

**PURCHASE AGREEMENT [DRAFT FORM]**

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This Agreement is entered into by and between the **Series Sunfish of Athans Holdings, LLC**, an Illinois Limited Liability Company (“Seller”), and the **City of Ramsey**, a Minnesota municipal corporation (“Buyer”).

In consideration of the Earnest Money, the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **EFFECTIVE DATE.** The effective date of this Agreement is 2016 January 27, 2017 (the “Effective Date”).

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2. **SALE OF PROPERTY.** Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, the Property within the City legally described as follows:

*Lot 2, Block 1, Sunfish Commons, County of Anoka, State of Minnesota*

and further identified by Anoka County by the following property identification number:

**34-32-25-14-0027**

with a street address of 6401 Highway 10, Ramsey, Minnesota 55303.

3. **PURCHASE PRICE.** The purchase price for the Property is \$645,000 (the “Purchase Price”).

4. **EARNEST MONEY.** Within five business days after the Effective Date, Buyer will deposit the sum of \$5,000 (the “Earnest Money”) with Title One Inc., 7533 Sunwood Drive NW, Ramsey, MN 55303 (“Escrow Agent”), via wire transfer or delivery of a certified check payable to Escrow Agent.

- a. Upon Seller’s receipt of a Notice to Proceed from Buyer in accordance with Section 8(b), the Earnest Money becomes non-refundable (except in accordance with Section 21 as a result of a default by Seller).
- b. If Buyer does not provide a Notice to Proceed to Seller in accordance with Section 8(b), this Agreement automatically terminates and Escrow Agent must disburse the Earnest Money Escrow Agent holds to Buyer.
- c. At Closing, Buyer shall receive a credit against the Purchase Price owing at Closing in an amount equal to the amount of the Earnest Money.

5. **SURVEY.** Seller shall, at Seller's expense, ~~obtain an ALTA survey (Table A, items 1-4 and 6, 8, 11a and 21) (the "Survey") from a duly licensed surveyor and~~ deliver all surveys in its possession or control ~~to~~ Buyer within thirty (30) days after the Effective Date. Buyer may arrange with the surveyor to include additional information on the Survey at Buyer's expense.

6. **TITLE COMMITMENT.**

- a. Within ten business days after the Effective Date, Seller shall, at ~~Buyer's Seller's~~ expense, obtain a commitment from Escrow Agent to issue an owner's policy of title insurance insuring Buyer's title to the Property (the "Title Commitment") and deliver the Title Commitment and copies of, or internet access to, copies of all recorded documents referenced in the Title Commitment to Buyer.
- b. Buyer shall have until the date ten business days after the receipt of the Title Commitment and the Survey (collectively, "**Title/Survey**") to review Title/Survey and to give Seller written notice of (i) any defects in the marketability of Seller title to the Property or any encumbrances on Seller's title to the Property that are objectionable to Buyer, and (ii) the specific actions Buyer requests that Seller take with respect to each such defect or encumbrance (a "**Title Objection Notice**"). Any defects in or encumbrances on Seller's title that Buyer does not identify in a timely Title Objection Notice are each a "**Permitted Exception**." Within three (3) business days after Seller's receipt of a Title Objection Notice from Buyer, Seller will notify Buyer, in writing, of the actions, if any, that Seller is willing to take with respect to each of the matters identified in the Title Objection Notice and the time frame in which Seller will take those actions ("**Seller's Title Notice**"). If Seller's Title Notice indicates that Seller unconditionally agrees to make Seller's title to the Property marketable on or before the closing date established pursuant to Section 12, the parties shall proceed to closing pursuant to the terms of this Agreement. If Seller's Title Notice indicates that Seller does not unconditionally agree to make Seller's Title to the Property marketable on or before the closing date, Buyer may, at any time with three (3) business days after Buyer's receipt of Seller's Title Notice, terminate this Agreement by written notice to Seller ("**Buyer's Title Termination Notice**") in which case this Agreement is terminated and Escrow Agent must disburse the Earnest Money to Buyer. If Buyer does not deliver a Buyer's Title Termination Notice to Seller within the three (3) business days after Buyer's receipt of Seller's Title Notice, then Seller must perform in accordance with Seller's Title Notice, Buyer shall be deemed to have waived Buyer's objections to the extent Seller has not agreed to address them in Seller's Title Notice, the matters to which Buyer objected and Seller did not agree to resolve are deemed Permitted Exceptions, and the parties shall proceed to Closing in accordance with the terms of this Agreement and the terms of Seller's Title Notice.

7. **RIGHT OF ENTRY.** At all times after Buyer has deposited the Earnest Money with Seller and before the expiration of the Inspection Period (as defined in Section 8), Buyer (and its employees, agents, and contractors) may enter the Property, upon at least 24 hours prior notice, for the purpose of conducting soil tests, environmental tests and additional survey work, subject to the following conditions:

- a. Upon the earlier of the date one week after Buyer's completion of its activities on the Property or the date one week after the termination of this Agreement, if either Seller or Buyer terminate this Agreement in accordance with the provisions hereof prior to Closing, Buyer must repair and or restore any damage Buyer or its employees, agents or contractors cause to the Property and remove any personal property, refuse or debris Buyer or its employees, agents or contractors brought onto or authorized third parties to bring onto the Property.
- b. Buyer must comply with and shall cause it employees, agents, and contractors to comply with all applicable laws, while on the Property.
- c. The cost of any test or additional survey work will be borne solely by Buyer.

8. **INSPECTION PERIOD.**

- a. Except as otherwise provided in Section 6, Buyer shall have from the date that Buyer deposits the Earnest Money with Escrow Agent to ~~March-April 27~~ April 12, 2017, (the "**Inspection Period**") to investigate the Property and determine, in Buyer's sole judgment, whether the condition of the Property is suitable to Buyer's intended use.
  - i. Seller agrees that investigation of the Property includes the right of Buyer to remove the existing canopy over the gas pump islands and removal of the underground storage tanks along with removal of whatever concrete in the vicinity of the pump islands reasonably necessary to complete the canopy and tank removal.
  - ii. Buyer is responsible for the cost of the removal described in Section 8(a)(i), including the cost for disposal of all equipment, materials, structures and concrete removed.
  - ~~iii.~~ Buyer shall fill and level any excavation with clean fill.
  - ~~iv.~~ Buyer and/or its consultant shall provide Seller a Certificate of Insurance, the Seller as named Insured, in the amount of One Million Dollars (\$1,000,000.00) to insure against any damages or injury occurring during any on-site inspection. Buyer shall indemnify and hold Seller harmless of and from any damages or injuries which may occur during the course of the inspection.
- b. Buyer may, at any time on or before 5:00 p.m. on the last day of the Inspection Period, terminate the Agreement by written notice to Seller based on Buyer's

determination, in Buyer's sole and absolute discretion, that the condition of the Property is not suitable for Buyer's intended use. In addition, this Agreement automatically terminates at 5:00 p.m. on the last day of the Inspection Period unless, prior to that time Buyer delivers a written notice of Buyer's intention to proceed (a "**Notice to Proceed**") to Seller.

- c. If, pursuant to Section 8(b), either Buyer terminates this Agreement or this Agreement is automatically terminated, the Escrow Agent must disburse to Buyer any Earnest Money Escrow Agent holds.

**9. DEFINITIONS.** As used in this Agreement:

"**Claim**" or "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

"**Environmental Law**" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq. the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

"**Hazardous Substance**" or "**Hazardous Substances**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

**10. ENVIRONMENTAL.**

- a. **Site Data.** Seller acknowledges that the Property was formerly used as a Shell gas station and the site still contains underground storage tanks (USTs) consistent with that use. Seller shall provide Buyer with the following within five days after the Effective Date:
  - i. A copy of the underground tank affidavit required under Minnesota Statutes section 116.48, which shall be recorded as required by that statute.
  - ii. A copy of all UST installation data in Seller's possession, including, if available, construction plans, specifications, technical data, and all permits and communications with the State concerning the tanks.

- iii. All notifications to the Minnesota Pollution Control Agency concerning any change in UST status or abandonment.
- iv. A copy of all available UST inspection records.
- v. A copy of all environmental reports, tests, and investigations concerning the Property, including soil and UST tests, in Seller's possession.
- vi. A copy of all available records generated by leak detection equipment used to monitor the USTs and associated piping and pumps.

~~b. **Indemnity.** Seller agrees to indemnify, hold harmless and defend Buyer or anyone acting on its behalf for, from and against any and all Claims (including without limitation all Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) past, present and future, existing and contingent, known and unknown arising out of, resulting from, or relating to the condition of the Property as it existed prior to Closing. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property, regardless of whether the foregoing condition of the Property was caused in whole or in part by the Seller's actions or inactions.~~

~~e.b. **Car Wash.** Seller shall remove all liquids (e.g., soaps and other cleaning agents) located in the tanks in the car wash area by the end of the Inspection Period.~~

**11. NOTICES.** Notices permitted or required by this Agreement must be in writing and shall be deemed given when delivered in legible form to the party to whom addressed. Notices may be sent by certified mail, fax or e-mail. Notices are effective two business days after they are mailed via certified mail, return receipt requested or, if delivered in any other manner, when the party to whom the notice is directed actually receives the notice. If delivered at the Closing, a notice shall be deemed given when hand-delivered to the party's representative at the Closing. The business addresses of the parties are as follows:

Seller: George Athans  
Series Sunfish of Athans Holdings, LLC  
8195 Pyott Road  
Lake in the Hills, IL 60156

Buyer: City Administrator  
City of Ramsey  
7550 Sunwood Drive N.W.  
Ramsey, MN 55303

Notices not given in the manner or within the time limits set forth in this Agreement are of no effect and may be disregarded by the party to whom they are directed.

**12. CLOSING.** This transaction shall close on the date 10 business days after Buyer receives approval for funding from the Minnesota Right-of-way Acquisition Loan Fund (RALF) program and delivers a Notice to Proceed to Seller, or ~~3045~~ days after the expiration of the Inspection Period, whichever is later. The Closing shall take place at the offices of the Escrow Agent, or at some other place as the parties may mutually agree prior to such date. At the option of either Party, the executed closing documents, Purchase Price and closing costs may be deposited with the Escrow Agent and disbursed by the Escrow Agent pursuant to avoid the necessity for a Closing at which the Parties are present. Notwithstanding anything set forth herein to the contrary, Seller shall have the absolute right to terminate this Agreement, which shall be deemed to be of no further force and effect, in the event Closing has not occurred by ~~June 4~~ May 15, 2017.

- a. **Conditions to Closing.** As a condition to Buyer's obligation to close, (i) all of Seller's representations and warranties shall be true and correct as of the Closing Date, (ii) Seller shall have performed all of its obligations under this Agreement, (iii) no condemnation or eminent domain affecting the Property or access to the Property shall have occurred or be threatened, (iv) the title company shall be irrevocably and unconditionally be prepared to issue its final title policy to Buyer pursuant to the Title Commitment, subject only to the Permitted Exceptions and free from the standard exceptions with all endorsements that Buyer shall request in connection with its title and survey review. If all of conditions are not satisfied on or before the Closing Date, Buyer may terminate this Agreement and receive a refund of any Earnest Money without limitation of any other remedy if the failure of condition was due to a default by Seller under this Agreement.
- b. **Seller's Obligations at Closing.** At Closing, Seller must deliver to Escrow Agent, for delivery to Buyer:
  - i. A general warranty deed, duly executed and acknowledged on behalf of Seller, conveying title to the Property; and
  - ii. Seller's affidavits (including such affidavits as required to induce the Title Company to remove the standard exceptions from the Title Policy), UST affidavit, well disclosure certificate (if required), settlement statement approved by Seller and Buyer, and any other documents required by the Escrow Agent.
- c. **Buyer's Obligations at Closing.** At Closing, Buyer must:
  - i. Wire Transfer (or deliver a certified check in) an amount equal to the amount of the Purchase Price adjusted for to reflect Buyer's prior payment of the Earnest Money to Escrow Agent for disbursement to Seller and others pursuant to this Agreement and the Settlement Statement; and

- ii. File or cause Escrow Agent to file an Electronic Certificate of Real Estate Value.

d. **Closing Costs.**

- i. At Closing, the following Seller closing costs and expenses must be paid from the Purchaser Price or, if the Purchase Price is not sufficient, paid by Seller:

- 1. Seller's portion of the property taxes prorated to the date of closing.
- 2. Seller's own attorney's fees.
- 3. One-half the cost of any closing fees.
- 4. State deed tax.

~~5. The cost of providing Title Commitment as prescribed in Section 6~~  
~~6.5.~~ The cost of real estate broker commission fees as prescribed in Section 15.

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- ii. At Closing Buyer must pay the Purchase Price to Seller and the following costs and expenses:

- 1. Buyer's portion of prorated property taxes.
- 2. Buyer's own attorney's fees.
- 3. One-half the cost of any closing fees.
- 4. Documentary and recording fees for the deed(s).
- 5. The cost of title commitment and title insurance, and the owner's title insurance policy if Buyer elects to purchase an Owner's title insurance policy.

- e. **Possession.** Seller must deliver possession of the Property to Buyer at Closing.

**13. REAL ESTATE BROKERS.** Seller and Buyer represent and warrant to each other that they have dealt with no brokers other than Nathen Hansen of Colliers International, who represents Seller. Seller is solely responsible for paying its broker's commission. Seller and Buyer agree to indemnify each other and to hold each other harmless against all claims, damages, costs or expenses of or for any broker's fees or commissions resulting for their actions or agreements regarding the execution or performance of this Agreement, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorney's fees.

**14. ASSIGNMENT.** This Agreement may not be assigned without the written consent of the non-assigning Party.

**15. THIRD PARTY BENEFICIARY.** There are no third party beneficiaries of this Agreement, intended or otherwise.

**16. JOINT VENTURE.** Seller and Buyer, by entering into this Agreement and completing the transactions described herein, shall not be considered joint venturers or partners.

**17. CAPTIONS.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

**18. ENTIRE AGREEMENT / MODIFICATION.** This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver or modification of any of its terms will be effective unless in writing executed by the parties.

**19. BINDING EFFECT.** This Agreement binds and benefits the Parties and their successors and assigns.

**20. CONTROLLING LAW.** This Agreement is made under the laws of the State of Minnesota and such laws will control its interpretation.

**21. REMEDIES.**

a. If Buyer fails to perform any of the terms or conditions of this Agreement within the specified time limits, Seller may declare this Agreement terminated pursuant to Minnesota Statutes section 559.21. Seller's sole remedy in the event of Buyer's default is retention of the Earnest Money, unless Buyer defaults under Section 7 or 10 of this Agreement, in which case Seller may retain the Earnest money or suspend the performance of its obligations under this Agreement and commence an action in Anoka County District Court to recover its actual damages arising from the default.

b. If Seller fails to perform any of the terms or conditions of this Agreement within the specified time limits, Buyer may declare this Agreement terminated in which case Escrow Agent and, if applicable, Seller, shall refund the Earnest Money to Buyer, or, in the alternative, Buyer may have this Agreement specifically enforced.

**22. WAIVER.** Failure of Seller or Buyer to insist upon the performance of any of the covenants, agreements and/or conditions of this Agreement or to exercise any right or privilege herein shall not be deemed a waiver of any such covenant, condition or right.

**23. SURVIVAL OF TERMS AND CONDITIONS.** The terms and conditions of this Agreement shall survive and be in full force and effect after the delivery of the deed, and shall not be deemed to have merged therein.

**24. SEVERABILITY.** Each provision of this Agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.

**25. CONSTRUCTION.** The Parties acknowledge that this Agreement was initially prepared by Buyer solely as a convenience and that all Parties and their counsel hereto have read and fully negotiated all the language used in this Agreement. The Parties acknowledge that because all Parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement to construe ambiguous or unclear language in favor of or against any Party.

**26. COUNTERPARTS; DIGITAL COPIES.** This Agreement may be executed in any number of counterparts and the signature pages of the separate counterparts combined into a single copy of this Agreement which will then constitute a fully executed version of this Agreement. A facsimile, .pdf file or digital copy of a signed counterpart or of an assemblage of counterparts of this Agreement shall be deemed to be an original thereof.

**27. SALE AND CONDITION OF PURCHASED ASSETS.** Seller shall sell, assign, and deliver to Buyer and Buyer shall purchase and accept, on the Date of Closing, the Real Property and the Personal Property (together, the “Purchased Assets”) on an “as is, where is,” basis.

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**SELLER: Series Sunfish of Athans Holdings, LLC**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2016

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**BUYER: The City of Ramsey, Minnesota**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2016  
Sarah Strommen, Mayor

By: \_\_\_\_\_  
Kurt Ulrich, City Administrator

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