees to deliver possession of the Property to the Purchaser on the Closing Date, subject only to the Permitted Encumbrances.

b. **City’s Closing Documents.** On the Closing Date, the City shall execute and/or deliver to the Purchaser all of the following documents (collectively, “**City’s Closing Documents**”):

(1) **Deed.** A Warranty Deed (the “**Deed**”) conveying the Property to the Purchaser shall be free and clear of all liens, restrictions and encumbrances except for the following:

(A) Local, state and federal rules and regulations; and

(B) Those exceptions listed in the Title Commitment and not objected to or waived by the Purchaser pursuant to section 5(c) above.

The above exceptions shall be referred to as “**Permitted Exceptions.**”

(2) **Seller’s Affidavit.** An Affidavit of Title by the City indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving the City or the Property; that there has been no skill, labor or material furnished to the Property for which payment has not been made or for which mechanics’ liens could be filed; and that there are no other unrecorded interests in the Property, together with whatever standard owner’s affidavit and/or indemnity (ALTA Form) which may be required by the Title Company to issue the Owner’s Policy of Title Insurance with the standard exceptions waived.

(3) **FIRPTA Affidavit.** 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.

(4) **Transfer Documents.** Any and all certificates, affidavits, real estate

transfer returns or other documents required of the City under Minnesota law for transfer of the Property to the Purchaser.

c. **Purchaser's Closing Documents.** On the Closing Date, the Purchaser will execute and/or deliver to the City the Purchase Price in its entirety by cash.

d. **Miscellaneous Closing Documents.** The City and Purchaser shall each execute any and all other documents reasonably requested by the other Party or the Title Company to complete the transfer of title from the City to the Purchaser pursuant to this Agreement.

10. **Prorations.** The Parties agree to the following prorations and allocations of costs regarding this Agreement:

a. **Title Insurance and Closing Costs.** The Purchaser will pay all costs for the Title Company to examine title and issue the Title Commitment and any fees charged by the Title Company for any escrow required regarding the Purchaser's Objections. The Purchaser will pay all premiums required for the issuance of a Title Policy and any mortgagee's title insurance policy. The Purchaser will pay all reasonable and customary closing fees or charges imposed by the Title Company. The Purchaser will pay all state deed tax regarding the Deed to be delivered by the City under this Agreement. The City will pay the cost of recording all documents necessary to place record title in the condition warranted and requested of the City in this Agreement, and the Purchaser will pay the cost to record the Deed. Each of the Parties will pay its own attorneys' fees. All other costs will be allocated in accordance with prevailing customs for similar transactions in the area.

b. **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 the City's portion shall be paid by the City at Closing. This proration shall result in the City's payment of real estate taxes from January 1 to the date immediately prior to the Closing Date and the Purchaser's payment of real estate taxes from the date of Closing to December 31. The City shall pay all special assessments levied, pending, or constituting a lien against the Property as of the date of Closing. The Purchaser shall pay all special assessments which may become payable with respect to the Property after Closing.

11. **Fees and Commissions.** Each Party represents and warrants to the other Party that it has dealt with no brokers, agents, finders or other intermediary in connection with the sale contemplated by this Agreement. Each Party agrees to indemnify, defend and hold the other Party 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.

12. **Mutual Indemnification.** The Parties agree to indemnify and hold each other harmless from and against all liabilities (including reasonable attorneys' fees in defending against claims) arising out of the ownership, operation or maintenance of the Property for their respective periods of ownership. Such rights to indemnification will not arise to the extent that the claim for indemnification arises out of the wrongful act or neglect of the party seeking indemnification.

13. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that the Purchaser's and City's rights and obligations hereunder may not be assigned without the written consent of the other Party, which consent shall not be unreasonable withheld, conditioned or delayed.

14. **Survival.** Except as otherwise provided herein, all of the terms of this Agreement will survive and be enforceable on and for twelve (12) months after the Closing.

15. **Notice.** Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery or by certified mail return receipt requested, addressed to the Parties at the following addresses:

City: City of Cannon Falls
918 River Road
Cannon Falls, MN 55009
Attn: Neil Jensen

Purchaser: Endres Canon Falls, LLC
1505 River Shore Drive
Hastings, MN 55033
Attn: Leon Endres

16. **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.

17. **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.

18. **Entire Agreement.** This Agreement embodies the entire agreement between the Parties 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 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 Parties.

19. **Governing Law: Jurisdiction.** This Agreement shall be governed by the laws of the State of Minnesota. The Parties 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 disputes arising from this Agreement.

20. **Time of Essence.** Time is of the essence with respect to all matters this Agreement and each and every term and condition hereof.

21. **Waivers.** Neither the extension of time or payment of any sum of money to be paid

hereunder nor any waiver by either Party of its right to declare this Agreement forfeited by reasons of any breach hereof, shall in any manner affect the right of either Party to terminate this Agreement because of a subsequent default. No extension of time or waiver shall be effective unless given in writing signed by the non-breaching Party.

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.** Each Party represents and warrants 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 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 expenses) arising from or related to any breach of the foregoing representation and warranty.

24. **Remedies.** If the Purchaser defaults in the performance of its obligations under this Agreement and fails to cure such default within thirty (30) days after written notice from the City specifying the default, the City may, in addition to any other rights and remedies available to the City at law or in equity, terminate this Agreement. If the City defaults in the performance of its obligations under this Agreement and fails to cure such default within thirty (30) days after written notice from the Purchaser specifying the default, the Purchaser may terminate this Agreement and receive reimbursement from the City for all reasonable costs and expenses actually incurred by Purchaser after the Effective Date in its due diligence and work to obtain governmental approvals.

25. **Cooperation.** The Parties, without further consideration, agree to execute such additional documents and provide such information as may be reasonably necessary to carry out this Agreement's purposes and intent and to fulfill the obligations of the respective parties under this Agreement.

26. **Calculation of Time Periods.** Unless otherwise specifically provided in this Agreement, in computing any period of time described in this Agreement, the day of the act or event after 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, unless such last day is a Saturday, Sunday or legal holiday. The final day of such period shall be deemed to end at 11:59 p.m. Central Standard Time.

27. **Project Commencement and Completion.** In accordance with Minnesota Statutes Section 469.105, subd. 5, within one (1) year after the Closing Date, the Purchaser (subject to Unavoidable Delays) shall devote the Property to its intended use as a residential development (the "**Project**") or begin work on the improvements to the Property for the Project. In addition, within two (2) years after the Closing Date, the Purchaser (subject to Unavoidable Delays) shall have

prepared twenty-one (21) single-family lots for sale to the general public. The City may extend such time periods under this Section at its discretion if the Purchaser demonstrates good cause to the City's satisfaction. "**Unavoidable Delays**" means delays, outside the control of the Purchaser, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, acts of war or terrorism, pandemic, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit which directly result in delays, acts of the public enemy or acts of terrorism and discovery of unknown hazardous materials or other concealed site conditions or delays of contractors due to such discovery.

28. **Certificate of Completion.** Following notice from Purchaser that it has completed all work necessary to produce twenty-one (21) single-family lots ready for sale to the general public, the City shall furnish the Purchaser with an original, recordable certificate of completion certifying that the Project has been completed as required by this Agreement in a form mutually agreeable to the Parties (the "**Certificate of Completion**"). The Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and the Deed with respect to the Purchaser's obligations to complete the Project as provided in Section 28 of this Agreement. The Purchaser may, at its cost, cause the executed Certificate of Completion to be recorded against the Property.

29. **Conveyance Subject to Right of Re-Entry.** The City's conveyance of the Property to the Purchaser is subject to the City's right of re-entry for the Purchaser's breach of its covenant to begin work on the improvements to the Property for the Project and complete the Project as provided in Section 28 of this Agreement. If the Purchaser, subject to Unavoidable Delays, fails to begin work on the improvements to the Property for the Project within one (1) year after the Closing Date or fails to produce twenty-one (21) single-family lots ready for sale to the general public within two (2) years after the Closing Date, and such failure is not cured within sixty (60) days after written notice from the City to the Purchaser, then the City shall have the right to seek a judicial decree from the Goodhue County District Court to establish the breach of such covenant and reversion of title to and possession of the Property to the City. In order to facilitate the obtaining of financing for the construction of the Project, the City agrees to subordinate its right of re-entry under this Agreement and the Deed to the documents executed in connection with any mortgage pursuant to a subordination agreement reasonably satisfactory to the City and such mortgagee.

30. **Prohibition on Property's Transfer.** Except for the purpose of obtaining Project financing or any lease, easement or similar encumbrance, the Purchaser may not transfer title to the Property within one (1) year after the Closing Date without the City's prior, written consent, which consent shall not be unreasonably withheld, conditioned or delayed. This transfer restriction shall be included in the Deed. Upon expiration of this restriction and upon the Purchaser's request, the City will execute a recordable document prepared by the Purchaser and acceptable to the City, confirming that this transfer restriction is terminated and of no further force and effect.

[Signature Page to Follow]

The City and the Purchaser have executed this Agreement as of the Effective Date.

PURCHASER:

Endres Canon Falls, LLC

By: _____
Leon Endres, Manager

CITY:

City of Cannon Falls

By: _____
Matt Montgomery, Mayor

By: _____
Neil Jensen, City Administrator

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 1-8 Block 1, Lots 1-4 Block 2, Outlot B, all in Sandstone Ridge, according to the recorded plat thereof, Goodhue County, Minnesota.

Together with

Lots 1-8 Block 1 Sandstone Ridge Second Addition, according to the recorded plat thereof, Goodhue County, Minnesota.

Together with

All the vacated right of ways of Sandstone Road, Sandstone Circle, and Decorah Drive as dedicated on the plat of Sandstone Ridge, according to the recorded plat thereof, Goodhue County, Minnesota.