

## REAL ESTATE PURCHASE AND SALE AGREEMENT

**THIS REAL ESTATE PURCHASE AND SALE AGREEMENT** (this "**Agreement**") is made as of the Effective Date (as hereinafter defined) by and between **CITY OF MONMOUTH**, an Illinois municipal corporation (the "**Seller**") and **LAKESHORE RECYCLING SYSTEMS, LLC**, a Delaware limited liability company, its successors or assignees ("**Purchaser**").

### **RECITALS:**

A. Seller owns fee simple title to certain parcels of improved real property consisting of approximately 8.36 acres and commonly known as 836 186<sup>th</sup> Avenue, Monmouth, Illinois 61462, legally described in **Exhibit "A"** attached hereto, together with all buildings and improvements located thereon, all personal property located thereon, and Seller's right, title, and interest in and to all hereditaments and appurtenances pertaining to such parcels and all improvements located thereon, including without limitation all of Seller's right, title, and interest in and to adjacent streets, alleys, and rights of way.

B. Purchaser desires to purchase from Seller the Property (as hereinafter defined) and Seller desires to sell the Property to Purchaser, in accordance with the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual promises herein contained and the respective undertakings of the parties hereinafter set forth, Seller and Purchaser hereby agree as follows:

1. **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller all of the following described property (collectively, the "**Property**"):

(a) The land, consisting of approximately 8.36 acres, together with all easements, rights-of-way, and appurtenances pertaining to the land (the "**Land**"), if any;

(b) The building(s), containing approximately 6,000 square feet and improvements located on the Land (collectively the "**Improvements**");

(c) All furniture, fixtures, equipment, tools, signs, apparatus, machinery, building supplies, heating systems, attached plumbing, electrical and other building systems including but not limited to overhead cranes, hydraulic lift systems, lighting fixtures, and alarm systems, and all other tangible personal property owned by Seller which are located on the Land and/or in the Improvements and used in connection with the operation and ownership of the Improvements (the "**Personal Property**");

(d) All rights, privileges, easements, and rights of way appurtenant to said Land and Improvements (collectively, the "**Appurtenances**");

(e) All of Seller's rights in and to contractual rights with respect to the operation, maintenance, and repair of the Land and the Improvements, including without limitation service and maintenance agreements and tipping agreements with third-party customers (collectively, the "**Service Contracts**") as set forth on **Exhibit "B"** attached hereto, that are expressly assumed by Purchaser pursuant to Section 4 below ("**Assumed Contracts**"); and

(f) Any intangible property (the "**Intangible Property**") owned or held by Seller solely in connection with Land or the Improvements including, but not limited to: (i) all transferable licenses and warranties covering the Land, the Improvements or any part thereof; (ii) all transferable permits covering the Land, the Improvements or any part thereof; (iii) all transferable utility contracts, governmental approvals, licenses and development rights related to the Land or Improvements; (iv) all guarantees and warranties received by the Seller, if any, in connection with the Improvements; (v) surveys, floor plans, specifications and drawings relating to the Land or Improvements; and (vi) trademarks, tradenames, or copyrights.

2. **Purchase Price.** The purchase price (the "**Purchase Price**") for the Property shall be **TWO MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,250,000.00)** which shall be payable at Closing (as hereinafter defined), plus or minus the prorations and credits hereinafter provided for, shall be paid by Purchaser at Closing by federal wire transfer funds, together with such additional funds for Purchaser's share of closing costs as may be required pursuant to this Agreement.

3. **Closing.** The closing of the transaction contemplated by this Agreement (the "**Closing**", the date of such closing being herein referred to as the "**Closing Date**") shall be held at the offices of Spears and Spears, 201 W. Broadway, Monmouth, Illinois (the "**Escrow Agent**"), and the Escrow Agent shall act as the settlement agent for said transaction. The transaction contemplated by this Agreement shall be closed by "sit down" closing or through the mail whereby the Deed (as hereinafter defined) will be exchanged for the Purchase Price with appropriated adjustments as contemplated by this Agreement.

4. **Assumed Contracts.** As of Closing, Purchaser has received all copies of the Service Contracts and has elected to assume the Assumed Contracts listed in **Exhibit "B"** attached hereto at Closing. Any Service Contracts that Purchaser does not elect to assume will be terminated by Seller prior to Closing. Any fees or penalties associated with any termination of a Service Contract shall be borne solely by Seller.

5. **Deliveries at Closing.**

(a) At Closing, Seller shall deliver to the Escrowee or Purchaser directly, as Seller may elect, the following documents:

(i) A warranty deed conveying to Purchaser the Land and Improvements, subject to the Permitted Exceptions (as hereinafter defined) (the "**Deed**");

(ii) An affidavit of title in customary form covering the date of Closing and showing title in Seller subject only to the Permitted Exceptions;

(iii) An original Bill of Sale, substantially in the form attached hereto as **Exhibit "C"** conveying to Purchaser the Personal Property executed by Seller;

(iv) A Certificate of Non-Foreign Status of Seller as required by Section 1445 of the Internal Revenue Code;

(v) An original executed blanket assignment of the Intangible Property, executed by Seller and assigning to Purchaser all of Seller's right, title and interest in the Intangible Property ("**Assignment of Intangible Property**");

(vi) An original assignment of Assumed Contracts ("**Assignment of Contracts**"), executed by Seller and assigning to Purchaser all of Seller's right, title and interest in the Assumed Contracts;

(vii) Notices to vendors of the transfer of title by Seller of the obligations under the Assumed Contracts;

(viii) Written termination of those Service Contracts not assumed by Purchaser;

(ix) Host Fee Agreement which is attached hereto as **Exhibit I** to this Agreement.

(x) Any reasonable and customary documentation required by the Title Company (as hereinafter defined) in order for the Title Company to issue the Title Policy (as hereinafter defined) in order to effectuate the provisions of this Agreement and the consummation of the transactions contemplated herein, including a survey affidavit that there have been no material changes or improvements to the Property since the date of the Survey;

(xi) Such proof of Seller's authority and authorization to enter into this transaction as may be required by the Title Company;

(xii) A written termination of any property manager hired by Seller with respect to the Property and Waiver of Lien from said property manager, if any, or an Affidavit of No Property Manager; and

(xiii) An ALTA Statement and GAP Undertaking.

(b) At Closing, Purchaser shall deliver to the Escrowee, or Seller directly, as Purchaser may elect, the following:

(i) The Purchase Price in accordance with Section 2 above, plus Purchaser's share of closing costs;

(ii) Host Fee Agreement;

(iii) Such proof of Purchaser's authority and authorization to enter into this transaction as may be required by the Title Company; and

(iv) Any reasonable and customary documentation required by the Title Company in order for the Title Company to issue the Title Policy.

(c) At Closing, Purchaser and Seller shall jointly deliver the following documents to the Escrowee:

(i) To the extent required, state, county and municipal transfer tax declarations; and

(ii) Counterparts to the settlement statement prepared by the Title Company in a manner which reflects the terms and conditions, as applicable, of this Agreement and otherwise in a form reasonably acceptable to Purchaser and Seller (the "**Closing Statement**").

6. **Allocation of Closing Costs and Expenses.** Seller shall pay for the cost of the Title Policy, including extended coverage and survey, access, 3.1 zoning with parking, permanent index number, and [reserved] (the "**Required Endorsements**"); the cost to record any instruments necessary to clear Seller's title; the cost of the Survey; one-half of the cost of the closing escrow (if applicable). Purchaser shall pay for the cost of any recording fees with respect to the Deed, one-half of the cost of the closing escrow (if applicable), and the cost of any endorsements required by the Purchaser other than extended coverage and the Required Endorsements. State, county, and municipal transfer taxes applicable to this transaction, if any, shall be paid by Seller.

7. **Prorations.** The following prorations, except as specifically provided herein to the contrary, shall be made as of the Closing Date and shall be applied to reduce or increase the balance of the Purchase Price, as applicable:

(a) **Taxes.** The property is currently exempt from real estate taxes and therefore there will be no proration of real estate taxes.

(b) **Miscellaneous.** If there are any items other than those set forth in subsections (a), the credit or proration of which are necessary to fairly allocate the benefits and burdens of ownership of the Property, such items shall be prorated at the Closing. In the event that accurate prorations and other adjustments for such items cannot be made at Closing because current bills are not available or the amount to be adjusted is not yet ascertainable, the parties shall prorate such items on the best available information, subject to further adjustment promptly upon receipt of the final bills or upon completion of final computations. This provision and the obligations hereunder shall survive the Closing.

8. **Title Insurance; Title Policy.** As of Closing, Seller will cause to be delivered to Purchaser the Title Policy (as hereinafter defined) in the form of the pro forma owner's policy ("**Pro Forma Policy**") for an ALTA Owner's Policy issued by First American Title ("**Title Company**") of title insurance with extended coverage and the Required Endorsements issued by the Title Company covering the Property in the amount of the Purchase Price allocated to the real estate ("**Title Policy**") and showing title to the Land vested in Seller, subject only to: (i) general real estate taxes not yet due and payable, (ii) matters created by, through or under Purchaser; and (iii) matters approved or waived by Purchaser (hereinafter collectively referred to as the "**Permitted Exceptions**"). The Pro Forma Policy is attached hereto as **Exhibit "D"**. Purchaser reserves the right to require Seller to use the proceeds payable at Closing to discharge any monetary liens of a definite or ascertainable amount affecting the Property.

9. **Plat of Survey.** Seller shall have delivered to Purchaser a copy of the most recent plat of survey in its possession or control, which survey was prepared by Jones Surveying & Engineering Corp. and is dated June 7, 2021 (the "**Survey**"). Seller represents and warrants to Purchaser that (i) to the best of Seller's knowledge the Survey is an accurate depiction of the Property and all of the Improvements currently located on the Property and (ii) there have been no material modifications to the Improvements located on the Property since the date of the Survey. The Survey shall be at Seller's sole cost and expense. Purchaser may, at its option, procure a current survey at its sole cost.

10. **Purchaser's Contingencies.**

(a) **Information and Documentation.** Seller has prior to the date hereof made available to Purchaser for Purchaser's review the information pertaining to the Property which is in Seller's possession or control including, but not limited to, existing surveys; title insurance policies; copies of recorded documents, including easements and declarations; all contracts including service contracts and tipping agreements; mortgage loan documents; UCC Searches; utility agreements; management, leasing, and brokerage agreements; government agreements, including development agreements and TIFs; license agreements; environmental reports and any other related materials; property zoning reports; engineering and structural reports; books and records; plans, specifications and related documents; real estate tax bills and assessment notices for the prior five years; real estate tax assessment information; insurance policies and loss histories for the prior five years; financial and operating statements; roof and other warranties; a schedule of historical property maintenance expenses including utilities, janitorial and landscaping for the current and preceding two calendar years; service and maintenance agreements; copies of all licenses and permits, including certificates of occupancy and sign permits; any governmental notices; copies of notices of code violations; and appraisals (collectively the "**Due Diligence Documents**").

(b) **Due Diligence Inspection; Condition.**

(i) Purchaser has prior to the date hereof inspected the Property and reviewed the Due Diligence Documents.

(ii) The items set forth on **Exhibit "E"** attached hereto shall be repaired or replaced by Seller at their sole cost and expense prior to the Closing Date ("**Seller's Work**"). Except for the Seller's Work, Purchaser agrees to accept the Property at Closing in its "as-is" condition as of the date hereof ordinary wear and tear excepted.

(c) **Closing Conditions.** The Purchaser's obligations to close pursuant to this Agreement are expressly conditioned upon the following:

(i) There shall have been no material and adverse changes in the condition of the Property as of the Closing Date.

(ii) All of Seller's representations are true and correct and Seller shall have complied with all of its obligations hereunder.

(iii) Seller has terminated all employees at the Property including any property manager.

(iv) Re-permitting of the existing transfer station permit to accommodate 150 tons per day.

#### 11. **Representations, Warranties and Covenants.**

(a) **Representations and Warranties of Seller.** In order to induce Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser as follows:

(i) *Litigation.* Except as stated on **Exhibit "F"** there is no litigation or legal proceeding pending or threatened against the Property.

(ii) *Violations of Law.* Seller has not received written notice nor, to the knowledge of Seller, is any such notice pending or threatened, from any governmental agency or authority having jurisdiction over the Property or from any other person or entity, to the effect that the Property is not currently in compliance with applicable laws and ordinances, including, without limitation, applicable Environmental Laws (as hereinafter defined), and Seller has no actual knowledge that the Property is not currently in compliance with all applicable laws and ordinances.

(iii) *Foreign Investment and Real Property Tax Act.* Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code, or under any comparable state statutes which are applicable to this transaction. At Closing, Seller will execute and deliver to Purchaser an affidavit regarding such matters.

(iv) *No Breach.* The consummation of the transactions contemplated hereunder, and the performance of this Agreement including execution and delivery of the Deed, will not result in any breach of, or constitute a default under, any instrument to which Seller is a party or by which any of the Property may be bound or affected.

(v) *Parties in Possession.* As of the date hereof, there are no persons in possession or occupancy of the Property or any part thereof other than Seller, nor are there any persons who have possessory rights in respect to the Property or any part thereof. At the time of Closing, there will be no leases or licenses in effect and no persons in possession or occupancy of the Property or any part thereof, nor will there be any persons who have possessory rights in respect to the Property or any part thereof being conveyed.

(vi) *Development Related Matters.* To the knowledge of the Seller, there is no pending, nor contemplated, threatened or anticipated: (i) widening, change of grade or limitation on use of streets, roads or highways abutting any of the Property; (ii) special tax or assessment to be levied against the Property; (iii) change in the zoning classification of the Property; (iv) road signalization improvements which might create a financial burden on an owner of the Property; or (v) donations or required payments for municipal or quasi-municipal bodies.

(vii) *Permits.* All governmental authorizations and permits which are required or appropriate to use, lease, or occupy the Property for its existing uses have been issued and, as of the Closing Date, shall be in full force and effect. Seller has not received any notice from any governmental authority or other entity having jurisdiction over any of the Property threatening a suspension, revocation, modification or cancellation of any governmental authorization or permit required to lease, occupy, or operate any of the Property.

(viii) *Taxes.* There are no taxes, assessments, fees, special assessments, impact fees, charges or similar costs or expenses imposed by any governmental authority, association or other entity having jurisdiction over the Property with respect to the Property or portion thereof which are unpaid or delinquent.

(ix) *No Special Assessments.* There is no proceeding pending or presently being prosecuted for the change of the assessed valuation of any of the Property for ad valorem tax purposes and there are no current or contemplated special assessments with respect to the Property. In addition, Seller has not received notice of any proceeding pending or presently being prosecuted for the change of the assessed valuation of the Property for ad valorem tax purposes and Seller has not received notice of any current or contemplated special assessments with respect to the Property.

(x) *Condition.* All of the Improvements at the Property are in good working condition and are fully suitable for the operation of the Property for its existing uses.

(xi) *Personal Property.* Seller has good and marketable title to the equipment and other Personal Property and assets used by it in connection with the operation of its businesses, free and clear of all liens, security interests, encumbrances or restrictions on transfer.

(xii) *CC&Rs and Declaration.* No default or breach exists under any of the covenants, conditions, restrictions, rights of way, declarations or easements, if any, affecting all or any part of the Property.

(xiii) *Unpaid Bills.* At Closing there will be no unpaid bills or claims in connection with any repairs or other operating expenses of the Property by or on behalf of any of the Seller.

(xiv) *Insurance Requests.* Seller has not received any written or verbal notice or request from any insurance company or board of fire underwriters (or any organization exercising functions similar thereto) requesting the performance of any work or alterations with respect to any Property.

(xv) *OFAC.* Neither (i) the Seller nor any person, entity, group or nation controlled by Seller, (ii) any person, entity, group or nation who owns a direct or indirect interest in or otherwise controls the Seller, (iii) if Seller is a privately held entity, any person, entity, group or nation otherwise having a beneficial interest (other than with respect to an interest in a publicly traded entity) in Seller nor (iv) any person, entity, group or nation for whom Seller is acting as agent or nominee in connection with this investment, is a country, territory, person, organization or entity named on an OFAC List (as hereinafter defined), including, without limitation, as a terrorist, "**Specially Designated National and Blocked Person**" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "**Prohibited Person**") or a prohibited country, territory, person, organization, or entity under any economic sanctions program administered or maintained by the Office of Foreign Assets Control of the United States Department of the Treasury ("**OFAC**"). For the purposes of this Agreement, "**OFAC List**" means, collectively, any and all lists of prohibited countries, individuals, organizations and entities that are administered or maintained by OFAC (and any similar lists that are maintained under any law, order, rule or regulation or any Executive Order of the President of the United States), including: (x) pursuant to Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), any related enabling legislation or any other similar executive orders, (y) the List of Specially Designated Nationals and Blocked Persons maintained by OFAC and (z) any list of "**Designated Nationals**" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

(xvi) *Service Contracts.* The parties to the Service Contracts are not in default under their respective Service Contracts, and there exists no default by any party under any Service Contracts. As of the date hereof, the Assumed Contracts are in full force and effect. Seller has delivered to Purchaser true, correct and complete copies of the Service Contracts.

(xvii) *Accurate Information.* The information provided to Purchaser in connection with its investigation of the Property prior to the date hereof are true, correct and complete in all material respects, and the same does not omit any material information required to make the submission thereof fair and complete.

(xviii) *Authorization.* Seller is a municipal corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Seller has



all requisite power and authority and all licenses, permits and other authorizations necessary to own and operate the Property and to carry on its businesses at the Property as now conducted. This Agreement has been, and all the documents to be delivered by Seller to Purchaser as of Closing will be, duly authorized, executed and delivered by Seller, are or will be legal, valid and binding obligations of Seller, will be sufficient at Closing to convey good and marketable title to Purchaser, are enforceable in accordance with their respective terms, and do not violate any provisions of any agreement to which Seller is a party or by which the Property is bound.

(xix) *Flood Zone*. The Property is located entirely within an area or areas currently designated by FEMA as flood zone B, C or X.

(xx) *Environmental*. As used in this subsection 11(a)(xxi), the following terms shall have the following meanings:

**“Environmental Laws”** means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and similar provisions having the force and effect of law, as well as common law, relating to pollution or protection of human health or the environment, relating to Hazardous Materials, and including those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the Release of Hazardous Materials and the generation use, storage, transportation, or disposal of or exposure to Hazardous Materials in any manner applicable to the Project, including the following statutes, each as amended from time to time, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, or regulations of similar import: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including Subtitle I relating to underground storage tanks); and the Solid Waste Disposal Act.

**“Hazardous Materials”** means, without limitation, any chemical, material or substance (whether solid, liquid or gas) (1) defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “medical waste,” “toxic pollutants,” “contaminants,” “pollutants,” “toxic substances,” or words of similar import under any Environmental Law, (2) any oil, petroleum, petroleum product or petroleum derived substance, (3) asbestos containing materials, (4) polychlorinated biphenyls, (5) flammables and explosives and (6) any other chemical, material or substance prohibited, limited, or regulated by any Governmental Authority under any applicable Environmental Law.

**“Release”** has the same meaning as used in CERCLA and includes with respect to any Hazardous Materials, but is not limited to, any presence, release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating,

injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

**“Third-Party Environmental Claim”** means an action, suit, demand, demand letter, claim, lien, notice of non-compliance or violation, notice of liability, proceeding, consent order, or consent agreement made under or in accordance with any Environmental Laws.

(A) The parties agree that the condition of the Property as of the date hereof is set forth in that certain Phase I Environmental Site Assessment Report dated [\_\_\_\_\_, 2021] (the **“Inspection Report”**) and prepared by [\_\_\_\_\_, a copy of which is attached hereto as **Exhibit “G”**, and the Inspection Report establishes the baseline condition of the Property (the **“Baseline Condition”**). Seller agrees to remain liable for any violations of Environmental Laws that arise out of the Baseline Condition, and Seller shall be responsible for the remediation of Hazardous Materials in the soil, groundwater, surface water, sediments, or air on or beneath the Property beyond the Baseline Condition of the Property which exists as of the date hereof.

(B) Except as disclosed on **Exhibit “G”**, the Property is in compliance in all material respects with all applicable Environmental Laws.

(C) No Release of Hazardous Materials has occurred at, on, or about any Property during the time of its ownership or control.

(D) Seller has not disposed of Hazardous Materials at a site included on the National Priorities List and Seller has not received written notice of potentially responsible party (**“PRP”**) status or other alleged liability with respect to any site in connection with a Release of Hazardous Materials;

(E) Seller has not (nor any predecessors to Seller, pre-petition owners nor any other previous owners of the Property) stored, managed, disposed of, or exposed any person or business entity to any Hazardous Materials such that it would give rise to liability under Environmental Laws.

(F) No Hazardous Materials have been stored, managed, disposed of or Released at, on or about the Property, nor Released to any off-site property, such that it would give rise to a Third-Party Environmental Claim.

(G) Seller possesses and is in compliance with all permits and approvals required under applicable Environmental Laws, a complete list of such Permits is set forth on **Exhibit “H”** attached hereto.

(H) There are no open and unresolved investigations, inquiries, administrative proceedings, actions, suits, claims, demands, legal proceedings or other proceedings pending or, threatened against Seller under or relating to any Environmental Laws.

(I) Seller has made available to the Purchaser copies of material reports, correspondence and memoranda in Seller's possession relating to the environmental condition of the Property.

(J) Except as set forth on **Exhibit "G"**, no underground storage or fuel tanks are currently present at the Property.

(xxi) *No Material Adverse Effect.* There is no event, development, state of facts, development, effect or change that, individually or in the aggregate, has had or would reasonably be expected to be materially adverse to the Property. Seller agrees to notify Purchaser immediately of such facts or circumstances if it becomes aware of the same.

(b) Seller agrees to indemnify, defend and hold Purchaser harmless from and against any and all loss, damage, liability and expense (including reasonable attorneys' fees and other litigation expenses) Purchaser may suffer, sustain or incur as a result of any misrepresentation, or breach of warranty or agreement, made by Seller under or in respect to this Agreement or any document or instrument executed or to be executed by or on behalf of Seller pursuant to this Agreement or in furtherance of the transaction contemplated by this Agreement. Seller shall notify Purchaser promptly if Seller becomes aware of any transaction or occurrence which would make any of the representations or warranties of Seller contained herein untrue in any material respect.

(c) Seller's representations, warranties and indemnities contained above shall survive the Closing.

(d) **Representations and Warranties of Purchaser.** In order to induce Seller to enter into this Agreement, Purchaser represents and warrants to Seller as follows:

(i) *Purchaser's Authority.* Purchaser has the legal power, right and authority to enter into this Agreement, to consummate the transactions contemplated hereby and to execute and deliver all documents and instruments to be delivered by Purchaser hereunder.

(ii) *Requisite Action.* All requisite action has been taken or obtained by Purchaser in connection with the entering into this Agreement and the consummation of the transactions contemplated hereby, or shall have been taken prior to the Closing Date.

12. **Brokers.** The parties mutually warrant and represent to the other that neither has authorized any broker to act on its behalf in respect of the transactions contemplated hereby and that neither has dealt with any broker in connection therewith. Each of the parties shall indemnify and save the other harmless from any claim by any other broker or other person for commissions or other compensation for bringing about the transactions contemplated hereby where such claim is based on the purported employment or authorization of such other broker or other person by such party. Notwithstanding anything contained in this Agreement to the contrary, the terms, provisions, conditions and indemnifications of this **Section 12** shall survive Closing and the delivery of the Deed or the termination of this Agreement.

13. **Covenants.**

(a) Seller has not entered into any new contracts or agreements affecting the Property that survive the Closing within thirty (30) days prior to the Effective Date nor shall Seller have modified or amended any existing contract or agreement affecting the Property without Purchaser's prior written consent within thirty (30) days prior to the Effective Date.

(b) Seller has operated, maintained and managed the Property in an ordinary and usual manner (including maintaining all insurance coverage through and including the Effective Date).

(c) Seller has maintained in good standing all licenses, permits, certificates and authorizations required for the Property through and including the Effective Date.

14. **Illinois Income Tax Withholding.** Seller hereby agrees to indemnify, defend and hold harmless Purchaser and its successors and assigns from and against any and all liability, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) that any of them may incur in connection with any amounts owed by Seller arising out of or relating to Seller's non-compliance with any applicable bulk sales or transfer laws in connection with the sale of the Property, which indemnity shall survive the Closing; provided, however, any indemnity obligations of Seller pursuant to this Section 14 shall expire upon Seller's tender to Purchaser of a release or clearance letter from the Illinois Department of Revenue. The provisions of this Section 14 shall survive the Closing.

15. **Default; Remedies.**

(a) **Purchaser's Remedies Upon Seller's Default.** In the event the Closing fails to occur because of Seller's default, it shall also constitute a default under the Asset Purchase Agreement. In such event, Purchaser shall be entitled enforce all of Purchaser's rights and remedies under this Agreement and the Asset Purchase Agreement, including the right to (a) terminate this Agreement by written notice to Seller and may recover its damages, or (b) seek specific performance within the applicable statute of limitation periods. Seller waives the right to assert the defense of lack of mutuality in any suit for specific performance instituted by Purchaser. In the event of a Seller's default, all escrow cancellation costs shall be paid by Seller. Nothing herein shall limit, waive or affect Seller's indemnity obligations and Purchaser's right to those indemnity obligations under this Agreement and the Asset Purchase Agreement. Purchaser shall be entitled to recover from Seller its reasonable attorneys' fees, court costs and litigation expenses in connection herewith.

(b) **Seller's Remedies Upon Purchaser's Default.** In the event the Closing fails to occur solely because of Purchaser's default, it shall constitute a default under the Asset Purchase Agreement and Seller shall have the right to enforce the Seller's rights and remedies under this Agreement and under the Asset Purchase Agreement.

16. **Possession; Condition of Property.** Seller has delivered possession of the Property to Purchaser on the Closing Date in materially the same condition as it was thirty (30) days prior to the Closing Date. Seller has repaired any damage caused by the installation, operation or removal of any equipment, machinery, fixtures or other items which were not part of the Property to be

conveyed hereunder (“**Removed Items**”) from the Improvements to the reasonable satisfaction of Purchaser.

17. **Notices.** All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when personally delivered, mailed by first-class mail, return receipt requested or delivered by a nationally recognized courier service or sent by electronic mail with confirmation of transmission (or, the first (1st) Business Day following such transmission if the date of transmission is not a Business Day). Notices, demands and communications to any Seller or the Purchaser shall, unless another address is specified in writing in accordance herewith, be sent to the address indicated below:

In the case of Seller, address to:

City of Monmouth  
C/O Lew Steinbrecher, City Administrator  
City Hall  
100 East Broadway Ave.  
Monmouth, Illinois 61462  
Telephone: 309-734-2141  
Email: [\_\_\_\_\_]

*with, in each case, a required copy to (which shall not constitute notice):*

Spears and Spears  
201 W. Broadway, PO Box 377  
Monmouth, IL 61462  
Attention: Marcum Spears  
Telephone: 309-734-5105  
Email: [marcum@spears-law.com](mailto:marcum@spears-law.com)

In the case of Purchaser, address to:

Lakeshore Recycling Systems, LLC  
265 N. Janesville Street  
Milton, Wisconsin 53563  
Attention: Dustin Reynolds  
Telephone: (414) 803-6866  
Email: [dustin@badgerlanddisposal.com](mailto:dustin@badgerlanddisposal.com)

*with, in each case, a required copy to (which shall not constitute notice):*

Harold S. Dembo, Esq. and Mitchell Roth, Esq.  
Much Shelist, P.C.  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
Telephone: (312) 521-2684; (312) 521-2477

Telefax: (312) 521-2584  
Email: [hdembo@muchlaw.com](mailto:hdembo@muchlaw.com); [mroth@muchlaw.com](mailto:mroth@muchlaw.com)

Notice of change of address shall be given by written notice in the manner detailed in this Section 17.

18. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters, if any, there being no other oral or written promises, conditions, representations, understandings, warranties or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party.

(b) **Time is of the Essence.** Time is of the essence of this Agreement.

(c) **Headings.** Section headings shall not be used in construing this Agreement.

(d) **No Waiver.** Except as herein expressly provided, no waiver by a party of any breach of this Agreement by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or as a modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

(e) **Sole Discretion.** Except as otherwise expressly provided herein, any approval or consent provided to be given by a party hereunder may be given or withheld in the absolute discretion of such party.

(f) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

(g) **Amendment or Modification.** No agreement, amendment, modification, understanding or waiver of or with respect to this Agreement or any term, provision, covenant or condition hereof, nor any approval or consent given under or with respect to this Agreement, shall be effective for any purpose unless contained in a writing signed by the party against which such agreement, amendment, modification, understanding, waiver, approval or consent is asserted.

(h) **Time Computation.** If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of such performance shall be extended to the next business day.

(i) Successors and Assigns. All of the terms and conditions of this Agreement are hereby made binding on the respective executors, heirs, devisees, administrators, personal representatives, successors and permitted assigns of both parties hereto.

(j) Further Assurances. The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the Closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

(k) Effective Date. The effective date of this Agreement (the "**Effective Date**") shall be the latter of the respective dates set forth next to the signatures of Seller and Purchaser contained below.

(l) Litigation Expenses. In the event of the bringing of any action or suit by either Purchaser or Seller to enforce any of the terms and conditions contained in this Agreement, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees and costs, including for consultants and experts, incurred in connection with such action.

(m) Exhibits. The Joinder and **Exhibits "A" through "I"** are incorporated herein by reference.

(n) Counterparts; Signatures. This Agreement and any documents executed in accordance herewith may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Facsimile, .pdf or electronic signatures will be deemed original signatures for purposes of this Agreement and any documents executed in connection herewith, except where original signatures are required by any third party or governmental authority (including, without limitation, where an original signature is required for recording a document in the public records).

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE IMMEDIATELY FOLLOWS.]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year set forth below.

Date: June \_\_\_\_, 2021

**PURCHASER:**

**LAKESHORE RECYCLING SYSTEMS, LLC**,  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: June \_\_\_\_, 2021

**SELLER:**

**CITY OF MONMOUTH**, an Illinois municipal  
corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## **LIST OF EXHIBITS**

- Exhibit “A” – Legal Description**
- Exhibit “B” – Assumed Contracts**
- Exhibit “C” – Bill of Sale**
- Exhibit “D” – Pro Forma Policy**
- Exhibit “E” – Seller’s Work**
- Exhibit “F” – Pending Litigation**
- Exhibit “G” – Inspection Report**
- Exhibit “H” – Permits**
- Exhibit “I” – Host Fee Agreement**

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A TRACT OF LAND BEING PART OF EAST HALF OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 11 NORTH, RANGE 2 WEST OF THE FOURTH PRINCIPAL MERIDIAN, WARREN COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT A FOUND IRON ROD MARKING THE CENTER WEST SIXTEENTH CORNER OF SAID SECTION 33; THENCE ALONG THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 33, NORTH 01 DEGREES 41 MINUTES 05 SECONDS EAST, 1083.66 FEET TO A SET IRON ROD; THENCE LEAVING SAID WEST LINE, SOUTH 89 DEGREES 00 MINUTES 40 SECONDS EAST, 201.74 FEET TO A SET IRON ROD; THENCE NORTH 00 DEGREES 07 MINUTES 33 SECONDS EAST, 40.00 FEET TO A SET IRON ROD; THENCE NORTH 89 DEGREES 00 MINUTES 40 SECONDS EAST, 139.57 FEET TO A SET IRON ROD; THENCE SOUTH 00 DEGREES 07 MINUTES 33 SECONDS WEST, 40.00 FEET TO A SET IRON ROD; THENCE SOUTH 89 DEGREES 00 MINUTES 40 SECONDS EAST, 38.37 FEET TO A SET IRON ROD; THENCE SOUTH 01 DEGREES 41 MINUTES 05 SECONDS WEST, 324.31 FEET TO A SET IRON ROD; THENCE NORTH 89 DEGREES 00 MINUTES 40 SECONDS WEST, 72.39 FEET TO A SET IRON ROD; THENCE SOUTH 01 DEGREES 41 MINUTES 05 SECONDS WEST, 770.46 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 33; THENCE ALONG SAID SOUTH LINE, NORTH 86 DEGREES 56 MINUTES 23 SECONDS WEST, 307.36 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINING 8.35 ACRES IS BASED UPON AN ACTUAL BOUNDARY SURVEY COMPLETED BY THE JONES SURVEYING AND ENGINEERING CORPORATION, DURING THE MONTH OF JUNE, 2021 AND IS SUBJECT TO A CREATED 30 FOOT WIDE INGRESS / EGRESS EASEMENT AS SHOWN ON THIS PLAT AND ALL OTHER ROAD RIGHT-OF-WAYS, EASEMENTS OF RECORD AND/OR PRESCRIPTION, RESTRICTIONS, RESERVATIONS AND CONDITIONS OF RECORD, IF ANY.

LAND DESCRIPTION CREATED 30' WIDE INGRESS / EGRESS EASEMENT:

A CREATED 30 FOOT WIDE INGRESS / EGRESS EASEMENT BEING PART OF EAST HALF OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 11 NORTH, RANGE 2 WEST OF THE FOURTH PRINCIPAL MERIDIAN, WARREN COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT A FOUND IRON ROD MARKING THE CENTER WEST SIXTEENTH CORNER OF SAID SECTION 33; THENCE ALONG THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 33, NORTH 01 DEGREES 41

EXHIBIT A

REAL ESTATE PURCHASE AND SALE AGREEMENT  
836 186<sup>TH</sup> AVENUE, MONMOUTH, ILLINOIS 61462

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MINUTES 05 SECONDS EAST, 1083.66 FEET TO A SET IRON ROD BEING THE POINT OF BEGINNING OF SAID CREATED 30 FOOT WIDE INGRESS / EGRESS EASEMENT, FROM THE POINT OF BEGINNING; THENCE LEAVING SAID WEST LINE, SOUTH 89 DEGREES 00 MINUTES 40 SECONDS EAST, 379.68 FEET; THENCE SOUTH 01 DEGREES 41 MINUTES 05 SECONDS WEST, 30.00 FEET; THENCE NORTH 89 DEGREES 00 MINUTES 40 SECONDS WEST, 379.68 FEET TO THE AFOREMENTIONED WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 33; THENCE ALONG SAID WEST LINE, NORTH 01 DEGREES 41 MINUTES 05 SECONDS EAST, 30.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT IS BASED UPON AN ACTUAL BOUNDARY SURVEY COMPLETED BY THE JONES SURVEYING AND ENGINEERING CORPORATION, DURING THE MONTH OF JUNE, 2021 AND IS SUBJECT TO ALL ROAD RIGHT-OF-WAYS, EASEMENTS OF RECORD AND/OR PRESCRIPTION, RESTRICTIONS, RESERVATIONS AND CONDITIONS OF RECORD

Commonly known as: 836 186<sup>th</sup> Avenue, Monmouth, Illinois 61462

Permanent Index Number: a portion of 09-044-113-09

**EXHIBIT "B"**

**ASSUMED CONTRACTS**

**NONE**

**EXHIBIT “C”**

**BILL OF SALE**

THIS BILL OF SALE (this “**Bill of Sale**”) is executed as of June \_\_, 2021 (the “**Effective Date**”) by **CITY OF MONMOUTH**, an Illinois municipal corporation (“**Seller**”) for the benefit of [ \_\_\_\_\_ ] (“**Purchaser**”).

*WITNESSETH:*

WHEREAS, pursuant to the terms of that certain Real Estate Purchase and Sale Agreement, dated as of the Effective Date, by and between Seller and Purchaser (the “**Agreement**”), Seller agreed to sell to Purchaser, *inter alia*, certain real property, the improvements located thereon and certain rights appurtenant thereto, all as more particularly described in the Agreement (collectively, the “**Real Property**”). Initially capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Agreement; and

WHEREAS, by Deed of even date herewith, Seller conveyed the Real Property to Purchaser; and

WHEREAS, in connection with the above described conveyance Seller desires to sell, transfer and convey to Purchaser the Personal Property.

NOW, THEREFORE, in consideration of the receipt of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid in hand by Purchaser to Seller, the receipt and sufficiency of which are hereby acknowledged, Seller has SOLD, TRANSFERRED, and CONVEYED and by these presents does hereby SELL, TRANSFER, and CONVEY to Purchaser, and Purchaser hereby accepts all right, title and interest in and to the Personal Property that are listed in **Exhibit “A”** attached hereto and incorporated herein by reference (herein collectively referred to as the “**Personal Property**”).

Notwithstanding the foregoing to the contrary, Seller hereby represents and warrants to Purchaser that Seller is the absolute owner of said Personal Property, that said Personal Property is free and clear of all liens, charges and encumbrances and that Seller has the full right, power and authority to sell said Personal Property to Purchaser and to make this Bill of Sale.

*[Remainder of page intentionally blank;  
Signature page immediately follows.]*

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written.

**SELLER:**

**CITY OF MONMOUTH**, an Illinois municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SIGNATURE PAGE

BILL OF SALE

836 186<sup>TH</sup> AVENUE, MONMOUTH, ILLINOIS 61462

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**EXHIBIT "A"**  
**(Schedule of Personal Property)**

**EXHIBIT "D"**

**PRO FORMA POLICY**



**EXHIBIT "E"**  
**SELLER'S WORK**

**NONE**

**EXHIBIT "F"**

**PENDING LITIGATION**

**NONE**

**EXHIBIT "G"**

**INSPECTION REPORT**

*Phase I Environmental Report No. \_\_\_\_ dated  
\_\_\_\_, 2021 prepared by [\_\_\_\_\_]*

**EXHIBIT "H"**

**PERMITS**

**EXHIBIT "I"**

**HOST FEE AGREEMENT**

EXHIBIT I

REAL ESTATE PURCHASE AND SALE AGREEMENT  
836 186<sup>TH</sup> AVENUE, MONMOUTH, ILLINOIS 61462