

2H. Consideration of adopting Resolution 2023-35 authorizing a purchase agreement for the acquisition of 200 West River Street

Prepared by: City Administrator	Meeting Date: 4/24/2023	<input checked="" type="checkbox"/> Consent Agenda Item <input type="checkbox"/> Regular Agenda Item
Reviewed by: N/A	Approved by:	

ACTION REQUESTED

Motion to adopt Resolution 2023-35 authorizing a purchase agreement for the acquisition of 200 West River Street and further authorizing the Mayor and City Administrator negotiate and specify final changes or amendments necessary to execute the intent of the City Council with respect to the purchase.

REFERENCE AND BACKGROUND

In late 2022, following public meetings regarding the 2023 Downtown Roadway & Pedestrian Improvement Project, the owners of 200 West River Street approached the City with an offer to sell their property. The subject parcel is approximately .37 acres and is an “L”-shaped lot adjacent to both Walnut and River Streets. The parcel is currently occupied by an existing single-family home structure that has been converted to a retail use as an occasional store. There is also an existing detached accessory building located at the rear of the property.

A primary focus of the Downtown Roadway & Pedestrian Improvement project is the reconnection of Walnut to River Street, and the intersection of the two streets will be directly adjacent to this parcel. While it’s unlikely the City will need additional right of way to connect the streets, grading on the parcel will be necessary to make the connection and to provide new sidewalk along the south side of River Street. Ownership of the property provides the City with flexibility in the grading limits and slope design in this area. In addition, it provides ample opportunity for designing an accessible route from Walnut Street to the existing building on the property. Ownership of the property also provides future opportunity to expand the parking area on the property and create additional circulation within this block of the downtown.

As noted, there is an occasional store located in the single-family structure on the parcel. The City has no plans to redevelop the site at this time, instead the existing principal use is intended to continue with an updated lease agreement. The restated lease is necessary since the existing agreement between the property owner and tenant is from 2008 and currently month-to-month. The City is proposing an Amended and Restated Lease with a 3-year term but has kept the monthly rent payment and general terms of the lease agreement the same. The draft lease agreement is included as supporting data to this report; however, the agreement remains

between the current property owner and tenant. The lease must be signed by both parties as a term of the Sale and Purchase Agreement and then the lease will become a document between the City and the tenant upon closing.

Additional key terms of the Sale and Purchase Agreement include:

- A purchase price of \$327,500
- Seller will pay closing fees up to \$2,500
- 2023 property taxes will be pro-rated between the Seller and the City
- Seller and City pay their own attorney fees

Following approval of the purchase agreement and review of the lease agreement by the seller and tenant, the closing will be scheduled as soon as possible.

- I. **Budget Impact:** The purchase price of \$327,500 and any closing costs above and beyond the \$2,500 from the seller will be paid from the Capital Projects Fund. There are funds to support this purchase; however, this reduces the balance for future projects.
- II. **Staff Workload Impact:** Staff have been involved in the development of the purchase agreement and revised lease agreement with significant participation by the City's attorney.
- III. **Comprehensive Plan Impact:** The parcel is guided "Downtown Mixed Use" within the current Monticello 2040 Vision + Plan. The Comprehensive Plan adopts the Monticello Downtown Small Area Plan as the guiding document for downtown development and land use. The Downtown Small Area Plan specifically recommends access to the riverfront by extending Walnut Street to connect to River Street. It also advocates for coordinated public and private improvements which will create a human-scaled environment for an attractive, vibrant downtown.

STAFF RECOMMENDED ACTION

Staff recommend approval of the acquisition. The acquisition of this parcel facilitates the street connection and the addition of a new sidewalk connection, both important components associated with the redevelopment of Block 52.

The Planning Commission reviewed the proposed purchase at its April 4, 2023 meeting and found it to be in conformance to the Monticello 2040 Vision + Plan.

SUPPORTING DATA

- A. Draft Resolution 2023-35
- B. Sale and Purchase Agreement
- C. Amended and Restated Lease

**CITY OF MONTICELLO
WRIGHT COUNTY, MINNESOTA**

**RESOLUTION NO. 2023-35
RESOLUTION APPROVING ACQUISITION OF PROPERTY**

WHEREAS, the City of Monticello ("City") is proposing to acquire certain real property located at 200 West River Street, Monticello, MN 55362 (PID No. 155010051111) ("Property") as part of the Downtown Roadway & Pedestrian Improvement Project;

WHEREAS, the City has received and reviewed the proposed Agreement for the acquisition of the property to be entered into by and between the City and the owner of the Property;

WHEREAS, the Planning Commission has reviewed the proposed acquisition of the Property and has found that such acquisition is in conformance with the City's Comprehensive Plan;

WHEREAS, the City Council finds that the acquisition of the Property is in the public's interest and furthers the aims and purposes of the City;

WHEREAS, the Property is not under the threat of condemnation and the acquisition is a voluntary sale.

NOW, THEREFORE, BE IT RESOLVED by the City of Monticello, Minnesota:

1. The Agreement is hereby approved.
2. The City Attorney and City staff are authorized to finalize all documents necessary to complete the acquisition of the Property.
3. The Mayor and City Administrator are authorized to execute any and all documents necessary and required under the terms of the Agreement to effect the acquisition of the Property.

APPROVED AND ADOPTED this 24th day of April, 2023, by the City Council of the City of Monticello, Minnesota.

CITY OF MONTICELLO

By _____
Lloyd Hilgart, Mayor

ATTEST:

Jennifer Schreiber, City Clerk

DRAFT

SALE AND PURCHASE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT (the “**Agreement**”), is made as of _____, 20__ (the “**Effective Date**” of this Agreement) between the **CITY OF MONTICELLO**, a Minnesota municipal corporation (the “**Buyer**”) and **PATRICK A. SAWATZKE** and **MICHELLE C. SAWATZKE**, husband and wife (“**Sellers**”).

In consideration of the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. SALE OF PROPERTY. Sellers agree to sell to Buyer, and Buyer agrees to buy from Sellers, the following (collectively, "**Property**"):

(a) **Real Property.** The real property located in the City of Monticello, Wright County, Minnesota described on attached Exhibit A ("**Land**") together with (1) building located on the Land (“**Building**”) (2) all improvements located on the Land and fixtures located thereon, including without limitation, all water and sewer taps, all equipment used in connection with the operation thereof, such as elevators, security and alarm systems, and heating and air conditioning systems and (3) all easements and rights benefitting or appurtenant to the Land (collectively the "**Real Property**"), subject to certain encumbrances, if any. Notwithstanding the foregoing, the Real Property shall not include trade fixtures belonging to any tenant located on the Real Property.

(b) **Material Contracts.** The Sellers’ entire right and interest in and to all utility deposits, all supplier, vendor or other contracts relating to the Property, and not cancelable on sale or upon thirty (30) days’ notice and all licenses, permits and warranties now in effect with respect to the Property (the "**Material Contracts**").

2. PURCHASE PRICE AND MANNER OF PAYMENT. The purchase price (“**Purchase Price**”) to be paid by Buyer to Sellers shall be Three Hundred Twenty Seven Thousand Five Hundred and No/100 Dollars (\$327,500.00) in full in cash, certified funds, title company check or by wire transfer of immediately available funds at Closing (as defined below).

3. CONDITIONS TO BUYER’S OBLIGATIONS. The obligations of Buyer under this Agreement are conditioned upon satisfaction or waiver by Buyer of each of the following by the respective dates indicated:

(a) **Access.** Sellers shall allow Buyer and Buyer’s agents’ access to the Property without charge and at all reasonable times for the purpose of investigation and testing. Buyer and its duly authorized agents will have the right during the period from the Effective Date until the Closing upon twenty-four (24) hour notice to Seller and Tenant (as further described below), to enter in and upon the Property to complete its due diligence, including without limitations, completing investigation and testing. If such testing reveals any condition or circumstances which Buyer finds objectionable for any reason, in Buyer’s sole and absolute discretion, Buyer shall have the right and option to terminate this Agreement by written notice delivered to Sellers on or before the Inspection Deadline as set forth herein. Subject to the monetary liability limits contained in Minn. Stat. 46.04, Buyer shall pay all

costs and expenses of such investigation and testing and shall indemnify, defend and hold Sellers and the Property harmless from all costs and liabilities relating to Buyer's activities; provided that Buyer shall not be responsible for existing conditions on the Property nor the cost of investigations or studies completed by Sellers before the Effective Date. Buyer shall further repair any damage to the Property caused by or occurring as a result of Buyer's testing. The foregoing covenants shall survive the termination or cancellation of this Agreement.

(b) Title. Title shall have been found acceptable by Buyer in its sole discretion, or been made acceptable, in accordance with the requirements and terms of **Section 4** below.

(c) Representations and Warranties. The representations of Sellers contained in this Agreement will be true now and on the Closing Date as if made on the Closing Date.

(d) Investigations or Testing. Buyer determining on or before the Closing Date, that it is satisfied, in its sole discretion, with the results of matters disclosed by any environmental/engineering investigation or testing of the Property performed by Buyer or Buyer agent.

(e) Records and Related Information. Buyer determining on or before the Closing Date, that it is satisfied, in its sole discretion, with its examination and analysis of all documents relating to the Property, including, without limitation, the documents identified as (1) – (14) below (collectively, the “**Documents**”). Within twenty (20) days of the date of this Agreement, Sellers shall deliver to Buyer all Documents for Buyer's review.

- (1) To the extent they exist and are in Sellers' possession, copies of all architectural, engineering and construction plans, blueprints, specifications and the like for the building and of all site plans, topographical drawings, utility plans, surveys and the like related to the Property.
- (2) Copies of all supplier or vendor contracts relating to the Property and not cancelable on sale or upon thirty (30) days' notice.
- (3) Copies of all building inspection reports or similar information issued on behalf of the City of Monticello in Sellers' possession and from any inspections performed by or for Seller or in Seller's possession.
- (4) Copies of any warranties in connection with the Property which shall be assigned to Buyer at Closing to the extent assignable.
- (5) Copies of the most recent property tax statements and information concerning property taxes and property tax appeals, if any.
- (6) Information concerning the history of operating income and expenses for the past three (3) years.

- (7) Certified current rent roll.
- (8) Copies of certificates of occupancy for the Property.
- (9) Copy of any existing surveys of the Property.
- (10) Copies of existing environmental reports and copies of all reports, assessments and information filed by Sellers or Sellers' predecessor in interest with the MPCA or any other regulatory body.
- (11) Copies of all Material Contracts and related files.
- (12) Copies of any outstanding bids or estimates for repairs and/or capital improvements.
- (13) Copy of all soil tests taken on the Property which are available to Seller.
- (14) Copy of all current leases, including the Tenant.

Buyer agrees to return all of said copies, records and information to Seller in the event that the Closing contemplated by this Agreement does not occur or if this Agreement is terminated for any reason.

(f) Amended and Restated Lease. Seller and Tenant entering into an amended and restated lease in a form approved by the City ("Lease Amendment").

(g) Estoppel Certificate. An Estoppel Certificate has been provided in a form acceptable to Sellers and Buyer for any leases currently in effect against the Property.

If any condition set forth in this **Section 3** has not been satisfied or waived on or before the Closing Date (the "**Inspection Deadline**"), then Buyer may, at Buyer's option, terminate this Agreement. Upon such termination, neither Sellers nor Buyer shall have any further rights or obligations under this Agreement except for the covenants made in **Section 3(a), Section 8 and Section 10** (the "**Surviving Covenants**"). If Buyer has not terminated this Agreement on or before the Inspection Deadline, then Buyer shall be deemed to have waived the contingencies set forth herein.

4. TITLE MATTERS. Title examination shall be conducted as follows:

(a) Title Evidence. Within fifteen (15) days of the date of this Agreement, Buyer shall be responsible for obtaining a title insurance commitment ("**Title Commitment**") from such title company selected by Buyer (the "**Title Company**") and reviewing title to the Property.

(b) Buyer's Objections. Buyer shall be allowed sixty (60) business days after the receipt of the Title Commitment (the "**Review Period**") for examination of title and to render any written objections to Sellers as to matters shown on the Title Evidence

(“**Objections**”). Buyer shall be deemed to have automatically made Objections to any mortgage, judgment, tax lien, mechanic’s lien or any other monetary lien against the Property (collectively “**Monetary Liens**”). With respect to any update to the Title Commitment, Buyer shall have fifteen (15) days after Buyer’s receipt of the applicable updated Title Commitment to notify Sellers of any Objections; provided that Buyer shall not have the right to object to any matters that were shown on a previous Title Commitment and not timely objected to by Buyer. Sellers shall have no obligation to correct any Objections; provided, however, Sellers shall cause to be satisfied at Closing all voluntary Monetary Liens (mortgages and other liens which Sellers have consented to or joined in) out of proceeds from Closing on the Closing Date if they are not satisfied prior thereto. At Closing, Buyer shall have the right to require endorsement(s) to the Title Policy. If the Objections are not cured prior to the Closing Date, Buyer will have the option to do any of the following by notice provided to Sellers:

(i) Terminate. Terminate this Agreement pursuant to **Section 3** herein, on or before the Closing Date. Upon such termination, neither Sellers nor Buyer shall have any further rights or obligations under this Agreement, except for the Surviving Covenants. Buyer shall be entitled to return of the Earnest Money; or

(ii) Waive. Waive the Objections and close the transaction contemplated by this Agreement as if such Objections had not been made or waive the Objections pending Sellers’ cure of the objections at or before Closing, in which case, Buyer’s right to terminate this Agreement under **Section 3** will extend until Closing.

(c) Title Policy. If the Closing occurs, Title Company shall issue an owner’s title insurance policy (“**Title Policy**”) pursuant to the Title Commitment, or a suitable marked up of the Title Commitment initiated by the Title Company undertaking to issue such a Title Policy within a reasonable time in the form required by the Title Commitment as approved by Buyer. The Title Policy shall be paid for by Buyer.

5. **CLOSING PROCEDURES.**

(a) Closing Date. The closing of the purchase and sale contemplated by this Agreement (the “**Closing**”) shall occur on or before _____, 20__ or such later date as mutually agreed to by the Buyer and Sellers (the “**Closing Date**”) or as otherwise extended under the terms of this Agreement. The Closing shall take place at 10:00 a.m. local time at the office of Title Company, or such other time or location as determined by the Buyer and shall be completed through escrow of closing documents and funds with the Title Company.

(b) Sellers’ Closing Documents. On the Closing Date, Sellers shall execute and/or deliver to Buyer the following (collectively, the “**Sellers’ Closing Documents**”):

- (i) Deed. A Warranty Deed (the “**Deed**”), in recordable form, conveying marketable title to the Property to Buyer, free and clear of all encumbrances, other than those encumbrances not objected to or waived pursuant to **Section 4** above;
 - (ii) Sellers’ Affidavit. The standard owner’s affidavit as may be required by the title Insurer to issue the Title Policy in the form required by **Section 4** above;
 - (iii) FIRPTA Affidavit. A nonforeign affidavit, properly executed and in recordable form, containing such information as is required by IRC Section 1445(b)(2) and its regulations;
 - (iv) Well Disclosure Statement. A Well Disclosure Statement, properly executed and in recordable form, disclosing any wells existing on the property or, if no wells, a statement to that effect on the Deed;
 - (v) Estoppel Certificate. Fully executed estoppel certificate covering the Lease on a form approved by Buyer;
 - (vi) Keys to all locks on the Property;
 - (vii) Lease Amendment. The Lease Amendment required under Section 3(f) of this Agreement ; and
 - (viii) Other Documents. All other documents reasonably determined by Buyer or the Title Company to be necessary to transfer the Property to Buyer, provided the same are acceptable to Sellers, including a Closing Statement, which shall also be joined in by Buyer.
- (c) Buyer’s Closing Documents. On the Closing Date, Buyer will execute and/or deliver to Sellers the following (collectively, “**Buyer’s Closing Documents**”):
- (i) Purchase Price. The Purchase Price to be paid as required by **Section 2** hereof; and
 - (ii) Title Documents. Such affidavits of Buyer or other documents as may be reasonably required by the Title Company in order to record Sellers’ Closing Documents and issue the Title Policy.
- (d) Possession. Sellers shall deliver possession of the Property not later than the actual date of closing.

6. PRORATIONS. Sellers and Buyer shall make the following prorations and allocations at the Closing:

- (a) Title Insurance and Closing Fee. Buyer shall pay the cost of the Title Commitment, the related title searches and a GAP endorsement. Buyer shall pay the cost of the

premium for the Title Policy and all other endorsements. Sellers will pay any reasonable and customary closing fee or charge imposed by the Title Company or its designated closing agent, up to \$2,500.00. Buyer will pay any remaining costs of such customary closing fee or charge as applicable.

- (b) Deed Tax. Sellers shall pay all state deed tax due on the Deed to be delivered by Sellers under this Agreement.
- (c) Real Estate Taxes and Special Assessments. General real estate taxes and installments of special assessments payable therewith (“Taxes”) due and payable in the year prior to the year in which the Closing Date occurs and all prior years shall be paid by Sellers. Taxes due and payable in the year in which the Closing Date occurs shall be prorated between Sellers and Buyer as of the Closing Date. Buyer shall pay the Taxes due and payable in the year subsequent to the year in which the Closing Date occurs and thereafter. Sellers shall pay all special assessments levied, pending or ordered against the Property as of the Closing Date.
- (d) Recording Costs. Sellers will pay the cost of recording all documents necessary to place record title in Sellers. Buyer will pay the cost of recording all other documents.
- (e) Attorneys’ Fees. Sellers and Buyer shall each pay its own attorneys’ fees in connection with the preparation and negotiation of this Agreement and the Closing.
- (f) Utilities. Final readings on all gas, water and electric meters shall be made as of the Closing Date, or as soon thereafter as is possible. Sellers shall be responsible for all charges for consumption of utilities through the Closing Date.
- (g) Operating Costs. Other operating costs shall be prorated between the Sellers and Buyer as of the Closing Date, with Sellers paying all such items applicable to the period through the Closing Date.
- (h) Rent. Sellers shall receive all rent from tenant under the terms of the Lease prorated through the Closing Date and Buyer shall receive rent under the Lease thereafter. Sellers shall assign the security deposit under the Lease to Buyer.
- (i) Other Costs. All other income, rents, fees, costs, expenses, operating costs of the Property and any other income or expenses shall be prorated between Seller and Buyer as of the Closing Date.

7. OPERATION PRIOR TO CLOSING. During the period from the Effective Date through the Closing Date (the “**Executory Period**”), Sellers shall not execute any contracts, leases, or other agreements regarding the Property, nor perform any act that would impair or encumber the title to the Property or affect the condition of the Property.

8. REPRESENTATIONS BY SELLERS. Sellers represent and warrant to Buyer as follows, which representations shall be true and correct as of the Closing:

(a) Authority. Sellers' execution, delivery, and performance by Sellers of such documents does not conflict with or result in a violation of any judgment, order, or decree of any court or arbiter to which Sellers are a party, or any agreement by which Sellers are bound; and such documents are and shall be valid and binding obligations of Sellers, enforceable in accordance with their terms.

(b) Title to Property. At Closing, Sellers will own and have good and marketable title to the Property, free and clear of all liens, agreements, encumbrances, or other restrictions; and Buyer will receive good and absolute fee title thereto, free from any liens, charges or encumbrances thereon.

(c) Mechanic's Liens. All labor and materials which have been provided to the Property have been fully paid for or will be fully paid for, prior to the Closing Date.

(d) Rights of Others to the Property. Sellers have not entered into any other contracts for the sale of the Property, nor are there any effective rights of first refusal or options to purchase the Property or any other legal or equitable rights of others that might prevent the consummation of this Agreement or the development and use of the Property as Buyer intends, except the Contract for Deed recorded in the Wright County Recorder's office on October 20, 2003, as Document No. A880382 ("Contract"), which Contract will be satisfied at Closing.

(e) Storage Tanks. There are no above-ground or underground tanks are located in or on the Property.

(f) Wells and Septic. Sellers know of no wells on the Property. At the time of Closing, Sellers will deliver any required well certificate pursuant to applicable laws. To Sellers' knowledge, there is no "individual sewage treatment system" within the meaning of Minn. Stat. Section 115.55 on or serving the Property.

(g) Litigation and Other Matters. Sellers have received no notice, and have no knowledge of any pending notice, of a violation of any statutes, ordinances, regulations, judicial decrees, or orders, or the pendency of any lawsuits, administrative or arbitration hearings, governmental investigations, proceedings, applications, petitioners, or other matters affecting the Property or the use thereof, except those which may have been initiated by or participated in by Buyer.

(h) Proceedings. There is no action, litigation, investigation, condemnation or proceeding of any kind pending or, to the best knowledge of Sellers, threatened against Sellers with respect to the Property. Sellers hereby acknowledge that the sale of the Property is a voluntary sale and not under threat of condemnation and the payment of the Purchase Price does not include payment for Relocation Benefits and Minimum Compensation

Benefits and hereby release Purchaser from any liability for payment of additional relocation payments pursuant to the Act (or other federal or state law provisions) with respect to the Property.

(i) Environmental.

(1) To Sellers' knowledge there are no Hazardous Substances stored, deposited or located within the Property or under the surface of the Property. For purposes of this representation, the term "**Hazardous Substances**" means asbestos and asbestos-containing materials, polychlorinated biphenyls, nuclear fuel or materials, chemical waste, radioactive materials, explosives, known carcinogens, petroleum products, or other dangerous, toxic, or hazardous pollutant, contaminant, chemical, material or substance defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by, any Environmental Laws. For purposes of this Agreement, the term "**Environmental Laws**" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. §§ 9601-9657, as amended, and any other federal, state and local laws, rules and regulations dealing with Hazardous Substances, the environment or public health.

(2) To Sellers' knowledge, the Property is in compliance with all applicable environmental laws, rules, regulations and ordinances.

(j) FIRPTA. Sellers are not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate," as those terms are defined in Section 1445 of the Internal Revenue Code.

(k) Protected Historical Sites. To Sellers' knowledge, the Property does not have any American Indian burial grounds, other human burial grounds, ceremonial earthworks, historical materials, and/or other archeological sites that are protected by federal or state law. Buyer's obligation to close is contingent upon Buyer determining to Buyer's satisfaction that the Property does not have any American Indian burial grounds, other human burial grounds, ceremonial earthworks, historical materials, and/or other archeological sites that are protected by federal or state law.

(l) Compliance with Laws. To the best of Sellers' knowledge, the Property and the current use thereof fully complies with all existing local, state and federal regulations concerning the maintenance and operation of the Property, including zoning, building, health and safety, fire safety, and environmental codes and laws. No notice of violations of the same have been received.

(m) Conditions. To Sellers' knowledge, the buildings and improvements currently constructed on the Property, have been constructed in a good and workman like manner in compliance with all applicable building, health and safety laws, codes and ordinances.

(n) No Defaults Under Assumed Contracts. To Sellers' knowledge, there are no defaults, or conditions that may constitute a default with the passage of time, under the Assumed

Contracts, and to Seller's knowledge all Assumed Contracts are valid, enforceable and currently being performed by all parties.

(o) Seller's Defaults. To Sellers' knowledge, Sellers are not in default concerning any of its other obligations or liabilities regarding the Property and the representations contained in this Agreement are true and correct.

(p) Assessments. Sellers have received no notice of actual or threatened imposition of any special assessment or any reassessment of the Real Property's current real estate tax valuation. The Property is not subject to any agreement for a minimum assessment value.

(q) Lien for Medical Assistance. Sellers indicate that the Property is **not** subject to a lien for Medical Assistance or other public assistance.

(r) Methamphetamine Disclosure. To the best of Sellers' knowledge, methamphetamine production **HAS NOT** occurred on the Property.

(s) Lease. There is a single tenant on the Property with Drawers of Davlee, Inc. ("Tenant"), a copy of the executed lease is not held by either Tenant or Seller. Seller will enter into an Lease Amendment prior to or at Closing, in a form acceptable to Buyer.

Sellers will indemnify Buyer, its successors and assigns, against, and will hold Buyer, its successors and assigns, harmless from, any expenses or damages including reasonable attorneys' fees, that Buyer incurs because of the breach of any of the above representations and warranties, whether such breach is discovered before or after closing. Each of the representations and warranties herein shall survive the Closing. Consummation of this Agreement by Buyer with knowledge of any breach of such representations and warranties by Sellers shall not constitute a waiver or release by Buyer of any claims due to such breach.

9. DAMAGE. If, prior to the Closing Date, all or any part of the Property is substantially damaged by fire, casualty, the elements or any other cause, Sellers shall immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within ten (10) days after Sellers' notice), this Agreement shall terminate, in which event neither party will have any further obligations under this Agreement. If Buyer fails to elect to terminate despite such damages, or if the Property is damaged, but not substantially, Sellers shall assign to Buyer all right to receive the proceeds of all insurance related to such damage and the Purchase Price shall remain the same. For purposes of this **Section**, the words "substantially damaged" mean damage that in the aggregate would cost Ten Thousand and no/100 Dollars (\$10,000.00)

10. REPRESENTATIONS AND INDEMNITY BY BUYER. Buyer represents to Sellers that Buyer has the power and authority to execute this Agreement and any Buyer's Closing Documents signed by it; that all such documents have been authorized by all necessary action on the part of Buyer and at the Closing shall have been duly executed and delivered; that the execution, delivery, and performance by Buyer of such documents does not conflict with or violate any judgment, order or decree of any court or arbiter or any agreement by which Buyer is bound;

Notice shall be effective, and the time for response to any notice by the other party shall commence to run, one (1) business day after any such mailing or deposit. Either Sellers or Buyer may change its address for the service of notice by giving notice of such change to the other party, in any manner above specified, ten (10) days prior to the effective date of such change. Notwithstanding the foregoing, any party may give any other party written notice hereunder by any means other than by United States registered or certified mail or overnight courier, which is reasonably calculated to reach the other party, including but not limited to hand delivery, email transmission or facsimile transmission, provided that any such notice shall be deemed to have been given and shall be effective only when actually received by the addressee, proof of which shall be furnished by the party sending such notice.

15. CAPTIONS; EXHIBITS. The section and paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. All schedules, exhibits, addenda or attachments referred to herein are hereby incorporated in and constitute a part of this Agreement.

16. ENTIRE AGREEMENT; MODIFICATION. This Agreement constitutes the complete agreement between Sellers and Buyer and supersedes any prior oral or written agreements between them regarding the Property. There are no oral agreements that change this Agreement, and no amendment of any of its terms will be effective unless in writing and executed by both Sellers and Buyer.

17. BINDING EFFECT. This Agreement binds and benefits Sellers and Buyer and their respective successors and assigns.

18. CONTROLLING LAW. This Agreement has been made under, and will be interpreted and controlled by, the laws of the State of Minnesota.

19. WAIVER. No waiver of the provisions of this Agreement shall be effective unless in writing, executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of similar or different nature, unless expressly stated in writing.

20. COUNTERPARTS. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

21. FACSIMILE SIGNATURES. This Agreement may be executed with signatures transmitted by facsimile or email and shall constitute a binding agreement with such signatures. Nonetheless, any party providing facsimile or emailed signatures shall provide the other party with the original signatures within five (5) business days after providing the facsimile signature page(s).

22. SEVERABILITY. If any provision of this Agreement is invalid or unenforceable, such provision shall be deemed to be modified to be within the limits of enforceability or validity, if feasible; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

23. LIMITATION OF LIABILITY. Upon Closing, Buyer shall neither assume nor undertake to pay, satisfy or discharge any liabilities, obligations or commitments of any Sellers other than those specifically agreed to between the parties and set forth in this Agreement.

24. REMEDIES. Time is of the essence of this Agreement. If Sellers fail to perform any of its obligations under this Agreement, Buyer may: (i) terminate this Agreement; or (ii) commence an action for specific performance of this Agreement within six (6) months after the termination of this Agreement. Such termination of this Agreement or specific performance action will be the only remedies available to Buyer for a default by Sellers, and Sellers will not be liable for damages.

If Buyer defaults in performance of its obligations under this Agreement, Sellers shall have the right to terminate this Agreement in the manner provided by Minn. Stat. Sec. 559.21. Such termination of this Agreement will be the only remedy available to Sellers for such default by Buyer, and Buyer will not be liable for damages or specific performance.

25. BROKER'S COMMISSION. Each party represents to the other that it has not engaged any party as a broker in connection with the transactions contemplated by this Agreement. Sellers will indemnify Buyer from and against any and all liability to which Buyer may be subjected by any broker's, finder's, or similar fee with respect to the transactions contemplated by this Agreement to the extent such fee is attributable to any action undertaken by or on behalf of Sellers or any affiliate of Sellers, including any claim by Sellers' Broker or any employee or agent of Sellers' Broker. Buyer will indemnify Sellers from and against any and all liability to which Sellers may be subjected by reason of any broker's, finder's or similar fee with respect to the transactions contemplated by this Agreement to the extent such fee is attributable to any action undertaken by or on behalf of Buyer.

Sellers and Buyer have executed this Agreement as of the date set forth above.

BUYER:

CITY OF MONTICELLO

By: _____

Its: _____

SELLERS:

Patrick A. Sawatzke

Michelle C. Sawatzke

EXHIBIT A

Lots 11 and 12, Block 51, Townsite of Monticello, Wright County, Minnesota, according to the recorded plat thereof except that part described as follows:

Beginning at the Southeast corner of said Lot 11; thence on an assumed bearing of North 64 degrees 05 minutes 32 seconds West along the Southwesterly line of said Lots 11 and 12 to a point distant 9.00 feet Northwesterly of the Southeast corner of said Lot 12; thence North 26 degrees 00 minutes 06 seconds East, parallel with the Southeasterly line of said Lot 12 a distance of 75.00 feet; thence South 64 degrees 05 minutes 26 seconds East to a point on the Southeasterly line of said Lot 11 distant 75.00 feet Northeasterly of the Southeast corner of said Lot 11; thence South 26 degrees 00 minutes 00 seconds West along said Southeasterly line a distance of 75.00 feet to the point of beginning.

Abstract Property

AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE ("Lease") is made on this ____ day of _____, 20__ by **PATRICK A. SAWATZKE** ("Landlord") and **DRAWERS OF DAVLEE, INC.**, a Minnesota corporation, ("Tenant").

WHEREAS, Landlord and Tenant entered into a General Lease agreement on April 5, 2008 ("Original Agreement") for a property that was described in the Original Agreement as: Portions of Lots 11 & 12, Block 51, Townsite of Monticello, Wright County; and

WHEREAS, it is unclear whether the Original Agreement was executed; and

WHEREAS, neither Landlord nor Tenant could provide a fully executed version of the Original Agreement, dated April 5, 2008; and

WHEREAS, Landlord and Tenant desire to amend and fully restate any lease agreement between them and to clarify their respective rights and obligations by outlining them in this Lease.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. LEASED PREMISES. Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant rents from Landlord, the premises legally described in the attached Exhibit A, hereinafter referred to as the "Leased Premises."

2. TERM. The term of this Lease (the "Term") shall be for three years from the date of the Lease, and may be terminated by either party upon 30 days' notice.

3. RENT. Tenant shall pay the Landlord as "Rent" for the Leased Premises the sum of Six Hundred Fifty and No/100 Dollars (\$650.00) per month. Rent is payable in advance, on or before the fifth day of each month through the Term provided. If the termination of the Lease shall be a day other than the last day of a calendar month, the Base Rent installment for such first or last fractional month shall be pro-rated accordingly. Tenant's failure to make any monetary payment required of Tenant hereunder within five (5) days of the due date therefore shall result in the imposition of a service charge for such late payment in the amount of \$25. In addition, any sum not paid within thirty (30) days of the due date therefore shall bear interest at a rate equal to the lesser of eighteen percent (18%) or the maximum amount permitted by law from the date due until paid.

4. UTILITIES AND SERVICES.

(a) Tenant shall be solely and exclusively responsible for making arrangements for, and solely and exclusively responsible for, the cost of the following services necessary for Tenant's comfortable use and occupancy of the Leased Premises for general office and/or retail use or as may be required by law or directed by governmental authority:

i. Cleaning and janitorial service;

ii. Cleaning, care and maintenance of the Leased Premises and the walks, driveways, parking lots and landscaped areas adjacent to the Leased Premises, including the removal of rubbish.

(b) Utility Charges. Tenant shall be responsible for the cost of all utilities at the Leased Premises including:

- i. Cost of all heating, ventilation and air conditioning of the Building including electrical and gas;
- ii. Cost of all electricity for lighting and operating any equipment on the Leased Premises;
- iii. Cost of all gas;
- iv. Cost of all water and sewer; and
- v. Replacement of all lamps, bulbs, starters and ballasts used on the Leased Premises.

(c) Sidewalk and Parking Lot Maintenance. Tenant shall be responsible for maintenance and snow removal of sidewalks and parking lot for the Leased Premises.

(d) Interruption of Services. Tenant understands, acknowledges and agrees that any one or more of the utilities or other building services identified above may be interrupted by reason of accident, emergency or other causes beyond Landlord's control, or may be discontinued or diminished temporarily by Landlord or other persons until certain repairs, alterations or improvements can be made; that Landlord does not represent or warrant the uninterrupted availability of such utilities or building services; and that any such interruption shall not be deemed an eviction or disturbance of Tenant's right to possession, occupancy and use of the Leased Premises or any part thereof, or render Landlord liable to Tenant in damages by abatement of rent or otherwise, or relieve Tenant from the obligation to perform its covenants under this Lease.

(f) Payment for Utilities and Building Services. The cost of additional utilities and other building services furnished by Landlord at the request of Tenant or as a result of Tenant's activities shall be borne by Tenant, who shall be separately and/or additionally billed therefore and who shall reimburse and pay Landlord monthly for the same, at the same time the next monthly installment of Rent is due. Tenant agrees to give reasonable advance notice, in writing, to Landlord of its request for additional services.

5. TAXES AND ASSESSMENTS. Tenant shall be responsible for the payment of any taxes and assessments levied or assessed upon or with respect to the land or improvements comprising the Property including the Building or Rent or other sums payable hereunder. If, at any time during the Term of the Lease, a tax or excise on rents or income or other tax however described is levied or assessed by the United States or the State of Minnesota, or any political subdivision thereof, on account of the Rent hereunder or the interest of Landlord under this Lease, such tax or excise shall constitute and be included as a tax hereunder. Should the State of Minnesota or any political subdivision thereof, or any other governmental authority having jurisdiction over the Property impose a tax, assessment, charge, or fee, which Landlord shall be required to pay, wholly or partially, in substitution for or as a supplement to such real estate taxes or levy against the land, or Building,

to the extent that the same is in substitution for or as a supplement to said real estate taxes, such taxes, assessments, fees or charges shall be deemed to constitute taxes hereunder.

6. LEASEHOLD IMPROVEMENTS. Tenant shall be solely and exclusively responsible for the cost of any leasehold improvements that Tenant may choose to make. No improvements shall be made by Tenant or Tenant's agents or contractors without Landlord's written consent. Tenant, or its contractors or agents, shall complete construction of any and all improvements in a good and workmanlike manner, utilizing new and first grade material, in conformity with all applicable federal, state, and local laws, ordinances, rules, regulations, building codes, fire regulations, and applicable insurance requirements.

7. DELIVERY OF POSSESSION. Tenant acknowledges that it is currently renting the Leased Premises, has inspected the Leased Premises, and accepts the Leased Premises "as is". Landlord makes no representations as to the repair of the Leased Premises and that no promises to alter, remodel or improve the Leased Premises have been made by the Landlord except as provided under this Agreement and Tenant agrees to make any repairs necessary for Tenant to use the Leased Premises.

8. USE OF THE LEASED PREMISES.

(a) Specific Use. The Leased Premises shall be occupied and used exclusively by Tenant as a used merchandise store.

(b) Covenants Regarding Use. In connection with its use of the Leased Premises, Tenant agrees to do the following:

- i. Tenant shall use the Leased Premises and conduct its business thereon in a safe, careful, reputable and lawful manner; shall keep and maintain the Leased Premises in as good a condition as they were when Tenant first took possession thereof, ordinary wear and tear excepted, and shall make all necessary repairs to the Leased Premises other than those which Landlord is obligated to make as provided elsewhere herein.
- ii. Tenant shall not commit, nor allow to be committed, in, on or about the Leased Premises any act of waste, or use or permit to be used on the Leased Premises any hazardous substance, equipment or other thing which might cause injury to person or property or increase the danger of fire or other casualty in, on or about the Leased Premises; permit any objectionable or offensive noise or odors to be emitted from the Leased Premises.
- iii. Tenant shall not overload the floors, ceilings, or wall of the Leased Premises beyond their designed weight-bearing capacity. Landlord reserves the right to direct the positioning of all heavy equipment, furniture and fixtures which Tenant desires to place in the Leased Premises so as to distribute properly the weight thereof, and to require the removal of any equipment or furniture which exceeds the weight limit specified for the Leased Premises.

- iv. Tenant shall not use the Leased Premises, nor allow the Leased Premises to be used, for any purpose or in any manner which would, in Landlord's opinion, invalidate any policy of insurance now or hereafter carried on the Leased Premises or increase the rate of premiums payable on any such insurance policy. Should Tenant fail to comply with this covenant, Landlord may, at its option, require Tenant to stop engaging in such activity or to reimburse Landlord for any increase in premiums charged during the term of this Lease on the insurance carried by Landlord on the Leased Premises and attributable to the use being made of the Leased Premises by Tenant.

(c) Compliance with Laws. Tenant shall not use or permit the use of any part of the Leased Premises for any purpose prohibited by law.

9. SIGNS. All signs on the Leased Premises shall comply with all ordinances, rules and regulations of the Landlord and require written consent of Landlord.

10. REPAIRS, MAINTENANCE, IMPROVEMENTS AND FIXTURES.

(a) Except as set forth herein, Landlord shall, at its expense, make any necessary repairs to the Building and Property and every part thereof, ordinary wear and tear excepted, including the heating, air conditioning, electrical and plumbing equipment and facilities servicing the Leased Premises, except repairs which may be required by reason of acts or negligence of Tenant, its agents, employees, customers or invitees, or the particular nature of Tenant's use of the Property. Tenant shall be responsible for repairing any damage to the Property and Building caused by the installation or moving of Tenant's furniture, equipment and personal property.

(b) Upon expiration or earlier termination of this Lease, Tenant shall surrender the Leased Premises to Landlord clean and in good condition and repair, normal wear and tear excepted.

(c) Tenant shall, at Tenant's expense, promptly repair all damage caused by the Tenant to the Leased Premises and replace or repair all damaged or broken fixtures, equipment and appurtenances with materials equal in quality and class to the original materials, under the supervision and subject to the approval of Landlord, and within any reasonable period of time specified by Landlord. If Tenant fails to do so, Landlord may, but need not make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, including Landlord's Costs, forthwith upon being billed for same. As used in this Lease, the term "Landlord's Costs" shall mean five percent (5%) of any costs or expenses paid by Landlord, in order to reimburse Landlord for all overhead, general conditions, fees and other costs and expenses arising from Landlord's actions or involvement.

(d) Trade Fixtures. Any trade fixtures installed on the Leased Premises by Tenant at its own expense, at Landlord's request, shall be removed upon termination of this Lease provided that Tenant is not then in default. Tenant agrees that Tenant will bear the cost of such removal, and further that Tenant will repair at its own expense any and all damage to the Leased Premises resulting from the original installation of and subsequent removal of such trade fixtures. If Tenant fails so to remove any and all such trade fixtures from the Leased Premises on the Expiration Date or upon earlier termination of this Lease, all such trade fixtures shall become the property of Landlord unless Landlord elects to require their removal, in which case Tenant shall promptly remove same and restore the Leased Premises to their prior condition. In the event Tenant so fails to remove same,

Landlord may have same removed and the Leased Premises repaired to their prior condition, all at Tenant's expense.

(e) Reserved Rights. Landlord reserves the right to make, at any time or times, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to the Leased Premises and the Building, and to perform any acts related to the safety, protection or preservation thereof, and during such operations to take into and through the Leased Premises all material and equipment required and to close or temporarily suspend operation of entrances, doors, corridors, or other facilities, provided that Landlord shall cause as little inconvenience or annoyance to Tenant as is reasonably necessary in the circumstances, and shall not do any act which permanently reduces the size of the Leased Premises. Landlord may do any such work during ordinary business hours and Tenant shall pay Landlord for overtime and for any other expenses incurred if Landlord agrees to conduct such work during other hours as requested by Tenant.

11. DAMAGE OR DESTRUCTION.

(a) If the Leased Premises is damaged or destroyed by fire or other casualty to the extent that the Tenant's enjoyment of the Leased Premises is substantially impaired, Tenant may (a) immediately vacate the Leased Premises and notify Landlord in writing within ten (10) business days of Tenant's intention to terminate this Lease, in which case the Lease shall terminate as of the date of the Tenant vacating the Leased Premises; or (b) if continued occupancy is lawful, vacate a part of the Leased Premises rendered unusable by the fire or other casualty, in which case Tenant's liability for Rent is reduced in proportion to the diminution in the fair rental value of the Leased Premises. Notwithstanding the foregoing, if the Lease is not terminated by the Tenant as provided herein, and the Leased Premises cannot reasonably be repaired within thirty (30) days from the date of such damage, or if the Landlord elects in its sole discretion not to repair such damage, the Landlord may give the Tenant written notice that it is not going to repair the damage to the Leased Premises and that the Landlord is terminating the Lease and the Lease shall there upon be terminated effective as of the date of the damage and the Tenant shall remove all of its property and/or equipment from the Leased Premises.

Tenant shall, at its expense during the term of this Lease, keep in full force and effect a policy or policies of property insurance with an insurance company licensed to do business in the State of Minnesota, covering its personal property, furniture, machinery, equipment, supplies, stored goods, trade fixtures installed by or paid for by Tenant or any additional improvements which Tenant may construct on the Leased Premises which coverage shall be no less than eighty percent (80%) of replacement value. Tenant shall furnish Landlord with a certificate evidencing that such coverages are in full force and effect. No reduction in Rent required under the term of this Lease shall be allowed for any period that Tenant experiences an interruption in business for any reason.

(b) Waiver of Subrogation. Landlord and Tenant hereby release each other and each other's employees, agents, customers and invitees from any and all liability for any loss, damage or injury to property occurring in, on or about or to the Leased Premises, improvements to the Leased Premises or personal property within the Leased Premises, by reason of fire or other casualty which are covered by applicable standard fire and extended coverage insurance policies.

12. GENERAL PUBLIC LIABILITY, INDEMNIFICATION, AND INSURANCE.

(a) All insurance, liability and indemnification certificates are subject to review and approval by the Landlord.

(b) Except for the negligence or intentional misconduct of Landlord, Landlord's agents, servants or employees, Tenant shall indemnify Landlord and hold it harmless from, any and all liability for any loss, damage or injury to person or property, arising out of use, occupancy or operations of Tenant and occurring in, on or about the Leased Premises, including use of the Leased Premises by Landlord's guests and invitees during the Landlord Usage Time, and Tenant hereby releases Landlord from any and all liability for the same. Tenant's obligation to indemnify Landlord hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, including attorney's fees, incurred in connection therewith.

(c) Tenant shall at all times during the Term carry, at its own expense, for the protection of Tenant and Landlord and Landlord's management agent (if any), as their interests may appear, one or more policies of commercial general liability and property damage insurance, issued by one or more insurance companies licensed to do business in the State of Minnesota and acceptable to Landlord, covering Tenant's use, occupancy and operations providing minimum coverages of \$1,000,000 combined single limit for bodily injury and property damage per occurrence with \$2,000,000 aggregate coverage together with an Umbrella Liability Policy with a minimum of \$1,000,000 per occurrence and \$1,000,000 aggregate. Such insurance policy or policies shall name Landlord, its agents and employees, as additional insureds and shall provide that they may not be canceled or materially changed on less than thirty (30) days prior written notice to Landlord, or ten (10) days' notice for non-payment of premium. Prior to Commencement of the Lease, Tenant shall furnish Landlord with certificates of insurance evidencing such insurance for approval by Landlord.

(d) Landlord and its officers, agents, servants and employees shall not be liable for any damage to person, property or business or resulting from the loss of use thereof sustained by Tenant or by any other persons due to the Building or any part thereof or any appurtenances thereof becoming out of repair, or due to the happening of any accident or event in or about the Building, including the Leased Premises, or due to any act or neglect of any tenant or occupant of the Building or of any other person. This provision shall apply particularly, but not exclusively, to damage caused by gas, electricity, snow, ice, frost, steam, sewage, sewer gas or odors, fire, water or by the bursting or leaking of pipes, faucets, sprinklers, plumbing fixtures and windows and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or to some other cause. Tenant agrees that all personal property located in the Leased Premises shall be at the risk of Tenant only, and that Landlord shall not be liable for any loss or damage thereto or theft thereof.

13. LIENS. Tenant shall not cause or allow any mechanic's lien or other lien to be filed against the Leased Premises or against other property of Landlord (whether or not such lien is valid or enforceable as such). In the event any mechanic's lien shall at any time be filed against the Leased Premises or any part of the Property by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Leased Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record. If Tenant shall fail to cause such lien forthwith to be discharged within five (5) days after being notified of the filing thereof, then, in addition to any

other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding, and the amount so paid by Landlord and all costs and expenses, including reasonable attorneys' fees incurred by Landlord in procuring the discharge of such lien, shall be due and payable in full by Tenant to Landlord on demand.

14. ASSIGNMENT AND SUBLETTING. Tenant may not assign or otherwise transfer its interest in this Lease or sublet the Leased Premises or any part thereof without the express, prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole discretion. Sub-leases must provide the same level of insurance required under this Lease and must be reviewed by Landlord's legal counsel prior to final approval by Landlord.

15. DEFAULTS AND REMEDIES.

(a) Default by Tenant. The occurrence of any one or more of the following events shall be a default and breach of this Lease by Tenant:

- i. Tenant shall fail to pay any monthly installment of Rent or any other charges set forth in this Lease within fifteen (15) days after the same shall be due and payable.
- ii. Tenant shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after notice thereof from Landlord.
- iii. Tenant shall vacate or abandon or fail to occupy for a period of thirty (30) days, the Leased Premises or any substantial portion thereof;
- iv. Tenant files for bankruptcy or makes or attempts to make an assignment for the benefit of creditors; or substantially all of Tenant's assets in, on or about the Leased Premises or Tenant's interest in this Lease are attached or levied upon under execution (and Tenant does not discharge the same within thirty (30) days thereafter); or
- v. Tenant causes or permits a hazardous condition to exist on the Leased Premises and fails to cure such condition immediately after notice thereof from Landlord.

(b) Remedies of Landlord. Upon the occurrence of any event of default set forth in this Lease, Landlord shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon Tenant:

- i. Landlord may re-enter the Leased Premises and cure any default of Tenant, in which event Tenant shall reimburse Landlord for any costs and expenses which Landlord may incur to cure such default; and Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action, regardless of whether caused by Landlord's negligence or otherwise.

- ii. Landlord may terminate this Lease as of the date of such default, in which event:
 - (1) Neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Leased Premises, and Tenant shall immediately thereafter surrender the Leased Premises to Landlord;
 - (2) Landlord may re-enter the Leased Premises and dispossess Tenant or any other occupants of the Leased Premises by summary proceedings, ejectment or otherwise, and may remove their effects, without prejudice to any other remedy which Landlord may have for possession or arrearages in rent;
- iii. Landlord may terminate Tenant's right of possession of the Leased Premises and may repossess the Leased Premises by unlawful detainer or eviction action, by taking peaceful possession or otherwise.
- iv. Landlord may sue for injunctive relief or to recover damages for any loss resulting from the breach.

Any agreement for an extension of the Term or any additional period thereafter shall not thereby prevent Landlord from terminating this Lease for any reason specified in this Lease. If any such right of termination is exercised by Landlord during the Term or any extension thereof, Tenant's right to any further extension shall thereby be automatically canceled. Any such right of termination of Landlord contained herein shall continue during the Term and any subsequent extension hereof.

(c) Default by Landlord and Remedies of Tenant. Landlord shall not be deemed to be in default under this Lease until Tenant has given Landlord written notice specifying the nature of the default and Landlord does not cure such default within thirty (30) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of such a character as to reasonably require more than thirty (30) days to cure. Landlord failure to cure its defaults under this Lease shall entitle Tenant to terminate the Lease immediately, and pursue claims for any damages caused Tenant by Landlord's default hereunder, in addition to such other rights and remedies as may exist under applicable law.

(d) Waiver of Covenants. Failure of Landlord to insist, in any one or more instances, upon strict performance of any term, covenant, condition, or option of this Lease, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future, of such term, covenant, condition, or option, but the same shall continue and remain in full force and effect. The receipt by Landlord of rents with knowledge of breach in any of the terms, covenants, conditions, or options, of any of this Lease to be kept or performed by Tenant shall not be deemed a waiver of such breach, and Landlord, shall not be deemed to have waived any provision of this Lease unless expressed in writing and signed by Landlord.

(e) Attorney Fees. If Tenant defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and Landlord placed the

enforcement of all or any part of this Lease, the collection of any rent due or to become due or the recovery of possession of the Leased Premises in the hands of an attorney, or if Landlord incurs any fees or out-of-pocket costs in any litigation, negotiation or transaction in which Tenant causes Landlord (without Landlord's fault) to be involved or concerned, Tenant agrees to reimburse Landlord for the attorney's fees and costs incurred thereby, whether or not suit is actually filed.

16. ACCESS TO THE LEASED PREMISES. Landlord, its employees and agents of the Leased Premises shall have the right to enter any part of the Leased Premises at all reasonable times for the purposes of examining or inspecting the same, showing the same to prospective purchasers, or tenants and for making such repairs, alteration or improvements to the Leased Premises as Landlord may deem necessary or desirable. If representatives of Tenant shall not be present to open and permit such entry into the Leased Premises at any time when such entry is necessary or permitted hereunder, Landlord and its employees and agents may enter the Leased Premises by means of a master key or otherwise, Landlord shall incur no liability to Tenant for such entry, nor shall such entry constitute an eviction of Tenant or a termination of this Lease, nor entitle Tenant to any abatement of rent therefore. Except in the case of emergency, Landlord shall give Tenant reasonable notice before entering the Leased Premises.

17. SURRENDER OF LEASED PREMISES. Upon the expiration, or earlier termination, of this Lease Tenant shall surrender the Leased Premises to Landlord, together with all keys, access cards, alterations, improvements, and other property as provided elsewhere herein, in broom-clean condition and in good order, condition and repair, except for ordinary wear and tear and damage which Tenant is not obligated to repair, failing which Landlord may restore the Leased Premises to such condition at Tenant's expense, which shall be payable upon demand. Upon such expiration or termination Tenant's trade fixtures, furniture and equipment shall remain Tenant's property, and if Tenant shall not then be in default under this Lease, Tenant shall have the right to remove the same prior to the expiration or earlier termination of this Lease, Tenant shall promptly repair any damage caused by any such removal, and shall restore the Leased Premises to the condition existing prior to the installation of the items so removed. Any of Tenant's trade fixtures, furniture or equipment not so removed shall be considered abandoned and may be retained by Landlord or be destroyed.

18. HOLDING OVER. If Tenant remains in possession of the Leased Premises without the consent of Landlord after the expiration or earlier termination of this Lease, Tenant shall be deemed to hold the Leased Premises as a tenant from month to month, terminable on thirty (30) days' notice given by one party to the other and subject to all of the terms, conditions, covenants and provisions of this Lease (which shall be applicable during the holdover period), except that Tenant shall pay to Landlord twice the last current Rent, and additional charges or expenses, which shall be payable to Landlord on demand. In addition, Tenant shall be liable to Landlord for all damages occasioned by such holding over. Tenant shall vacate and surrender the Leased Premises to Landlord upon Tenant's receipt of notice from Landlord to vacate. No holding over by Tenant, whether with or without the consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided herein.

19. QUIET ENJOYMENT. Except as may be provided in this Lease to the extent that it may be applicable, if and so long as Tenant pays the prescribed Rent and performs or observes all of the terms, conditions, covenants and obligations of this Lease required to be performed or observed by it hereunder, Tenant shall at all times during the term hereof have the peaceable and quiet enjoyment,

possession, occupancy and use of the Leased Premises without any interference from Landlord or any person or persons claiming the Leased Premises by, through or under Landlord.

20. FORCE MAJEURE. All of the obligations of Landlord and of Tenant under this Lease are subject to and shall be postponed for a period equal to any delay or suspension resulting from fires, strikes, acts of God, and other causes beyond the control of the party delayed in its performance hereunder, this Lease remaining in all other respects in full force and effect and the Term not thereby extended. Notwithstanding the foregoing, the unavailability of funds for payment or performance of Tenant's obligations hereunder shall not give rise to any postponement or delay in such payment or performance of Tenant's obligations hereunder.

21. NOTICE AND PLACE OF PAYMENT.

(a) All rent and other payments required to be made by Tenant to landlord shall be delivered or mailed to Landlord at the address set forth below or any other address Landlord may specify from time to time by written notice given to Tenant.

(b) Any notice, demand or request required or permitted to be given under this Lease or by law shall be deemed to have been given if reduced to writing and mailed by Registered or Certified mail, postage prepaid, to the party who is to receive such notice, demand or request at the address set forth below or at such other address as Landlord or Tenant may specify from time to time by written notice. When delivering such notice, demand or request shall be deemed to have been given as of the date it was so delivered or mailed.

Landlord: Patrick A. Sawatzke

_____, MN _____

Tenant: Drawers of Davlee, Inc.

_____, MN _____
Attention: _____

22. MISCELLANEOUS GENERAL PROVISIONS

(a) Applicable Law. This Lease and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Minnesota.

(b) Entire Agreement. This Lease, including all Exhibits, constitutes the entire and only agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto. No oral statements or representations or prior written matter not contained in this instrument will have any force and effect. This Lease Agreement cannot be modified in any way except by writing executed by both parties.

(c) Binding Effect. This Lease and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as well as the parties themselves; provided, however, that Landlord, its successors and assigns

shall be obligated to perform Landlord's covenants under this Lease only during and in respect of their successive periods as Landlord during the term of this Lease.

(d) Severability. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall not be effected or impaired, and such remaining provisions shall remain in full force and effect.

(e) Landlord/Tenant Relationship. Nothing contained in this Lease shall be deemed or construed to create the relationship of principal and agent or that of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of rent, nor any other provisions contained in this Lease, nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord/Tenant.

(f) Waiver of Jury. To the extent permitted by Law, Tenant and Landlord hereby waive any right either may have to a jury trial in the event of litigation between Tenant and Landlord pertaining to this Lease.

(g) Right to Change Name and Building Address. Landlord reserves the right to change the name or street address of the Building.

(h) Time of Essence. Time is of the essence of this Lease and each of its provisions.

(i) Complete Lease; Amendments. This Lease supersedes all prior discussions and negotiations and contains all agreements and understandings between the Landlord and Tenant. This Lease may only be amended in writing signed by all parties. All Exhibits are incorporated into this Lease by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first written above.

**LANDLORD:
PATRICK SAWATZKE**

By _____
Patrick Sawatzke

**TENANT:
DRAWERS OF DAVLEE, INC.**

By _____
_____ [print name]
Its _____ [title]

EXHIBIT A

Legal Description of the Leased Premises:

Lots 11 and 12, Block 51, Townsite of Monticello, Wright County, Minnesota, according to the recorded plat thereof except that part described as follows:

Beginning at the Southeast corner of said Lot 11; thence on an assumed bearing of North 64 degrees 05 minutes 32 seconds West along the Southwesterly line of said Lots 11 and 12 to a point distant 9.00 feet Northwesterly of the Southeast corner of said Lot 12; thence North 26 degrees 00 minutes 06 seconds East, parallel with the Southeasterly line of said Lot 12 a distance of 75.00 feet; thence South 64 degrees 05 minutes 26 seconds East to a point on the Southeasterly line of said Lot 11 distant 75.00 feet Northeasterly of the Southeast corner of said Lot 11; thence South 26 degrees 00 minutes 00 seconds West along said Southeasterly line a distance of 75.00 feet to the point of beginning.

Abstract Property

DRAFT