

**RESOLUTION #12-1-2014B  
FOR THE CITY OF MT. VERNON**

**WHEREAS** on December 1, 2014, the City Council of the City of Mt. Vernon, Iowa held a public hearing on a request from Night Shift LLC, an Iowa Limited Liability Company to purchase City owned property located at 116 2<sup>nd</sup> Avenue South, Mt. Vernon, Iowa.

**WHEREAS** Night Shift LLC has offered the City of Mt. Vernon, Iowa the purchase price of one dollar (\$1.00) for the real estate; AND

**WHEREAS** Night Shift LLC, as additional consideration will renovate the real estate by bringing the building up to the current building code on or before July 30, 2015 or the real estate will automatically revert back to the City of Mt. Vernon, Iowa; AND

**WHEREAS** If Night Shift fails to bring the building up to code and renovate the building on or before July 30, 2015, the real estate will automatically revert back to the City of Mt. Vernon; AND

**WHEREAS** due notice was given pursuant to Iowa Code §364.7.

**NOW THEREFORE BE IT RESOLVED** by the City of Mt. Vernon, Iowa as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed sale of the property to Night Shift LLC are hereby overruled.
2. There is no public need or benefit for the real estate.
3. The sale of the real estate located at 116 2<sup>nd</sup> Avenue South, Mt. Vernon, Iowa is hereby approved.
4. The property will be transferred to Knight Shift LLC upon the terms and conditions set forth in the attached Real Estate Purchase Agreement and conditioned upon the City's review and approval of the survey in the City's sole discretion.
5. The Mayor is authorized and directed to sign the Real Estate Purchase Agreement and Deed for this conveyance. The City Clerk is authorized and directed to attest to the Mayor's signature. All necessary documents will be recorded upon closing.

Motion made by \_\_\_\_\_, seconded by \_\_\_\_\_ to \_\_\_\_\_  
Resolution #12-1-2014B.

Resolution #12-1-2014B \_\_\_\_\_ on December 1, 2014, by the following roll call vote:

YES:

NO:

ABSTAIN:

ABSENT:

MOUNT VERNON CITY COUNCIL  
MOUNT VERNON, IOWA

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James L. Moore, Mayor

ATTEST:

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Sue Ripke  
Assistant City Administrator/Clerk

## REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this "*Agreement*") is made and entered into on \_\_\_\_\_, 2014 (the "*Effective Date*") by and between City of Mt. Vernon, an Iowa municipal corporation ("*Seller*") and Night Shift, LLC, an Iowa limited liability company ("*Buyer*").

### RECITALS

- A. Seller is the owner of that certain real estate locally described as 116 2<sup>nd</sup> Avenue South, Mount Vernon, Iowa generally depicted on **Exhibit "A"** (the "*Real Estate*"), attached hereto and incorporated herein by reference and which comprises an approximately 43' x 25' portion of land wholly contained within land legally described as follows:

Lot 5 and Lot 8, Block 2, Original Town, Mt. Vernon, Iowa, excepting therefrom the Southwesterly Four Feet (4') of the Northwesterly Sixty Six Feet (66') of said Lot 8

(the "*Parent Parcel*").

- B. The Buyer is willing to cause substantial renovations to the building located on the Real Estate (the "*Building*").
- C. Seller desires to sell to Buyer the Real Estate.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

### ARTICLE 1.

#### The Real Estate and Survey

**Section 1.1 The Real Estate.** Subject to the terms and conditions of this Agreement, Seller hereby sells and Buyer hereby purchases, upon the terms and conditions contained herein, the Real Estate;

**Section 1.2 Survey.** Upon mutual execution hereof, the Buyer shall secure a survey of the Real Estate. Upon approval by the Seller, the legal description of the Real Estate set forth in the survey shall be incorporated into this Agreement. The survey shall, at a minimum, create a legal description for the Real Estate.

#### Purchase Price and Condition

**Section 1.3 Purchase Price.** The total purchase price for the Real Estate shall be One Dollar and No/100 (\$1.00) (the "*Purchase Price*"). The Purchase Price shall be paid in cash or certified funds at the closing of the transaction contemplated by this Agreement (the "*Closing*").

**Section 1.4 Condition.** The Buyer shall accept possession and title to the Real Estate in its as-is, where-is condition.

## Title

**Section 1.5 Title.** Seller shall not be obligated to create, extend or provide to Buyer an abstract of title to the Real Estate.

## ARTICLE 2. Environmental

**Section 2.1 Environmental.** Seller makes no warranties or representations as to the existence of any "Hazardous Materials (as hereinafter defined) or "Adverse Environmental Conditions" (as hereinafter defined).

**Section 2.2 Indemnification.** To the fullest extent permitted by law Buyer shall indemnify and hold harmless the Seller, its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from the presence of any Hazardous Materials and Adverse Environmental Conditions. The obligation set forth in this Section 3.2 shall survive closing of this Agreement.

**Section 2.3 Definitions.** As used herein:

(a) The term "*Hazardous Materials*" will mean and include the existence in any form of (i) polychlorinated biphenyls; (ii) asbestos or asbestos containing materials; (iii) urea formaldehyde foam insulation; (iv) oil, gasoline, or other petroleum products (other than in vehicles operated in the ordinary course of business); (v) pesticides and herbicides; and (vi) any other chemical, material, or substance to which exposure is prohibited, limited, or regulated by any Environmental Laws and any federal, state, county, regional, or local authority or which, even if not so regulated, is known to pose or suspected of posing a threat to the health or safety of those coming into contact with such materials or substances.

(b) The term "*Environmental Laws*" will mean any federal, state, or local laws, statutes, ordinances, regulations, or policies relating to the environment, health and safety, any hazardous materials (including without limitation, the use, handling, transportation, production, disposal, discharge, or storage thereof) or to industrial hygiene or the environmental conditions applicable to the Real Estate, including, without limitation, soil, subsurface, and ground water conditions.

(c) The term "*Adverse Environmental Conditions*" will mean conditions existing or which existed in the past on or in the vicinity of the Real Estate owned or operated by the Seller with respect to the air, soil, surface waters, ground waters, or stream sediments. Included, but not limited thereto, are conditions that may pose a threat to human health or the environment.

## ARTICLE 3. INTENTIONALLY OMITTED.

## ARTICLE 4. Conditions Precedent to Seller's Obligation to Close

The parties acknowledge that Seller's obligation to consummate this transaction is conditioned upon satisfaction of each of the following contingencies at or before the Closing:

(a) The City Council for the City of Mt. Vernon approving the consummation of this Agreement by resolution; and

(b) Review and approval by the Seller, in Seller's sole and absolute discretion, of the survey created pursuant to Section 1.2.

(c) Compliance with the zoning code for the Seller in regards to the proposed division of the Parent Parcel.

Each of the contingencies listed in the Article are for the benefit of Seller exclusively. Seller shall have until Closing ("the *Due Diligence Date*") to satisfy or release the above contingencies. Seller shall proceed in good faith and exercise due diligence in its efforts to satisfy or release the above contingencies. The above contingencies may be satisfied or released by written notice to Seller delivered or mailed by certified mail, return receipt requested to the Seller, at the address set forth herein. If Seller determines in its sole discretion at any time after the Effective Date that the contingencies cannot be satisfied to the Seller's satisfaction, then this Agreement may be terminated by the Seller by providing Buyer with written notice of such termination.

## **ARTICLE 5. Closing**

**Section 5.1 Time and Place of Closing.** Provided that all of the conditions of this Agreement have been satisfied, the Closing shall take place on or before \_\_\_\_\_, 2014. The Closing shall be at such time at City Hall in Mt. Vernon, Iowa, as the Buyer and Seller shall agree, or otherwise at 9:00 a.m.. The Closing may be advanced or extended by written agreement between the Buyer and Seller. This transaction shall be considered closed upon the title transfer documents to Buyer and Seller's receipt of all funds then due at the Closing from Buyer under this Agreement. Buyer shall be entitled to possession on the Closing Date.

**Section 5.2 Events of Closing.** At the Closing:

(a) Seller shall deliver to Buyer the following:

(i) A Deed Without Warranties duly executed and acknowledged by Seller, conveying to Buyer the Real Estate, which Deed Without Warranties shall include the reversion language necessary to effect the terms of Section 7.2 below.

(ii) A Declaration of Value, Groundwater Hazard Statement and Seller's Closing Statement.

(iii) Seller shall pay the following Closing costs and expenses: (i) any excise, transfer or similar tax imposed on the conveyance of the Real Estate, (ii) all real estate taxes prorated to the Closing Date, and (v) all special assessments constituting a lien, including those not due and payable, against the Real Estate on the Closing Date.

(b) Buyer shall deliver to Seller the following:

(i) The consideration required pursuant to Article 2 above, in cash, by wire transfer, or by Buyer's certified or cashier's check in U.S. funds available immediately to Seller.

(ii) Buyer shall pay the following costs and expenses: (i) the recording fees in connection with the warranty deed, (ii) all attorneys fees incurred by the Seller pursuant to this Agreement, including, without limitation, that cost of drafting this Agreement, and (iii) all other charges properly borne by the Buyer consistent with the terms of this Agreement.

**Section 6.3 Real Estate Taxes.** Seller shall pay any unpaid real estate taxes payable in the fiscal year Closing occurs and all prior years. Seller shall also pay a proration of real estate taxes up to and including the date of Closing for those taxes payable in the fiscal year following Closing. Buyer shall pay all subsequent real estate taxes. Any proration of real estate taxes on the Real Estate shall be based upon such taxes for the year currently payable; provided, however, if such taxes are based upon a partial assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current tax rate, assessed value, legislative tax rollback, and real estate tax exemptions that will actually be applicable as shown by the assessor's records on the date of possession.

**Section 6.4 Special Assessments.** Seller shall pay all special assessments which are a lien on the Real Estate as of the date of Closing. Seller shall pay all special assessments which are levied or assessed including any installments of special taxes or special assessments not due and payable as of the Effective Date by providing Buyer a credit at closing for any such special assessments. Tap on fees, if any, which exist for municipal services to the Real Estate shall be paid by Seller. All other special assessments shall be paid by Buyer. Seller hereby represents and warrants that there are no known special assessments which may be levied against the Real Estate.

## ARTICLE 6.

### Termination, Default and Remedies

**Section 6.1 Permitted Termination.** If this Agreement is terminated by either party pursuant to a right expressly given it to do so hereunder (a "*Permitted Termination*"), neither party will have any further rights or obligations under this Agreement.

**Section 6.2 Default by Buyer.** Buyer shall be in default hereunder if Buyer fails to deliver at the Closing any of the items required of Buyer in Article 6, for any reason other than a default by Seller hereunder or a Permitted Termination. If Buyer defaults hereunder, Seller will be entitled to terminate this Agreement by notice to Buyer and pursue any remedy afforded under applicable Iowa law.

**Section 6.3 Attorney's Fees.** If it shall be necessary for either Buyer or Seller to employ an attorney to enforce its rights pursuant to this Agreement, the non-prevailing party shall reimburse the prevailing party for reasonable attorney's fees.

## ARTICLE 7.

### POST-CLOSING OBLIGATION

**Section 7.1 Renovation.** As further consideration for the nominal amount of the Purchase Price, following Closing Buyer shall immediately commence renovation activities (the "*Renovation*") with respect to the Building including, but not limited to, the following:



c/o Night Shift LLC  
1451 NE 69<sup>th</sup> Place, Suite 43  
Ankeny, IA 50021

**Section 9.2 Governing Law: Venue.** The laws of the State of Iowa shall govern the validity, enforcement, and interpretation of this Agreement. Any dispute or cause of action under this Agreement shall be resolved in a court of competent subject matter jurisdiction in Linn County, Iowa.

**Section 9.3 Integration; Modification; Waiver.** This Agreement constitutes the complete and final expression of the agreement of the parties relating to the Real Estate, and supersedes all previous contracts, agreements, and understandings of the parties, either oral or written, relating to the Real Estate. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) executed by the party against whom enforcement of the modification or waiver is sought.

**Section 9.4 Binding Effect.** This Agreement is binding on and shall inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns.

**Section 9.5 Acceptance.** When executed by both parties, this Agreement shall be a binding Agreement.

**Section 9.6 Counterparts.** This Agreement may be executed in a number of identical counterparts, which taken together, shall cause it to be collectively one Agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart with each party's signature. In an electronically-transmitted copy of an executed counterpart this agreement shall be deemed an original.

**Section 9.7 No Presumption Against Drafter.** This Agreement has been freely negotiated by both parties. In any controversy, dispute, or contrast over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and delivered as of the date(s) set forth below.

**SELLER:**

**CITY OF MT. VERNON**

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

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

**BUYER:**

**NIGHT SHIFT, LLC**

\_\_\_\_\_  
By: Allen Roen

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

