



DATE: October 5, 2021
CONSENT

AGENDA ITEM: NorthPoint Purchase Agreement Amendment #1

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

At the June 15, 2021 Council meeting, council approved a purchase agreement with NorthPoint Development for the 77 acres south of CSAH 14 and east of Ideal Ave. Since that time, we have learned that an AUAR will be needed to proceed so amendments to the timeline are proposed. NorthPoint also wants to make sure sewer will be available to them so a reference to the city awarding the bid has been added.

ISSUE BEFORE COUNCIL:

Should the Council approve Amendment #1 to the purchase agreement approved June 15, 2021 with NorthPoint Development?

PROPOSAL:

Since an AUAR can take 6-9 months, the approvals period has been increased to 300 (previously 180) days from the end of the due diligence period which ended September 15, 2021. Closing would still need to occur 30 days from the end of the approvals period as noted in the original purchase agreement. New language in the amendment would require NorthPoint to cover the city's cost of cancelling the sewer contract should they decide not to purchase the property. Lastly, the time to commence construction was increased from 6 to 9 months after closing to accommodate getting through the winter months.

OPTIONS:

- 1) Approve Amendment #1
- 2) Do not approve amendment #1

RECOMMENDATION:

If removed from the consent agenda:

“Motion to approve Amendment #1 to the Purchase Agreement with NorthPoint Development.”

ATTACHMENT:

- Amendment #1

FIRST AMENDMENT TO REAL ESTATE SALE CONTRACT

THIS FIRST AMENDEMENT TO REAL ESTATE SALE CONTRACT (this “**Amendment**”) is entered into this ____ day of _____, 2021, by and between NorthPoint Development, LLC, a Missouri limited liability company, or assigns (“**Buyer**”) and City of Lake Elmo, a Minnesota municipal corporation (“**Seller**”).

R E C I T A L S

WHEREAS, Buyer and Seller entered into that certain Real Estate Sale Contract dated June 17, 2021 (the “**Contract**”), pursuant to which Buyer agreed to purchase certain real property located at Ideal Ave., South of CSAH 14, Lake Elmo, Washington County, Minnesota (a portion of Tax ID 16.029.21.24.0002), as more particularly described therein; and

WHEREAS, Buyer and Seller desire to amend the Contract as more specifically set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between Buyer and Seller as follows:

1. Definitions. Capitalized terms used herein but not defined shall have the meaning given to such terms in the Contract.
2. Approvals Period. The Approvals Period shall be deemed to expire on the date occurring three hundred (300) days following the expiration of the Due Diligence Period.
3. Section 27 of the Contract is hereby replaced with the following language:

27. Commencement of Construction. If Buyer has not commenced construction on its proposed development of the Property on or before the nine-month anniversary of the Closing Date, then Buyer shall pay to Seller an additional payment in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the “Commencement Fee”). For purposes of this Contract “commenced construction” shall mean the grading of the Property and the installation of building footings and the construction of building foundations with respect to any such building to be constructed by Buyer on the Property. Buyer shall be excused, without payment of the Commencement Fee, for the period of any delay in the performance of its obligations in this Section 27 when prevented from doing so by causes beyond its control, which shall include acts of God, governmental restrictions, pandemic, strikes, labor disturbances, shortages of materials or supplies and the inability to obtain said materials or reasonable substitutes at reasonable cost, and actions or inactions of governmental authorities (but not violations of applicable laws) (a “Force Majeure Event”). In connection with any Force Majeure Event, Buyer must use good faith and commercially reasonable efforts to mitigate the effect of such Force Majeure Event including, without limitation, using good faith efforts to procure substitute materials from alternative sources if necessary, which such good faith efforts shall include, without limitation, a requirement that Buyer obtain a

minimum of three (3) bids (which such bids shall include the price and timing of delivery of such substitute materials) from well-recognized and industry standard general contractors, which Buyer shall deliver such bids to Seller once obtained.

4. Sewer Line Extension and Installation. A new Section 29 of the Contract is hereby added which shall read as follows:

29. Sewer Line Extension and Installation. Seller shall be responsible for designing and constructing that certain sewer line extension depicted as “Route A” on Exhibit B (the “**Route A Extension**”), for the benefit of Buyer’s proposed industrial warehouse development, by constructing the existing sewer line from the City of Oakdale’s lift station to 31st Street along the portion of the southern boundary of the Property, as generally depicted on Exhibit B attached hereto. If Seller has not completed the Route A Extension on or before October 15, 2022, then Buyer shall have the right to complete the Route A Extension on behalf of the Seller. For purposes of Seller’s obligation to complete the Route A Extension on or before October 15, 2022, “complete” shall mean that the sewer pipe is operational and can be connected to for use.

Buyer will be responsible for the cost of permitting and the sewer line installation from the center portion of the southern boundary of the Property under Union Pacific's rail line to the northern parcel as depicted as “Route B” on Exhibit B (the “**Route B Extension**”) attached hereto (together, the Route A Extension and the Route B Extension constitute the “**Sewer Line Extension**”). Seller shall reasonably assist Buyer during the permitting process of the Sewer Line Extension, which may include acting as the applicant on any necessary permits, as may be deemed required by Buyer, and such assistance shall not be unreasonably withheld. Seller and Buyer assume the Sewer Line Extension shall remain a public utility.

Seller hereby gives Buyer the right to coordinate with the City of Oakdale, from time to time, on the design and construction of the that certain lift station expansion for the benefit of Buyer’s proposed industrial warehouse development.

This Section shall survive Closing.

5. Closing Conditions. The following shall be added as a Closing Condition to the Contract as Section 8(c) thereof:

(c) Buyer shall have obtained the Approvals.

(d) Seller shall have designed, bid and executed the contract for construction of the Route A Extension so as to be ensure such extension shall commence immediately following the Closing Date. Should Buyer not purchase the Property for any reason and Seller has executed the contract for the construction of the Route A Extension, Buyer shall be responsible for any costs incurred by Seller related to cancelling the contract, including any claims asserted by the contractor who will be performing the work under the contract.

6. Amendment Controls; Ratification and Affirmation. In the event that the terms of this Amendment and the Contract are held to be inconsistent, the terms of this Amendment shall control. The parties each agree and warrant that, in all other respects, the Contract is unmodified, in full force and effect, and each party hereby ratifies and affirms the Contract and any terms contained therein not otherwise modified by this Amendment.


7. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument. Each party may rely upon facsimile or electronic mail counterparts of this Amendment signed by the other party with the same effect as if such party had received an original counterpart signed by such other party.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

BUYER:

NorthPoint Development, LLC, a Missouri
limited liability company

By: _____
Nathaniel Hagedorn, Manager

SELLER:

City of Lake Elmo

By: _____
Charles Cadenhead
Its: Mayor

By: _____
Julie Johnson
Its: City Clerk

EXHIBIT B

Sewer Line Extension

