



CITY OF MILACA

# Project Newsletter No. 5 (10.31.24)

## 110TH AVENUE IMPROVEMENTS

### STANTEC CONTACTS:

#### CITY/PROJECT ENGINEER

- Phil Gravel  
612.712.2053

#### FIELD INSPECTOR

- Zac Stiller  
612.401.9789

### CITY OF MILACA CONTACTS:

#### PUBLIC WORKS

- Gary Kirkeby  
320.362.4055

### PRIME CONTRACTOR: NORTHERN LINES CONTRACTING, INC.

- Brady Enright  
952.807.3322

## Project Overview

The 2024-2025 110th Avenue Improvement Project includes work on 110th Avenue (between 150th Street and 160th Street). The project includes installation of sanitary and water main in the area of the intersection of 110th Avenue and 150th Street, along with various culvert installations and bituminous paving over the length of the project.

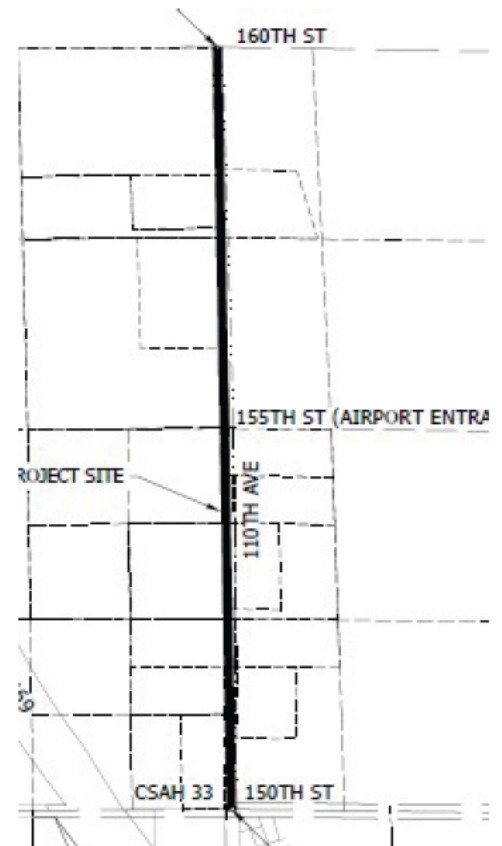
**The construction of 110<sup>th</sup> Avenue is still in progress. A substantial amount of the proposed construction has been completed:**

- Sanitary and water utility construction has been completed.
- Paving of the 110<sup>th</sup> Ave and 150<sup>th</sup> St intersection has been completed.
- Roadway excavation and aggregate base construction had been completed.
- Culvert installation has been completed.
- Initial turf restoration has been completed.
- Turf restoration will be checked in 2025.
- Mail boxes have been reinstalled.

The Prime Contractor for the project is Northern Lines Contracting. The City appreciates your cooperation and patience during this important project.

## Road paving will be completed in 2025.

The construction included excavation of the road base and installation of a 24-inch thick aggregate base. The excavation and aggregate installation has been completed. Due to wet subsurface conditions, the aggregate material has been unable to pass a "roll test" which checks the stability of the material. Paving of 110th Ave. has been delayed until 2025. It is anticipated that the base material will pass a roll test late next Spring.



**Safety-** On any project our first concern is always safety. Please be reminded the size and weight of the machinery, and the noise and dust produced makes it difficult for workers to keep track of the whereabouts of onlookers, especially children. You can help us minimize the potential for accidents by keeping neighborhood children clear of the construction area and equipment at all times.



# CITY OF MILACA Minnesota

255 First Street East, Milaca, MN 56353

(320)983-3141 | (320)983-3142 fax

## MINOR LOT SPLIT/COMBINATION APPLICATION

### OWNER

OWNER NAME Mid Minnesota Investments LLC  
Jesse Latterell - financed Town + Country Finance Inc  
Bill Hjort

OWNER ADDRESS 115 2nd Ave SW  
 STREET ADDRESS

Milaca MN 56353  
 CITY STATE ZIP CODE

EMAIL: landmarks@ifs@gmail.com

TELEPHONE [REDACTED]

### PROPERTY

ADDRESS/LOCATION 110 + 116 2nd Ave SW

LEGAL (110) Sec. 25 Twp 38 Rg 27

DESCRIPTION N 23.6 ft on E Line & N 23 ft on W Line of Lot 6 BLK 3  
(116) Lot 6 BLK 3 site EX N 23.6 ft on E Line & EX N 23 ft  
on W Line & EX S 24 ft 8 in of

CURRENT ZONING Comm Land/BID LOT AREA (110) 615 Acres - 0.07943158  
(116) 615 Acres - 0.0613295

#### APPLICANT INCLUDES:

- COMPLETED SURVEY BY CERTIFIED SURVEYOR
- NONREFUNDABLE FEE OF \$300 PLUS \$500 ESCROW

#### GENERAL REQUIREMENTS

- ALL RESIDENTIAL LOTS MUST BE 10,000 SQUARE FEET
- 80 FOOT MINIMUM WIDTH FOR LOTS BEING CREATED
- ALL LOTS MUST HAVE STREET FRONTAGE

\*CITY WILL CONTACT YOU WHEN EXEMPTION CERTIFICATE IS COMPLETE

DATE RECEIVED 10.28.24 DATE PAID 10.28.24

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Exemption Certificate

NAME OF OWNER:

Town & Country Finance, Inc. - Bill Hjort

NAME OF BUYER:

Mid Minnesota Investments - Sessie Latterell

ADDRESS OF OWNER:

105 8th St. NE P.O. Box 156  
Milaca, MN 56353

LEGAL DESCRIPTION OF EXISTING PARCEL(S) (ATTACH SURVEY):

— see attached  
PID# 21-040-0340 | PID# 21-040-0350  
N 23.6 ft on E Line + 23 ft on W Line of Lot 6 Blk 3 | Lot 6 Blk 3 site Ex N 23.6 ft on E Line + EX N 23 ft on W Line + EX S 24 ft 8 in of

LEGAL DESCRIPTION OF NEW PARCEL SPLIT OR COMBINED LOT(S) (ATTACH SURVEY):

— see attached  
The West 71.00 feet of Lot 6, Block 3, Original Townsite of the City, recorded according to the recorded plat thereof on file in the Milaca County, Minnesota Recorder's Office. Except the South 24 feet 8 inches of Lot 6, Block 3 Original Townsite of the city

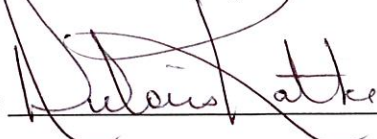
SECTION 25 TOWNSHIP 38 RANGE 27

SURVEYOR'S NAME Richard Schlieman

OWNER'S SIGNATURE  DATE 10-25-24

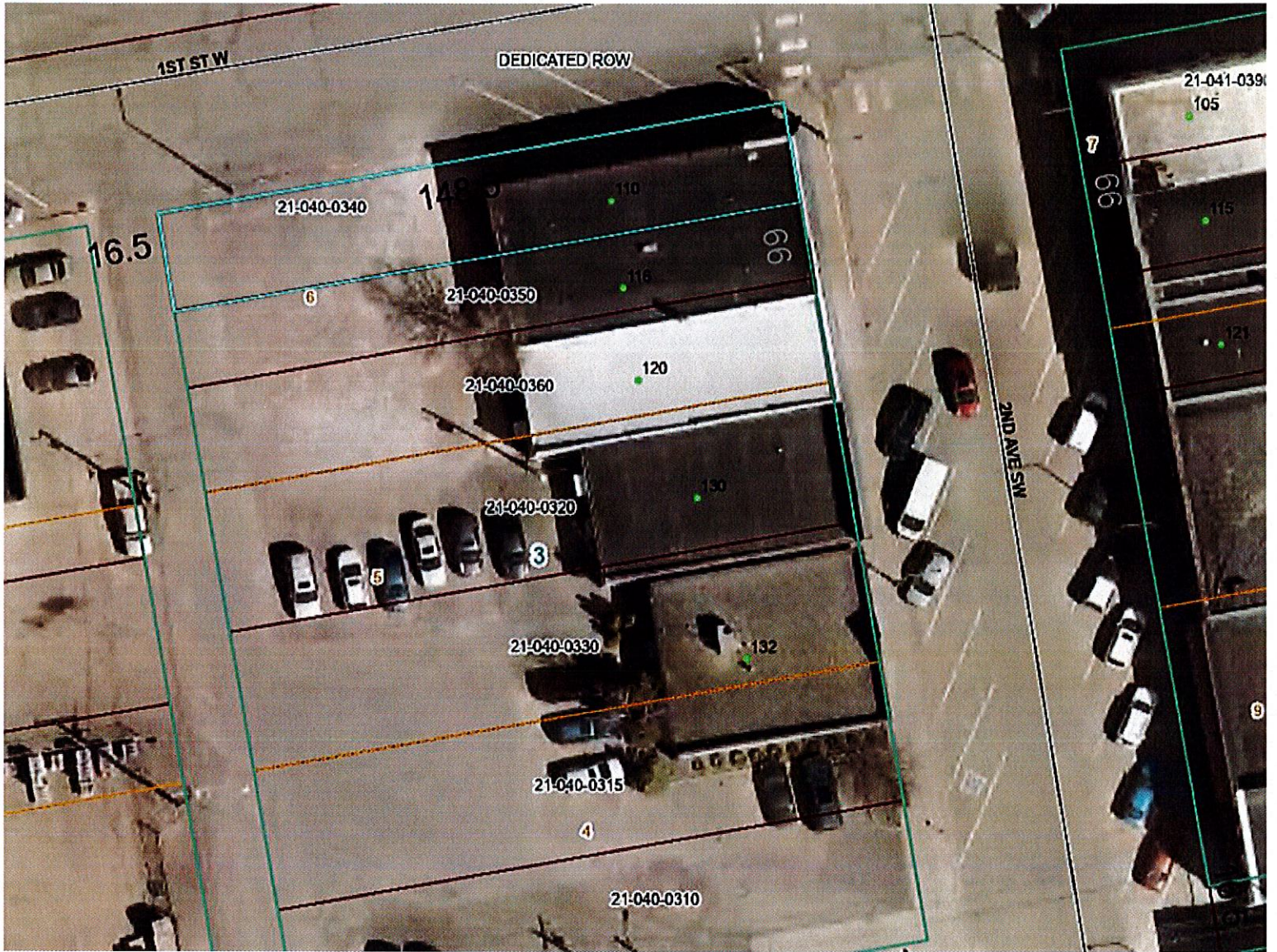
SURVEY OF PARCELS REQUIRED

I have reviewed the above lot split/combination request and find that:  
The proposal meets all applicable requirements of the Zoning and Subdivision Ordinances and may be recorded without any additional review by the Planning Commission or City Council.

By:  Date: \_\_\_\_\_  
Zoning Administrator

Original to be recorded with deed within six (6) months of the date approved. Failure to record within the six (6) month time period will make this Exemption Certificate null and void.







## Deloris Katke

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**From:** Jesse Latterell <jessel2011@live.com>  
**Sent:** Monday, October 28, 2024 11:12 AM  
**To:** Deloris Katke  
**Cc:** bhjort@citilink.net  
**Subject:** 116 & 110 2nd Ave SW Minor Lot Split Envision Statement

Hi Deloris,

The intentions of splitting the lot into a separate PID # are to establish a separate parcel to provide a future stand-alone lot to either build or offer for re-sale in an attempt to continue the vitality of the downtown area. Currently I am invested in the downtown as the owner of the building across the street (115 2<sup>nd</sup> Ave SW) in which a tremendous amount of revamping aesthetically has gone into creating the updated old-fashioned look I envision for a classic downtown small-town America. Currently I am working on revitalizing the old Currot building to continue my goal of keeping the downtown areas busy and beautiful. I appreciate your review and understanding of the importance to keep areas like downtown Milaca alive and growing as so frequently the great old buildings become ghost areas and run down in a lot of smaller towns.

Jesse Latterell

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**From:** Jesse Latterell <jessel2011@live.com>  
**Sent:** Monday, October 28, 2024 9:53 AM  
**To:** Deloris Katke <dkatke@milacacity.com>  
**Cc:** Tammy Pfaff <TPfaff@milacacity.com>; bhjort@citilink.net <bhjort@citilink.net>  
**Subject:** 116 & 110 2nd Ave SW Minor Lot Split Documents

Hello Deloris

Please see the attached documentation for the Minor Lot Split at PID #'s 21-040-0340 & 21-040-0350. Also attached is a PDF of the survey and copy of the check I will drop off at the office today. Please let me know if I need to provide you with any additional information. It would be great if you could let me know the next steps involved to finalize the division and recording of the new lot. Thank you Kindly.

Jesse Latterell

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**From:** Deloris Katke <dkatke@milacacity.com>  
**Sent:** Thursday, August 8, 2024 11:13 AM  
**To:** jessel2011@live.com <jessel2011@live.com>  
**Cc:** Gary Kirkeby <gkirkeby@milacacity.com>; Tammy Pfaff <TPfaff@milacacity.com>  
**Subject:** Currott Building, Milaca

I just checked with Gary in regard to water line by Currott's building and you would be OK to build on to the west. The curb stop for that building is located by the food pantry building and the water line comes from the alley.

With that being said, next year the city may be redoing the sidewalk along 1<sup>st</sup> Street and that may be a good time to install your own water line and curb stop because as of right now the Currott building and food pantry are on one line and the same curb stop (if you purchase this building).

Hope this helps. If you have any additional questions in regard to water line, please contact Gary Kirkeby at 320-983-6547.

Thank you,

Deloris Katke  
Assistant City Clerk/Accounts Payable  
320-983-3141



CITY OF  
**MILACA** *Minnesota*  
255 First Street East, Milaca, MN 56353 (320)983-3141 | (320)983-3142 fax

**EXISTING LEGAL DESCRIPTION** (According to Document No. A442816):

- Lot Six (6) of Block Three (3) of the Original Townsite of the Village of Milaca, except the following described property, to-wit: Beginning at the Northeast Corner of Lot Six (6) in Block Three (3), Townsite of Milaca; thence South along the East line of said Lot Six (6) 23.6 feet to a point in the center of the brick and tile wall or which point is directly East from said point in the center of said wall which is 2.9 feet West from the East line of said Lot (6); thence in a Westerly direction along and through the center of said brick and tile wall (which said wall shall be a party wall for the adjoining owners with all the rights and easements in adjoining owners of a party wall) a distance of 77.6 feet to the West end of said wall and which line at the West end of said wall is 23.3 feet South from the North line of said Lot Six (6); thence continuing Westerly on a line which is the prolongation of the line in the center of said party wall to the West line of said Lot Six (6); thence North along the West line of said Lot Six (6) about 23 feet to the Northwest Corner of said Lot Six (6); thence East along the North line of said Lot Six (6) to the Northeast Corner thereof being the point of beginning, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said County. Subject to easements and restrictions of record, if any.

**AND LESS THE FOLLOWING DESCRIBED TRACT:**

The South 24 feet 8 inches of Lot Six (6), Block Three (3), Original Townsite of the City, formerly Village of Milaca, including and subject to Party Wall agreements and easements of record. That plat of Milaca being located upon the Northwest Quarter of the Southwest Quarter (NW1/4 of SW1/4) of Section Twenty-five (25), Township Thirty-eight (38), Range Twenty-seven (27), MILLE LACS COUNTY, MINNESOTA.

AND

That part of Lot Six (6), in Block Three (3), Original Townsite of Milaca described as follows: Beginning at the Northeast Corner of Lot Six (6) in Block Three (3), Milaca according to the map or plat thereof on file and of record in the office of the County Recorder within and for Mille Lacs County, Minnesota; thence South along the East line of said Lot Six (6) 23.6 feet to a point in the center of the brick and tile wall (or which point is directly East from said point in the center of said wall which is 2.9 feet West from the east line of said Lot 6), thence in a Westerly direction and through the center of said brick and tile wall (which said wall shall be a party wall for the adjoining owners, with all the rights and easements in adjoining owners of a party wall) a distance of 77.6 feet to the West end of said wall and which line, at the West end of said wall, is 23.3 feet South from the North line of said Lot 6; thence continuing Westerly on a line which is a prolongation of the line in the center of said party-wall to the West line of said Lot 6; thence North along the West line of said Lot 6 about 23 feet to the Northwest corner of said Lot 6; thence East along the North line of said Lot 6 to the Northeast corner thereof being the point of beginning. Together with an easement for the sewer drain and for the water line entering the conveyed premises from the property adjoining on the South thereof, and to the use of the chimney on said adjoining property, said easement to be used and all rights thereunder exercised in a reasonable manner and so as not to damage unduly the adjoining property in making any repairs to said sewer drain or water line or in the use of said chimney, Mille Lacs County, Minnesota.

**PROPOSED LEGAL DESCRIPTIONS:**

**PARCEL A:**

That part of Lot Six (6), in Block Three (3), Original Townsite of Milaca described as follows: Beginning at the Northeast Corner of Lot Six (6) in Block Three (3), Milaca according to the map or plat thereof on file and of record in the office of the County Recorder within and for Mille Lacs County, Minnesota; thence South along the East line of said Lot Six (6) 23.6 feet to a point in the center of the brick and tile wall (or which point is directly East from said point in the center of said wall which is 2.9 feet West from the east line of said Lot 6), thence in a Westerly direction and through the center of said brick and tile wall (which said wall shall be a party wall for the adjoining owners, with all the rights and easements in adjoining owners of a party wall) a distance of 77.6 feet to the West end of said wall and which line, at the West end of said wall, is 23.3 feet South from the North line of said Lot 6; thence continuing Westerly on a line which is a prolongation of the line in the center of said party-wall to the West line of said Lot 6; thence North along the West line of said Lot 6 about 23 feet to the Northwest corner of said Lot 6; thence East along the North line of said Lot 6 to the Northeast corner thereof being the point of beginning.

**EXCEPT**

The West 71.00 feet of Lot 6, Block 3, Original Townsite of Milaca according to the recorded plat thereof, on file in the Mille Lacs County, Minnesota, Recorder's Office.

Together with an easement for the sewer drain and for the water line entering the conveyed premises from the property adjoining on the South thereof, and to the use of the chimney on said adjoining property, said easement to be used and all rights thereunder exercised in a reasonable manner and so as not to damage unduly the adjoining property in making any repairs to said sewer drain or water line or in the use of said chimney. Subject to easements, reservations and restrictions of record, if any.

**PARCEL B:**

Lot Six (6) of Block Three (3) of the Original Townsite of the Village of Milaca, except the following described property, to-wit: Beginning at the Northeast Corner of Lot Six (6) in Block Three (3), Townsite of Milaca; thence South along the East line of said Lot Six (6) 23.6 feet to a point in the center of the brick and tile wall or which point is directly East from said point in the center of said wall which is 2.9 feet West from the East line of said Lot (6); thence in a Westerly direction along and through the center of said brick and tile wall (which said wall shall be a party wall for the adjoining owners with all the rights and easements in adjoining owners of a party wall) a distance of 77.6 feet to the West end of said wall and which line at the West end of said wall is 23.3 feet South from the North line of said Lot Six (6); thence continuing Westerly on a line which is the prolongation of the line in the center of said party wall to the West line of said Lot Six (6); thence North along the West line of said Lot Six (6) about 23 feet to the Northwest Corner of said Lot Six (6); thence East along the North line of said Lot Six (6) to the Northeast Corner thereof being the point of beginning, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said County.

**EXCEPT**

The South 24 feet 8 inches of Lot Six (6), Block Three (3), Original Townsite of the City, formerly Village of Milaca, including and subject to Party Wall agreements and easements of record. That plat of Milaca being located upon the Northwest Quarter of the Southwest Quarter (NW<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub>) of Section Twenty-five (25), Township Thirty-eight (38), Range Twenty-seven (27), MILLE LACS COUNTY, MINNESOTA.

**AND EXCEPT**



**EXCEPT**

The South 24 feet 8 inches of Lot Six (6), Block Three (3), Original Townsite of the City, formerly Village of Milaca, including and subject to Party Wall agreements and easements of record. That plat of Milaca being located upon the Northwest Quarter of the Southwest Quarter (NW1/4 of SW1/4) of Section Twenty-five (25), Township Thirty-eight (38), Range Twenty-seven (27), MILLE LACS COUNTY, MINNESOTA.

**AND EXCEPT**

The West 71.00 feet of Lot 6, Block 3, Original Townsite of Milaca according to the recorded plat thereof, on file in the Mille Lacs County, Minnesota, Recorder's Office.

Subject to easements, reservations and restrictions of record, if any.

**PARCEL C:**

The West 71.00 feet of Lot 6, Block 3, Original Townsite of Milaca according to the recorded plat thereof, on file in the Mille Lacs County, Minnesota, Recorder's Office.

**EXCEPT**

The South 24 feet 8 inches of Lot Six (6), Block Three (3), Original Townsite of the City, formerly Village of Milaca. That plat of Milaca being located upon the Northwest Quarter of the Southwest Quarter (NW1/4 of SW1/4) of Section Twenty-five (25), Township Thirty-eight (38), Range Twenty-seven (27), MILLE LACS COUNTY, MINNESOTA.

Subject to easements, reservations and restrictions of record, if any.





# Planning Report

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**Date:** November 20, 2024  
**To:** Milaca City Council  
**From:** Phil Carlson, AICP, Stantec  
**Request:** Minor Subdivision/Lot Split  
**Owner:** Mid-Minnesota Investments LLC  
**Applicant:** Jesse Latterell  
**Address:** 110 & 116 2<sup>nd</sup> Avenue SW  
**PIDS:** 21-040-0340, 21-040-0350  
**Zoning:** B-1 Central Business District

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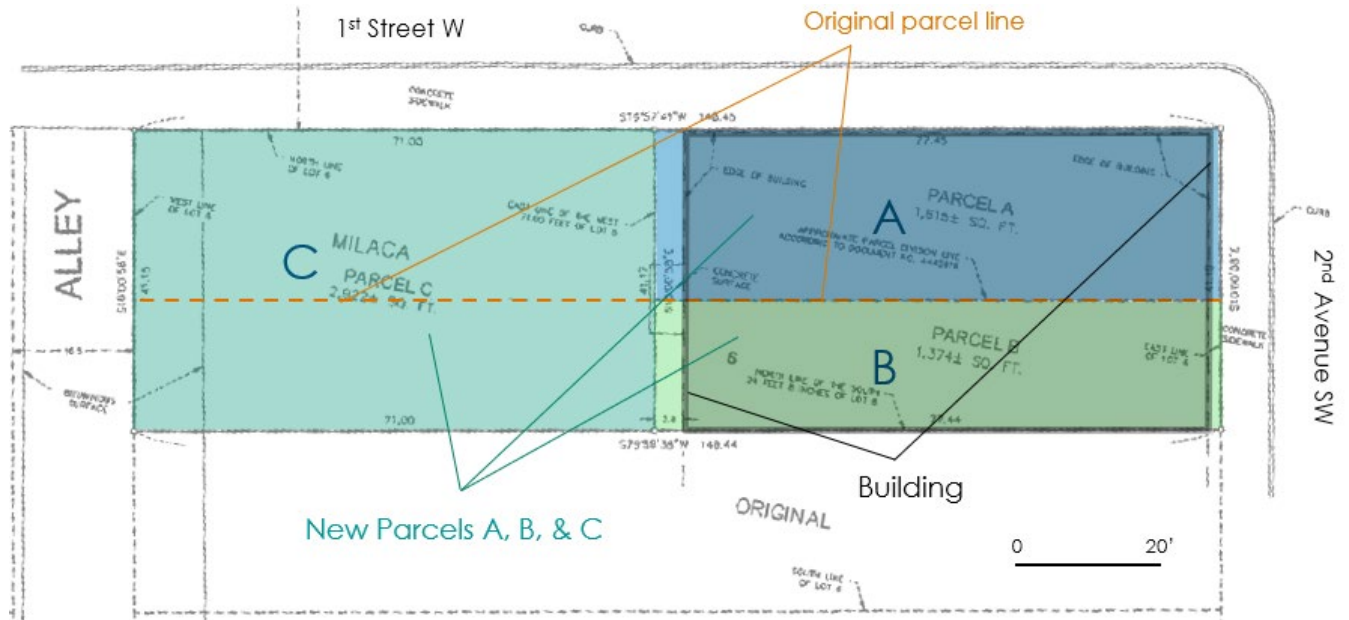
## INTRODUCTION

Jesse Latterell owns the two parcels at 110 and 116 2<sup>nd</sup> Avenue SW, occupied by a building with two storefronts in the B-1 Central Business zoning district. Currently there are two long, narrow parcels side-by-side corresponding to the two addresses. The applicant wishes to divide the parcels differently to have three parcels as illustrated on the map on the next page. The lot split would have two smaller parcels corresponding to 110 and 116 2<sup>nd</sup> Avenue SW, with a new third parcel covering the rear parking lot for both parts of the building.

## MINOR SUBDIVISION & RESUBDIVISION, ZONING

The Milaca Subdivision Code, in Sections 155.126, 155.127, and 155.128, allows the adjustment of lot lines between existing parcels if there are no more than three lots involved, as is the case here, and as long as the resulting lots meet zoning standards. There is no minimum lot size, minimum lot width, or required setbacks in the B-1 district, so the resulting lots meet zoning standards.





The proposed subdivision separates the building (Parcels A and B) from the parking lot (Parcel C), so it will be important that there be clear agreements in place between the parcels concerning shared parking and cross access.

### RECOMMENDATION

We recommend approval of the minor subdivision for the property owned by Jesse Latterell of Mid-Minnesota Investments LLC at 110 and 116 2nd Avenue SW as depicted on the Certificate of Survey from Schlieman Land Surveying, dated 10-28-2024, with following conditions and findings of fact:

#### Conditions of Approval

- 1) The owner will prepare and record cross easements for access and parking for the parcels, to be reviewed and approved by the City Attorney and City Engineer.
- 2) The applicant will verify the location of all public and private utilities on the new parcel and provide easements if necessary, to be reviewed and approved by the City Attorney and City Engineer.

#### Findings of Fact for Approval

- 1) Mid-Minnesota Investments LLC owns the building and two parcels at 100 and 116 2nd Avenue SW.



- 2) The applicant, Jesse Latterell, proposes a minor subdivision to divide the properties into three new lots, identified as Parcels A, B, and C on the Certificate of Survey from Schlieman Land Surveying, dated 10-28-2024.
- 3) The parcels after the subdivision meet the zoning standards in the Milaca Zoning Code.
- 4) The request meets the standards for approval of a minor subdivision in Section 155 of the Milaca Subdivision Code.

### **CITY COUNCIL MOTIONS**

#### *Approval*

The City Council approves of the minor subdivision as described in the applicant's submitted materials and with the conditions and findings of fact (or as modified) in the Planner's report of November 18, 2024.

#### *Denial*

If the City Council wishes to recommend denial of the minor subdivision request they would need to craft findings that would support denial.

### **CITY COUNCIL DEADLINE FOR ACTION**

The application was received October 28, 2024. The deadline for final action by the City Council is February 26, 2024. The deadline for a subdivision is 120 days (not 60 days like zoning applications) per State statute 462.358 Subd. 3b.

## **SUBDIVISION CODE EXCERPTS**

### **§ 155.126 MINOR SUBDIVISIONS.**

In the case of a subdivision resulting in three or fewer lots, situated in a neighborhood where conditions are well defined, the City Council may exempt the subdivider from complying with some of the requirements of these regulations. In the case of a request to subdivide a lot which is a part of a recorded plat, or where the subdivision is to permit the adding of a parcel of land to an abutting lot or to create not more than three new lots, and the newly created property lines will not cause any resulting lot to be in violation of these regulations or Chapter 156 of this code, the division may be approved by the City Council, after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision.

### **§ 155.127 RESUBDIVISION.**

In the case of a request to divide a lot which is a part of a recorded plat, where the division is to permit the adding of a parcel of land to an abutting lot or to create two lots and the newly created property line will not cause the other remaining portion of the lot to be in violation with this regulation or Chapter 156 of this code, the division may be approved by the City Council after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision.

### **§ 155.128 LAND DIVISION.**

In any case where the division of land into two or more lots or parcels for the purpose of transfer of ownership or building improvement is not specifically provided for in the provisions of these regulations, a description of land division shall be filed with the City Manager-Clerk. No building permit shall be issued for any construction, enlargement, alteration, repair, demolition, or moving of any building or structure on any lot or parcel resulting from the division, until that division has been approved by the City Council. Prior to the consideration of the division by the City Council, they shall require that a certified survey be submitted.



## CITY ATTORNEY LEGAL SERVICES AGREEMENT (COMBINED)

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AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between THE CITY OF MILACA, a Minnesota Municipal Corporation, (“the City”); and Damien F. Toven & Associates, LLC, (“Damien F. Toven & Associates”).

WHEREAS, the City desires to obtain professional legal services for purposes of handling the duties and responsibilities of City Attorney; and,

WHEREAS, DAMIEN F. TOVEN & ASSOCIATES desires to act as City Attorney for the City;

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the parties agree as follows:

I. **Civil Services Fixed by Retainer.** Except as specifically limited below, DAMIEN F. TOVEN & ASSOCIATES shall provide the following services to the City for a Fixed Retainer Fee set forth in paragraphs

IV - B below.

A. **General**

1. Meetings and/or telephone conversations with and advising Mayor, Council Members, City Manager, Department Heads and other staff on general legal matters.
2. Research and submission of legal opinions on municipal or other legal matters requested by City staff or City Manager; availability to answer staff questions by telephone.

B. **Meetings**

3. Prepare for, attend, unless excused, regular city council meetings and advise the mayor, council members and City Manager on matters of parliamentary law and procedures of a general matter.

4. Attend such special city council meetings as the council or the City Manager directs.
  5. Attend such meetings of boards or commissions as the City Manager directs.
  6. Attend such other meetings, planning sessions, conferences and/or departmental meetings as requested by the City Manager.
  7. Attendance of all city council meetings during a calendar year shall be included in the retainer fee. Attendance of special city council meetings, department and boards or commission meetings as directed, shall be billed and paid at the hourly rate.
  8. Review of Council and Planning Commission agenda packets and minutes.
- C. Preparation and Review of Legal Documents (Unless Covered Under § II)**
9. Prepare such resolutions as the City Manager or the city council shall direct, except resolutions relating to the responsibility of the fiscal consultant or bond approving attorney.
  10. Review of municipal contracts, including contracts for public improvements, developments, joint powers agreements, construction, purchase of equipment, and the like for content, form, legality and execution as requested.
  11. Examine and advise regarding the legality of all proceedings and actions of the city council and other boards or commissions.
  12. Render written opinions on law when requested, including interpretation of statutes, ordinances, rules and regulations.
  13. Drafting of ordinances, ordinance amendments, resolutions, developer agreements, and correspondence as requested, including assistance in the maintenance of master city codebook as the City Manager shall direct.
  14. Review bonds, deeds, securities and insurance requirements required by or for City contracts or activities.
- D. Public Improvements (Unless Covered Under § II)**
15. Examine all petitions for improvements for validity.

16. Assist the city engineer in preparing preliminary reports as to legal costs easement costs, assessment methods, and assessment area.
17. Prepare or review such routine legal notices for posting, publishing or mailing as required by the statutory assessment process.

**E. Real Estate Sale and Acquisition (Unless Covered Under § II)**

18. Review acquisition requirements with appropriate departments, evaluate any special legal or cost problems, develop acquisition timetables, make preliminary cost estimates and obtain or develop proper legal descriptions.
19. Examine title, or arrange for the City to procure title insurance, as to each parcel as requested by the City Manager.
20. Prepare documents necessary for routine land purchases and/or sales. All such transactions shall be deemed to be routine unless the Attorney contacts the City in advance and obtains the City's approval that the transaction contemplated is non-routine. Any such non-routine transactions shall be billed at the hourly contract rate.

**F. Zoning**

21. Provide legal advice to Zoning Administrator, City Manager, Planning Commission and City Council regarding zoning code matters.
22. Represent the City in matters related to the enforcement of minor violations of city building, subdivision, maintenance and zoning codes.

**G. Labor Relations**

23. Review and interpret collective bargaining agreements between the City and its employees.
24. Provide legal advice for City's negotiator and/or personnel officer.

**H. Other Matters**

25. Matters not specifically listed above or billed hourly as provided below, will be discussed in advance with City Staff and/or City Council to determine the billing to be applied considering the nature and scope of the services sought.

**II. Civil Services Hourly Rate.** DAMIEN F. TOVEN & ASSOCIATES shall provide the following services to the City at the hourly contract rate described in paragraph IV - C



below, together with such other services not otherwise covered by this Agreement requested by the City and approved in advance by DAMIEN F. TOVEN & ASSOCIATES.

**A. Public Improvements.**

26. Represent the City in the acquisition of properties for public improvements, easements, parks and the like as needed.
27. Perform all legal work in connection with financing, not usually performed by the fiscal consultant or bond counsel.
28. Receive and evaluate all assessment appeals and try cases in District Court or recommend amendments to assessment if warranted.
29. Handle all legal matters under City construction contracts and any resulting litigation.

**B. Land Acquisition and Sale**

30. Represent the City in condemnation proceedings for public improvement projects, etc.
31. Prepare annexation documents, handle negotiations and initiate annexation proceedings at the direction of the City and follow through with all necessary documentation and presentation to the State Boundary Adjustments Division.

**C. Economic Development**

32. Representation of the City on Economic Development related issues, including developer agreements and tax increment document review as needed.

**D. Claims Against the City**

33. Where no insurance coverage is provided, make appropriate evaluation of claims for legality, investigate facts, and make recommendations to the council.
34. Defend in court all litigation where no insurance coverage is available. This includes but is not limited to: (1) human rights claims; (2) condemnation; (3) zoning and land use regulation matters; (4) permits and administrative actions; and (5) labor and employment matters.
35. Assist in resolving claims not resulting in litigation.

E. **Claims By the City**

- 36. Investigate and evaluate all claims by the City against others and recommend appropriate course of action.
- 37. Attempt collection of all proper claims including litigation where necessary and authorized by the City.

F. **Intergovernmental Relations and Disputes**

- 38. Provide such services as requested by the City regarding contractual dealings with Federal, State, County, Township, Municipal, and Special Districts by the City, including Joint Powers Act Public Improvements and contracts.
- 39. Handle disputes between the City and other governmental units, including litigation and annexation.

G. **Zoning**

- 40. Represent the City in litigation on zoning matters; i.e. rezoning, variances, special permits, subdivisions.
- 41. Represent the City in matters related to the enforcement of substantial violations of city building, subdivision, maintenance and zoning codes.

H. **Public Utility Matters**

- 42. Provide services to the Public Utilities, including but not limited to, the preparation and review of documents pertaining to easements, power purchases, bidding, agency agreements, bonds, contracts, etc.

I. **Appeals**

- 43. Examine, evaluate and provide representation for all appeals to Appellate Courts, both criminal and civil.

III. **Criminal Prosecution Services:** DAMIEN F. TOVEN & ASSOCIATES shall provide the following services for the Fixed Retainer Fee described in paragraph IV - A below.

- 44. Prosecution of all petty misdemeanor, misdemeanor and statutorily delegated gross misdemeanor offenses committed within the corporate limits of the City. This includes all such cases initiated by any law enforcement agency and citizen complaints including but not limited to traffic violations, DUI cases, theft and City code violations.

45. Provide advice, consultation and training where required to the City's Police Department and to all other departments of the City in the interpretation and enforcement of statutes, ordinances and investigations of violations in connection with the prosecution of criminal cases.
46. Prepare criminal complaints where facts warrant.
47. Evaluate all cases where a plea of not guilty is entered and prosecute where warranted.
48. Prepare appropriate pre-trial notices as required.
49. Seek such additional investigation as required.
50. Negotiate and enter plea bargains where deemed advisable.
51. Represent the City at all pre-trials motions.
52. Pursue vehicle and contraband forfeiture awards.
53. Perform all legal research and prepare trial court briefs when required.
54. Try all jury and court cases.

IV. **Fees:**

- A. City shall pay to DAMIEN F. TOVEN & ASSOCIATES the sum of \$4,500.00 monthly for services described in Section III of this Agreement, beginning January 1, 2025. City shall pay to DAMIEN F. TOVEN & ASSOCIATES the sum of \$5,000.00 monthly for services described in Section III of this Agreement, beginning January 1, 2026. This amount will remain the same for the balance of the contract.
- B. City shall pay to DAMIEN F. TOVEN & ASSOCIATES the sum of \$1,500.00 per month for services described in Section I of this Agreement, beginning January 1, 2025 and through the balance of the contract.
- C. City shall pay to DAMIEN F. TOVEN & ASSOCIATES the sum of \$175.00 per hour for attorneys and \$75.00 per hour for paralegals and assistants for services described in Section II during the term of this Agreement.

- V. **Responsible Attorneys:** Damien F. Toven shall be assigned to provide services to the City on behalf of DAMIEN F. TOVEN & ASSOCIATES provided that DAMIEN F. TOVEN & ASSOCIATES may utilize such other qualified attorneys as it deems appropriate and/or necessary to render quality legal services to the City.

- VI. **Term:** The term of this Agreement shall commence January 1, 2025, and continue through December 31, 2027. This Contract may be extended or renewed by mutual agreement of the parties.
- VII. **Independent Contractor:** DAMIEN F. TOVEN & ASSOCIATES shall at all times be an independent contractor to the City and shall not be deemed to be an employee. Except as specified herein, DAMIEN F. TOVEN & ASSOCIATES shall not be entitled to any benefits provided by the City to its employees and shall be responsible for payment of all taxes, worker's compensation, unemployment, social security and other required withholdings.
- VIII. **Termination:** Either party may terminate this Agreement upon one hundred eighty (180) days written notice to the other.
- IX. **Notices:** Any notices required under this Agreement shall be deemed given when personally delivered or three (3) calendar days after being sent by U.S. Certified Mail addressed as follows:

If to the City:

The City of Milaca  
Attn: City Manager  
255 1<sup>st</sup> St E  
Milaca, Minnesota 56353

If to DAMIEN F. TOVEN & ASSOCIATES:

Damien F. Toven & Associates, LLC  
413 South Rum River Drive, Suite 6  
Princeton, Minnesota 55371

- X. **Benefit:** This Agreement shall be binding upon and inure to the benefit of the parties hereto their successors and assigns.
- XI. **Entire Agreement:** This document contains the entire agreement between the parties and no changes hereto may be made unless in writing signed by both parties.



IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above to be effective as of January 1, 2025.

DAMIEN F. TOVEN & ASSOCIATES, LLC

By: *Damien F. Toven*  
Damien F. Toven, Owner

THE CITY OF MILACA

By: \_\_\_\_\_  
Dave Dillan, Its Mayor

By: \_\_\_\_\_  
Tammy Pfaff, Its City Manager

## MIXED MUNICIPAL SOLID WASTE HAULERS AGREEMENT

This Contract is made and entered into between THE CITY OF MILACA, a Minnesota Municipal Corporation, 255 First Street East, Milaca, Minnesota 56353, hereinafter “City” and, JIM’S MILLE LACS DISPOSAL, INC., a Minnesota Corporation, 205 Second Avenue Northeast, Milaca, Minnesota 56353, hereinafter “Contractor”.

WHEREAS, the City desires services to be provided to its residents and businesses for the collection and disposal of mixed municipal solid waste and for recycling; and,

WHEREAS, Contractor desires to and is capable of providing the necessary services according to the terms and conditions stated herein and in compliance with the City of Milaca Code, Chapter 50.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

### 1. TERM

The term of this Contract shall be from January 1, 2025 to and including December 31, 2028, unless earlier terminated by law or according to the provisions herein. This Contract shall be in effect from the date of execution by all parties, or from the commencements of services hereunder, whichever is first, and shall continue in effect until the termination date or earlier termination as provided herein or by law.

### 2. CONTRACTOR’S OBLIGATIONS

Contractor shall provide for the collection and disposal of mixed municipal solid waste from each residence and business within the City of Milaca at a minimum of once per week. Contractor shall further provide for curb side pick up of recyclables from residential customers at a minimum of twice each calendar month.

### 3. PAYMENT

Contractor shall be solely responsible for the collection of its fees directly from its customers. Fees shall be as set from time to time by the Milaca City Council as provided in the City of Milaca Code, Chapter 50.

### 4. COMPLIANCE WITH LAWS/STANDARDS

4.1 General: Contractor shall abide by Title V (Public Works) Chapter 50 (Garbage) of the City of Milaca code of Ordinances and all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted

pertaining to this Contract or to the facilities, equipment and employees for which Contractor is responsible.

4.2 Licenses: Contractor shall procure, at its own expense, all licenses, permits, or other rights required for the provision of services contemplated by this Contract. Contractor shall inform the City of any changes in the above within five (5) days of occurrence.

4.3 Minnesota Law to Govern: This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Contract shall be venued in the State of Minnesota.

## 5. INDEPENDENT CONTRACTOR STATUS

Contractor is an independent contractor and nothing herein contained shall be construed to create a relationship of employer and employee between City and Contractor. Contractor shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services. Contractor acknowledges and agrees that Contractor is not entitled to receive any of the benefits received by City employees and is not eligible for Worker's Compensation or Unemployment Compensation Benefits. It is Contractor's sole obligation to comply with the applicable provisions of all Federal, State and local laws.

## 6. INDEMNIFICATION

Any and all claims that arise or may arise on behalf of Contractor, its agents, servants or employees as a consequence of any act or omission on the part of Contractor or its agents, servants, employees while engaged in the performance of the Contract, shall in no way be the obligation or the responsibility of the City. Contractor shall indemnify, hold harmless and defend the City, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the City, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any negligent or willful act or omission of Contractor, its agents, servants or employees, in the execution, performance or failure to adequately perform Contractor's obligations pursuant to this Contract.

## 7. INSURANCE AND BONDING

Contractor shall maintain during the entire term of this Contract insurance coverage in an amount equal to the statutory maximum liability for municipalities, pursuant to Minnesota State statutes in effect at the time of the execution of this agreement, and otherwise amended from time to time. Contractor shall maintain the following insurance

coverage, which represents the current Minnesota State statutory maximum liability amounts, and provide the City with a certificate of insurance and bond showing such coverage before providing any services under this Contract:

- (1) Commercial General Liability Insurance on an “Occurrence Basis” with limits of liability not less than \$2,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage;
- (2) Owners Contractors Protective Liability Insurance with limits of liability not less than \$2,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage, The City of Milaca shall be an additionally, “Named Insure” on said coverage;
- (3) Motor Vehicle Liability Insurance, including applicable No-Fault coverages, with limits of liability not less than \$2,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned, all non-owned, and all hired vehicles;
- (4) Workers’ Compensation Insurance, including Employers’ Liability Coverage, in accordance with all applicable statutes of the State of Minnesota. In addition to the coverage specified in this subsection, Contractor will carry a \$2,000,000 umbrella policy of insurance.
- (5) A bond in the amount of \$10,000.00 and submit a copy of the dated document payable to the City of Milaca demonstrating coverage during each year of this agreement.

## 8. SUBCONTRACTING

Contractor shall not enter into any subcontract for the performance of services contemplated under this Contract nor assign any interest in the Contract without prior written consent of the City of Milaca.

## 9. DEFAULT

Contractor shall make every reasonable effort to maintain staff, facilities and equipment to deliver the services required hereunder. Contractor shall immediately notify the City in writing whenever it is unable to, or reasonable believes it is going to be unable to, provide the agreed upon quality and quantity of services. Upon such notification, the City shall determine whether such inability requires a modification or cancellation of this Contract.



## 10. TERMINATION

- 10.1 Notice of Default: Either party may terminate this Contract for cause by giving ten (10) days written notice of its intent unless a different procedure and/or effective date is provided within the specific article or paragraph of this Contract under which the default, failure or termination occurs. Said notice shall specify the circumstances warranting termination of the Contract.
- 10.2 Failure to Cure: If the party in default fails to cure the specified circumstances as described by the notice given under the above paragraph within ten (10) days, or such additional time as may be authorized by the party giving notice, then the whole or any part of this Contract may be terminated by written notice.
- 10.3 Notice of Termination: Notice of termination shall be made by certified mail or personal delivery to the authorized agent of the party. Notice of termination is deemed effective upon delivery to the address of the part as stated in Paragraph 12.
- 10.4 Effect of Termination: Termination of this Contract shall not discharge any liability, responsibility or right of any part which arises from the performance of or failure to adequately perform the terms of this Contract prior to the effective date of termination.

## 11. CONTRACT RIGHTS/REMEDIES

- 11.1 Rights Cumulative: All remedies available to either party under the terms of this Contract or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 11.2 Waiver: Waiver for any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to be modification for the terms of this Contract unless stated to be such in writing and signed by authorized representatives of the City and Contractor.

## 12. AUTHORIZED REPRESENTATIVE

Notification required to be provided pursuant to this Contract shall be provided to the following named persons and addresses unless otherwise stated in this Contract, or in a modification of this Contract.

TO CONTRACTOR

Jim's Mille Lacs Disposal, Inc.  
Jim Gerads, President  
205 2<sup>nd</sup> Ave NE  
Milaca MN 56353  
(320) 983-6474

TO CITY

Milaca City Manager  
255 1st St. E.  
Milaca, MN 56353  
(320) 983-3141

13. MODIFICATIONS

Any alterations, variations, modifications, or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing and signed by authorized representatives of the City and the Contractor.

14. SEVERABILITY

The provisions of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Contract with respect to either party.

15. MERGER

Final Agreement: This Contract is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties or stipulations, either oral or written, not herein contained provided, however, in the event there is any contradiction between this agreement and the provisions of the City of Milaca Code, the provisions of the Code shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates indicated below:

CONTRACTOR

CITY

JIM'S MILLE LACS DISPOSAL, INC

CITY OF MILACA

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

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

James Gerads, President

Dave Dillan, Its Mayor

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

Tammy Pfaff, Its City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# City of Milaca

## Rate for Residential and Commercial Businesses

### Residential

#### Bags

15 Gallon Bag	\$2.00 *
33 Gallon Bag	\$3.70 *

#### Carts

35 Gallon Cart	\$16.00 *
64 Gallon Cart	\$20.00 *
95 Gallon Cart	\$25.00 *

#### Dumpsters-one time use

2 Yard	\$40.00 *
4 Yard	\$80.00 *
6 Yard	\$120.00 *
8 Yard	\$160.00 *

\*Residential tax included 9.75%

### Businesses

#### Dumpsters

2 Yard	\$8.00/Yard **
4 Yard	\$8.00/Yard **
6 Yard	\$8.00/Yard **
8 Yard	\$8.00/Yard **

\$10/month bin rental/dumpsters \*\*

\*\*Plus business tax of 17%

### Recycling Services

Residential

Free to customers

Business

Bin or cart recycling is Free  
\$10 dumpster/month rental  
2<sup>nd</sup> dumpster \$20/month rental



## LEASE AGREEMENT FOR AMBULANCE STATION

**THIS LEASE AGREEMENT** (this “Lease”) is made on this 20<sup>th</sup> day of November, 2024, by and between the **CITY OF MILACA**, a Municipal Corporation under the laws of the State of Minnesota (“**Landlord**”) and **NORTH MEMORIAL HEALTH**, a Non-Profit Corporation (“**Tenant**”).

### **1.0 BASIC TERMS**

The following terms shall have the meanings set forth in this Section unless specifically modified by other provisions of this Lease:

- 1.1 **Building:** The building in which the Leased Premises are located and commonly known as: 1005 Central Ave N., Milaca Minnesota 56353.
- 1.2 **Premises:** Landlord hereby demises and leases to Tenant, and Tenant hereby accepts and leases from Landlord approximately 1,456 useable square feet in the building which is owned by Landlord.
- 1.3 **Lease Term:** Three (3) year, commencing on the Commencement Date and terminating on the Termination Date, provided that if the Commencement Date is not the first day of a calendar month, the Lease Term shall end one (1) year from the last day of the calendar month in which the Commencement Date occurs.
- 1.4 **Commencement Date:** Shall be as set forth in Section 3 (estimated to be Approximately January 1, 2025). This Lease and its Commencement are subject to Tenant.
- 1.5 **Termination Date:** Shall be as set forth as December 31, 2027.
- 1.6 **Permitted Use:** Emergency Medical Service/Ambulance station.

### **2.0 DEMISE OF PREMISES**

Landlord hereby lets and demises to Tenant and Tenant hereby rents from Landlord The Premises, subject to the terms and conditions set forth below.

### 3.0 TERM

- 3.1 **Initial Term:** The initial term of this Lease shall be for a period of one (1) year, commencing on the Commencement Date (as hereinafter defined) and ending at 11:59 p.m. of the day immediately preceding the anniversary of the Commencement Date thereafter; provided, however, that if the Lease Commencement Date is other than the first day of a calendar month, the term shall end at 11:59 on the last day of the calendar month containing the one-year anniversary of the Commencement Date, unless sooner terminated as hereinafter provided.
- 3.2 **Renewal Terms:** Further, Tenant shall have the right to renew this Lease for three (3) year renewal.
- 3.3 In the event Tenant chooses to enter into additional Renewal Terms, it shall give written notice of such exercise no less than ninety (90) days and no more than one hundred twenty (120) days prior to the end of the initial term.

### 4.0 USE AND OPERATION COVENANTS

- 4.1 During the entire Lease Term, the Premises shall be leased, used and occupied by Tenant for an emergency medical service facility, including ambulance station, in accordance with all applicable governmental laws and regulations, and all other recorded covenants, conditions and restrictions which are recorded on the date hereof, and for no other purpose without the prior written consent of Landlord. Tenant shall not cause injury to the improvements on the Premises and shall not use the Premises in a manner that would constitute a public or private nuisance or constitute waste.
- 4.2 Tenant covenants and agrees with Landlord that it will base an ambulance at the Premises during the Lease Term. The parties acknowledge that the ambulance stationed at the Premises will leave the Premises from time to time to perform services, and that the ambulance may be relocated by Tenant to other location on a temporary basis from time to time to maintain ambulance coverage to Tenant's service area, as Tenant determines in its sole discretion.
- 4.3 During the entire Lease Term, Tenant shall maintain and keep in good repair the Premises which Tenant occupies including all cleaning of said Premises.

## 5.0 RENT

As for rental of the Premises during the Lease Term, Tenant shall pay the following amounts (all of which collectively, together with other amounts due under this Lease shall be referred to herein as the “**Rent**”), and the obligation to pay such amounts shall survive the expiration or termination of this lease.

- 5.1 Base Rent: Tenant shall occupy the Premises at a cost of five hundred (\$500.00) dollars per month which monthly payments shall be due and payable on the 1<sup>st</sup> day of each and every month beginning January 1, 2025.
- 5.2 Additional Rent: Tenant shall pay as additional rent all charges for electric provided to the Premises during the Lease Term. Tenant agrees to have such services charged directly to Tenant, if possible, and to pay invoice for services when due. In the event that Tenant does not pay additional rent when due, Landlord shall have the option, but no obligation, to pay for any such item, whereupon Tenant shall owe Landlord such amount paid by Landlord plus five percent (5%) of such amount as a late payment fee, which amount shall be paid by Tenant as additional rent immediately upon receipt of an invoice therefor from Landlord. Notwithstanding the foregoing, Landlord shall provide five (5) days prior written notice to Tenant once in any given calendar year before the late fee herein is charged to Tenant. No such notice shall be required for subsequent late payments in the same calendar year.

## 6.0 OPERATING COSTS

Except for the obligations of Tenant as expressly set forth in this Lease, Landlord shall be solely responsible for and shall pay all sums expended or obligations incurred by Landlord with respect to the building and grounds, whether or not now foreseen, including, but not limited to maintenance costs of contractors providing maintenance to the Building; insurance covering liability, hazards, casualties and potential losses of any kind, repairs, maintenance, including but not limited to, landscaping, snow removal, parking lot sweeping, window washing, parking lot lighting and trash removal, replacements respecting the Building, including costs of materials, supplies, tools and equipment used in connection therewith; and including the repaving of parking areas, replanting of landscaped areas and replacing building components; costs incurred in connection with the operation, maintenance, repair, replacing, inspection and servicing (including maintenance contracts) of electrical, plumbing, heating, air conditioning and mechanical equipment and the cost of materials, supplies, tools and equipment used in connection therewith, including leasing as appropriate; replacements of the original components of the Building; and all other expenses and costs of every kind and nature incurred for the purpose of operating and maintaining the Building and grounds, whether or not similar to the foregoing.

## 7.0 TAXES, ASSESSMENTS AND UTILITY CHARGES

- 7.1 Landlord shall bear, pay and discharge all real estate taxes and assessments (if any) which shall be charged, assessed, imposed or levied, or become a lien upon or on account of the Premises or any appurtenances thereof.
- 7.2 Throughout the Lease Term, Landlord shall provide for the provision of adequate utilities including gas, electric, telephone, cable television and DSL internet to the Premises so as to protect the same from damage. Tenant shall maintain and pay monthly gas and telephone utility charges at the time the same become due or payable. Electric utility charges will be billed at ten percent (10%) of the annual billed electric expense to the building. Tenant will be billed annually for this expense. Landlord will send invoice in February of 2025 and be payable by March 30, 2025, for the Lease Term. Landlord shall pay the monthly cost for furnishing internet and cable services to the building and shall pay the monthly charges for water and sewer service. Tenant shall install, maintain and pay for any coaxial cable used for radios for their own use. Landlord shall not be liable to Tenant should the furnishing of water and sewer service be interrupted because of repairs, installation of improvements or for any other cause not caused by Landlord.

## 8.0 COMMON AREAS

Tenant, its employees, agents and invitees shall have the reasonable, nonexclusive right to use, in common with Landlord and the other tenants and occupants of the building and grounds and their respective employees, customers and invitees and all others to whom Landlord has or may hereafter grant rights to use the same, the common areas as may from time to time exist, including, but not limited to parking facilities, sidewalks, driveways, accessways and meeting room ("**Common Areas**").

Landlord shall at all times have full control, management and direction of the Common Areas. Tenant shall not cause or allow any storage of materials or equipment outside of the Premises on any of the Common Areas. Landlord reserves the right at any time and from time to time to reduce, increase, enclose or otherwise change the size, number, location, layout and nature of the Common Areas, to construct additional buildings and stories to create additional rentable areas through use and/or enclosure of Common Areas, to close portions of the Common Areas for maintenance, repair or replacement, to place signs in Common Areas and on the Building, to change the name or address of the Building to change the nature of the use of any portion thereof. Notwithstanding any provision to the contrary in this Section, Landlord acknowledges that Tenant's use of the Premises is dependent upon the concurrent use of certain Common Areas. As such, Tenant shall be allowed to terminate this Lease upon notice to Landlord if any rights

exercised by Landlord in respect to the Common Areas have the effect of substantially limiting Tenant's use or enjoyment of the Premises.

## **9.0 REPAIRS AND MAINTENANCE**

- 9.1 Except as provided in Section 10, Landlord shall, at its sole cost and expense, maintain the Building and Premises and every part thereof in good condition and repair. Landlord's obligations shall include, but not be limited to: maintaining landscaping, providing snow removal (except in regard to any sidewalks Tenant is obligated to clear pursuant to this Lease), parking lot sweeping, window washing, parking lot lighting and trash removal; and operate, maintain, repair, replace, inspect and service electrical, plumbing, heating, air conditioning and mechanical equipment.
- 9.2 Tenant shall, at its sole cost and expense, maintain and repair its Tenant improvements and any alterations made to the Premises by Tenant after the Commencement Date; repair any damage to the Building, Premises or Common Areas caused by the installation or moving of Tenant's furniture, equipment and personal property; and repair or replace with glass of equal quality any broken or cracked plate or other glass on the Building to the extent such glass was broken or cracked by Tenant, its employees, agents, invitees or customers. Tenant shall not defer any repairs or replacements to the Premises by reason of the anticipation of the expiration of the Term. Landlord, at Landlord's option, may elect to perform all or part of the maintenance, repairs and servicing which is the obligation of the Tenant hereunder and/or the obligation of all of the other tenants of the Project with respect to the respective premises occupied by them, in which event the costs thereof shall be billed directly to and paid by Tenant as Additional Rent. Except as aforesaid, in the event that, at the request of Tenant, Landlord, at its option, performs any maintenance, repairs or servicing which is the obligation of the Tenant hereunder, then Tenant shall pay Landlord directly therefor. In the event there is any warranty in effect in connection with repairs or replacements made by Tenant and if Landlord is unwilling to pursue the warranty claim, then Tenant shall have the right to pursue the warranty claim in connection with the repair and/or replacement made by Tenant. Tenant shall be responsible for all snow and ice removal on sidewalks adjacent to the Premises. Upon expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean and in good condition and repair excepting only (a) normal wear and tear; (b) losses caused by fire or other casualty; (c) losses caused by condemnation; and (d) losses due to Landlord's failure to maintain the Project (including the Premises) or to make repairs which Landlord is required by this Lease to make. Tenant's obligation to so deliver the Premises shall survive the expiration or termination of this Lease.

## 10.0 ALTERATIONS BY TENANT

- 10.1 Tenant may not make any alterations, additions or improvements (collectively, “Alterations” and individually, an “Alteration”) in or to the Premises without Landlord’s prior written consent. In each instance which consent will not be unreasonably withheld or unduly delayed for non-structural Alterations which are not visible from the exterior of the Premises or do not affect the exterior appearance of the Premises. Landlord will not be deemed to be unreasonably withholding its consent if it requires Tenant to *remove* the alteration when approval is requested and Tenant refuses to *remove* the alteration. In the event Landlord approves an Alteration, (a) the Alteration shall be constructed in a good and workmanlike manner, (b) the structural integrity of the Facility and the exterior appearance shall not be impaired by the Alteration or the construction thereof, (c) no liens shall attach to the Premises by reason thereof, and (d) Tenant shall carry or cause its contractors to carry any required worker’s compensation insurance. All Alterations made by Tenant shall be at its sole cost and expense. Landlord’s consent to an Alteration may be conditioned upon the receipt by Landlord of such information as Landlord may reasonably require, and upon the furnishing of certificates of insurance, waivers of lien, and receipted bills covering any and all labor and materials utilized in connection therewith, and such other conditions as Landlord may reasonably require and the parties agree that the same shall be surrendered by Tenant and become the property of Landlord upon termination of the Lease.
- 10.2 Upon the written request by Tenant for Landlord approval of Alterations, Landlord shall notify Tenant in writing which Alterations must be removed from the Premises upon termination of the Lease; all other Alterations shall remain on the Premises and shall become the property of Landlord. Tenant shall remove the Alterations designated by Landlord for removal, all at Tenant’s sole expense, on or before Termination Date and Tenant shall repair any damage to the Premises caused by such removal. Tenant’s obligations under this Section shall survive the expiration or termination of this Lease. If Tenant fails to remove the Alterations as required hereunder, Landlord may remove the Alterations and may, at Landlord’s option, store or destroy them and all costs incurred by Landlord shall be promptly reimbursed by Tenant.

## 11.0 FIXTURES AND SIGNS

Tenant may have signage as permitted by and subject to Landlord’s consent. Such consent shall be given or withheld at Landlord’s sole discretion.

## 12.0 INSURANCE

- 12.1 During the Lease Term, Tenant shall provide and maintain in full force and effect at no costs to Landlord the following insurance coverages with the minimum limits as indicated:
- A. Commercial general liability insurance with liability limits of not less than \$1 million per occurrence, \$3 million aggregate (to include products/completed operations. Landlord shall be included as an **ADDITIONAL INSURED** under such insurance.
  - B. All Risk form commercial property insurance on Tenant's Improvements for their full replacement value.
- 12.2 Tenant may, at its option, purchase business income, business interruption, extra expense or similar coverage as part of this commercial property insurance, and in no event shall Landlord be liable for any business interruption or other consequential loss sustained by Tenant, whether or not it is insured, even if such loss is caused by the negligence of Landlord, its employees, officers, directors, or agents.
- 12.3 Tenant may, at its option, purchase insurance to cover personal property. In no event shall Landlord be liable for any damage to or loss of personal property sustained by Tenant, whether or not it is insured, even if such loss is caused by the negligence of Landlord, its employees, officers, directors or agents.
- 12.4 Landlord agrees that Tenant shall have the right to satisfy these insurance requirements pursuant to (a) a blanket insurance policy covering other properties in addition to the Premises, provided that the coverage in effect for the Premises shall equal the minimum insurance limits specified herein; (b) a plan of self-insurance (after furnishing financial statements reasonably satisfactory to Landlord demonstrating the financial ability of Tenant to fund a plan of self-insurance), or, (c) a combination of any of the foregoing insurance programs. Tenant shall provide Landlord with certificates of insurance or a letter confirming such self-insurance, as evidence of the above insurance, if requested. Tenant will give Landlord thirty (30) days written notice of any cancellation of insurance coverage.
- 12.5 During the Lease Term, Landlord shall provide and maintain in full force and effect the following insurance coverages with minimum limits as indicated, (which may also be revised to reasonable amounts consistent with similar industry practice at the Landlord's discretion from time to time):



- A. All Risk form commercial property insurance on the building and all improvements therein (other than Tenants Improvements) for their full replacement value.
  - B. Commercial general liability insurance (or its equivalent), occurrence form, and, if necessary, commercial umbrella or excess insurance with a total limit of not less than \$1,000,000 each occurrence as described below.
- 12.6 Landlord agrees to furnish copies of any insurance policies for Tenant's review if requested. Landlord shall also furnish Tenant with duly executed Certificates of Insurance verifying that all required insurance has been provided and that the insurance companies will give Tenant thirty (30) days prior written notice of any cancellation of insurance coverage.
- 12.7 Notwithstanding anything apparently to the contrary in this Lease, Landlord and Tenant hereby release one another and their respective officials, directors, officers and employees from any and all liability (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by property insurance or coverable by a customary form, of the "All Risk" property insurance required of Landlord and Tenant as set forth above, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

### **13.0 COMPLIANCE WITH LAWS**

Subject to the obligations imposed on Landlord in Section 9, Tenant shall, at its sole cost and expense, comply with any and all laws, statutes, ordinances, regulations, fire codes, building codes and restrictions and easements of record, now or hereafter in force, applicable to the performance of Tenant's operations on the Premises or relating to the use of Tenant Improvements or Alterations or to the making of repairs, changes, alterations, or improvements to such Tenant Improvements or Alterations. Tenant also covenants to comply, at its sole cost and expense, with any and all reasonable rules and regulations applicable to the conduct of Tenant's operations on the Premises issued by insurance companies (including Landlord's fire underwriters, if any) writing policies covering the Premises to the extent that noncompliance will result in premium increases (or, in the alternative Tenant may, at its option, pay such premium increase as Additional Renter here under). Landlord shall, at its sole cost and expense, comply with any and all laws, statutes, ordinances, and regulations, fire codes, building codes and restrictions and easements of record, now or hereafter in force, applicable to the building (other than Tenant Improvements or Alterations) or to the making of repairs, changes, alterations or improvements to the building (other than Tenant Improvements or Alterations).

## **14.0 PARKING**

Tenant and Tenant's employees, customers and invitees shall have the nonexclusive right to use the parking spaced located within the Common Areas. Landlord reserves the right to regulate parking within the Common Areas, including the right to preclude Tenant from parking in certain parking spaces or requiring Tenant to use certain parking spaces. Tenant shall not permit vehicles and/or trailers to be abandoned or stored in the parking and loading areas.

## **15.0 JANITORIAL SERVICES**

Tenant shall clean the Premises and arrange for trash removal from the Premises to the existing trash dumpster on a daily basis or otherwise in a manner sufficient to keep and maintain the Premises in a first-class and clean condition.

## **16.0 ENVIRONMENTAL MATTERS**

- 16.1 "Environmental Laws" means any or all of the following: the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300h et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 401 et seq.; regulations under any of the foregoing statutes; and any other laws and regulations of the United States, the State of Minnesota or any political subdivision or agency of either of them, which are now in effect or hereinafter enacted or amended that deal with the regulation or protection of the environment, including ambient air, groundwater, surface water and land use, including sub-strata land.
- 16.2 Tenant shall comply in all respects with all present and hereinafter enacted Environmental Laws, and any amendments thereto, relating to Tenant's operations on the Premises. Tenant shall immediately notify Landlord of any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operations on the Premises or any change in Tenant's operations on the Premises that will change or has a potential to change Tenant's or Landlord's obligations or liabilities under the Environmental Laws. Tenant hereby agrees to indemnify and hold harmless Landlord and Landlord officers, officials, agents and employees from and against any and all loss, damage, and expense (including, but not limited to, reasonable investigation and legal fees and expenses), including, but not limited to, any claim or action for injury, liability, or damage to persons or property, and any and all claims or actions brought by any person, firm, governmental body, or other entity, alleging or resulting from or arising from or in connection with contamination of or adverse effects on the environment, or violation of any

Environmental Law or other statute, ordinance, rule, regulation or order of any government or judicial entity, and from and against any damages, liability, cost, and penalties assessed as a result of any activity or operation on the Premises during the Lease Term. Tenant's obligations and liabilities under this Section shall survive the expiration or termination of this Lease. The terms of this Section shall be enforceable by injunction or, at Landlord's option, by action for damages.

## **17.0 INDEMNIFICATION**

- 17.1 Tenant hereby agrees to indemnify and hold harmless Landlord and Landlord's officers, directors, agents, and employees from and against any and all claims, demands, causes of action, suits, proceedings, liabilities, damages, losses, costs, and expenses, including reasonable attorney's fees, caused by, incurred, or resulting from (a) Tenant's occupancy, use or operation of the Premises, or (b) from any default under or failure to perform any term or provision of this Lease by Tenant or (c) the negligent or willful acts of Tenant, its directors, officers, or employees. This indemnity does not cover matters arising out of the negligent or willful acts of Landlord or its employees, agents, contractors, guests, officers, invitees or officials. It is expressly understood that Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason. In case any action or proceeding is brought against Landlord or its officers, officials, agents or employees, by reason of any such claim, Tenant, upon notice, will defend such action or proceeding by responsible counsel selected by Tenant and reasonably acceptable to Landlord.
- 17.2 Landlord hereby agrees to indemnify and hold harmless Tenant and Tenant's officers, directors, agents, and employees from and against any and all claims, demands, causes of action, suits, proceedings, liabilities, damages, losses, costs, and expenses, including reasonable attorneys' fees, caused by, incurred, or resulting from (i) Landlord's occupancy, use or operation of the Premises, or (ii) from any default under or failure to perform any term or provision of this Lease by Landlord or (iii) the negligent or willful acts of Landlord, its directors, officers, or employees. This indemnity does not cover matters arising out of the negligent or willful acts of Tenant or its employees, agents, contractors, guests, officers, invitees or officials. It is expressly understood that Landlord's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason. In case any action or proceeding is brought against Tenant, or its officers, officials, agents or employees, by reason of any such claim, Landlord, upon notice, will defend such action or proceeding by responsible counsel selected by Landlord and reasonably acceptable to Tenant.

## **18.0 DAMAGE OR DESTRUCTION**

- 18.1 If the Building or Premises is destroyed or damaged in whole or in part by fire, or the elements, or as a result directly or indirectly of war, or by act of God, or by reason of any other cause whatsoever, Tenant shall give notice thereof to Landlord, and except as otherwise provided below, Landlord at Landlord's cost and expense promptly may repair, replace, and rebuild the Premises or Building to at least as good condition as it or they were in immediately prior to such occurrence.
- 18.2 If following such damage or destruction the estimate of the time to complete such repair or restoration, as reasonably and promptly determined by the general contractor selected by Landlord, exceeds one hundred twenty (120) days, Landlord and Tenant at their respective options shall have the right to terminate the Lease upon written notice to the other party given within twenty (20) days after receipt of the estimated time to repair or restore.
- 18.3 The net proceeds of any insurance shall be applied in payment of the cost of such repairing or rebuilding as the same progresses. If the insurance proceeds exceed the cost of such repairs or rebuilding, then the balance remaining after payment of the cost of such repairs or rebuilding shall be paid over and belong to Landlord.
- 18.4 Except as specifically provided in this Section 18.0, this Lease shall not terminate or be affected in any manner by reason of the destruction or damage in whole or in part of the Premises or any building or improvements now or hereafter standing or erected thereon or by reason of the untenability of the Premises or any such building or improvements except that rent shall abate during the period of untenability.
- 18.5 If the fire or casualty damages or destroys more than twenty-five percent (25%) of the Tenant Improvements on the Premises and occurs within the last two months of the Lease Term then Tenant, at its option, may elect to terminate the Lease by giving written notice thereof to Landlord within fifteen (15) days after such fire or casualty. If Tenant timely gives such notice, then the Lease shall terminate as of the date of such fire or casualty; Tenant shall not be liable for any rent accruing after the date of such fire or casualty; Landlord shall not be required to rebuild or restore the Premises; and all casualty insurance proceeds shall be the sole property of Landlord.

## **19.0 CONDEMNATION**

- 19.1 If all or substantially all of the Premises are taken by the exercise of the power of eminent domain or conveyed under the threat of eminent domain, then this

Lease shall terminate as of the date possession is taken by the condemner (provided that the Lease shall not terminate if Landlord is the condemner). The entire compensation award shall belong to Landlord and Tenant shall have no interest therein; provided that Tenant shall have the right to make a separate claim for its personal property or relocation benefits in accordance with applicable law, provided that the award to Landlord is not reduced thereby.

- 19.2 If (i) more than twenty percent (20%) of the area of the Premises, or (ii) any Common Areas reasonably necessary for use of the Premises are taken by the exercise of the power of eminent domain or sold under the threat of eminent domain, then Tenant shall have the right to terminate this Lease if the portion of the Premises or Common Areas remaining are such that their continued use for the purposes for which the same were being used immediately prior to such taking is reasonably impractical or economically imprudent. Termination shall be as of the date legal possession is taken by the condemner. The option to terminate herein granted shall be exercised in writing by Tenant within thirty (30) days after the date of the taking of possession by the condemner. In any event, the entire compensation award shall belong to Landlord and Tenant shall have no interest therein; provided that Tenant shall have the right to make a separate claim for its personal property or relocation benefits in accordance with applicable law, provided that the award to Landlord is not reduced thereby. If this Lease is not terminated, then Tenant, with reasonable diligence and at its own expense, shall restore any improvements upon the Premises affected by the taking, even if the total cost for such restoration is in excess of the amount awarded or paid by the condemner for such purpose, and Landlord shall make the proceeds of the condemnation award available for said purpose. Rent shall abate in the event of any partial taking hereunder to the extent to which the Premises are untenable.

## **20.0 INSPECTION**

Landlord and its authorized representatives shall have the right, upon giving reasonable prior written notice (except in an emergency, in which case no notice is required), to enter the Premises or any part thereof and inspect the same for the purposes of determining Tenant's compliance with the terms of this Lease or to make repairs or maintenance required hereunder.

## **21.0 QUIET ENJOYMENT**

So long as Tenant shall timely pay the Rent and all other sums herein provided and shall keep and timely perform all of the terms, covenants, and conditions on its part herein contained, Landlord covenants that Tenant, subject to Landlord's rights herein, shall have the right to the peaceful and quiet occupancy of the Premises.

## **22.0 ASSIGNMENT AND SUBLETTING**

- 22.1 Except as herein set forth, Tenant shall not mortgage, encumber or assign this Lease or any interest therein, or sublet all or any portion of the Premises, or allow the use of any portion of the Premises by any third party, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld or unduly delayed. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease upon notice to Landlord, but without Landlord's consent, to any entity controlled by or controlling Tenant, or to an entity that acquires all or substantially all of Tenant's assets; provided, however, that in such instances Tenant shall remain liable for the performance of this Lease and Landlord shall have the right to withhold consent to the assignment in its sole discretion to determine that the intended assignee constitutes a public service entity and has the ability to pay rent and perform the Tenant's obligations under this Lease.
- 22.2 Landlord shall have the right at any time to sell or convey the Premises subject to this Lease or to assign its rights, title and interest as Landlord under this Lease in whole or in part. In the event of any such sale or assignment (other than a collateral assignment as security for an obligation of Landlord), and provided the assignee assumes all of the Landlord's obligations under this Lease from and after the date of transfer Landlord shall be relieved from and after the date of such transfer or conveyance of liability for the performance of any obligation of Landlord contained herein, except for obligations or liabilities accrued prior to the date of such assignment or sale, and Tenant shall attorn to the purchaser or assignee (as the case may be).

## **23.0 DEFAULT AND REMEDIES**

- 23.1 Each of the following shall be deemed a "Default" of this Lease by Tenant:
- A. If any Rent or other monetary sum due remains unpaid for five (5) days after such sum is due and Tenant fails to pay such sum within ten (10) days of receiving notice from Landlord demanding payment;
  - B. If Tenant becomes insolvent, or if proceedings are commenced against Tenant hereunder in any court under any bankruptcy act or for the appointment of a trustee or receiver of Tenant's property and are not dismissed within sixty (60) days, or if Tenant files any assignment for the benefit of creditors, is not generally paying its debts as the same become due, or is taken over by any government regulatory agency having the jurisdiction to do so and such agency does not fully comply with the obligations imposed on Tenant hereunder, or if Tenant abandons or vacates

the Premises or advises Landlord in writing that it intends to discontinue its business operations; or

- C. If Tenant fails to perform or violates any other of the covenants, conditions, obligations or restrictions of this Lease, which failure to perform or violation remains uncured for a period of thirty (30) days or more after notice thereof from Landlord to Tenant; provided, however, that if such failure or violation cannot reasonably be cured within the thirty (30) day period, and Tenant is diligently pursuing a cure of such failure or violation, then Tenant shall, after receiving notice specified herein, have a reasonable period to cure such failure or violation, not exceeding one hundred eighty (180) days, provided Tenant continuously exercises due diligence in the cure of the same.

23.2 In the event of any Default, and without any notice, except, if applicable, the notice prior to Default required under circumstances set forth in subsection (a) above, Landlord shall be entitled to exercise, at its option, concurrently, successively, or in any combination, any and all remedies available at law or in equity, including without limitation anyone or more of the following:

- A. To terminate this Lease;
- B. To terminate Tenant's occupancy of the Premises and to reenter and take possession of the Premises or any part thereof (which termination of occupancy and reentry shall not operate to terminate this Lease unless Landlord expressly so elects) and of any and all fixtures which are located on the Premises and owned by Landlord;
- C. To recover from Tenant all expenses, including attorneys' fees, reasonably paid or incurred by Landlord as a result of any such Default;
- D. To recover from Tenant all Rent not theretofore paid at the time of any Default, the remaining balance due Landlord for the Landlord Improvements, and any sums thereafter accruing as they become due under this Lease, if the Lease has been terminated, during the period from the Default to the Termination Date.
- E. Landlord's rights to exercise the remedies set forth in this Section shall survive the expiration or termination of this Lease.

23.3 In the event of any Default by Tenant, or in the event of a failure by Tenant to perform any covenant, condition, obligation or restriction under this Lease pertaining to the repair or maintenance of the Premises (prior to the expiration of any applicable grace or cure period) that Landlord reasonably deems of an



emergency in nature Landlord may, at its option, but shall not be obligated to, immediately or at any time thereafter, and without notice except as required herein, correct such Default or failure without, however, curing the same, for the account and at the expense of the Tenant. Any sum or sums so paid by Landlord, together with interest at the Applicable Rate, and all costs and damages, shall be deemed to be Additional Rent hereunder and shall be due from Tenant to Landlord upon demand.

#### **24.0 ADDITIONAL RIGHTS RESERVED TO LANDLORD**

Without affecting Tenant's obligations hereunder, Landlord reserves the right to enter the Premises at all reasonable times to show the same to prospective purchasers, lessees or mortgagees, provided that the entry does not unreasonably interfere with the conduct and operation of Tenant's business.

#### **25.0 NOTICES**

All notices, demands, requests, consents, approvals, or other instruments required or permitted to be given by either party pursuant to this Lease shall be in writing and sent to the other party at the following addresses:

To Tenant:                      North Memorial Health  
    3300 Oakdale Ave N  
    Robbinsdale MN 55422

To Landlord :                    City of Milaca  
    Attn: Tammy Pfaff  
    255 1<sup>st</sup> St E  
    Milaca MN 56353

All notices shall be deemed received when delivered, if hand-delivered, or three business days after deposit with the United States Postal Service, postage prepaid and sent by certified mail, return receipt requested, or one business day after deposit with a nationally recognized overnight commercial courier service. Notices by telefax or e-mail alone are not sufficient. The addresses for notices may be changed by the parties from time to time by delivery of written notice to the other party as provided herein.

#### **26.0 CONDITION OF PREMISES**

Except as expressly provided herein, Landlord makes no representations or warranties, either express or implied, regarding the condition of the Premises or suitability of the Premises for Tenant's proposed uses.

## **27.0 HOLDING OVER**

If Tenant remains in possession of the Premises after the expiration of the Lease Term without consent, then Landlord may, at Landlord's option, deem Tenant to be a tenant on a month-to-month basis ("Holdover Rent") and Tenant shall pay all sums and shall comply with all the terms of this Lease; provided that nothing herein nor the acceptance of Rent by Landlord shall be deemed a consent to such holding over. Landlord shall be entitled to all remedies available to it at law or in equity for such holdover, including Holdover Rent and including, but not limited to, Landlord's damages suffered as a result of such holding over by Tenant.

## **28.0 WAIVER AND AMENDMENT**

No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

## **29.0 JOINT VENTURE**

None of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint venturers, nor to make Landlord in any way responsible for the debts or losses of Tenant.

## **30.0 CAPTIONS**

Captions are used throughout this Lease for convenience or reference only and shall not be considered in any manner in the construction or interpretation of this Lease.

## **31.0 SEVERABILITY**

If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Lease, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

### **32.0 CONSTRUCTION**

This Lease involves property located within the State of Minnesota and shall be construed according to the laws of the State of Minnesota.

### **33.0 ENTIRE AGREEMENT**

This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties, or agreements except as herein provided.

### **34.0 COUNTERPARTS**

This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

### **35.0 BINDING EFFECT**

The terms and conditions of this Lease shall be binding upon and benefit the parties hereto and their respective successors and assigns.

### **36.0 ATTORNEY'S FEES**

In the event of litigation arising out of this Lease, the prevailing party shall be entitled to court costs, out-of-pocket expenses and reasonable attorneys' fees from the unsuccessful party.

### **37.0 REPRESENTATION AS TO AUTHORITY**

#### **37.1 Tenant**

- A. Tenant is a 501 C3 Non-Profit Corporation validly existing and in good standing under the laws of the State of Minnesota and has the power and authority to consummate the transactions contemplated by this Lease.
- B. All proceedings of Tenant necessary to consummate the transactions contemplated by this Lease have been duly taken in accordance with law.
- C. The person or persons executing this Lease on behalf of Tenant are duly authorized to bind Tenant.

#### **37.2 Landlord**

- A. Landlord has the power and authority to consummate the transactions contemplated by this Lease.
- B. All proceedings of Landlord necessary to consummate the transactions contemplated by this Lease have been duly taken by the Milaca City Council in accordance with law.
- C. The person or persons executing this Lease on behalf of Landlord are duly authorized to bind Landlord.

### **38.0 BROKERS**

Each party represents and warrants that it has dealt with no broker or agent in this transaction. Landlord and Tenant agree to indemnify and hold each other harmless from and against any claims by any broker or agent claiming commissions or other compensation as their respective representative or agent with regard to this transaction. The provisions of this Section shall survive the termination of this Lease.

### **39.0 MEMORANDUM OF LEASE**

Either party may, at its expense, record a memorandum of this Lease in form and content mutually agreeable to the parties hereto and executed by both parties.

### **40.0 PERFORMANCE OF WORK BY TENANT**

All work on the Premises performed by Tenant or Tenant's contractors, agents or employees during the Lease Term, whether in the form of maintenance, repair, replacement, alterations or work in compliance with law, shall be performed by contractors approved in advance by Landlord, shall be performed in a good and workmanlike manner and in accordance with law, and shall be free and clear of all mechanics' lien claims (provided that Tenant shall have the right to contest mechanics' lien claims).

### **41.0 FORCE MAJEURE**

Time periods, deadlines or dates for Landlord's or Tenant's performance under any provisions of this Lease (except for the payment of money) shall be extended for the period of time during which the non-performing party's performance is prevented or delayed due to labor disputes, casualties, embargoes, governmental restrictions or regulations, unusual weather and other acts of God, war or other strife, shortages of fuel labor, or building materials, action or non-action of public utilities or local, state or federal governments or agencies, the act or neglect of the other party or those acting for or under the other party, or any other causes or circumstances beyond the non-performing party's reasonable control.

**IN WITNESS WHEREOF**, Landlord and Tenant have entered into this Lease as of the date first above written.

Landlord:

**City of Milaca,**  
A Minnesota Municipal Corporation

\_\_\_\_\_  
Mayor Dave Dillan

\_\_\_\_\_  
City Manager Tammy Pfaff

Date: \_\_\_\_\_

Tenant:

**North Memorial Health,**  
a Minnesota Municipal Corporation

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**LG214 Premises Permit Application**

**Annual Fee \$150 (NON-REFUNDABLE)**

**REQUIRED ATTACHMENTS TO LG214**

- 1. If the premises is leased, attach a copy of your lease. Use **LG215 Lease for Lawful Gambling Activity**.
- 2. \$150 annual premises permit fee, for each permit (non-refundable). Make check payable to "State of Minnesota."

**Mail the application and required attachments to:**  
 Minnesota Gambling Control Board  
 1711 West County Road B, Suite 300 South  
 Roseville, MN 55113

**Questions?** Call 651-539-1900 and ask for Licensing.

**ORGANIZATION INFORMATION**

Organization Name: AMERICAN LEGION POST 178 License Number: 00530  
 Chief Executive Officer (CEO) LEW RATAJCZAK Daytime Phone: 320-982-0038  
 Gambling Manager: TRAVIS HALL Daytime Phone: [REDACTED]

**GAMBLING PREMISES INFORMATION**

Current name of site where gambling will be conducted: ROUND TWO  
 List any previous names for this location:  
TIMBER VALLEY GRILL  
 Street address where premises is located: 1030 CENTRAL AVE N, MILACA, MN 56353  
(Do not use a P.O. box number or mailing address.)

City: MILACA OR Township: \_\_\_\_\_ County: MILLE LAES Zip Code: 56353

Does your organization own the building where the gambling will be conducted?  
 Yes  No If no, attach LG215 Lease for Lawful Gambling Activity.

A lease is not required if only a raffle will be conducted.  
 Is any other organization conducting gambling at this site?  Yes  No  Don't know

Note: Bar bingo can only be conducted at a site where another form of lawful gambling is being conducted by the applying organization or another permitted organization. Electronic games can only be conducted at a site where paper pull-tabs are played.

Has your organization previously conducted gambling at this site?  Yes  No  Don't know

**GAMBLING BANK ACCOUNT INFORMATION; MUST BE IN MINNESOTA**

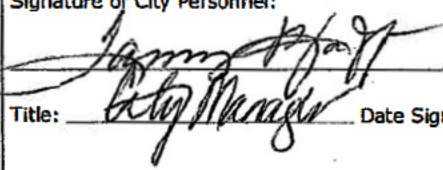
Bank Name: FIRST NATIONAL BANK Bank Account Number: 1006068  
 Bank Street Address: 190 2<sup>ND</sup> AV SW City: MILACA State: MN Zip Code: 56353

**ALL TEMPORARY AND PERMANENT OFF-SITE STORAGE SPACES**

Address (Do not use a P.O. box number): 160 2<sup>ND</sup> ST SE City: MILACA State: MN Zip Code: 56353  
 \_\_\_\_\_ City: \_\_\_\_\_ State: MN Zip Code: \_\_\_\_\_  
 \_\_\_\_\_ City: \_\_\_\_\_ State: MN Zip Code: \_\_\_\_\_



**ACKNOWLEDGMENT BY LOCAL UNIT OF GOVERNMENT: APPROVAL BY RESOLUTION**

<p><b>CITY APPROVAL</b> for a gambling premises located within city limits</p> <p>City Name: <u>City of Milaca</u></p> <p>Date Approved by City Council: _____</p> <p>Resolution Number: _____ (If none, attach meeting minutes.)</p> <p>Signature of City Personnel: </p> <p>Title: <u>City Manager</u> Date Signed: <u>11/4/21</u></p> <div style="border: 1px solid black; padding: 10px; text-align: center; margin-top: 20px;"> <p><b>Local unit of government must sign.</b></p> </div>	<p><b>COUNTY APPROVAL</b> for a gambling premises located in a township</p> <p>County Name: _____</p> <p>Date Approved by County Board: _____</p> <p>Resolution Number: _____ (If none, attach meeting minutes.)</p> <p>Signature of County Personnel: _____</p> <p>Title: _____ Date Signed: _____</p> <p>TOWNSHIP NAME: _____</p> <p><b>Complete below only if required by the county.</b> On behalf of the township, I acknowledge that the organization is applying to conduct gambling activity within the township limits. (A township has no statutory authority to approve or deny an application, per Minnesota Statutes 349.213, Subd. 2.)</p> <p>Print Township Name: _____</p> <p>Signature of Township Officer: _____</p> <p>Title: _____ Date Signed: _____</p>
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**ACKNOWLEDGMENT AND OATH**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. I hereby consent that local law enforcement officers, the Board or its agents, and the commissioners of revenue or public safety and their agents may enter and inspect the premises.</li> <li>2. The Board and its agents, and the commissioners of revenue and public safety and their agents, are authorized to inspect the bank records of the gambling account whenever necessary to fulfill requirements of current gambling rules and law.</li> <li>3. I have read this application and all information submitted to the Board is true, accurate, and complete.</li> <li>4. All required information has been fully disclosed.</li> <li>5. I am the chief executive officer of the organization.</li> </ol> | <ol style="list-style-type: none"> <li>6. I assume full responsibility for the fair and lawful operation of all activities to be conducted.</li> <li>7. I will familiarize myself with the laws of Minnesota governing lawful gambling and rules of the Board and agree, if licensed, to abide by those laws and rules, including amendments to them.</li> <li>8. Any changes in application information will be submitted to the Board no later than ten days after the change has taken effect.</li> <li>9. I understand that failure to provide required information or providing false or misleading information may result in the denial or revocation of the license.</li> <li>10. I understand the fee is non-refundable regardless of license approval/denial.</li> </ol> |
|--|---|

Signature of Chief Executive Officer (designee may not sign) \_\_\_\_\_ Date \_\_\_\_\_

<p>Data privacy notice: The information requested on this form (and any attachments) will be used by the Gambling Control Board (Board) to determine your organization's qualifications to be involved in lawful gambling activities in Minnesota. Your organization has the right to refuse to supply the information; however, if your organization refuses to supply this information, the Board may not be able to determine your organization's qualifications and, as a consequence, may refuse to issue a permit. If your organization supplies the information requested, the Board will be able to process your organization's application. Your organization's name and address will be public</p>	<p>Information when received by the Board. All other information provided will be private data about your organization until the Board issues the permit. When the Board issues the permit, all information provided will become public. If the Board does not issue a permit, all information provided remains private, with the exception of your organization's name and address which will remain public. Private data about your organization are available to: Board members, Board staff whose work requires access to the information;</p>	<p>Minnesota's Department of Public Safety, Attorney General, Commissioners of Administration, Minnesota Management &amp; Budget, and Revenue; Legislative Auditor, national and international gambling regulatory agencies; anyone pursuant to court order; other individuals and agencies specifically authorized by state or federal law to have access to the information; individuals and agencies for which law or legal order authorizes a new use or sharing of information after this notice was given; and anyone with your written consent.</p>
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This form will be made available in alternative format, i.e. large print, braille, upon request.

An equal opportunity employer



**LG215 Lease for Lawful Gambling Activity**

LEASE INFORMATION		
Organization: <b>AMERICAN LEGION POST 178</b>	License/Site Number: <b>00530</b>	Daytime Phone: <b>320-983-3898</b>
Address: <b>160 2ND ST SE</b>	City: <b>MILACA</b>	State: Zip: <b>MN 56353</b>
Name of Leased Premises:	Street Address: <b>1030 CENTRAL AVE N</b>	
City: <b>MILACA</b>	State: Zip: <b>MN 56353</b>	Daytime Phone: [REDACTED]
Name of Legal Owner: <b>Donna Evangeline Jones</b>	Business/Street Address: <b>1030 Central Ave</b>	
City: <b>Milaca</b>	State: Zip: <b>Mn. 56373</b>	Daytime Phone: [REDACTED]
Name of Lessor (if same as legal owner, write "SAME"): <b>Same</b>	Address:	
City:	State: Zip:	Daytime Phone:
<p>Check applicable item:</p> <p><input type="checkbox"/> <b>New or amended lease.</b> Effective date: _____ . Submit changes at least ten days <b>before</b> the effective date of the change.</p> <p><input checked="" type="checkbox"/> <b>New owner.</b> Effective date: <u>11/01/2024</u> . Submit new lease <b>within</b> ten days after new lessor assumes ownership.</p>		
<b>CHECK ALL ACTIVITY THAT WILL BE CONDUCTED (no lease required for raffles)</b>		
<input checked="" type="checkbox"/> Pull-Tabs (paper)	<input checked="" type="checkbox"/> Electronic Pull-Tab	
<input type="checkbox"/> Pull-Tabs (paper) with dispensing device	<input checked="" type="checkbox"/> Electronic Linked Bingo	
<input checked="" type="checkbox"/> Bar Bingo <input type="checkbox"/> Bingo	Electronic games may only be conducted:	
<input checked="" type="checkbox"/> Tipboards	1. at a premises licensed for the on-sale of intoxicating liquor or the on-sale of 3.2% malt beverages; or	
<input checked="" type="checkbox"/> Paddlewheel <input type="checkbox"/> Paddlewheel with table	2. at a premises where bingo is conducted as the primary business and has a seating capacity of at least 100.	
<b>PULL-TAB, TIPBOARD, AND PADDLEWHEEL RENT (separate rent for booth and bar ops)</b>		
<b>BOOTH OPERATION:</b> Some or all sales of gambling equipment are conducted by an employee/volunteer of a licensed organization at the leased premises.		
<b>ALL GAMES, including electronic games:</b> Monthly rent to be paid: _____%, not to exceed <b>10%</b> of gross profits for that month.		
<ul style="list-style-type: none"> <li>• Total rent paid from all organizations for only booth operations at the leased premises may not exceed <b>\$1,750</b>.</li> <li>• The rent cap does not include BAR OPERATION rent for electronic games conducted by the lessor.</li> </ul>		
<b>BAR OPERATION:</b> All sales of gambling equipment conducted by the lessor or lessor's employee.		
<b>ELECTRONIC GAMES:</b> Monthly rent to be paid: <u>15</u> %, not to exceed <b>15%</b> of the gross profits for that month from electronic pull-tab games and electronic linked bingo games.		
<b>ALL OTHER GAMES:</b> Monthly rent to be paid: <u>20</u> %, not to exceed <b>20%</b> of gross profits from all other forms of lawful gambling.		
<ul style="list-style-type: none"> <li>• If any booth sales conducted by a licensed organization at the premises, rent may not exceed <b>10%</b> of gross profits for that month and is subject to booth operation <b>\$1,750</b> cap.</li> </ul>		
<b>BINGO RENT (for leased premises where bingo is the primary business conducted, such as bingo hall)</b>		
Bingo rent is limited to one of the following:		
<ul style="list-style-type: none"> <li>• Rent to be paid: <u>10</u>%, not to exceed <b>10%</b> of the monthly gross profit from all lawful gambling activities held during bingo occasions, excluding bar bingo.</li> <li>- OR -</li> <li>• Rate to be paid: \$ _____ per square foot, not to exceed <b>110%</b> of a comparable cost per square foot for leased space, as approved by the director of the Gambling Control Board. The lessor must attach documentation, verified by the organization, to confirm the comparable rate and all applicable costs to be paid by the organization to the lessor.</li> <li>⇒ <b>Rent may not be paid for bar bingo.</b></li> <li>⇒ Bar bingo does not include bingo games linked to other permitted premises.</li> </ul>		
<b>LEASE TERMINATION CLAUSE (must be completed)</b>		
The lease may be terminated by either party with a written <u>30</u> day notice. Other terms:		



**LG215 Lease for Lawful Gambling Activity**

**Lease Term:** The term of this agreement will be concurrent with the premises permit issued by the Gambling Control Board (Board).

**Management:** The owner of the premises or the lessor will not manage the conduct of lawful gambling at the premises. The organization may not conduct any activity on behalf of the lessor on the leased premises.

**Participation as a Player is Prohibited:** The lessor will not participate directly or indirectly as a player in any lawful gambling conducted on the premises. The lessor's immediate family and any agents or gambling employees of the lessor will not participate as players in the conduct of lawful gambling on the premises, except as authorized by Minnesota Statutes, Section 349.181.

**Illegal Gambling:** The lessor is aware of the prohibition against illegal gambling in Minnesota Statutes 609.75, and the penalties for illegal gambling violations in Minnesota Rules 7865.0220, Subpart 3. In addition, the Board may authorize the organization to withhold rent for a period of up to 90 days if the Board determines that illegal gambling occurred on the premises or that the lessor or its employees participated in the illegal gambling or knew of the gambling and did not take prompt action to stop the gambling. Continued tenancy of the organization is authorized without payment of rent during the time period determined by the Board for violations of this provision, as authorized by Minnesota Statutes, Section 349.18, Subd. 1(a).

To the best of the lessor's knowledge, the lessor affirms that any and all games or devices located on the premises are not being used, and are not capable of being used, in a manner that violates the prohibitions against illegal gambling in Minnesota Statutes, Section 609.75.

Notwithstanding Minnesota Rules 7865.0220, Subpart 3, an organization must continue making rent payments under the terms of this lease, if the organization or its agents are found to be solely responsible for any illegal gambling, conducted at this site, that is prohibited by Minnesota Rules 7861.0260, Subpart 1, Item H, or Minnesota Statutes, Section 609.75, unless the organization's agents responsible for the illegal gambling activity are also agents or employees of the lessor.

The lessor must not modify or terminate the lease in whole or in part because the organization reported, to a state or local law enforcement authority or to the Board, the conduct of illegal gambling activity at this site in which the organization did not participate.

**Other Prohibitions:** The lessor will not impose restrictions on the organization with respect to providers (distributor or linked bingo game provider) of gambling-related equipment and services or in the use of net profits for lawful purposes.

The lessor, the lessor's immediate family, any person residing in the same residence as the lessor, and any agents or employees of the lessor will not require the organization to perform any action that would violate statute or rule. The lessor must not modify or terminate this lease in whole or in part due to the lessor's violation of this provision. If there is a dispute as to whether a violation occurred, the lease will remain in effect pending a final determination by the Compliance Review Group (CRG) of the Board. The lessor agrees to arbitration when a violation of this provision is alleged. The arbitrator shall be the CRG.

**Access to Permitted Premises:** Consent is given to the Board and its agents, the commissioners of revenue and public safety and their agents, and law enforcement personnel to enter and inspect the permitted premises at any reasonable time during the business hours of the lessor. The organization has access to the premises during any time reasonable and when necessary for the conduct of lawful gambling.

**Lessor Records:** The lessor must maintain a record of all money received from the organization, and make the record available to the Board and its agents, and the commissioners of revenue and public safety and their agents upon demand. The record must be maintained for 3-1/2 years.

**Rent All-Inclusive:** Amounts paid as rent by the organization to the lessor are all-inclusive. No other services or expenses provided or contracted by the lessor may be paid by the organization, including but not limited to:

- trash removal
- electricity, heat
- snow removal
- storage
- janitorial and cleaning services
- other utilities or services
- lawn services
- security, security monitoring
- cost of any communication network or service required to conduct electronic pull-tabs games or electronic bingo
- in the case of bar operations, cash shortages.

Any other expenditures made by an organization that is related to a leased premises must be approved by the director of the Board. Rent payments may not be made to an individual.

**ACKNOWLEDGMENT OF LEASE TERMS**

I affirm that this lease is the total and only agreement between the lessor and the organization, and that all obligations and agreements are contained in or attached to this lease and are subject to the approval of the director of the Gambling Control Board.

**Other terms of the lease:**

\_\_\_\_\_  
 \_\_\_\_\_

Signature of Lessor: <i>Donna Jones</i> Date: <i>11-13-24</i>	Signature of Organization Official (Lessee): <i>[Signature]</i> Date: <i>11/13/24</i>
Print Name and Title of Lessor: <i>Donna Jones Owner</i>	Print Name and Title of Lessee: <i>TRAVIS HALL - GAMBLING MANAGER</i>

**Questions?** Contact the Licensing Section, Gambling Control Board, at 651-539-1900. This publication will be made available in alternative format (i.e. large print, braille) upon request. **Data privacy notice:** The information requested on this form and any attachments will become public information when received by the Board, and will be used to determine your compliance with Minnesota statutes and rules governing lawful gambling activities.

**Mail or fax lease to:**  
 Minnesota Gambling Control Board  
 1711 W. County Road B, Suite 300 South  
 Roseville, MN 55113  
 Fax: 651-639-4032

RESOLUTION NO. 24-41

A RESOLUTION APPROVING A CHARITABLE GAMBLING PREMISES PERMIT

BE IT RESOLVED BY THE MILACA CITY COUNCIL that the City Council hereby acknowledges and approves the American Legion Post 178 charitable gambling premises permit application to Gambling Control Board for lawful gambling.

The following premises so indicated are located within the city limits:

Round Two – 1030 Central Ave N

Any change in application information must be submitted to the City Council within ten (10) days of the change.

Adopted this 20<sup>th</sup> day of November, 2024.

\_\_\_\_\_  
Mayor Dave Dillan

ATTEST

\_\_\_\_\_  
Tammy Pfaff, City Manager