

EXHIBIT 1

PURCHASE AGREEMENT

This Purchase Agreement (this “Agreement”) is entered into as of _____, 2021, by and between Northern AQ LLC, a limited liability company under the laws of the State of Minnesota (“Buyer”) and the City of Duluth, a municipal corporation under the laws of the State of Minnesota (“City”).

RECITALS

WHEREAS, City owns certain real property in St. Louis County, Minnesota, legally described on the attached Exhibit A, together with any and all improvements located thereon and all privileges, rights and easements appurtenant thereto (the “Property”).

WHEREAS, Buyer wishes to construct two residential units on the Property, with each unit being at least 500 square feet (the “Project”).

WHEREAS, Buyer wishes to purchase the Property from City and City wishes to sell the Property to Buyer pursuant to the authority granted in Duluth City Code Section 2-177.4.

In consideration of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, City and Buyer agree as follows:

1. Purchase. City agrees to sell to Buyer and Buyer agrees to purchase from City, on the terms and conditions set forth in this Agreement, all of City’s right, title and interest in the Property.

2. Purchase Price and Closing.

(A) The purchase price for the Property, which City agrees to accept and Buyer agrees to pay, is \$1.00 (the “Purchase Price”). Buyer shall also pay to the City an administrative fee of \$500.00 for staff time invested to facilitate this transaction (the “Fee”). The Purchase Price and the Fee shall be paid in cash at Closing (defined below). The closing on the purchase and sale shall occur within 180 days of the effective date of the City Council ordinance approving the sale of the Property to Buyer (the “Ordinance”), at a time and location mutually agreeable to the parties (the “Closing”).

(B) City shall deliver possession of the Property on the date of Closing. On the date of Closing, Buyer shall pay the Purchase Price to City and City shall deliver a quitclaim deed to Buyer conveying City’s interest in the Property to Buyer (the “Deed”). If the Closing has not occurred within 180 days of the effective date of the Ordinance, (i) this Agreement shall automatically terminate; (ii) upon request, each party shall promptly sign a cancellation of purchase agreement evidencing the cancellation of this Agreement; and (iii), except as expressly set forth in this Agreement, the parties shall have no further obligations to one another pursuant to this Agreement.

(C) The Deed shall include the following restrictive covenant in favor of City:

This deed is subject to the condition that title to the property shall automatically revert to the grantor in the event that any of the following conditions occur within 18 months of the date of this deed:

- (i) grantee ceases to exist as a legal entity in the State of Minnesota;*
- (ii) grantee attempts to transfer, sell, lease, sublease or otherwise convey any interest of grantee, legal or equitable, in the property, prior to completion of construction of the residential units described in subparagraph (iv) below, with completion evidenced by issuance of Certificates of Occupancy for both units;*
- (iii) grantee fails to pay any taxes or other encumbrances against the property on or before the applicable due date;*
- (iv) grantee fails to complete construction of two residential units on the property (each unit being at least 500 square feet), with completion evidenced by issuance of Certificates of Occupancy for both units; or*
- (v) grantee shall make any assignment for the benefit of its creditors, or generally not be paying its debts as they become due, or a petition shall be filed by or against grantee under the United States Bankruptcy Code, or grantee shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of any part of the property.*

This restrictive covenant shall run with the land and be enforceable by grantor.

3. *Intentionally Omitted.*

4. **Inspection Contingency.** Buyer and its employees, agents, contractors and subcontractors, shall have a non-exclusive license for 30 days from the date of this Agreement (the "Inspection Period") to enter onto the Property (the "Inspection License") with all necessary tools, equipment and related materials for the purpose of conducting inspections related to the condition of the Property (the "Site Inspections"). No tools, equipment or related materials shall be stored on the Property and City shall not be responsible for the security of or any damage to Buyer's property. The extent of the Site Inspections that may be performed pursuant to the Inspection License shall be in the sole discretion of City's Director of Planning and Construction Services, or their designee. Buyer understands that all Site Inspections done on the Property prior to Closing shall be at the sole risk and expense of Buyer and in the event that the Closing does not occur for any reason, Buyer will not be entitled to reimbursement from City or any lien against the Property in relation to the Site Inspections. Buyer shall restore the Property to its present condition prior to the end of the Inspection Period. The Inspection License shall terminate automatically upon termination of this Agreement. If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to City within 3 days from the end of the Inspection Period. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

5. The Project. The Project shall be completed within 18 months of the date of the Deed, except that City, through its Director of Planning and Economic Development, or their designee, may agree in its sole discretion to extend the time for completion of the Project upon request from Buyer up to a maximum of 120 days. Buyer shall bear all costs related to the Project.

6. Taxes and Costs. Real estate taxes on the Property shall be prorated as of the Closing based upon the latest available tax statement. Buyer shall be responsible for all real estate taxes and assessments for the year following Closing and all subsequent years. Buyer shall pay all closing costs, recording fees, any real estate transfer tax or conveyance fees, any title company costs, and any other costs and expenses required to effectuate the purchase and sale contemplated by this Agreement. The parties intend that City will not incur any out of pocket expenses in relation to the purchase and sale contemplated by this Agreement or in relation to the Project.

7. Title. Buyer may obtain, at Buyer's expense, a title insurance commitment for an ALTA Owner's Policy of Title Insurance insuring title to the Property (the "Title Commitment"). The premium for a title insurance policy, if Buyer elects to obtain title insurance, shall be paid for by Buyer. In the event that the Title Commitment reflects that title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying Buyer's objections in writing to City with 10 days of receipt of the Title Commitment. At City's election, City may fix any title defects, or may decline to fix any title defects by delivering written notice to Buyer within 10 days of receipt of Buyer's title objections. If City fixes the title defects, the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If City declines to fix the title defects, Buyer may terminate this Agreement by delivering written notice of termination to City within 5 days of receiving notice that City will not fix the title defects. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement. If Buyer fails to terminate this Agreement pursuant to this paragraph, the parties shall proceed to the Closing as contemplated by this Agreement.

8. Statutory Disclosures. City staff handling the sale of the Property on behalf of City have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; or (2) methamphetamine production on the Property.

9. Buyer Representations. Buyer makes the following representations:

(A) Buyer is a limited liability company in good standing under the laws of the State of Minnesota, has the full power and authority to (i) enter into this Agreement, (ii) purchase the Property in accordance with this Agreement and (iii) complete the Project. No consent or authorization from any other person, entity or government agency is required for Buyer to enter into and perform Buyer's obligations under this Agreement except as has already been obtained. The execution of the Agreement will not constitute a breach or default under any agreement to which Buyer is bound.

(B) There is no suit, action, legal, administrative or other proceeding or inquiry pending or threatened against Buyer which could affect Buyer's ability to enter into and

perform Buyer's obligations under this Agreement. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Buyer, nor are any such proceedings contemplated by Buyer.

Each of the above representations is material and is relied upon by City. Each of the above representations shall be deemed to have been made as of the Closing and shall survive the Closing.

10. Indemnity. Buyer shall be liable for any damage or injury to any person or property occasioned by the acts of Buyer, its employees, agents, contractors and subcontractors, relating to the Property. Buyer shall indemnify and hold harmless City, its officers, directors, agents and employees from any and all liens, liabilities, losses, claims, costs, or damages, including reasonable attorney fees and costs, causes of action, suits, claims, demands, and judgments of any nature resulting from the use of the Property pursuant to this Agreement. Buyer agrees to assume the benefit and burden of the Property as of the date of Closing. Promptly after receipt by City of notice of the commencement of any action with respect to which Buyer is required to indemnify City under this Agreement, City shall notify Buyer in writing of the commencement of the action, and, subject to the provisions as hereinafter stated, Buyer shall assume the defense of the action, including the employment of counsel satisfactory to City and the payment of expenses. In so far as such action shall relate to any alleged liability of City with respect to which indemnity may be sought against Buyer, City shall have the right to employ separate counsel and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Buyer. This paragraph 10 shall survive the Closing and cancellation of this Agreement for any reason.

11. No Representations by City. Without limitation, Buyer acknowledges that City has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Buyer may conduct; the compliance of the Property or the Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Buyer acknowledges and agrees that City has no obligation to remove any personal property or debris from the Property. Buyer acknowledges and agrees that, to the maximum extent permitted by law, Buyer is purchasing the Property in its "AS-IS" condition. This paragraph 11 shall survive the Closing and cancellation of this Agreement for any reason.

12. No Assignment. The parties acknowledge that City is relying upon the qualifications and identity of Buyer to complete the Project. Therefore, Buyer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney (except the sale or lease of the Property after completion of the Project as evidenced by the issuance of a Certificate of Occupancy for both units of the Project), nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and

has not or will not otherwise transfer in any other way all or any portion of the Property, Buyer, the Project, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder (except the sale or lease of the Property following completion of the Project as evidenced by the issuance of a Certificate of Occupancy for both units of the Project); and Buyer will not make or create or suffer to be made any such transfer of Buyer's rights hereunder. If any assignment of Buyer's obligations under this Agreement is approved, any such assignee shall explicitly assume the obligations of Buyer under this Agreement and Buyer remains principally liable for the performance of Buyer's obligations under this Agreement.

13. Miscellaneous. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings between the parties regarding the Property. There are no oral agreements that change this Agreement and no waiver of any of its terms shall be effective unless in a writing executed by the parties. Time is of the essence in all terms of this Agreement. This Agreement binds and benefits the parties and their successors in interest. This Agreement shall be construed under the laws of the state of Minnesota. This Agreement, each provision of it, and all warranties and representations in this Agreement shall survive the Closing. The representations, warranties, agreements, and obligations of the parties shall survive the Closing. Amendments to this Agreement must be in writing and must be executed by the same officers as executed this Agreement, except that City's Director of Planning and Construction Services is authorized, in their discretion, to sign amendments solely to extend timelines set forth in this Agreement up to a maximum of 120 days.

14. Waiver. The failure of either party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

15. Default and Remedies.

(A) *General Events of Default*. The following shall be deemed to be general events of default by Buyer under the terms and conditions of this Agreement to which the remedies set forth in subparagraph (B) below shall be applicable as otherwise set forth in this Agreement.

(i) Buyer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Buyer pursuant to this Agreement and such failure shall continue for a period of twenty calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Buyer of such default or, in the event that such default shall be incapable of cure during said twenty day period, shall have failed to commence to cure said default within twenty days of the date of said notice and to diligently pursue the same to completion.

(ii) Any liens are placed on the Property due to the action or inaction of Buyer which effect or encumber City's interest in the Property or this Agreement.

(iii) Buyer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Buyer or its business; or Buyer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Buyer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within thirty (30) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Buyer's properties or fails to have dismissed or vacated within thirty (30) days after the appointment without the consent or acquiescence of Buyer or any trustee, receiver or liquidator of any material part of Buyer's properties.

(B) *General Remedies.* Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Buyer:

(i) Seek and be entitled to monetary damages, including consequential damages, from Buyer for any damages incurred by City as a result of Buyer's default.

(ii) Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Buyer's violation of the terms and conditions of this Agreement or to compel Buyer's performance of its obligations hereunder.

(iii) Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

(C) *Non-Waiver.* The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

(D) *Remedies Cumulative.* Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

16. Notices. Notices sent pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City
City of Duluth
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, MN 55806

Buyer

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

17. Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below.

Dated: _____, 2021.

NORTHERN AQ LLC

By _____
Its _____

CITY OF DULUTH

By _____
Its Mayor

Attest: _____
Its City Clerk

Date Attested: _____, 2021

Countersigned:

By: _____
Its Auditor

Approved as to form:

By: _____
Its City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Easterly One-half (E'ly ½) of Lot Three Hundred Fifty-Nine (359), Block One Hundred Twenty-three (123), Duluth Proper Second Division, St. Louis County, Minnesota.