

EXHIBIT 1

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “**Agreement**”) is entered into as of the date of the certification by the City Clerk set forth below (the “**Effective Date**”), by and between JAMES D. MCCAULEY, an unmarried person (“**Seller**”), and CITY OF DULUTH, a Minnesota municipal corporation and political subdivision (“**City**” or “**Buyer**”).

RECITALS

A. Seller is the owner of real property in Duluth, St. Louis County, Minnesota legally described on the attached **Exhibit A** (the “**Property**”), which Property is depicted in its approximate location outlined in red on the drawing attached as **Exhibit B**.

B. Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt, sufficiency and mutuality of which are acknowledged, Buyer and Seller agree as follows:

- 1.0 Property To Be Purchased. Subject to compliance with the terms and conditions of this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller the Property, together with any improvements located thereon. The parties agree and acknowledge that in the event the Title Commitment (defined below), indicates that Seller does not own fee title to Parcel 2 as legally described on Exhibit A, the parties will enter into an amendment to this Agreement removing Parcel 2 from the transaction contemplated by this Agreement, with no change in the Purchase Price (defined below). Notwithstanding Section 19.0(d) below, Buyer’s City Administrator is authorized, in their discretion and without further City Council action, to sign an amendment to this Agreement on behalf of Buyer solely for the following reasons: (i) to extend timelines set forth in this Agreement up to a maximum of 120 days; and/or (ii) in the event the Title Commitment indicates that Seller does not own Parcel 2 as legally described on Exhibit A, to remove Parcel 2 from the transaction contemplated by this Agreement, with no change to the Purchase Price.
- 2.0 Purchase Price. The purchase price to be paid by Buyer for the purchase of the Property shall be Five Thousand and no/100 Dollars (\$5,000.00) (the “**Purchase Price**”), to be paid in cash at Closing (defined below), plus or minus pro-rations and adjustments as set forth in this Agreement.
- 3.0 Closing Date. The closing of the purchase and sale contemplated by this Agreement (the “**Closing**”) shall occur April 30, 2024, or such earlier date as may be agreed upon by the parties (the “**Closing Date**”). The Closing shall take place at the office of First American Title Insurance Company-Consolidated Title & Abstract Company (“**Title**”) in Duluth, Minnesota, or at such other place as the parties shall mutually agree upon. Seller shall deliver possession of the Property to Buyer on the Closing Date. Buyer shall be entitled to walk through the Property on the Closing Date to ensure that the condition of the Property has not materially changed since the Effective Date.

- 4.0 Evidence of Title. Promptly after the Effective Date, Buyer shall order, at Buyer's sole cost and expense, a commitment from Title to issue an ALTA Owner's Policy of Title Insurance (the "**Title Policy**") in the amount of \$24,800.00, to insure Buyer's title to the Property, including copies of documents referenced in Schedule B (collectively, the "**Title Commitment**"). The Title Commitment shall include affirmative coverages for appurtenant easements, if any.
- 5.0 Buyer's Objections to Title. Buyer shall make any written objections (the "**Objections**") to the form or content of the Title Commitment within 20 days of receipt of the Title Commitment. Any matter disclosed by the Title Commitment and not objected to by Buyer shall be a "**Permitted Exception.**" All liens, mortgages, deeds of trust, trust deeds, and security interests affecting the Property shall automatically be deemed Objections, without notice by Buyer to Seller. Seller shall use its best efforts to attempt to cure or satisfy the Objections within twenty days after receipt of the Objections, during which period the Closing will be postponed if necessary. If Seller fails to cure the Objections within such twenty-day period, Buyer will have the option to (a) terminate this Agreement (without either party being deemed at fault); or (b) waive the Objections and proceed to Closing (and all uncured Objections shall be deemed Permitted Exceptions). Buyer shall exercise its option to terminate under this Section 5.0 by delivering written notice to Seller within ten days after the expiration of the twenty-day period. If Buyer fails to deliver notice of termination, Buyer shall be deemed to have waived the Objections.
- 6.0 Buyer's Conditions To Closing. The Closing of the transaction contemplated by this Agreement and the obligation of Buyer to purchase the Property shall be subject to the following conditions:
- (a) Inspection. Buyer shall have determined on or before the Contingency Date that it is satisfied, in its sole discretion, with the condition of the Property. From and after the Effective Date, Buyer, and its agents, employees, contractors and invitees, may, following reasonable notice to and cooperation with Seller, enter upon the Property in order to perform testing and inspections as Buyer may deem necessary including, without limitation, a survey of the Property and environmental testing and inspections, provided that neither Buyer nor its agents shall engage in any intrusive testing without the prior written consent of Seller which consent shall not be unreasonably withheld, conditioned or delayed. Buyer will promptly pay when due the costs of all entry and inspections, tests and examinations done with regard to the Property. Buyer will, at its sole cost and expense, repair and restore the Property to its original condition before any such entry upon the Property and inspection, test or examination was undertaken. Buyer shall keep the Property free and clear of any mechanics', materialmen's or similar liens related to Buyer's right of inspection and its due diligence activities. To the extent permitted by law, Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all losses, claims, causes of action, liabilities and costs of defense incurred by Seller arising out of the actions of Buyer, its agents, employees, contractors or invitees in the performance of its inspection of the Property. Buyer and its agents shall comply with all applicable laws and regulations with respect to the inspection and access and shall refrain from interfering with Seller's use of the Property. Buyer shall assume

all liability for any damages to the Property or injury to persons resulting from, arising out of or incurred in connection with any inspection or access to the Property by Buyer or its agents. In the event Buyer determines that it is not satisfied with the physical condition of the Property based on the inspections undertaken pursuant to this Agreement, Buyer may terminate this Agreement by written notice to Seller delivered to Seller no later than the expiration of the Contingency Date.

- (b) Representations. Seller's representations in this Agreement shall be true at the time of Closing as though such representations were made at such time.
- (c) Title. The status of title to the Property shall have been accepted by Buyer pursuant to the provisions of Section 5.0 of this Agreement, and on or before Closing, Buyer shall have received the Title Policy, or a suitably marked up Title Commitment dated and initialed by Title, insuring Buyer's title to the Property subject to the Permitted Exceptions and in form acceptable to Buyer.

The contingency date shall be April 10, 2024 (the "**Contingency Date**"). If the condition set forth in Section 6.0(a) has not been satisfied or waived prior to the Contingency Date, this Agreement may be terminated at the option of Buyer, by written notice from Buyer to Seller delivered to Seller no later than the Contingency Date. If any of the conditions set forth at Sections 6.0(b) and (c) have not been satisfied or waived prior to the Closing Date, this Agreement may be terminated, at the option of Buyer, by written notice from Buyer to Seller delivered to Seller no later than the Closing Date. All of the contingencies set forth in Section 6.0 of this Agreement are for the sole and exclusive benefit of Buyer and Buyer shall have the right to unilaterally waive any contingency by written notice to Seller.

6.1 Seller's Conditions To Closing. The Closing of the transaction contemplated by this Agreement and the obligation of Seller to sell the Property shall be subject to the following conditions:

- (a) Representations. Buyer's representations in this Agreement shall be true at the time of Closing as though such representations were made at such time.
- (b) Performance by Buyer. Buyer shall have performed all of its obligations under this Agreement.

If the conditions set forth in Section 6.1 have not been satisfied or waived prior to the Closing Date, this Agreement may be terminated by Seller, by written notice from Seller to Buyer delivered to Buyer no later than the Closing Date. All of the contingencies set forth in Section 6.1 of this Agreement are for the sole and exclusive benefit of Seller and Seller shall have the right to unilaterally waive any contingency by written notice to Buyer.

7.0 Representations By Seller. Seller makes the following representations to Buyer:

- (a) Seller is an unmarried person.

- (b) 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.
- (c) There have been no bankruptcy or dissolution proceedings involving Seller during the time Seller has had any interest in the Property, there are no unsatisfied judgments or state or federal tax liens of record against Seller, and there has been no labor or materials furnished to the Property for which payment has not been paid.
- (d) To Seller's knowledge, there are no unrecorded mortgages, contracts, purchase agreements, options, rights of first refusal, leases, easements or other agreements or interests relating to the Property.
- (e) There are no persons in possession of the Property other than Seller.
- (f) Seller has not received notice of any new public improvement project(s), the cost of which a governmental entity may assess against the Property.
- (g) The Property is not in violation of any statute, law, ordinance or regulation, and there is no action, litigation, governmental investigation, condemnation or administrative proceeding of any kind pending or, to Seller's best knowledge, threatened, against or involving any portion of the Property, except as follows: Duluth City Code violations and related condemnation orders by the City of Duluth, issued pursuant to Section 10-3(a) and (b) of the Duluth City Code.
- (h) Seller is not in default in the performance of any of Seller's obligations under any easement agreement, covenant, condition, restriction, or other instrument or agreement relating to the Property.
- (i) Seller does not know of any "wells" on the Property within the meaning of Minn. Stat. §103I. This representation is intended to satisfy the requirements of the statute.
- (j) Solely for the purpose of satisfying the requirements of Minn. Stat. §115.55, Seller certifies that there is no "subsurface sewage treatment system" within the meaning of that statute on or serving the Property.
- (k) Seller has no knowledge that methamphetamine production has occurred on the Property.
- (l) There are not now, nor to Seller's knowledge have there ever been underground or above ground storage tanks of any size or type located on the Property nor any Hazardous Substances (defined below) located on the Property in violation of applicable governmental requirements, and the Property has not been used in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substances in violation of applicable governmental requirements. To Seller's knowledge, no activity has been undertaken on the Property that would cause or contribute to the discharge of Hazardous Substances or of fluids into any water source or system, the dredging or filling of any waters or the discharge into the air

of any emissions that would require a permit under any federal or state law or local ordinance. For purposes of this Agreement, the term “**Hazardous Substances**” includes but is not limited to substances defined as “hazardous substances,” “toxic substances,” “hazardous wastes” “pollutants” or contaminants” under federal or Minnesota law. The term “hazardous substance” shall also include asbestos, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and synthetic gas).

The foregoing representations shall be accurate on the Effective Date and on the date of Closing. If, at any time prior to the Closing, Seller acquires actual knowledge of events or circumstances which render the representations and warranties set forth in this section inaccurate in any respect, Seller shall immediately notify Buyer in writing and Buyer shall have the right to terminate this Agreement. Seller will indemnify Buyer, its successors and assigns, against and will hold Buyer, its successors and assigns harmless from, any loss, liability, costs, expenses or damages, including reasonable attorney’s fees, that Buyer incurs because of Seller’s breach of any of the above representations, the inaccuracy of any of the above representations when made or remade, or Seller’s failure to notify Buyer, before the Closing, if the representations set forth above become inaccurate and Seller actually knows of such inaccuracy. The representations, warranties and indemnification set forth above shall survive the Closing of this transaction and Seller’s delivery of the Deed (defined below).

7.1 Representations by Buyer. Buyer makes the following representations to Seller:

- (a) The individuals executing this Agreement on behalf of Buyer have the requisite authority to execute this Agreement and such other documents as are contemplated or to be delivered by Buyer, and to bind Buyer thereto; and Buyer has the full and complete authority to purchase the Property.
- (b) Buyer shall promptly pay when due any and all charges for engineering, surveying or other studies, reports, assessments or investigations which are commissioned or requested by Buyer and not the responsibility of Seller under this Agreement.

The representations contained in this Section shall be true and correct on the Effective Date and the Closing Date.

8.0 Real Estate Taxes and Special Assessments. At or before the Closing, Seller shall pay all real estate taxes and special assessments (with the exception of City Assessments, as defined and addressed below) payable therewith and any penalties and interest thereon due and payable with respect to the Property in all years prior to the year of Closing, including all deferred taxes attributable to years prior to the year of Closing. Buyer shall pay all real estate taxes and special assessments payable as to the Property for the year 2024 and in the years following the year of Closing. Notwithstanding the above, all assessments against the Property that have been assessed by the City of Duluth, plus associated administrative fees, penalties, and interest (collectively, the “**City Assessments**”), will not be due and payable at the Closing as City intends to write off the City Assessments after the Closing. If the Closing does not occur for any reason, City will not write off the City Assessments.

9.0 Closing Documents. At or prior to the Closing, the parties shall execute and deliver the following:

- (a) A warranty deed (the “**Deed**”), in substantially the form of the Minnesota Uniform Conveyancing Blank, subject to the Permitted Exceptions;
- (b) Resolution by Buyer, in form acceptable to Title, authorizing the acquisition of the Property by Buyer;
- (c) Any documents reasonably required by Title;
- (d) A certificate (or statutory statement on the Deed) signed by Seller warranting that there are no “Wells” on the Property within the meaning of Minn. Stat. Chapter 103I, or if there are “Wells”, a Well Certificate in the form required by law;
- (e) If the Property contains or contained a storage tank, an affidavit by Seller with respect thereto, if required by Minn. Stat. Sec. 116.48; and
- (f) All other documents required by this Agreement to effectuate the provisions of this Agreement.

10.0 Closing Costs. The following costs and expenses shall be paid in connection with the Closing:

- (a) Buyer shall pay the cost of:
 - (i) All fees associated with the issuance of the Title Commitment, including state and federal tax lien, judgment and bankruptcy searches and the premium for the Title Policy, if any;
 - (ii) All state deed taxes and/or transfer taxes on deeds;
 - (iii) All recording fees, including but not limited to fees to record the Deed, Buyer’s resolution authorizing the purchase of the Property to Buyer, all releases and satisfactions of existing mortgages or liens, and other documents necessary to satisfy any Objections;
 - (iv) Any surveys, reports or inspection reports obtained by Buyer;
 - (v) Proration as of the Closing Date of all utilities and operating expenses and rents, if any;
 - (vi) Any real property taxes and installments of special assessments to be paid by Buyer as specified in Section 8.0 above;
 - (vii) Any other item allocated to or assumed by Buyer in this Agreement;
 - (viii) The entire Closing fee charged by Title; and

- (ix) All attorneys' fees and expenses incurred by Buyer.
- (b) Seller shall pay the cost of:
 - (i) Proration as of the Closing Date of all utilities and operating expenses and rents, if any;
 - (ii) Any real property taxes and installments of special assessments to be paid by Seller as specified in Section 8.0 above; and
 - (iii) All attorneys' fees and expenses incurred by Seller.
- 11.0 Title To Be Delivered. Seller agrees to convey marketable fee simple title in the Property to Buyer at Closing subject only to:
 - (a) Reservations of minerals or mineral rights by the State of Minnesota, if any;
 - (b) Building, zoning and subdivision laws, ordinances and State and Federal regulations which do not interfere with present improvements; and,
 - (c) Any Permitted Exceptions, as defined in Section 5.0 above.
- 12.0 Commission. Seller and Buyer represent and warrant to each other that they have not engaged the services of any broker in connection with the sale and purchase contemplated by this Agreement. Seller and Buyer shall each indemnify and hold the other harmless of any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party. This provision shall survive Closing and delivery of the Deed.
- 13.0 Risk of Loss. If there is any loss or damage to the Property between the date of this Agreement and the date of Closing, the risk of loss shall be on Seller. If the Property is destroyed or damaged prior to the Closing, Buyer may cancel this Agreement upon written notice to Seller and in such event, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.
- 14.0 Condemnation. If, prior to the Closing Date, a public or private entity with the power of eminent domain commences condemnation proceedings against all or any part of the Property, Seller will promptly notify Buyer, and Buyer may, at Buyer's sole option, terminate this Agreement. Buyer will have until the earlier of (a) the Closing Date; or (b) the date twenty days from Buyer's receipt of Seller's notice to Buyer, to exercise Buyer's termination right. If Buyer does not terminate this Agreement pursuant to this Section 14.0, the parties will fully perform their obligations under this Agreement, with no reduction in the Purchase Price, and Seller will assign to Buyer, on the Closing Date, all of Seller's right, title and interest in any award made or to be made in the condemnation proceedings. Seller will not designate counsel, appear or otherwise act with respect to any such condemnation proceedings without Buyer's prior written consent unless Buyer fails to respond within seven (7) days to a request for such written consent.

15.0 Operation Prior to Closing. Between the Effective Date and the Closing Date, Seller shall operate and maintain the Property in the same manner as it is being operated on the date hereof and in accordance with prudent and reasonable standards. Seller shall execute no contracts, leases, or other agreements regarding the Property which extend beyond the Closing Date without the prior written consent of Buyer, which consent may be withheld by Buyer at its sole discretion. Seller shall not pledge or transfer any interest in or encumber or permit the encumbrance of the Property with any lien, easement, interest or agreement from and after the Effective Date without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

16.0 Default.

- (a) If Buyer defaults in the performance of Buyer's obligations under this Agreement due to no fault of Seller, then Seller may, as its sole and exclusive remedy, terminate this Agreement in accordance with Minnesota Statutes Section 559.21.
- (b) If Seller defaults in the performance of Seller's obligations under this Agreement due to no fault of Buyer, then Buyer may, after at least thirty (30) days prior written notice to Seller and Seller's failure to cure the default within said notice period, either (i) declare this Agreement terminated, or (ii) Buyer may elect to seek specific performance of this Agreement.
- (c) Notwithstanding anything in this Section 16 to the contrary, any action by Buyer for specific performance must be commenced no later than 180 days after the date Buyer discovers or becomes aware of Seller's default.
- (d) The limitation set forth in the preceding sentence shall not apply to claims for indemnification or contribution specifically provided for in this Agreement.
- (e) This section shall survive Closing and delivery of the Deed.

17.0 No Assignment. Neither Seller or Buyer may assign its interest in this Agreement.

18.0 As-Is. Except as expressly set forth in this Agreement, Buyer warrants and acknowledges to and agrees with Seller that Buyer is purchasing the Property in its "As-Is, Where Is" condition "with all faults" as of the Closing Date and specifically and expressly without any warranties, representations or guarantees, either express or implied, as to its condition, fitness for any particular purpose, merchantability, or any other warranty of any kind, nature, or type whatsoever from or on behalf of Seller. Seller will continue to maintain the Property through the Closing Date.

19.0 Miscellaneous.

- (a) Time of Essence. Time is of the essence of this Agreement.
- (b) Governing Law. This Agreement is made and executed under and in all respect to be governed by the laws of the State of Minnesota. Any dispute that may arise between

same Agreement. Facsimile or electronic signatures shall be binding on the transmitting party and shall have the same force and effect as if the original signature had been delivered.

- (i) Waiver. The failure of either party to enforce any provision of this 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.
- (j) Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof. No modification, amendment or waiver may be made to the terms of this Agreement without the written consent of both parties.

[Remainder of this page is intentionally left blank.]

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

JAMES D. MCCAULEY, an unmarried person

By: James D McCauley

Printed Name: James D McCauley

Date: 3-20-24

CITY OF DULUTH

By: _____
Its Mayor

Attest: _____
Its City Clerk
Date Attested: _____

Countersigned:

By: _____
Its Auditor

Approved as to form:

By: _____
Its City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1

Southerly 29 feet of Lot 15, MYERS REARRANGEMENT OF BLOCK 70, DULUTH
PROPER SECOND DIVISION

Northerly 27 feet of Lot 10, MYERS REARRANGEMENT OF BLOCK 70, DULUTH
PROPER SECOND DIVISION, including 5 feet of adjacent vacated alley

Parcel 2

Northerly 25 feet of Lot 14, MYERS REARRANGEMENT OF BLOCK 70, DULUTH
PROPER SECOND DIVISION

St. Louis County, Minnesota