

City of South St. Paul

Economic Development Authority Agenda

Monday, September 16, 2024
SPECIAL MEETING



1. CALL TO ORDER:

2. ROLL CALL:

3. AGENDA:

A. Approval of Agenda

Action – Motion to Approve

Action – Motion to Approve as Amended

4. PUBLIC HEARING:

All items listed on the Consent Agenda are items, which are considered to be routine by the Economic Development Authority and will be approved by one motion. There will be no separate discussion of these items unless a Commissioner or citizen so requests, in which event the item will be removed from the consent agenda and considered at the end of the Consent Agenda.

- A. Approval of Purchase Agreement and Public Hearing for the Conveyance of Property to Verderosa Industrial, LLC, Resolution 2024 – 19

5. GENERAL BUSINESS:

- A. Approval of a Development Agreement with Blue River Holdings, LLC, Resolution 2024 – 20
- B. Request to Enter into Project Development Agreement with Johnson Controls, Inc. for John Carroll and Nan McKay Highrises, Resolution 2024 – 21

6. ITEMS FOR FUTURE FOLLOW-UP:

General communications of the President and Commissioners are provided and may be considered for inclusion on a future agenda. There will be no discussion or decisions made related to these items at this meeting.

7. ADJOURNMENT:

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Ryan Garcia'.

Ryan Garcia, EDA Executive Director

This meeting is being taped by Town Square Television (NDC4).
Replays can be viewed on Government Channel 19.
Replay Times – Friday following Meeting at 1:00 p.m. & 7:00 p.m.
651-451-7834



EDA Agenda Item Report

Date: September 16, 2024

EDA Executive Director:

4-A

AGENDA ITEM:

Approval of Purchase Agreement and Public Hearing for the Conveyance of Property to Verderosa Industrial, LLC, Resolution 2024 – 19

ACTION TO BE CONSIDERED:

Hold Public Hearing to consider conveyance of property at 6xx Verderosa Avenue to Verderosa Industrial, LLC.

Following public hearing, motion to approve Resolution 2024 – 19

SUMMARY:

Background

In 2018 and 2019, the City and EDA commissioned a study of the development potential for an approximately 50-acre area of the City located north of the Kinder-Morgan/Holcim Dakota Bulk Terminal, south of I-494/Wakota Bridge, between Hardman Avenue and the Mississippi River. This study was intended to gain a better understanding of site conditions to inform an optimized Industrial Development Scenario that would maximize potential employment and property tax base benefits to the City. In short, the motivation for this study was to transform this relatively significant expanse of property from a condition of blight, underutilization, and vacancy into a thriving, dynamic, and diverse business park in the mold of the highly successful “Bridgepoint I – IV” redevelopment of the former Stockyards and Dakota Premium sites. This vision was in keeping with the City’s 2030 (and now, 2040) Comprehensive Plan, which guided the site towards Light Industrial Development. As such, upon completion of the Study, Staff began to focus on implementing that vision through additional site diligence and identification of partnerships to foster the creation of the Wakota Crossing Industrial Park. Within this area, the EDA owns an approximately 15-acre parcel that has been positioned for redevelopment, thanks to significant coordination and support with Federal and State partners including the U.S. Army Corps of Engineers, U.S. Department of Housing and Urban Development, Minnesota Department of Employment and Economic Development, and Metropolitan Council. Private Development interest in the site has remained high, and the EDA has identified a development partner (Verderosa Industrial, LLC/Interstate Development) that we feel is best equipped to help the City and EDA achieve the vision for this property.

Site Background and Conditions

The EDA-owned site was owned (until the late 1960s) by the City of South St. Paul as a significant parcel within the previous municipal wastewater treatment plant (settling ponds). In the late 1960s, the City conveyed the land to the Metropolitan Sewer Board as wastewater services in the 7-county Twin Cities Metro Region were centralized through this new entity. The original conveyance agreement between the City and the Metropolitan Sewer Board (now Met Council Environmental Services - MCES) obligated MCES to convey any property “no longer needed for regional wastewater” purposes back to the City. The City re-acquired the property at no cost as mandated by this agreement in 2023, and in 2024 conveyed the property to the EDA.

Given our several-years effort to advance redevelopment of this challenging site, we are mindful of numerous site characteristics that will impact development of the EDA-owned site, the most significant of which are summarized below:

- *Soil Conditions* – From 2017 through the present day, a significant amount of soil and groundwater analysis has been conducted within the Wakota Crossing area, providing valuable information about site conditions that will impact the development methods, schedules, and cost of the site. Put simply, there is every expectation that any/all development at the site will require some level of environmental remediation, as well as additional soil correction and/or an engineered solution to address soil conditions that are currently not suitable to support the proposed industrial development. While we have been successful in obtaining a substantial amount of grant assistance to address these issues, as it related to the now-dormant Capital Partners project at this site, the estimated costs related to overcoming the geotechnical deficiencies and environmental conditions at the site (\$6,211,800) amounted to more than 2x the amount of grant funds that the EDA/City received for these extraordinary challenges (\$3,007,063). These site preparation costs – which are necessary in any development scenario that involves the construction of buildings – amount to more than 26% of total estimated construction costs for their project. In Staff’s experience, that is unprecedented, but indicative of the challenges of this site due to its historic uses (unregulated dumping, sewage treatment ponds) and natural characteristics (floodplain soils, even though the site is now behind the levee and is flood protected).
- *Flowage Easement* – Longer-tenured Council members will recall that the Army Corps of Engineers (ACOE) emerged as a significant player in the FedEx discussions, due to their ownership of an easement over a significant portion of the Danner property immediately south of the EDA property for (essentially) the ability to re-route the Mississippi River and flood that site. While ACOE eventually recorded a release of the flowage easement over the Danner property, this encumbrance remains upon the EDA property. ACOE was “at the table” throughout our 2018/2019 MCES study. As authorized by Council in 2023, the City/EDA is actively working with ACOE to finalize the release of flowage easement from the EDA property. Having completed all required tasks and submittals in their process, we are aware that ACOE is processing the easement release internally, but unfortunately have not received a commitment as to when the process may be complete.
- *Access/Utilities* – Currently, the EDA-owned parcel is “landlocked” as there is no direct frontage on or access to any public street. The 2018/2019 Study identified an opportunity to extend Verderosa Avenue south and eventually west to connect with Hardman Avenue South. Currently, Verderosa terminates at the City’s current compost site, while public sanitary and water infrastructure also terminate generally in the area of the new Wakota Trailhead structure. Communications (phone/internet) and other private utilities (gas, electric services) are also not currently established to or through the site. Additionally, the Union Pacific’s mainline railroad track “cuts off” the site just to the north of the Wakota Trailhead, crossing Verderosa Avenue and at times introducing significant delay as rail cars block this crossing for extensive periods (the longest such delay as measured in June-July 2024 being 25 minutes). Finally, the South St. Paul Levee system makes up the entirety of the EDA property’s southern and western property line/border. The levee should be seen as a “hard” barrier, as ACOE has indicated that any penetrations of the levee (specifically for extension of public or private utilities) would at best add significant complexity to any development project.

Development Opportunity – Highlights of Purchase Agreement

[Interstate Development](#) has a successful history of developing and managing light industrial facilities in South St. Paul, having developed more than 400,000 square feet of commercial-industrial properties in the Bridgepoint Business Park, on the site of the former South St. Paul Stockyards and Dakota Premium Foods sites. In August 2024, Staff introduced Interstate to the Wakota Crossing concept and began meeting with Interstate to help them build an understanding of the site’s opportunities and challenges. In

short order, Interstate expressed an interest in entering a purchase agreement and pursuing a build-to-suit development for the site. Interstate is interested in generally following the previously-discussed Wakota Crossing Concept, which would propose a light industrial, office-warehouse building ranging from 175,000 – 200,000 square feet. It is anticipated that a Development Agreement, more clearly delineating the terms and expectations of the development project, will be presented for approval in mid-2025.

As alluded to above, this development site is challenged with site conditions that introduce risk and, unfortunately, extraordinary costs that threaten the viability of the site for private development. With these challenges in mind, Interstate has indicated that development of the site is not feasible without a full contribution of the land from the EDA to the Developer. It should be noted that as a component of our ongoing work with the Army Corps of Engineers on the release of flowage easement, they completed a value appraisal of the easement area. ACOE valued the encumbered property at \$0, in consideration of its lack of utilities and access in addition to the significant soil deficiencies as verified through extensive geotechnical and environmental investigations at the property.

Key Terms and Conditions of the Purchase Agreement are highlighted below:

- *Purchase Price* – the agreement provides that the property will be acquired “as is” for \$100.00 by Verderosa Industrial, LLC – a unique corporate entity created by Interstate to own and develop this property.
- *Contingencies*
 - Key Buyer Contingencies
 - Build-to-Suit – the agreement provides that the buyer has until February 14, 2025 to identify and secure commitment from a tenant to lease an approximately 180,000 SF office/warehouse facility at the property
 - Due Diligence – the agreement provides that the buyer has until February 14, 2025 to complete any additional site investigations at the property and confirm that the property can be developed for their intended use (180,000 SF office/warehouse development)
 - Survey – the agreement provides that the buyer has until February 14, 2025 to obtain and approve a survey of the property
 - Development Agreement – the agreement provides that on or before August 31, 2025, buyer and seller will enter into a development agreement
 - Seller Contingencies
 - Sketch Plan – the agreement provides that the seller can exercise a termination of agreement if the buyer fails to submit an application for sketch plan approval to the City on or before March 1, 2025
 - Preliminary Plat/PUD - The agreement provides that the seller can exercise a termination of agreement if the buyer fails to submit an application for preliminary plat and PUD approval to the City on or before May 1, 2025
 - Final Plat/PUD - exercise a termination of agreement if the buyer fails to submit an application for Final Plat and PUD approval to the City on or before July 1, 2025
 - Development Agreement - the agreement provides that on or before August 31, 2025, buyer and seller will enter into a development agreement
- *Closing* – the agreement provides that closing will occur on or before September 30, 2025.

In summary, this project is a textbook example of the type of public-private partnership that is required at times for complex redevelopment and business attraction projects to succeed. The project is directly aligned to our Economic Development Strategy, and represents a significant “win” for the community.

FUNDING SOURCES AND OTHER FISCAL CONSIDERATIONS:

Several grant programs for site cleanup and redevelopment are already awarded for this site, totaling more than \$6,000,000. Preliminary cost estimates for the implementation of the Wakota Crossing concept indicate that these grant funds are about \$3,000,000 short of the total “predevelopment” costs that are needed (road and utility extensions, soil correction and ground improvements, and contamination cleanup) just to get the site ready for private development. Given these conditions, a land contribution by the EDA is both justifiable and necessary for virtually any private development of the site.

It is estimated that private development of the site generally in accordance with the Wakota Crossing vision would yield an assessed value between \$12,000,000 - \$15,300,000. These values would translate to Pay 2024 estimated property tax of between \$375,000 and \$480,000 in property taxes annually.

ATTACHMENTS:

Orientation Map

Preliminary Site Concept (2018)

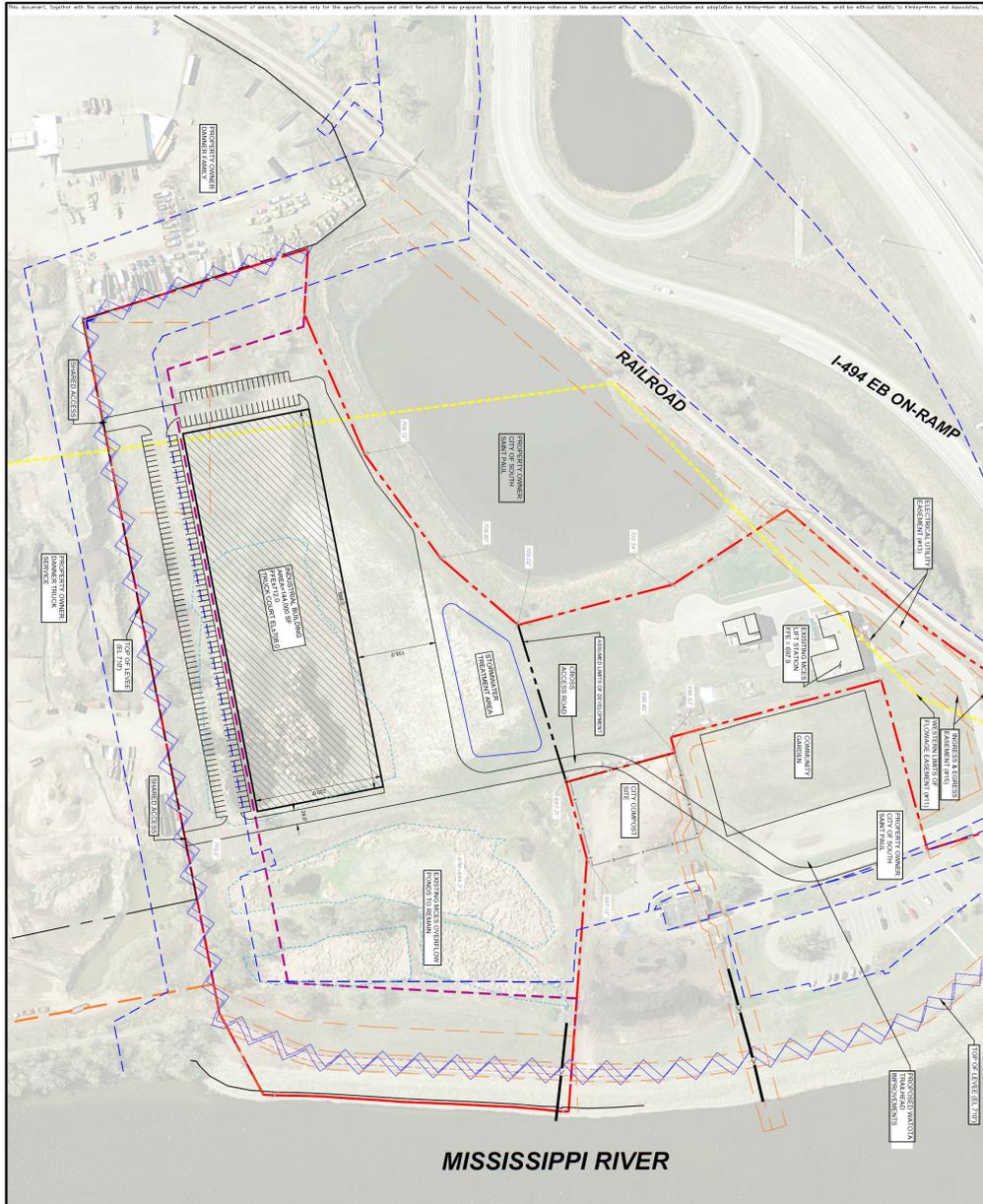
Resolution 2024 – 19

Purchase Agreement

PROPERTY/ORIENTATION MAP



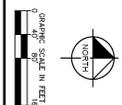
PRELIMINARY SITE CONCEPT (EDA – 2018)



MISSISSIPPI RIVER

LEGEND	
[Red dashed line]	PROPERTY LINE
[Blue dashed line]	EXISTING LOT LINE
[Purple dashed line]	PROPOSED LOT LINE
[Yellow dashed line]	ADJACENT LOT LINE
[Orange dashed line]	CONVEYANCE EASEMENT
[Black dashed line]	OTHER EASEMENTS
[Black dashed line]	EXISTING STORM SEWER
[Black dashed line]	LEVEL (ELEV. 7.0)
[Black dashed line]	LEVEL (ELEV. 7.0)
[Black dashed line]	WETLAND
[Hatched area]	PROPOSED BUILDING
[Black dashed line]	EXISTING SHOT ELEVATION

PROPERTY SUMMARY	
MCES PROPERTY CONVEYANCE	4,239.2 AC
TOTAL ACRES PARCEL	4,239.2 AC
CONVEYANCE PARCEL	4,239.2 AC
PROPOSED ZONING	P-10 INDUSTRIAL
PROPOSED SETBACKS	FRONT 150'
REAR 150'	
SIDE 150'	
STREET FRONTAGE	1,000.0 FT
TOTAL IMPROVED AREA	1,000.0 AC
TOTAL UNIMPROVED AREA	3,239.2 AC
CONVEYANCE EASEMENT	1,000.0 AC
PROPOSED ZONING	P-10 INDUSTRIAL
PROPOSED SETBACKS	FRONT 150'
REAR 150'	
SIDE 150'	
STREET FRONTAGE	1,000.0 FT



<p>PROJECT NUMBER: CONCEPT 1</p> <p>MCES PROPERTY CONVEYANCE SOUTH ST. PAUL, MN</p>	<p>MCES PROPERTY CONCEPT</p>	<p>NOVA PROJECT: 160574206</p> <p>DATE: 07/12/2018</p> <p>SCALE: AS SHOWN</p> <p>DESIGNED BY: [Signature]</p> <p>DRAWN BY: [Signature]</p> <p>CHECKED BY: [Signature]</p>	<p>PRELIMINARY</p>	<p>Kimley-Horn</p> <p>© 2015 KIMLEY-HORN AND ASSOCIATES, INC. 2850 UNIVERSITY AVENUE WEST, SUITE 200N, ST. PAUL, MN 55114 PHONE: 651-846-4141 WWW.KIMLEY-HORN.COM</p>
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**SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 2024-19

RESOLUTION AUTHORIZING THE SALE AND CONVEYANCE OF REAL PROPERTY

WHEREAS, the South St. Paul Economic Development Authority (EDA) owns certain real property located in the City of South St. Paul, County of Dakota, State of Minnesota, which is legally described on the attached Exhibit A (Property); and

WHEREAS, pursuant to Minnesota Statutes, Section 469.105, the EDA has the authority to sell any of its lands; and

WHEREAS, the EDA has entered into a Purchase Agreement (Purchase Agreement) with Verderosa Industrial, LLC, a Minnesota Limited Liability Company (Buyer) for the sale of the Property, subject to final approval of the sale of the property by the EDA to the Buyer, the terms and conditions of which include the requirement that Buyer and EDA enter into a Development Agreement to govern the terms and conditions of the development and use of the Property; and

WHEREAS, the EDA has published a notice of public hearing for the sale of the Property pursuant to Minnesota Statutes, Section 469.105, and such notice was published on September 6, 2024 in the St. Paul Pioneer Press, a local newspaper of general circulation notice;

WHEREAS, the EDA held a public hearing on September 16, 2024 pursuant to Minnesota Statutes, Section 469.105 regarding the sale of the Property to the Buyer at which all interested persons were given an opportunity to be heard; and

WHEREAS, the EDA has determined that the sale and conveyance of the Property to the Buyer are in the best interests of the City of South St. Paul and its people, the transaction furthers its general plan of economic development and is consistent with the City of South St. Paul's Comprehensive Plan, and the sale furthers the aims and purposes of Minnesota Statutes, Sections 469.090 to 469.108; and

WHEREAS, the EDA is selling the Property to the Buyer pursuant to the authority set forth in Minnesota Statutes, Section 469.105 and the EDA has satisfied all provisions contained in such statutes.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the South St. Paul Economic Development Authority that:

1. The EDA hereby approves the sale and conveyance of the Property to the Buyer pursuant to the terms of the Purchase Agreement and contingent on Buyer and EDA entering into a Development Agreement, and it is hereby found and determined that Buyer possesses the qualifications and the financial responsibility to acquire, renovate, and occupy the Property as a permitted use for office use in accordance with the City's zoning and building ordinances, codes, statutes and standards; and
2. The purchase price and all other terms and conditions of the Purchase Agreement are hereby approved and the required officers of the EDA, staff, and consultants are hereby authorized to execute the necessary documents to sell and convey the Property to the Buyer pursuant to the terms of the Purchase Agreement.

Adopted this 16th day of September, 2024.

James P. Francis, President

Ryan Garcia, Executive Director

Exhibit A

Real property in Dakota County, Minnesota legally described as follows:

PID: 36-83210-01-020

Lot 2, Block 1, Wakota North

Torrens Property

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made as of September ____, 2024 (the “**Effective Date**”), by and between the **South St. Paul Economic Development Authority**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (“**Seller**”), VERDOSA INDUSTRIAL LLC, a Minnesota limited liability company, or its permitted assigns (“**Buyer**”).

RECITALS

A. Seller is, or will be by the Closing Date, the owner of certain real property located in South St. Paul, Minnesota with Parcel Identification Number of 36-83210-01-020 and legally described on Exhibit A attached hereto (“**Property**”).

B. Buyer desires to purchase the Property from Seller, and Seller desires to sell the same to Buyer, all on the terms and conditions of this Agreement.

AGREEMENT

In consideration of this Agreement, Seller and Buyer agree as follows:

1. Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, the real property located in the City of South St. Paul (the “**City**”), Dakota County, Minnesota, as described and depicted on **Exhibit A-1** and **Exhibit A-2** hereto (the “**Land**”) containing approximately 15.62 acres, together with all easements and rights benefiting or appurtenant to the Land (collectively, the “**Property**”).
2. Purchase Price and Manner of Payment. The total purchase price (the “**Purchase Price**”) for the Property shall be One Hundred and No/100 Dollars (\$100.00), payable as follows: \$100.00 as earnest money (“**Earnest Money**”, which term shall include any interest earned thereon), which Earnest Money shall be held by DCA Title Company (“**Escrow Agent**” or “**Title Company**”).
3. Sale “As Is”; Release of Seller.
 - 3.1. SELLER AND BUYER AGREE THAT BUYER IS ACCEPTING POSSESSION OF THE PROPERTY ON THE CLOSING DATE “AS IS, WHERE IS, WITH ALL FAULTS” WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, INCLUDING ANY FAULTS, PROBLEMS OR ISSUES OF THE PROPERTY AS MAY BE DISCLOSED IN THAT CERTAIN PHASE I ENVIRONMENTAL REPORT DATED AUGUST 2018 PREPARED BY WENCK ASSOCIATES, INC., AND THAT CERTAIN PHASE II ENVIRONMENTAL REPORT DATED AUGUST 2018 PREPARED BY WENCK ASSOCIATES, INC., AND THAT CERTAIN SUPPLEMENTAL PHASE II ENVIRONMENTAL REPORT DATED OCTOBER 2021 PREPARED BY AMERICAN ENGINEERING TESTING, INC., AND THAT CERTAIN

SUPPLEMENTAL PHASE II SOIL VAPOR INVESTIGATION REPORT DATED DECEMBER 2021 PREPARED BY AMERICAN ENGINEERING TESTING, INC., AND THAT SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED OTHER THAN AS CONTAINED HEREIN. BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, SELLER'S AGENTS, OR BROKERS AS TO ANY MATTER CONCERNING THE PROPERTY AND THAT EXCEPT AS SET FORTH HEREIN, BUYER IS RELYING ENTIRELY ON ITS OWN INDEPENDENT INSPECTIONS, EXAMINATIONS, STUDIES AND OTHER DUE DILIGENCE ACTIVITY, WITHOUT ANY PHYSICAL OR ENVIRONMENTAL OR OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND BY SELLER. BUYER AGREES TO PAY FOR AND HAS MADE OR CAUSED TO BE MADE ALL INSPECTIONS, INVESTIGATIONS AND ANALYSES AS IT DEEMS NECESSARY OR APPROPRIATE FOR THE PURPOSE OF DETERMINING COMPLIANCE OR NON-COMPLIANCE BY THE PROPERTY WITH ALL BUILDING, HEALTH, ENVIRONMENTAL, ZONING AND LAND USE LAWS, ORDINANCES, RULES AND REGULATIONS. ANY REPORTS, REPAIRS OR WORK REQUIRED BY BUYER ARE TO BE THE SOLE RESPONSIBILITY OF BUYER AND BUYER AGREES THAT THERE IS NO OBLIGATION ON THE PART OF SELLER TO MAKE ANY CHANGES, ALTERATIONS OR REPAIR TO THE PROPERTY, AND BUYER ACKNOWLEDGES THAT UPON EXPIRATION OF THE INSPECTION PERIOD, BUYER HAS COMPLETED ITS DUE DILIGENCE WITH RESPECT TO THE PROPERTY TO ITS SATISFACTION.

- 3.2. BUYER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES, AND COSTS RESULTING FROM OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ARISING FROM AND AFTER THE CLOSING DATE. BUYER ACKNOWLEDGES THAT ANY CONDITION OF THE PROPERTY THAT BUYER DISCOVERS PRIOR TO OR AFTER THE CLOSING DATE SHALL BE AT BUYER'S SOLE EXPENSE, SUBJECT TO THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 13 HEREOF. BUYER, FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS, RELEASES SELLER AND SELLER'S AGENTS AND REPRESENTATIVES FROM, AND WAIVES ALL CLAIMS AND LIABILITY AGAINST, SELLER AND SELLER'S AGENTS AND REPRESENTATIVES FOR ANY STRUCTURAL, PHYSICAL OR ENVIRONMENTAL CONDITIONS AT THE PROPERTY AND FURTHER RELEASES SELLER AND SELLER'S AGENTS AND REPRESENTATIVES FROM, AND WAIVES ALL LIABILITY AGAINST SELLER AND SELLER'S AGENTS AND REPRESENTATIVES ATTRIBUTABLE TO, THE STRUCTURAL, PHYSICAL, AND ENVIRONMENTAL CONDITION OF THE

PROPERTY SUBJECT TO THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 13 HEREOF.

The provisions of this Section shall survive the Closing indefinitely.

4. Buyer Contingencies. The obligations of Buyer under this Agreement are contingent upon satisfaction of each of the following:
 - 4.1. Representations and Warranties. The representations and warranties of Seller contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date in all material respects.
 - 4.2. Absence of Changes and Litigation. There shall have been no material adverse change in the Property, and there shall not have been any occurrence, event, or set of circumstances which might reasonably be expected to result in any such material adverse change before or after Closing Date. There shall be no proceeding or investigation pending or threatened against Seller or Buyer or affecting the Property which, in the reasonable judgment of Buyer, would make the consummation of the transactions contemplated by this Agreement inadvisable.
 - 4.3. Build-to-Suit Development. Buyer represents that the Property is intended to be developed for and occupied for a business that is legally permitted in the City's Industrial Zoning District. On or before the conclusion of the Inspection Period (defined below), Buyer shall have obtained on terms reasonably satisfactory to Buyer, a commitment to lease the Property as a **180,000 sq. ft. office/warehouse facility** (hereinafter "**Buyer's Intended Use**").
 - 4.4. Due Diligence; Survey; Site Investigation. On or before the conclusion of the Inspection Period, Buyer shall have obtained: (i) a satisfactory outcome to its due diligence investigation with respect to the Property, (ii) a satisfactory survey and site investigation verifying Seller's warranties with respect to the Property; (iii) a satisfactory outcome to its soil boring and environmental testing; and (iv) satisfactory evidence that the Property and the contemplated operation and use of the Property by Buyer for Buyer's Intended Use complies with all applicable laws.
 - 4.5. Title Commitment. On or before the conclusion of the Inspection Period, Buyer shall have received and approved of the title insurance commitment referred to in Section 9.
 - 4.6. Survey. On or before the conclusion of the Inspection Period, Buyer shall have reviewed and approved the survey as described in Section 10.
 - 4.7. Development Agreement. On or before the conclusion of the Entitlements Period, Buyer and Seller shall enter into a development agreement, which final form (including Buyer's approved construction drawings which will be attached as Exhibits) shall be mutually agreeable between all parties, that will govern the development and use of the Property (the "**Development Agreement**").

- 4.8 Default. There shall be no uncured material default by Seller of any of its obligations under this Agreement.
- 4.9 Inspection, Testing and Inspection Period.
- 4.9.1 Seller shall allow Buyer and Buyer's agents access to the Property without charge (but subject to Buyer's indemnification obligations contained herein) and at all reasonable times upon at least two business days' advance written notice by Buyer to Seller for the purpose of Buyer's investigation and testing the same until **February 14, 2025** (the "**Inspection Period**"). Buyer, at Buyer's expense, may enter upon the Property to conduct such tests and make such examinations, including soil, boring and environmental tests, as Buyer deems necessary. In the event the results of tests or examinations conducted by Buyer or Buyer's representative(s) verify that there is accumulation in or about the Property or adjacent groundwater of petroleum, PCBs or any hazardous waste or toxic pollutant, contaminant or other substance regulated by any state or federal statute including Solid Waste Disposal Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601), the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6901) or the Toxic Substance Control Act (15 U.S.C. Sec. 2604) or by any other statute, rule, regulation or order of any governmental agency having jurisdiction over the control of such substances or wastes, or other substances of public health concern, or if Seller acknowledges that the Property is contaminated by any such waste or substances, Buyer may in its sole discretion, terminate this Agreement.
- 4.9.2 Buyer shall pay all costs and expenses of any investigation and testing, and shall keep the Property free of any liens arising out of Buyer's activities on the Property, and those of its authorized agents. Buyer shall repair any and all damage to the Property arising from or related to Buyer's or its authorized agents' investigation and testing, and shall restore the Property to substantially the same condition as existed prior to such entry.
- 4.9.3 Buyer shall indemnify, defend and hold Seller and the Property harmless from all costs and liabilities arising from or related to Buyer's or its authorized agents' activities. Prior to the time Buyer avails itself of the rights herein contained to enter upon the Property, Buyer shall deliver to Seller evidence that Buyer and its authorized agents have in effect a fully paid policy of insurance insuring Buyer and Seller against any liability normally covered by a commercial general liability policy to the extent of at least \$2,000,000.00 with respect to death of or injury to any one person and with respect to property damage or as otherwise reasonably requested by Seller. Notwithstanding anything to the contrary in this Agreement, Buyer's obligations to indemnify, defend and hold Seller and the Property harmless and to repair and restore the Property pursuant to this Section shall

survive the Closing or the earlier termination or expiration of this Agreement.

- 4.9.4 In the exercise of its rights pursuant to this Section, Buyer shall not interfere with the conduct of Seller's operations being conducted on the Property. Notwithstanding anything to the contrary in this Agreement, in no event is Seller obligated to repair any Property defects discovered by Buyer's due diligence investigations.

If any contingency contained in this Section has not been satisfied on or before the date described herein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from Buyer to Seller. If termination occurs pursuant to a contingency contained herein, the Earnest Money shall be returned to Buyer, in which event all documents deposited by Buyer shall be immediately returned to Buyer, and all documents deposited by Seller shall be immediately returned to Seller and neither party will have any further rights or obligations with respect to this Agreement or the Property. All the contingencies in this Section are specifically for the benefit of Buyer, and Buyer shall have the right to waive any contingency in this Section by written notice to Seller.

5. Seller Contingencies. The obligations of Seller under this Agreement are contingent upon each of the following:
- 5.1 Buyer Performance. Buyer shall have delivered and executed all monies, items and other instruments required by this Agreement, and shall have performed all obligations contained herein.
- 5.2 Representations and Warranties. The representations and warranties of Buyer contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date in all material respects.
- 5.3 Government Approvals. On or before the conclusion of the Entitlements Period (defined below), Buyer shall have obtained, at its sole cost and expense all final governmental approvals necessary in Buyer's judgment in order to make the use of the Property for Buyer's Intended Use ("**Government Approvals**"). Seller shall cooperate in all reasonable respects with Buyer in obtaining such approvals for Buyer's Intended Use, and shall execute such applications, permits and other documents as may be reasonably required in connection therewith.
- 5.4 Development Agreement. At Closing, Buyer and Seller shall have entered into a Development Agreement that will govern the development and use of the Property, which final form (including Buyer's approved construction drawings which will be attached as Exhibits) shall be mutually agreeable between all parties that will govern the development and use of the Property.
- 5.4 Entitlements Period. Buyer shall have until August 31, 2025, to obtain all necessary Government Approvals as defined in this Agreement ("**Entitlements Period**").

Buyer acknowledges that time is of essence to obtain the Government Approvals and shall comply with the following deadlines:

1. Submit completed application and related materials for sketch plan approval to the City of South St. Paul on or before March 1, 2025.
 2. Submit completed applications and related materials for preliminary plat and PUD approval to the City of South St. Paul on or before May 1, 2025.
 3. Submit completed applications and related materials for final plat and PUD approval to the City of South St. Paul on or before July 1, 2025.
- 5.5 Default. There shall be no uncured material default by Buyer of any of its obligations under this Agreement.

If any contingency contained in this Section has not been satisfied on or before the date described herein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from Seller to Buyer. If termination occurs, Seller shall return the Earnest Money plus any accrued interest to Buyer, in which event all documents deposited by Buyer shall be immediately returned to Buyer, and all documents deposited by Seller shall be immediately returned to Seller and neither party will have any further rights or obligations with respect to this Agreement or the Property. All the contingencies in this Section are specifically for the benefit of Seller, and Seller shall have the right to waive any contingency in this Section by written notice to Buyer.

6. Closing. The closing date shall occur on the business day first occurring on or after the date thirty (30) calendar days after the end of the Entitlements Period, or such earlier date as is agreed upon by Seller and Buyer (the actual date of the Closing being herein referred to as the “**Closing Date**”). The Closing shall take place at such place in the Minneapolis-St. Paul, Minnesota area as Buyer and Seller may agree. Seller agrees to deliver possession of the Property to Buyer on the Closing Date, subject only to the Permitted Encumbrances (defined below).

7. Closing Documents.

7.1. Seller’s Closing Documents. On the Closing Date, Seller shall execute and deliver to Buyer the following (collectively, “**Seller’s Closing Documents**”):

7.1.1. Deed from Seller to Buyer. A Limited Warranty Deed conveying the Property to Buyer (the “**Deed**”), free and clear of all encumbrances, except the Permitted Encumbrances. The Limited Warranty Deed will incorporate, as a covenant running with the land, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the land. If the covenant is violated the Seller may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the deed.

7.1.2. FIRPTA Affidavit. A non-foreign affidavit, properly executed, containing such information as is required by IRC Section 1445(b)(2) and its regulations.

- 7.1.3. Seller's Affidavit. A seller's affidavit in form and content required by the Title Company.
- 7.1.4. IRS Forms. If applicable, a Designation Agreement designating the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.
- 7.1.5. Well Certificate. If there are "Wells" on the Property within the meaning of Minn. Stat. § 103I.235, a Well Certificate in the form required by law.
- 7.1.6. Storage Tanks. If the Property contains or contained a storage tank, an affidavit with respect thereto, as required by Minn. Stat. § 116.48(6).
- 7.1.7. Individual Sewage Treatment Systems. If the Property contains an individual sewage treatment system, a disclosure statement as required by Minn. Stat. § 115.55.
- 7.1.8. Closing Statement. A closing statement acceptable to Seller.
- 7.1.9. Development Agreement. The Development Agreement, which final form (including Buyer's approved construction drawings which will be attached as Exhibits) shall be mutually agreeable between all parties.
- 7.1.10. Other Documents. All other documents reasonably necessary and appropriate to complete the Closing.
- 7.2. Buyer's Closing Documents. On the Closing Date, Buyer will execute and deliver to Seller the following (collectively, "**Buyer's Closing Documents**"):
 - 7.2.1. IRS Form. If applicable, a Designation Agreement designating the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.
 - 7.2.2. Closing Statement. A closing statement acceptable to Buyer.
 - 7.2.3. Development Agreement. The Development Agreement, which final form (including Buyer's approved construction drawings which will be attached as Exhibits) shall be mutually agreeable between all parties.
 - 7.2.4. Other Documents. All other documents reasonably necessary and appropriate to complete the Closing.
- 8. Prorations. Seller and Buyer agree to the following prorations and allocation of costs with respect to this Agreement:
 - 8.1. Title Insurance and Closing Fee. Seller shall pay for the Title Commitment. Buyer shall pay for the Title Policy, including, without limitation, all premiums and costs

of endorsements thereto. Buyer will pay any other closing fee or charge imposed by the Title Company.

- 8.2. Recording Costs. Buyer will pay the cost of recording any documents required to be recorded by this Agreement, including, without limitation, the Deed.
- 8.3. Deed and Mortgage Taxes. Seller shall pay all state deed tax payable in connection with this transaction. Buyer shall pay all mortgage registry tax payable in connection with financing obtained by Buyer, if any.
- 8.4. Real Estate Taxes and Special Assessments. All real estate taxes due and payable in the years prior to the year in which the Closing occurs shall be paid by Seller. Real estate taxes due and payable in the year in which the Closing occurs shall be and in any year subsequent to the year in which the Closing occurs shall be the obligation of Buyer. All levied, pending, deferred or postponed special assessments against the Property shall be the obligation of Buyer.
- 8.5. Attorneys' Fees. Each of the parties will pay its own attorneys' fees, except that a party defaulting under this Agreement will pay the reasonable attorneys' fees and court costs incurred by the nondefaulting party to enforce its rights hereunder.
- 8.6. Governmental Fees. Any impact or park dedication fees or other governmental fees paid or payable to any governmental authority with respect to Buyer's Intended Use of the Property shall be the sole responsibility of Buyer.
9. Title Commitment and Title Insurance. Buyer shall obtain a commitment to issue an ALTA Form 2006 owner's title insurance policy in the amount of the purchase price. Seller shall pay for the cost of the Title Commitment. All expense incurred in paying the premium charge for the final title policy shall be paid by Buyer. Within twenty (20) days after Buyer's receipt of the Title Commitment, Buyer shall notify Seller in writing of any title matters (exceptions to title or exclusions from title) not acceptable to Buyer ("**Title Defect**"). The objections to title may include without limitation, any easements, restrictions or other matters which may interfere with the Buyer's Intended Use of the Property. Any matters reflected on the Title Commitment which are not objected to by Buyer within such time period or waived by Buyer shall be deemed to be permitted encumbrances ("**Permitted Encumbrances**"). Buyer shall have the renewed right to object to the Title Commitment as the same may be revised or endorsed from time to time. Seller shall be allowed twenty (20) days after the making of Buyer's objections to title to cure the same but shall have no obligation to do so. If such cure is not completed within said period, or if Seller elects not to cure such Objections, Buyer shall have the option to do any of the following: (i) Terminate this Agreement with respect to all of the Property, or (ii) Waive one or more of its objections and proceed to Closing. If Buyer so terminates this Agreement, neither Seller nor Buyer shall be liable to the other for any further obligations under this Agreement (except for such obligations as survive termination of this Agreement) and the Earnest Money shall be refunded to Buyer.
10. Survey.

- (a) Buyer may at its option, obtain an updated survey of the Property, and Seller agrees to cooperate with Buyer in obtaining such survey. All expenses incurred in obtaining such survey shall be paid by Buyer. Such survey shall be prepared in accordance with the Minimum Standard Detail Requirements for Land Title Surveys as adopted by the American Title Association and the American Congress on Surveying and Mapping in 2011, and shall include a proper and complete legal description of such Property and shall show: (i) external boundaries of such Property and the length and direction of each dimension; (ii) access to and names of the nearest or adjacent public roads; (iii) the locations of all recorded easements; (iv) the locations of any flood plains; (v) the legal description and street address of such Property and the number of square feet within such property; (vi) setback requirements; (vii) physical encroachments onto such Property and from such Property onto adjacent property; (viii) the locations of monuments at corners; (ix) the locations of all improvements; (x) the locations of all utilities and if they have not been extended to the boundary of such Property, the nearest point from which they could be extended to such Property; (xi) the locations of all concrete pads, stand pipes, vent pipes and filler pipes; (xii) the topography of the Property at two foot intervals; and (xiii) other information necessary or required by the title company to remove the "survey" exception in the title commitment;
- (b) The survey described above shall contain a certification by the surveyor to Buyer and all those who may purchase, take a mortgage on or insure title to the Property described therein within one (1) year from the date of said survey that (i) the information, courses, and distances shown are correct, (ii) the title lines and lines of actual possession are the same, (iii) the size, location and type of buildings and improvements are as shown and all are within the boundary lines and applicable setback lines of such Property, (iv) there are no violations of zoning ordinances or restrictions with reference to the location, size or height of said buildings and improvements, (v) there are no easements or uses affecting such Property appearing from a careful inspection of the same, other than as shown on the commitment of title insurance described in Section 9 hereof and depicted thereon, and (vi) there are no encroachments affecting such Property except as shown on the survey.

11. Representations and Warranties by Buyer. Buyer represents and warrants to Seller as follows:

- 11.1. Existence; Authority. Buyer is a Minnesota limited liability company that is duly qualified, registered and in good standing under the laws of the State of Minnesota, and has the requisite power and authority to enter into and perform this Agreement and Buyer's Closing Documents; such documents have been duly authorized by all necessary action; such documents are valid and binding obligations of Buyer, enforceable in accordance with their terms, except as enforceability may be limited by equitable principles or by the laws of bankruptcy, insolvency or other laws affecting creditors' rights generally.
- 11.2. Recording. Buyer shall not record this Agreement or a memorandum hereof at any time.

12. Representations and Warranties by Seller. Seller represents and warrants to Buyer as follows:
- 12.1. Existence; Authority. Seller is duly organized, qualified and in good standing under the laws of the State of Minnesota, and has the requisite power and authority to enter into and perform this Agreement and Seller's Closing Documents; such documents have been duly authorized by all necessary action; such documents are valid and binding obligations of Seller, enforceable in accordance with their terms, except as enforceability may be limited by equitable principles or by the laws of bankruptcy, insolvency or other laws affecting creditors' rights generally.
- 12.2. FIRPTA. Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate," as those terms are defined in Section 1445 of the Internal Revenue Code.
- 12.3. Wells and Individual Sewage Treatment Systems. Seller certifies and warrants that there are no "Wells" on the described Property within the meaning of Minn. Stat. § 103I or "Individual Sewage Treatment Systems" on the described Property within the meaning of Minn. Stat. § 115.55. This representation is intended to satisfy the requirements of those statutes.
- 12.4. Methamphetamine Disclosure. Solely for purposes of satisfying the requirements of Minn. Stat. § 152.0275, to Seller's knowledge, Methamphetamine production has not occurred on the Property.
- 12.5. Hazardous Materials. Except as disclosed in that certain Phase I Environmental Report dated August 2018 prepared by Wenck Associates, Inc., and that certain Phase II Environmental Report dated August 2018 prepared by Wenck Associates, Inc., and that certain Supplemental Phase II Environmental Report dated October 2021 prepared by American Engineering Testing, Inc., and that Certain Supplemental Phase II Vapor Investigation Report dated December 2021 prepared by American Engineering Testing, Inc., to Seller's knowledge, no toxic or hazardous substances or wastes, pollutants or contaminants have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on the Property in violation of any Environmental Law, nor has any activity been undertaken on the Property that would cause or contribute to the Property becoming a treatment, storage or disposal facility within the meaning of any Environmental Law. The term "**Environmental Law**" shall mean any and all federal, state and local laws, statutes, codes, ordinances, regulations, rules, policies, consent decrees, judicial orders, administrative orders or other requirements relating to the environment or to human health or safety associated with the environment, all as amended or modified from time to time.
- 12.6. No Proceedings or Violations. To Seller's knowledge, there are (a) no legal or administrative proceedings pending against Seller that would adversely affect its right to convey the Property to Buyer as contemplated in this Agreement; (b) no condemnation or eminent domain proceedings pending with respect to the Property;

E-mail: lp@interstatedevelopment.com
vperbix@interstatedevelopment.com

If to Seller: South St. Paul Economic Development Authority
125 Third Avenue North
South St. Paul, Minnesota 55075
Attention: Executive Director

E-mail: rgarcia@southst.paul.org

With a Copy to: South St. Paul City Attorney
LeVander, Gillen and Miller, PA
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121
Attention: Amanda Johnson

E-mail: ajohnson@levander.com

Any party may change its address for the service of notice by giving notice of such change 10 days prior to the effective date of such change.

20. Remedies.

20.1 If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice to Buyer. If Buyer fails to cure such default within 10 days of the date of such notice, this Agreement will terminate, and upon such termination, Seller will retain the Earnest Money and any accrued interest as liquidated damages, time being of the essence of this Agreement. The termination of this Agreement and retention of the Earnest Money and any accrued interest will be the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages or specific performance. Seller and Buyer acknowledge and agree that any liability of Buyer to Seller under the indemnities provided for in this Agreement will not be limited by this liquidated damages provision.

20.2 If Seller defaults under this Agreement, and fails to cure such default within 30 days after receipt of written notice from Buyer (or such reasonably longer period of time if such default is incapable of cure within such 30-day period), Buyer shall, as its sole and exclusive remedy, be entitled to terminate this Agreement and recover all Earnest Money or seek specific performance of this Agreement by commencing suit thereof within three months after the date of Seller's default.

21. Miscellaneous. This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the Property. There are no verbal agreements that change this Agreement, and no waiver of any of its terms will be effective unless in writing executed by the parties. This Agreement binds and benefits the parties and their successors and assigns. This Agreement

has been made under the laws of the State of Minnesota and such laws will control its interpretation.

22. Signatures in Counterparts and By Electronic Mail. The undersigned agree that this Agreement may be signed in any number of counterparts, each of which will constitute an original, and that a electronic copy of any signature of any party will be deemed as enforceable and effective as an original signature. All such counterparts together will constitute one and the same instrument.

24. Broker's Commission. Seller and Buyer each represent and warrant to the other party that it has dealt with no brokers, finders or the like in connection with this Agreement or the transactions contemplated hereby. Seller and Buyer agree to indemnify and defend each other against, and hold each other harmless from, all claims, damages, costs and expenses of or for any fees or commissions resulting from their actions or agreements regarding the execution or performance of this Agreement, if and to the extent the representation and warranty made by such party in the immediately preceding sentence is not true.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

South St. Paul Economic Development Authority

By: _____

Name: _____

Its: President

By: _____

Name: _____

Its: Executive Director

BUYER:

VERDOSA INDUSTRIAL LLC,
a Minnesota limited liability company

By: _____

Name: Lonnie Provencher

Its: President

EXHIBIT A-1

Property Legal Description

Real property in Dakota County, Minnesota legally described as follows:

PID: 36-83210-01-020

Lot 2, Block 1, Wakota North

Torrens Property



EDA Agenda Item Report

Date: September 16, 2024

EDA Executive Director:

5-A

AGENDA ITEM:

Approval of Development Agreement with Blue River Holdings, LLC, Resolution 2024-20

ACTION TO BE CONSIDERED:

Motion to approve Resolution 2024 – 20

SUMMARY:

The Proposed Development

Blue River Holdings, LLC, the real estate holding company owned by the principal of South St. Paul Animal Hospital, has been working with Staff for several years to secure a location for an expanded clinic. On November 1, 2021 the EDA held a public hearing to consider the sale of the EDA-owned property located on the 400 Block of Concord Exchange South, directly north of Al's Corral, to Blue River Holdings, commensurate with the adoption of a purchase and development agreement. The developer has spent the two and a half years since then to attempt to secure SBA and Conventional financing for the project. SBA Funding was approved in July 2024, and the Developer is actively soliciting proposals for principal financing for the development.

In 2022, the developer received all zoning approvals necessary to allow for the development of an approximately 14,000 square foot commercial facility, housing the Animal Hospital and other tenant spaces that will be marketed for lease. In late 2023, the Developer worked with the EDA on a successful application to Dakota County CDA for a Redevelopment Incentive Grant, to help overcome geotechnical and environmental soil deficiencies at the site. As the developer works to finalize financing for the project in anticipation of a Spring 2025 construction start, the EDA agreed to terminate the 2021 Development Agreement – which had been amended five times to extend closing, commencement and completion dates – on September 3, 2024. As the developer is actively soliciting proposals from lenders for project financing, a new purchase and development agreement is necessary.

The Development Property

The EDA owns the approximately 1.5 Acre property on the west side of Concord Exchange, just north of Armour Avenue. About 1/3 of this property (a little over ½ acre generally on the west side of the property) consists of unbuildable, vegetated bluff, but the northern portion of the property provides a developable parcel with about 250' frontage and about 135' depth to accommodate a reasonable building pad for the development as envisioned. This property is comprised of six tax parcels and lies directly north of Al's Corral, across Concord Street from the Rihm Kenworth, kiddie-corner from Kwik Trip. The property was historically home to several different businesses:

- Lenfer Transmission – north end of site, acquired by HRA in 2005 and promptly demolished
- Tammy Jane/My 2nd Home – south end of site, acquired by HRA in 2006 and promptly demolished
- Nick's Place – just north of My 2nd Home, acquired by HRA in 2012 and promptly demolished

The HRA acquired these properties sequentially between 2005 - 2012 at a total acquisition cost of approximately \$775,000, and the property has been held for redevelopment ever since. From 2005 – 2008 the HRA leased the property for truck and trailer parking at \$300/month, and from 2008 – 2019 for \$200/month. Annual holding costs (for maintenance and snow/ice removal) related to the property

have averaged about \$3,000 per year. The property has been exempt from property taxes for as long as it's been publicly owned, however the Dakota County Assessor's Office lists a total estimated market value for the property of \$390,400 for Pay 2024, or about \$5.70 per square foot.

An updated Purchase and Development Agreement has been negotiated between Blue River Holdings, LLC and the EDA for the purchase and development of the EDA property. Staff is recommending approval of Resolution 2024-20, and thereby authorization to execute the Agreement and move this project forward. Staff notes the following essential elements of the agreement:

- **Purchase Price** – The agreement establishes a purchase price of \$75,000 for the site, with \$10,000 already collected and held in escrow and the balance due at closing. Staff is supportive of the purchase price, which represents a discount against the perceived market value of the site, for the following reasons:
 - The property has an existing retaining wall system that the City analyzed in 2018 and was found to be “in various stages of deterioration and disrepair”. The study suggested that while the walls generally were “stable”, the serviceable life of the wall unless supplemented, repaired or replaced might be 15 – 25 years. While the EDA considered implementing the recommendations in 2018 when the Kaposia Club (now Stockyards Tavern and Chophouse) was constructed, the estimated cost of more than \$250,000 influenced our decision to defer action until the property was developed. The buyer's intention is to work with their design and development team to review the recommendations of the City's previous study and implement improvements to the system as a part of their development cost, with no City/EDA contribution. It is worth noting that for the Kaposia Club project, the EDA assumed the entire cost of design and construction of the retaining wall, and also financed the acquisition through a forgivable loan.
 - More than 1/3 of the property is completely undevelopable due to steep slopes.
 - This property is highly visible at a key gateway to the City's core area, and has been vacant and/or looked of distress for decades. The public benefit of improving these conditions, in addition to the retention of an important community amenity and fixture in the animal hospital, will provide sustained economic benefit to the corridor and the community.

- **Timeline** – The EDA acknowledges that this project has been beset by delay, and that this agreement spells out slightly more extended timelines for critical milestones than the typical agreement. The developer has requested these timelines in light of the fact that they are having to “re-bid” the project financing and can not justify the premium they'd have to pay to undertake wintertime construction of this project. The Agreement suggests the following “Key Dates” for the project:
 - **November 15, 2024 (Contingencies)** – The agreement requires that project financing and all lender-required surveys, inspections, testing, and title matters that have not already been completed must be completed by this date.
 - **February 28, 2025 (Closing)** – The agreement requires that the date of closing shall be no later than this date, unless mutually agreed upon by both parties.
 - **May 1, 2025 (Commencement)** – The agreement identifies that construction will begin no later than this date.
 - **September 30, 2026 (Completion)** – The agreement identifies that construction will be completed no later than this date, subject to unavoidable delay.

FUNDING SOURCES AND OTHER FISCAL CONSIDERATIONS:

The EDA-owned property has been property tax exempt for a number of years. The proposed development should be expected to generate a total market value for taxable purposes of between \$2,500,000 and \$3,000,000, which would result in a total annual property tax bill (in 2024 figures) of between \$75,000 and \$93,000. At current tax rates, the City portion of this property tax bill is estimated at \$21,000 - \$26,000, while the SSD #6 portion is estimated at \$15,000 - \$19,000.

\$250,000 in RIG funding from the CDA is already approved for this project. RIG funding is provided on a 2:1 basis, meaning that for every dollar of RIG funding dedicated to the project, the grant recipient must match two dollars in funding. Matching funds will be provided for by the developer, well in excess of the 2:1 requirement.

A \$75,000 forgivable loan for the acquisition cost was approved in June 2024 that would essentially be a paper transaction in Fund 40490 (Concord TIF). Rather than receive the \$75,000 in proceeds at closing from the developer, the TIF Fund would provide the \$75,000 in the form of a loan which is then immediately paid to the TIF Fund as sales proceeds, essentially a net "\$0" transaction in the TIF.

ATTACHMENTS:

Orientation Map

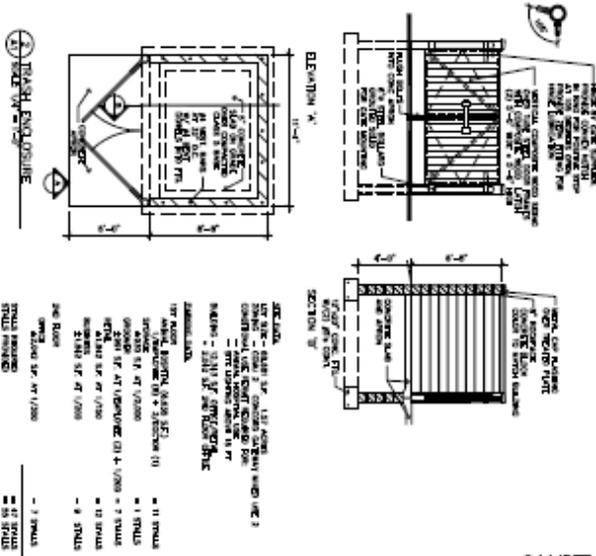
Approved Development Plan

Resolution 2024 – 20

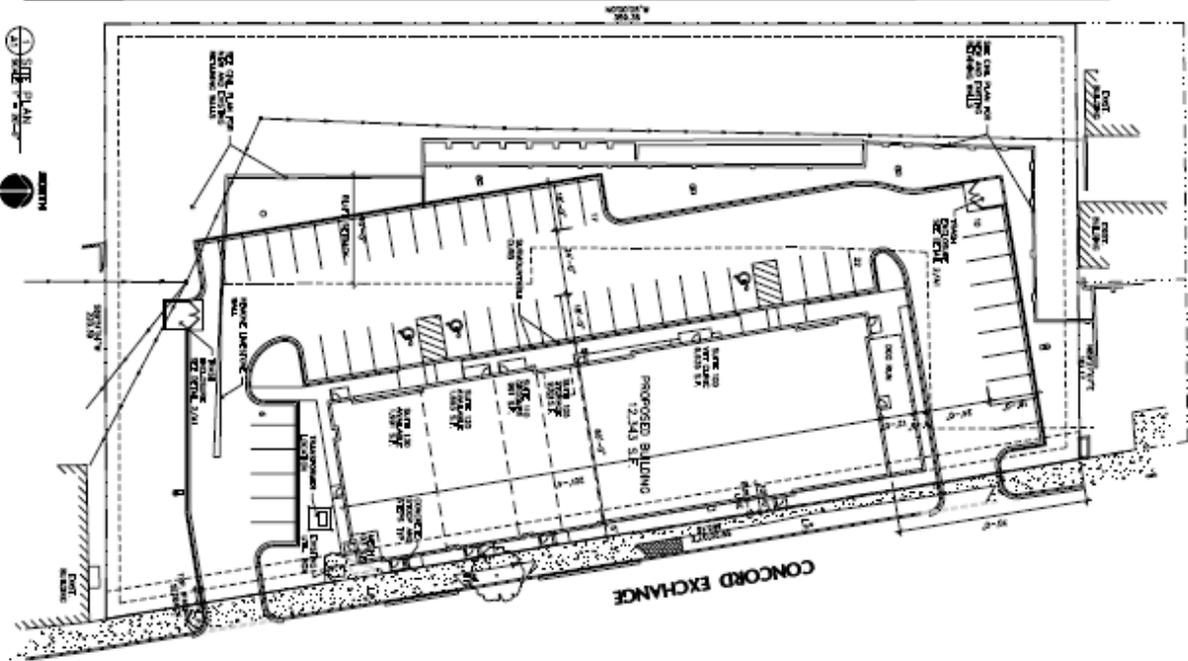
PROPERTY/ORIENTATION MAP



APPROVED DEVELOPMENT PLAN



CAMBER AVENUE



PROJECT NO.	201222-3
DATE	10/15/12
DESIGNED BY	J. J. HANPPE
DRAWN BY	J. J. HANPPE
CHECKED BY	J. J. HANPPE
APPROVED BY	J. J. HANPPE
DATE	10/15/12
PROJECT NO.	201222-3
DATE	10/15/12
DESIGNED BY	J. J. HANPPE
DRAWN BY	J. J. HANPPE
CHECKED BY	J. J. HANPPE
APPROVED BY	J. J. HANPPE
DATE	10/15/12

SOUTH ST. PAUL ANIMAL HOSPITAL
South St. Paul, Minnesota

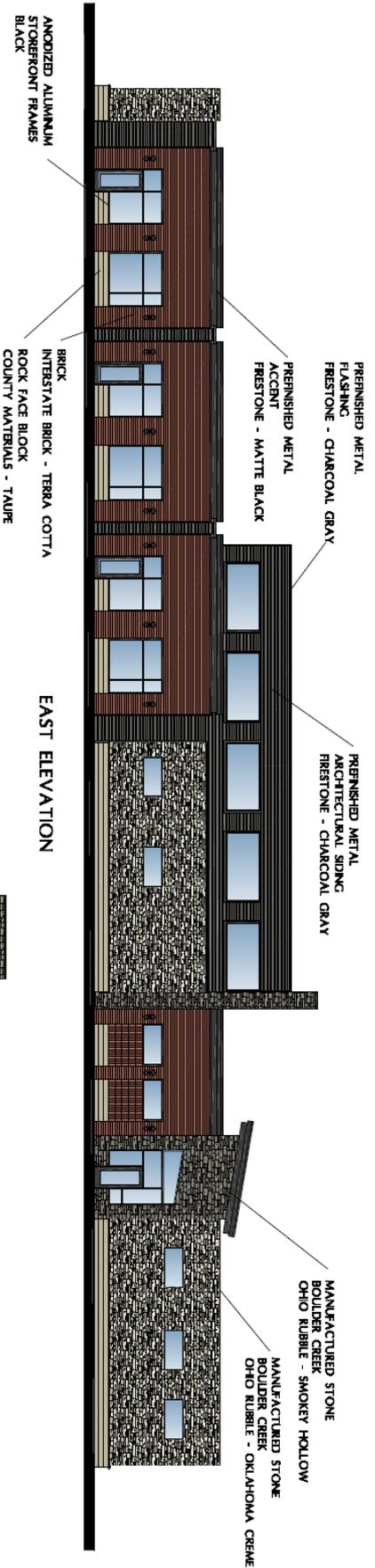
HANPPE'S ARCHITECTS
1000 W. WASHINGTON ST.
ST. PAUL, MN 55102
TEL: 651.224.1111
WWW.HANPPE.COM

FOR INFORMATION ONLY
THIS PLAN IS NOT TO BE USED FOR CONSTRUCTION WITHOUT THE SIGNATURE OF THE ARCHITECT.

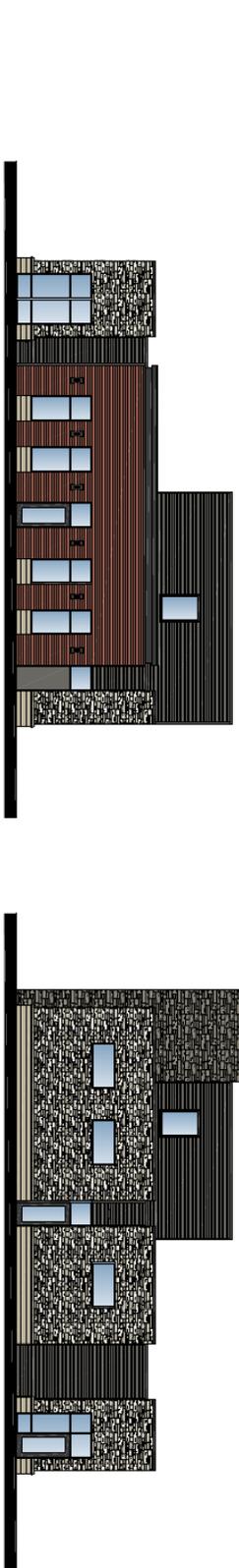
NOT FOR CONSTRUCTION

A1

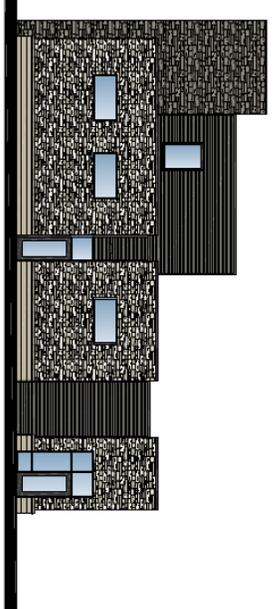
PROJECT NO. 201222-3



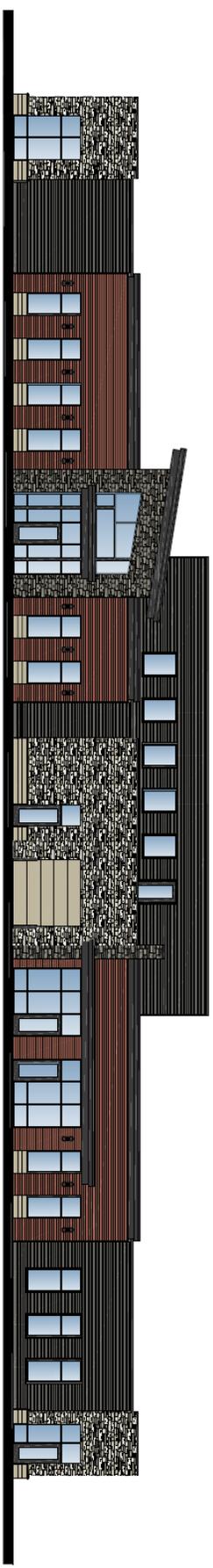
EAST ELEVATION



SOUTH ELEVATION



NORTH ELEVATION



WEST ELEVATION

**SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY
DAKOTA COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2024-20

**RESOLUTION APPROVING THE SALE OF PROPERTY TO
BLUE RIVER HOLDINGS, LLC FOR REDEVELOPMENT PURPOSES
AND APPROVING THE RELATED DEVELOPMENT AGREEMENT**

WHEREAS, the South St. Paul Economic Development Authority (“EDA”) owns certain real property located in the City of South St. Paul, County of Dakota, State of Minnesota, legally described on the attached Exhibit A (“EDA Property”); and

WHEREAS, the EDA desires to sell the EDA Property; and

WHEREAS, Blue River Holdings, LLC (“Developer”) desires to develop the EDA Property, pursuant to a Development Agreement by and between the EDA, the City of South St. Paul and Developer (“Development Agreement”) for the purpose of development of a multi-tenant commercial building including a veterinary clinic and compatible uses; and

WHEREAS, the Development Agreement describes and articulates the sale of the EDA Property and the Developer agrees to accept these terms of the sale; and

WHEREAS, on November 1, 2021, the EDA held a public hearing on the sale of the EDA Property and the EDA considered all of the information presented at the public hearing.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the South St. Paul Economic Development Authority:

1. The sale of the EDA Property to Developer is in the public interest of the City and its people, furthers its general plan of economic development and furthers the aims and purposes of Minn. Stat. Sections 469.090 to 469.108; and the appropriate officials are authorized to take such action so as to effectuate such sale.
2. The EDA approves the Development Agreement, subject to minor modification as approved by the City Attorney, and the appropriate officials are authorized to take such action as to effectuate its execution and implementation.

Adopted this 16th day of September, 2024.

James P. Francis, President

Ryan Garcia, Executive Director

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in Dakota County, Minnesota legally described as follows:

PIDs: 36-64300-20-030, 36-64300-20-050, 36-64300-20-060, 36-64300-20-071 (abstract property):

Lots 2, 3, 4, 5, 6, 7, Block 20, Riverside Park Addition to the City of St. Paul, according to the plat thereof on file and of record in the office of the County Recorder, Dakota County, Minnesota.

PID: 36-64300-20-091 (abstract property):

Lot 9, the South ½ of Lot 8, and the North ½ of Lot 8, Block 20, Riverside Park Addition to the City of St. Paul, Dakota County, Minnesota.

PID: 36-64300-20-100 (abstract property):

Lot 10 in Block 20 in Riverside Park Addition to the City of St. Paul, Dakota County, Minnesota.

CONTRACT
FOR
PRIVATE DEVELOPMENT
By and Between
SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY
And
BLUE RIVER HOLDINGS LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into as of September 16, 2024 (the “Effective Date”), by and between the South St. Paul Economic Development Authority, a public body corporate and politic organized under the laws of Minnesota (“EDA”), and Blue River Holdings LLC, a Minnesota limited liability company (“Developer”).

RECITALS

Recital No. 1. The EDA was created pursuant to Minnesota Statutes, Sections 469.090 to 469.1082, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of South St. Paul.

Recital No. 2. The EDA is the owner of certain vacant real property located in South St. Paul, Dakota County, Minnesota, legally described on Exhibit A (the “Property”).

Recital No. 3. EDA will sell the Property to Developer on the terms and conditions of this Agreement.

Recital No. 4. Developer desires to purchase the Property from EDA.

Recital No. 5. Developer desires to develop the Property under the terms and conditions of this Agreement.

Recital No. 6. EDA believes that the sale and development of the Property pursuant to and in general fulfillment of this Agreement is in the vital and best interests of the City, will promote the health, safety, morals and welfare of its residents, and will be in accord with the public purposes and provisions of the applicable State and local laws and requirements.

NOW, THEREFORE, in consideration of the covenants and the mutual obligations contain herein, the parties hereby covenant and agree with each other as follows:

1. **Definitions.** In this Agreement, unless a different meaning clearly appears from the context:

A. “Agreement” means this Agreement, as the same may be modified, amended, or supplemented, in writing, by mutual agreement of both parties.

B. “Approvals” means, but is not limited to all government approvals, such as platting, zoning approvals and/or rezoning of the Property, conditional use permits, variances, access permits, signage permits, building permits, required licenses, site plan approvals, architectural approvals and other regulatory permits and approvals.

C. “Certificate of Completion” means the certificate, in the form contained in Exhibit B attached hereto, which will be provided to Developer pursuant to Section 10.7 of this Agreement.

D. “City” means the City of South St. Paul, a Minnesota municipal corporation.

E. “City Engineer” means the City Engineer of the City of South St. Paul or delegates.

F. “Closing” or “Closing Date” means on or before February 28, 2025, unless otherwise agreed to by the parties.

G. “Commitment” means an irrevocable commitment to issue a title insurance policy for the Property received from Title Company in a form and substance satisfactory to Developer in Developer’s sole discretion, not disclosing any encumbrance not acceptable to Developer in Developer’s sole discretion.

H. “Construction Plans” means the plan sets submitted to the City for construction of the Minimum Improvements dated _____, as may be amended and approved by the South St. Paul City Council, pursuant to Section 10 of this Agreement.

I. “Contingency Date” shall mean sixty (60) days from the Effective Date.

J. “Deed” means the general warranty deed in the form attached hereto as Exhibit C, by which the EDA will convey the Property to Developer.

K. “Developer” means Blue River Holdings LLC, a Minnesota limited liability company.

L. “Earnest Money” means the earnest money deposit of Ten Thousand Dollars and 00/100s (\$10,000.00) previously deposited with the EDA by Developer.

M. “EDA” means South St. Paul Economic Development Authority, a public body corporate and politic organized under the laws of Minnesota.

N. “Event of Default” means an action by Developer or the EDA listed in Section 14 of this Agreement.

O. “Minimum Improvements” means the construction of an approximately 14,000 square foot, multi-tenant commercial building including veterinary clinic and other uses compatible with Mixed-Use Development, generally depicted in the Construction Plans and as such plans may be modified to meet the minimum standards relating to Concord Gateway Mixed-Use development as regulated by Chapter 118 of the City Municipal Code.

P. "Permitted Encumbrance" means any matters reflected on the Title Evidence which are not objected to by Developer within such time period or waived by Developer in accordance with Section 6.1 (other than such consensual liens).

Q. "Property" means the real property upon which the Minimum Improvements will be constructed, which property is legally described on Exhibit A attached hereto.

R. "Sale" means any sale, conveyance, lease, exchange, forfeiture other transfer of the Developer's interest in the Minimum Improvements or the Property, whether voluntary or involuntary.

S. "Title Company" means DCA Title Company with offices at 1313 - 147th Street West, Suite 161 in Apple Valley, Minnesota, unless otherwise agreed to by the parties.

T. "Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused, which are the direct result of strikes, other labor troubles, weather, fire, or other casualty to the Minimum Improvements; litigation commenced by third parties which, by injunction or other similar judicial action, results in delays, or acts of any federal, state or local governmental unit (other than the EDA in exercising its rights under this Agreement) that result in delays.

2. **Sale.**

2.1. **Sale.** Subject to the compliance with the terms and provisions of this Agreement, EDA shall sell the Property to Developer, and Developer shall purchase the same from EDA.

2.2. **Purchase Price.** The purchase price to be paid by Developer to EDA for the Property shall be Seventy-Five Thousand Dollars (\$75,000.00) (the "Purchase Price") payable as follows: (a) Ten Thousand and zero/100 Dollars (\$10,000.00), as earnest money, deposited with the EDA at the time of execution of this Agreement; and (b) the balance on the Closing Date subject to those adjustments, prorations and credits described in this Agreement, in cash or certified funds or by wire transfer pursuant to instructions from the EDA or Title Company.

3. **Available Surveys, Tests, and Reports.** EDA has previously delivered to Developer, and Developer acknowledges receipt and sufficiency of, (a) copies of any surveys, easement documents, property tax information (including any appeals), soil tests, environmental or engineering reports, wetland delineations, and any other studies and/or site analyses previously conducted on the Property and in the possession of EDA (b) copies of existing title work for the Property and in the possession of EDA (the "Due Diligence Materials"). EDA makes no representations or warranties regarding the accuracy of the Due Diligence Materials. If Developer so request, EDA shall request the preparers of any such surveys, soil tests, environmental reports,

and any other studies and/or site analyses to re-issue or re-certify the same for the direct benefit of Developer, at Developer's expense, so that Developer may rely on such site analyses or surveys as if prepared for Developer in the first instance, but EDA makes no representation as to whether any such reissuance or recertification will be available.

4. **Developer's Investigations.** For a period from the Effective Date up to the Contingency Date, EDA shall allow Developer and Developer's agents access to the Property without charge and at all times for the purpose of Developer's investigation and testing of the Property, including surveying and testing of soil and groundwater ("Developer's Investigations"); provided, however, Developer shall not perform any invasive testing unless (a) EDA gives its prior written approval of Developer's consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) Developer gives EDA reasonable prior notice of such testing. EDA shall have the right to accompany Developer during any of Developer's Investigations of the Property. Developer shall provide to EDA copies of all third-party, non-confidential written test results and reports conducted as part of Developer's Investigations. Developer agrees to pay all of the costs and expenses associated with Developer's Investigations, to cause to be released any lien on the Property arising as a result of Developer's Investigations and to repair and restore, at Developer's expense, any damage to the Property caused by Developer's Investigations which, however, shall not include any duty by Developer to remediate any pre-existing environmental conditions discovered or disturbed at the Property. Developer shall indemnify and hold EDA and the Property harmless from all costs and liabilities, including, but not limited to, reasonable attorneys' fees, arising from Developer's Investigations. The indemnification obligations provided herein shall survive the termination or cancellation of this Agreement.

5. **Insurance; Risk of Loss.** EDA assumes all risk of destruction, loss or damage to the Property prior to the Closing Date. If, prior to the Closing Date, all or any portion of the Property or access thereto is condemned, taken by eminent domain, or damaged by cause of any nature, EDA shall immediately give Developer notice of such condemnation, taking or damage. After receipt of notice of such condemnation, taking or damage (from EDA or otherwise), Developer shall have the option (to be exercised in writing within thirty (30) days) either (a) to require EDA to (i) convey the Property at Closing to Developer in its damaged condition, upon and subject to all of the other terms and conditions of this Agreement without reduction of the Purchase Price, (ii) assign to Developer at Closing all of EDA's right, title and interest in and to any claims EDA may have to insurance proceeds, condemnation awards and/or any causes of action with respect to such condemnation or taking of or damage to the Property or access thereto, and (iii) pay to Developer at Closing by certified or official bank check all payments made prior to the Closing Date under such insurance policies or by such condemning authorities, or (b) to terminate this Agreement by giving notice of such termination to EDA, whereupon this Agreement shall be terminated, and thereafter neither party shall have any further obligations or liabilities to the other, except for such obligations as survive termination of this Agreement. If the right to terminate this Agreement is not exercised in writing within such thirty (30) day period, such right shall be deemed to have been waived. EDA shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Developer's prior written consent, which consent shall not be unreasonably withheld.

6. **Contingencies.**

6.1. **Developer's Contingencies.**

A. Unless waived by Developer in writing, Developer's obligation to proceed to Closing shall be subject to (a) performance by EDA of its obligations hereunder, (b) the continued accuracy of EDA's representations and warranties provided in Section 15.1, and (c) Developer's satisfaction, in Developer's sole discretion, as to the contingencies described in this Section 6.1 within the time periods set forth below:

(1) On or before the Contingency Date, Developer shall have determined, in their sole discretion, that they are satisfied with (a) the results of and matters disclosed by Developer's Investigations, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property and (b) all other inspections and due diligence regarding the Property, including any Due Diligence Materials.

(2) On or before the Contingency Date, Developer shall have determined the acceptability of the Property for use as a veterinary clinic and uses related thereto (collectively, the "Proposed Use"). All costs and expenses related to applying for and obtaining any governmental permits and approvals for the Property for the Proposed Use shall be the responsibility of the Developer.

(3) On or before the Closing Date, Developer shall have obtained all appropriate approvals and permits necessary for the Proposed Use on the Property, which approvals may include, without limitation, platting or replatting, zoning approvals and/or rezoning of the Property, conditional use permits, access permits, signage permits, building permits, required licenses, site plan approvals and architectural approvals (the "Approvals"). All costs and expenses related to the preparation of any documentation necessary to create any plans, specifications or the like shall be the responsibility of the Developer.

(4) On or before the Contingency Date, and without limitation of the terms of Section 6.1(A)(3), Developer shall be satisfied that they may develop the Property in accordance with a site plan, architectural plan, building plan, grading and drainage plan and other plans and specifications satisfactory to Developer in their sole discretion.

(5) On or before the Contingency Date, Developer shall have satisfied themselves, in Developer's sole discretion, that access to and from roads and the Property is adequate for the Proposed Use, including without limitation, access to the Property from the adjacent road, median cuts and curb cuts.

(6) On or before the Contingency Date, Developer shall have satisfied themselves, in Developer's sole discretion, that water and gas mains, electric power lines, sanitary and storm sewers and other utilities are available to the Property and are adequate for the Proposed Use, such that only service lines must be extended to service the Property for water, gas, electric, sanitary and storm sewer and other utilities.

(7) On or before the Contingency Date, Developer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to Developer in Developer's sole discretion, not disclosing any encumbrance not acceptable to Developer in Developer's sole discretion.

(8) On or before the Closing Date, EDA shall have obtained releases of the Property from any and all mortgages or other monetary liens affecting any of the Property.

(9) On or before the Contingency Date, Developer shall review and approve the books and records in EDA's possession, if any, including site plans, surveys, engineering or environmental reports associated with the Property.

(10) On or before the Contingency Date, Developer shall secure financing that is satisfactory to Developer in Developer's sole discretion for the purpose of acquiring and constructing the Project for Developer's intended use.

(11) On or before sixty (60) days following the Effective Date, Developer may obtain, review and approve an ALTA Survey of the Property.

(12) On or before the Closing Date, Developer shall approve the forms of all closing documents.

The foregoing contingencies are for Developer's sole and exclusive benefit and one (1) or more may be waived in writing by Developer in their sole discretion. EDA shall reasonably cooperate with Developer's efforts to satisfy such contingencies, at no out of pocket cost to EDA or assumption of any obligation or liability by Developer. Developer shall bear all cost and expense of satisfying Developer's contingencies. If any of the foregoing contingencies have not been satisfied on or before the applicable date, then this Agreement may be terminated, at Developer's option, by written notice from Developer to EDA. Such written notice must be given on or before the applicable date, or Developer's right to terminate this Agreement pursuant to this Section shall be waived. If Developer terminates this Agreement pursuant to this Section, then any amount previously paid by Developer to EDA, including the Earnest Money, shall immediately be refunded to

Developer. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations as survive termination of this Agreement.

B. If Developer elect not to exercise any of the contingencies set out herein, such election may not be construed as limiting any representations or obligations of EDA set out in this Agreement, including without limitation any indemnity or representations with respect to environmental matters.

6.2 EDA's Contingencies. EDA's obligation to proceed to Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions:

A. Developer shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by or prior to the Closing Date.

B. All representations and warranties of Developer contained in this Agreement shall be accurate as of the Closing Date.

C. There shall be no uncured default by Developer of any of Developer's obligations under this Agreement as of the Closing Date.

If any contingency contained in this Section has not been satisfied on or before the date described therein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from EDA to Developer and no party shall have any further rights or obligations with respect to this Agreement or the Property, except for such obligations as survive termination of this Agreement. If termination occurs, EDA shall return the Earnest Money to Developer. All contingencies in this Section are for the benefit of EDA, and EDA may in its sole discretion waive any of the conditions precedent set out in this Section by written notice to Developer.

7. Closing. The closing of the purchase and sale contemplated by this Agreement shall occur on or before the Closing Date, unless otherwise agreed to by the parties. The EDA agrees to deliver legal and actual possession of the Property to Developer on the Closing Date. Closing shall occur at Title Company.

7.1 EDA's Closing Documents and Deliveries. EDA shall execute and/or deliver, as applicable, to Developer the following:

A. Deed. A general warranty deed conveying title to the Property to Developer, free and clear of all encumbrances, except the Permitted Encumbrances. The Deed shall include as a covenant running with the land the condition of Minnesota Statutes, Sections 469.090 to 469.1082 relating to the use of the Property. If the covenant is violated the authority may declare a breach of the

covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the Deed.

B. Bring Down Certificate. EDA shall provide Developer with a certificate certifying that the representations and warranties of the EDA contained in this Agreement are true as of the Closing Date.

C. FIRPTA Affidavit. An affidavit of EDA certifying that EDA is not a “foreign person”, “foreign partnership”, foreign trust”, “foreign estate” or “disregarded entity” as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

D. EDA’s Affidavit. A standard owner’s affidavit (ALTA form) from EDA which may be reasonably required by Title Company to issue an owner’s policy of title insurance with respect to the Property with the so-called “standard exceptions” deleted.

E. Settlement Statement. A settlement statement with respect to this transaction.

F. Copies of Resolutions. EDA shall provide Developer with copies of the resolutions for the various EDA and/or City public meetings showing the EDA and/or various City commissions and/or councils have approved this transaction, the Approvals, if required by Title Company.

G. General Deliveries. All other documents reasonably determined by Title Company to be necessary to transfer the Property to Developer and to evidence that EDA (a) has satisfied all monetary indebtedness with respect thereto, (b) has obtained such termination statements or releases from such secured creditors as may be necessary to ensure that the Property is subject to no monetary liens, (c) has obtained all consents from third parties necessary to effect EDA’s performance of the terms of this Agreement, including, without limitation, the consents of all parties holding an interest in the Property, (d) has provided such other documents as are reasonably determined by Title Company to be necessary to issue policies of title insurance to Developer with respect to the Property with the so-called “standard exceptions” deleted, and (e) has duly authorized the transactions contemplated hereby.

7.2. Developer Closing Documents and Deliveries. Developer shall execute and/or deliver, as applicable, to EDA the following:

A. Payment of Purchase Price. Developer shall pay the Purchase Price on the Closing Date, subject to those adjustments, pro-rations and credits described in this Agreement, in certified funds or by wire transfer pursuant to instructions from the EDA or Title Company.

B. Bring Down Certificate. Developer shall provide EDA with a certificate, signed by an authorized officer of Developer, certifying that the representations and warranties of the Developer contained in this Agreement are true as of the Closing Date.

C. Settlement Statement. A settlement statement with respect to this transaction.

D. FIRPTA Affidavit. An affidavit of Developer certifying that Developer is not a “foreign person,” “foreign partnership,” “foreign trust,” “foreign estate” or “disregarded entity” as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

E. Developer’s Affidavit. A standard owner’s affidavit (ALTA form) from Developer which may be reasonable required by Title to issue an owner’s policy of title insurance with respect to the EDA Property with the so-called “standard exceptions” deleted.

F. Lot Combination Application. Developer shall combine the following parcel identification numbers: 36-64300-20-100, 36-64300-20-091, 36-64300-20-071, 36-64300-20-060, 36-64300-20-050 and 36-64300-20-030.

G. Evidence of Authority. Developer shall provide EDA with copies of the resolutions showing Developer has met with necessary requirements to acquire the Property in accordance with this Agreement together with such proceedings, instruments and documents as may be reasonably required Title Company as a condition precedent to issuing the Title Policy in Developer’s name.

H. General Deliveries. All other documents reasonably determined by Title Company to be necessary to evidence that Developer has duly authorized the transactions contemplated hereby and evidence the authority of Developer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant to this Agreement, or may be required of Developer under applicable law, including any purchaser’s affidavits or revenue or tax certificates or statements.

8. **Prorations, Adjustments, and Credits.** EDA and Developer agree to the following prorations and allocation of costs regarding this Agreement:

8.1 Title Evidence, Survey and Closing Costs. EDA shall pay all costs of the Commitment with respect to the Property, including search and exam fees. Developer shall pay all costs of the ALTA Survey of the Property. Developer shall pay all premiums for any title insurance policy it desires with respect to the Property. Developer shall pay all reasonable closing fees or charges imposed by Title Company and any and all escrow fees charged by Title Company.

8.2 Transfer Taxes. EDA shall pay all state deed tax regarding the Deed.

8.3 Recording Costs. Developer will pay all recording costs with respect to the recording of the Deed and this Agreement and for the recording of the mortgage, if any, and any mortgage registration tax, if any.

8.4 Real Estate Taxes and Special Assessments. General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between EDA and Developer on a daily basis as of 12:00 a.m. CT on the Closing Date based upon a calendar fiscal year, with EDA paying those allocable to the period prior to the Closing Date and Developer being responsible for those allocable to the Closing Date and subsequent thereto. EDA shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending, postponed or deferred with respect to any of the Property as of the Closing Date. Developer shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date, including, without limitation, those related to Developer's development of the Property.

8.5 Lot Combination Fees. Developer shall pay any fee associated with combining parcel identification numbers: 36-64300-20-100, 36-64300-20-091, 36-64300-20-071, 36-64300-20-060, 36-64300-20-050 and 36-64300-20-030.

8.6 Attorneys' Fees. EDA and Developer shall each pay its own attorneys' fees incurred in connection with this transaction, unless otherwise stated in this Agreement.

8.7 Survival. The obligations set forth in this Section 8 survive the Closing.

9. **Title Examination.** (i) Within twenty (20) days following the Effective Date, EDA shall, at EDA's expense, provide to Developer a commitment for an owner's title insurance policy (ALTA Form 2006) issued by Title Company for the Property, and copies of all encumbrances described in the commitment (the "Commitment"); and (ii) within sixty (60) days following the Effective Date, Developer may obtain, at Developer's expense, an ALTA-certified survey bearing the legal description of the Property, and showing the area, dimensions and location of the Property and the matters shown in the Commitment (the "Survey," together with the Commitment, shall mean the "Title Evidence").

9.1 Developer's Objections. Within ten (10) days after Developer's receipt of the last of the Title Evidence, or ten (10) days after the date of execution of this Agreement, whichever occurs later, Developer may make written objections ("Objections") to the form or content of the Title Evidence. The Objections may include without limitation, any easements, restrictions or other matters which may interfere with the Proposed Use of the Property or matters which may be revealed by the Survey. Any matters reflected on the Title Evidence which are not objected to by Developer within such time period or waived by Developer in accordance with Section 9.2(B) shall be deemed to be Permitted Encumbrances. Notwithstanding the foregoing, the following items shall be deemed Permitted Encumbrances: (a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record which do not interfere with the Proposed

Use, if any; (b) Reservation of minerals or mineral rights by the State of Minnesota, if any; (c) Utility and drainage easements which do not interfere with the Proposed Use; and (d) Applicable laws, ordinances, and regulations. Developer shall have the renewed right to object to the Title Evidence as the same may be revised or endorsed from time to time.

9.2 EDA's Cure. EDA shall be allowed twenty (20) days after the receipt of Developer's Objections to cure the same but shall have no obligation to do so. If such cure is not completed within said period, or if EDA elects not to cure such Objections, Developer shall have the option to do any of the following:

- A. Terminate this Agreement with respect to all of the Property.
- B. Waive one or more of its objections and proceed to Closing.

9.3 If Developer so terminates this Agreement, neither EDA nor Developer shall be liable to the other for any further obligations under this Agreement, except for such obligations as survive termination of this Agreement, and any amount previously paid by Developer to EDA, including the Earnest Money, shall be refunded to Developer.

10. Construction of Minimum Improvements.

10.1 Construction of Minimum Improvements. On or before Closing, Developer shall submit Construction Plans to the EDA. The Construction Plans shall provide for the construction of Minimum Improvements. All Minimum Improvements constructed on the Property shall be constructed, operated and maintained in accordance with the terms of the Construction Plans, this Agreement, the Comprehensive Plan, and all local, Minnesota and federal laws and regulations (including, but not limited to, Environmental Controls and Land Use Regulations). Developer will use commercially reasonable efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, in a timely manner, the requirements of applicable Environmental Controls and Land Use Regulations which must be met before Developer's Minimum Improvements may be lawfully constructed.

10.2 Grading/Drainage Plan and Easements. Developer shall construct drainage facilities adequate to serve the Minimum Improvements in accordance with the Construction Plans. Developer agrees to grant to the City all easements reasonably necessary for the preservation of the drainage system, for drainage basins, and for utility service as required by the City. The grading and drainage plan shall include any measures reasonably necessary to conform to the overall City storm sewer plan, including but not limited to such considerations as lot and building elevations, drainage swales, storm sewer, catch basins, erosion control structures and ponding areas. The grading of the site shall be completed in conformance with the Construction Plans. All storm sewer facilities, sanitary sewer and water lines shall be private unless located within the City's right of way, in which case, that portion of the facilities shall be public.

10.3 Street Maintenance, Access, and Repair. Developer shall clear, on a daily

basis, any soil, earth or debris from the existing streets within or adjacent to this Minimum Improvements resulting from the grading or building on the land within the Minimum Improvements by Developer or its agents, and shall restore to the City's specifications any gravel base contaminated by mixing construction or excavation debris or earth in it, and repair to the City's specifications any damage to bituminous surfacing resulting from the use of construction equipment.

10.4 Erosion Control. Developer shall provide and follow a plan for erosion control in accord with the Best Management Practices (BMP) as delineated by the Minnesota Pollution Control Agency. Such plan shall be detailed on the Construction Plans and shall be subject to approval of the City. Developer shall install and maintain such erosion control structures as appear necessary under the Construction Plans or become necessary subsequent thereto. Developer shall be responsible for all damage caused as the result of grading and excavation within the Minimum Improvements including, but not limited to, restoration of existing control structures and clean-up of public right-of-way. As a portion of the erosion control plan, Developer shall re-seed or sod any disturbed areas in accordance with the Construction Plans. The City reserves the right to perform any necessary erosion control or restoration as required by the BMP, if these requirements are not complied with after written notice by the City. Developer shall be financially responsible for payment for this extra work.

10.5 Zoning; Other Approvals. The parties agree that the development of the Minimum Improvements is in the public interest, will provide significant and important benefits to the City and its residents, and is a desirable and appropriate use of the Property. Developer has sought and obtained certain Approvals as defined in Section 6.1(A)(3) in order for Developer to develop the Property for the Proposed Use, including receipt of a conditional use permit. EDA, at no out-of-pocket cost to EDA, or the assumption of any obligations or liabilities by EDA, will reasonably cooperate with Developer's efforts to obtain or modify the Approvals at or prior to Closing. EDA hereby grants Developer the right to file and prosecute applications and petitions for the Approvals and any special use permits and variances desired by Developer; provided, however, any special use permits or variances shall (a) be contingent on the occurrence of the Closing and shall not be binding upon EDA or the Property unless and until the Closing occurs, or (b) be approved in writing in advance by EDA. EDA, at no out-of-pocket cost to EDA, or the assumption of any obligations or liabilities by EDA, agrees to cooperate with Developer in the filing and prosecution of such applications and petitions, including the filing of the same in EDA's name, if required.

10.6 Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall commence construction of the Minimum Improvements no later than May 1, 2025. "Commence Construction" shall mean the start of site grading and installation of utilities. Subject to Unavoidable Delays, Developer shall have substantially completed the construction of the Minimum Improvements no later than September 30, 2026. All work with respect to the Minimum Improvements to be constructed or provided by Developer on the Property shall be in substantial conformity with the Construction Plans and Developer will not modify the size or exterior appearance of the Minimum

Improvements without the consent of the EDA and the City, which consent shall not be unreasonably withheld.

10.7 Certificate of Completion.

A. After substantial completion of the Minimum Improvements in accordance with the Construction Plans and all terms of this Agreement, EDA will furnish Developer with a Certificate of Completion in the form of Exhibit B hereto. Such certification by the EDA shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Deed with respect to the obligations of Developer to construct the Minimum Improvements and the dates for the beginning and completion thereof. The Certificate of Completion shall only be issued after issuance of a certificate of occupancy by the City.

B. The Certificate of Completion provided for in this Section 10.7 shall be in such form as will enable it to be recorded in the proper county office in Dakota County, Minnesota for the recordation of deeds and other instruments pertaining to the Property. If the EDA shall refuse or fail to provide such certification in accordance with the provisions of this Section 10.7, the EDA shall, within thirty (30) days after written request by Developer, provide Developer with a written statement, indicating in adequate detail in what respects Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default of a material term of this Agreement, and what measures or acts will be necessary, in the reasonable opinion of the EDA, for Developer to take or perform in order to obtain such certification.

C. Reconstruction of Minimum Improvements. If the Minimum Improvements are damaged or destroyed before completion thereof and issuance of a Certificate of Completion, to the extent payment is actually made to Developer under a valid and collectible insurance policy in connection with such specific claim, issue or matter, Developer agrees, for itself and its successors and assigns, to reconstruct the Minimum Improvements within one (1) year of the date of the damage or destruction. The Minimum Improvements shall be reconstructed in accordance with the approved Construction Plans, or such modifications thereto as may be requested by Developer and approved by the EDA in accordance with Section 10 of this Agreement, which approval will not be unreasonably withheld. Developer's obligation to reconstruct the Minimum Improvements pursuant to this Section 10.7(C) shall end when the Certificate of Completion is issued.

11. Insurance and Condemnation.

11.1 Required Insurance. Developer agrees to provide and maintain or cause its general contractor to provide and maintain at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the EDA, furnish the EDA with proof of payment of premiums on:

A. Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy;

B. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's contractor's policy with limits against bodily injury and property damage of not less than \$1,500,000 for each occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and

C. Workers' compensation insurance, with statutory coverage. The policies of insurance required pursuant to clauses (A) and (B) above shall be in form and content reasonably satisfactory to the EDA and shall be placed with financially sound and reputable insurers licensed to transact business in Minnesota. The policy of insurance delivered pursuant to clause (A) above shall contain an agreement of the insurer to give not less than thirty (30) days' advance written notice to the EDA in the event of cancellation of such policy or change affecting the coverage thereunder.

11.2 Evidence of Insurance. All insurance required in this Section 11.2 shall be taken out and maintained in responsible insurance companies selected by Developer which are authorized under the laws of Minnesota to assume the risks covered thereby. Until the Certificate of Completion is issued, Developer agrees to deposit annually with the EDA copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Section 11.2, each policy shall contain a provision that the insurer shall not cancel nor materially modify it without giving written notice to Developer and the EDA at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, Developer shall furnish the EDA evidence satisfactory to the EDA that the policy has been renewed or replaced by another policy conforming to the provisions of this Section 11.2, or that there is no necessity therefor under the terms of this Agreement. In lieu of separate policies, Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event Developer shall deposit with the EDA a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

11.3 Condemnation. In the event that title to and possession of the Minimum Improvements or any material part thereof shall be taken in condemnation or by the exercise of eminent domain authority by any governmental body or other person (except the EDA) after Closing but prior to the Commencement of Construction, as defined in Section 10.6, Developer shall, with reasonable promptness after such taking, notify the EDA as to the nature and extent of such taking. Upon receipt of any condemnation award

and subject to the rights of the first mortgagee, Developer shall use the entire condemnation award to reconstruct the Minimum Improvements (or, in the event only a part of the Minimum Improvements have been taken, then to reconstruct such part) within the Property.

12. **Environmental Considerations.**

12.1 Definitions. For purposes of this Agreement,

A. "Hazardous Substances" shall include, without limitation, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, and shall include, without limitation, substances defined as "hazardous substances", "toxic substances", "hazardous waste", "pollutants or contaminants" or similar substances under any Environmental Law, as hereinafter defined.

B. "Environmental Law" shall mean (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance, (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401, et seq., (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq., (g) any law or regulation governing aboveground or underground storage tanks, (h) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation, including, without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01, et seq., (i) all rules or regulations promulgated under any of the foregoing, and (j) any amendments of the foregoing.

C. "Environmental Conditions" shall mean any release or threatened release of any Hazardous Substances into the drainage systems, soils, groundwater, waters or atmosphere, which release is the result of the control, use, occupancy and/or operation of the Property prior to the Closing Date.

12.2 Environmental Conditions. Developer acknowledges and agrees that the EDA has not made, and the EDA hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or arising by operation of law, with respect to the Environmental Conditions of the EDA Property. Subject to the Developer's Investigations, as stated in Section 4 of this Agreement, Developer agrees to accept the EDA Property and acknowledges that the sale of the EDA Property as provided for herein is made by the EDA on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the Deed.

12.3 Developer Indemnification Obligation. Developer agrees to pay and protect, indemnify and release EDA from and hold EDA harmless against any and all loss, liability, damage, cost, expense (including attorneys' fees and expenses), cause of action, regulatory proceeding, suit, claim, demand or judgment, against EDA or its agents, employees, contractors, and legal consultants or the Property arising in connection with or in relation to Environmental Conditions, or any clean-up thereof, including, specifically, claims by adjacent property owners for damages resulting from the contamination of adjacent properties due to the migration of any Environmental Conditions. Notwithstanding anything else set forth in this Agreement, Developer's indemnification obligation set forth in this Section shall survive the Closing or any termination of this Agreement. This indemnification shall not be limited as a result of any investigations conducted by EDA or Developer.

12.4 Reporting Requirements. EDA and Developer agree to comply with all reporting requirements set out in any Environmental Law.

12.5 Redevelopment Incentive Grant. EDA has been awarded \$250,000 in grant funds from the Dakota County Community Development Agency's Redevelopment Incentive Grant to assist with the environmental and geotechnical issues present at the Property (the "RIG Grant"), and has executed a Grant Agreement with the Dakota County Community Development Agency to support Developer's proposed development project at the Property (the "Grant Agreement"). Developer agrees to complete all of the grant eligible work on the Property and satisfy any grant matching requirements. Developer further agrees to comply with all requirements applicable to the EDA in relation to the RIG Grant, including but not limited to providing upon request by the EDA all documentation necessary for processing reimbursement(s) to the Developer from the RIG Grant. EDA agrees to timely reimburse Developer, solely from available RIG Grant proceeds for the project, for eligible costs actually incurred and paid in carrying out the grant-eligible activities as defined in the Grant Agreement

13. **Prohibition Against Sale; Encumbrances.**

13.1 Prohibition Against Sale of Minimum Improvements. Developer represent and agree that their use of the Property and other undertakings pursuant to the Agreement, are, and will be, for the purpose of development of the Property and not for speculation in land holding. Developer further recognize that in view of the importance of the construction of the Minimum Improvements on the Property to the general welfare of the City and the substantial assistance that has been made available by the EDA for the purpose of making such development possible, the fact that any act or transaction involving or resulting in a significant change in the identity of Developer are of particular concern to the EDA. Developer further recognize that it is because of such qualifications and identity that the EDA is entering into the Agreement with Developer, and, in so doing, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby by it to be performed. For the foregoing reasons, Developer represent and agree that, prior to the issuance of the Certificate of Completion, there shall be no sale of the Property or the Minimum Improvements by Developer nor

shall Developer suffer any such sale to be made, without the prior written approval of the EDA.

A. As security for the obligations of Developer under this Agreement, Developer represents and agrees that prior to the issuance of the Certificate of Completion, Developer will maintain its existence as a Minnesota limited liability company and shall not consolidate with or merge into another entity and shall not dissolve or otherwise dispose of all or substantially all of its assets except as permitted by this Agreement. Nothing herein shall prevent Developer from selling or issuing additional membership interests in Developer. Developer and any entity succeeding to all or part of Developer's rights in the Minimum Improvements or any part under this Section ("Successor Developer") may consolidate with or merge into another entity or sell or otherwise transfer to a company or limited liability company, or other legal entity, or an individual, all or any part of its interest in this Agreement and the Minimum Improvements and thereafter be discharged from liability hereunder to the extent of the interest so transferred, if Developer or such Successor Developer, as applicable, is not in default of any of its material obligations under this Agreement, if the transferee company, limited liability company, entity or individual enters into a written agreement assuming all of the obligations of Developer under this Agreement not retained by Developer, if any, with respect and to the extent of the interest so transferred, in form and substance reasonably acceptable to the EDA, and the transferee company, limited liability company, entity or individual is financially capable of and has experience in performing the obligations of Developer under this Agreement and is approved by the EDA. In the event of a consolidation, merger or sale in accordance with this subsection, Developer or other transferor shall not be liable for any actions of the Successor Developer or purchaser or have any liability under this Agreement with respect to matters arising subsequent to such consolidation, merger or sale which relate to the interest so transferred.

B. Developer or any Successor Developer may not sell, transfer, lease or convey the Property and its rights and obligations under this Agreement with respect to such parcel to another entity, whether or not such Successor Developer is under common management and control with Developer, or is related to Developer, except in accordance with the terms of this Agreement. Except as provided in Section 13.1 no such sale, transfer, conveyance or lease shall be effective or recognized for any purpose hereunder, unless:

(1) The Successor Developer will assume all of Developer's obligation under any agreement relative to a credit provider and the Successor Developer is approved by the credit provider and enters into a written assumption agreement reasonably acceptable to the credit provider; and

(2) The Successor Developer will assume all of Developer's financial obligations to the EDA and the Successor Developer is approved by the EDA and enters into a written assumption agreement in form and substance reasonably acceptable to the EDA.

13.2 Limitation Upon Encumbrance of Property. Prior to the issuance of the

Certificate of Completion, except for financing approved by EDA pursuant to Section 6.1(A)(10), Developer agrees not to engage in any financing creating any mortgage or other encumbrance or lien upon the Property or the Minimum Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property or the Minimum Improvements, other than the liens or encumbrances directly and solely related to construction of the Minimum Improvements and approved by the EDA, which approval shall not be withheld or delayed unreasonably if the EDA determines that such lien or encumbrance will not threaten its security in the Property or the Minimum Improvements.

14. **Events of Default.**

14.1 **Events of Default Defined.** Each and every one of the following shall be an Event of Default under this Agreement:

A. Failure by the EDA or Developer to proceed to Closing on the Property after compliance with or the occurrence of all conditions precedent to Closing;

B. Failure by Developer to commence and complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Section 10 of this Agreement, including the timing thereof, unless such failure is caused by an Unavoidable Delay;

C. Failure by Developer to pay real estate taxes or special assessments on the Property and Minimum Improvements as they become due;

D. Use by Developer or others of the Minimum Improvements for purposes other than those contemplated and permitted by this Agreement;

E. Transfer or Sale of the Property or the Minimum Improvements or any part thereof by Developer in violation of Section 13.1 of this Agreement and without the prior written permission by the EDA;

F. If Developer shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors or shall consent to the appointment of a receiver; or

G. Failure by any party to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

14.2 **Remedies on Default.** Whenever any Event of Default referred to in Section 14.1 of this Agreement occurs, the non-defaulting party may take any one or more of the following actions after providing thirty (30) days' written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances to the non-defaulting party reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be

cured as soon as reasonably possible:

A. Suspend its performance under this Agreement, including refusing to close on the Property, until it receives assurances from the defaulting party, deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement;

B. If the EDA defaults under this Agreement for any reason (other than Developer's default), Developer shall be entitled to terminate this Agreement in which event the Earnest Money shall be promptly refunded to Developer.

C. If Developer defaults under this Agreement for any reason (other than the EDA's default) prior to the Closing Date, the EDA shall be entitled to terminate this Agreement and to retain the Earnest Money paid by Developer pursuant to this Agreement.

D. If the default occurs prior to completion of the Minimum Improvements and remains uncured following the cure period, the EDA may withhold the Certificate of Completion; or

E. Take whatever action, including legal or administrative action, which may appear necessary or desirable to the non-defaulting party to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the defaulting party under this Agreement.

14.3 Revesting Title in EDA on Failure to Commence Construction Subsequent to Conveyance to Developer. Pursuant to Minn. Stat. §469.105 subd. 5, if Developer fails to commence construction pursuant to this Agreement within one (1) year from the Closing Date, the EDA shall have the right to re-enter and take possession of the Property and to terminate the estate conveyed in the Deed to Developer, it being the intent of this provision that the conveyance of the Property to Developer shall be made upon and a deed containing a condition subsequent to the effect that in the event that Developer fails to commence construction pursuant to this Agreement and fails to request and receive additional time for commencement, the EDA at its option, may declare a termination in favor of the EDA of the title and of all the rights and interests in and to the Property conveyed to Developer. In such circumstances, all title, rights and interests of Developer and any assigns or successors in interest to and in the Property, shall revert to the EDA. If Developer does commence construction pursuant to this Agreement within one year from the Closing Date, a Release of Right to Re-enter and Revest shall be filed with Office of the County Recorder in and for the County of Dakota and State of Minnesota memorializing the commencement of Minimum Improvements and releasing Developer from the EDA's right to re-enter and take possession of the parcel and to terminate the estate conveyed in the Deed to Developer pursuant to Minn. Stat. §469.105, subd. 5, although all additional covenants and provisions of this Agreement and the Deed shall remain in effect.

14.4 Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the EDA of title to and/or possession of the Property or any part thereof as

provided above, the EDA shall, pursuant to its responsibilities under law, use its best efforts to sell the Property or part thereof as soon and in such manner as the EDA shall find feasible to a qualified and responsible party, who will assume the obligation of making or completing Minimum Improvements or such other improvements in their stead as shall be satisfactory to the EDA in accordance with the uses specified for such parcel or part thereof. During any time while the EDA has title to and/or possession of a parcel obtained by reverter, the EDA will not disturb the rights of any tenants under any leases encumbering such parcel. Upon resale of the Property or any part thereof, the proceeds thereof shall be applied:

A. First, to reimburse the EDA for all reasonable costs and expenses incurred by the EDA, including but not limited to brokerage fees, all taxes, assessments and water and sewer charges accrued with respect to the Property or part thereof prior to reversion of title; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of reversion of title thereto in the EDA or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, or Successor Developer; any expenditures made or obligations incurred by EDA with respect to the making or completion of the Minimum Improvements; and any amounts otherwise owing the EDA by Developer or its Successor Developer; and

B. Second, to reimburse Developer or Successor Developer, up to the amount equal to (i) the Purchase Price paid by Developer; plus (ii) the amount actually invested by it in making any of the subject improvements on the Property or part thereof, less (iii) any gains or income withdrawn or made by it from the Agreement or the Property.

C. Any balance remaining after such reimbursements shall be retained by the EDA as its property.

Nothing in this Section 14 shall in any way affect or diminish Developer's right to terminate this Agreement in accordance with Section 6.1.

14.5 No Remedy Exclusive. No right or remedy herein conferred upon or reserved to the parties is intended to be exclusive of any other available right or remedy herein or provided by law, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the EDA or Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in Section 14.2 of this Agreement.

14.6 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived

and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

15. **Warranties and Representations.**

15.1 By EDA. EDA warrants and represents the following to Developer, and acknowledges that Developer has relied on such representations and warranties in agreeing to enter into this Agreement:

A. This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of EDA enforceable in accordance with its terms. EDA has been duly formed under the laws of the State of Minnesota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by EDA pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by EDA pursuant hereto have each been duly authorized by all necessary action on the part of EDA and such execution, delivery and performance does and will not conflict with or result in a violation of EDA's organizational agreement or any judgment or order.

B. The execution, delivery and performance by EDA of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to EDA, or (b) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which EDA is a party or by which it or any of its properties may be bound.

C. To EDA's knowledge, except as contemplated herein, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any other entity, is required on the part of EDA to authorize, or is required in connection with, the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, this Agreement, except for Developer obtaining all the Approvals.

D. To EDA's knowledge, there are no actions, suits or proceedings pending or threatened against or affecting EDA or any of its properties, before any court or arbitrator, or any governmental department, board, agency or other instrumentality which in any of the foregoing (a) challenges the legality, validity or enforceability of this Agreement, or (b) if determined adversely to EDA, would have a material adverse effect on the ability of EDA to perform its obligations under this Agreement.

E. EDA has not received written notice, and has no knowledge, of (a) any pending or contemplated annexation or condemnation proceedings, or purchase in lieu of the same, affecting or which may affect all or any part of the Property, (b) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property, (c) any proposed changes in any road patterns or grades which would adversely and materially affect access to the roads providing a means of ingress or egress to or from all or any part of the Property, or (d) any uncured violation of any legal requirement, restriction, condition, covenant or agreement affecting all or any part of the Property or the use, operation, maintenance or management of all or any part of the Property.

F. To EDA's knowledge, there are no wells or sewage treatment systems located on any portion of the Property. To EDA's knowledge, there has been no methamphetamine production on or about any portion of the Property. To EDA's knowledge, the sewage generated by the Property, if any, goes to a facility permitted by the Minnesota Pollution Control Agency and there is no "individual sewage treatment system" (as defined in Minnesota Statutes § 115.55, Subd. 1(g)) located on the Property.

G. EDA is not a "foreign person," "foreign corporation," "foreign trust," "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code.

H. To EDA's knowledge, except as may be disclosed as part of the Due Diligence Materials, (i) no condition exists on the Property that may support a claim or cause of action under any Environmental Law (as defined below) and there are no Hazardous Substances (as defined below) on the Property, (ii) there has been no release, spill, leak or other contamination or otherwise onto the Property, and (iii) there are no restrictions, clean ups or remediation plans regarding the Property. To EDA's knowledge, except as may be disclosed as part of the Due Diligence Materials, there is no buried waste or debris on any portion of the Property. "Environmental Law" shall mean (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance, (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401, et seq., (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq., (g) any law or regulation governing aboveground or underground storage tanks, (h) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation, including, without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01, et seq., (i) all rules or regulations promulgated under any of the foregoing, and (j) any amendments of the foregoing. "Hazardous Substances" shall mean polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, and shall include, without limitation, substances

defined as “hazardous substances,” “toxic substances,” “hazardous waste,” “pollutants or contaminants” or similar substances under any Environmental Law.

I. To the EDA’s knowledge, there are no leases, tenancies unrecorded agreements or other contracts of any nature or type relating to, affecting or serving the Property that will not be terminated as of the Closing Date.

J. There will be no indebtedness or sums due attributable to the Property which will remain unpaid after the Closing Date.

As used in this Agreement, the term “to EDA’s knowledge” shall mean and refer to only the current actual knowledge of the designated representative of EDA and shall not be construed to refer to the knowledge of any other partner, officer, manager, member, director, agent, authorized person, employee or representative of EDA, or any affiliate of EDA, or to impose upon such designated representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such designated representative any individual personal liability. As used herein, the term “designated representative” shall refer to EDA’s Executive Director.

The representations, warranties and other provisions of this Section 15.1 shall survive Closing; provided, however, EDA shall have no liability with respect to any breach of a particular representation or warranty if Developer shall fail to notify EDA in writing of such breach within two (2) years after the Closing Date, and provided further that EDA shall have no liability with respect to a breach of the representations and warranties set forth in this Agreement if Developer has actual knowledge of EDA’s breach thereof prior to Closing and Developer consummates the acquisition of the Property as provided herein.

Developer acknowledge and agree that, except as expressly specified in this Agreement and/or in any documents executed and delivered by the EDA at Closing, EDA has not made, and EDA hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or arising by operation of law, with respect to the Property, including but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition, utilities, valuation, governmental approvals, the compliance of the Property with governmental laws, the truth, accuracy or completeness of any information provided by or on behalf of EDA to Developer, or any other matter or item regarding the Property. Developer agree that except as expressly specified in this Agreement and/or in any documents executed and delivered by the EDA at Closing, Developer shall accept the Property and acknowledges that the sale of the Property as provided for herein is made by EDA on an “AS IS,” “WHERE IS,” and “WITH ALL FAULTS” basis. Developer is an experienced purchaser of property such as the Property and Developer has made or will make its own independent investigation of the Property. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the Deed.

15.2 By Developer. Developer warrant and represent the following to EDA, and acknowledge that EDA has relied on such representations and warranties in agreeing to enter into this Agreement:

A. Developer is a limited liability company and Developer is a corporation, duly organized and in good standing under the laws of the state of Minnesota and is not in violation of any provisions of its company documents or its operating agreement. Developer have all requisite authority to enter into this Agreement and to perform all of its obligations under this Agreement.

B. The execution, delivery and performance by Developer of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Developer, (b) violate or contravene any provision of the articles of incorporation or bylaws of Developer, or (c) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Developer is a party or by which it or any of its properties may be bound.

C. Developer have received no notice or communication from any local, state or federal official that the activities of the Developer or the EDA on the Property may be or will be in violation of any environmental law or regulation. Developer is aware of no facts, the existence of which would cause it to be in violation of any local, state, or federal environmental law, regulation or review procedure or which give any person a valid claim under any of the foregoing.

D. Developer will complete the Minimum Improvements in accordance with all local, state, federal laws or regulations.

E. Developer will obtain, in a timely manner, all required permits, licenses, insurance, and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed or acquired.

F. Developer shall have satisfied the terms and conditions contained in this Agreement prior to the Closing Date or posted surety bonds for future fulfillment of all requirements contained in this Agreement.

G. Developer shall cooperate with EDA with respect to any litigation, other than litigation in which EDA and Developer are adverse parties, commenced with respect to the Minimum Improvements.

H. Whenever any Event of Default occurs and EDA employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer under this Agreement, Developer agree that Developer shall, within ten (10) days of written demand by EDA, pay to EDA the reasonable fees for attorneys and consultants and other expenses so incurred by EDA, including

those costs incurred in the negotiation, preparation and implementation of this Agreement. The requirements of this provision shall survive any termination of this Agreement.

The representations, warranties and other provisions of this Section 15.2 shall survive Closing.

16. **Additional Obligations of EDA.**

16.1 Condition of the Property at Closing. On the Closing Date, EDA shall deliver to Developer exclusive vacant possession of the Property, free and clear of any personal property, surface waste and surface debris of any kind.

16.2 Further Assurances. From and after the Closing Date, EDA agrees to execute, acknowledge and deliver to Developer such other documents or instruments of transfer or conveyance as may be reasonably required to carry out its obligations pursuant to this Agreement.

17. **Additional Provisions.**

17.1 Commissions. Each party represents that all negotiations on its behalf relative to this Agreement and the transactions contemplated by this Agreement have been carried on directly between the parties, without the intervention of any party as broker, finder or otherwise, and that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Agreement.

17.2 Notice. Except as otherwise provided in this Agreement, any notice to be given by one party hereto shall be personally delivered (including messenger delivery) or be sent by registered or certified mail, or by a nationally recognized overnight courier which issues a receipt, in each case postage prepaid, to the other party at the addresses in this Section (or to such other address as may be designated by notice given pursuant to this Section), and shall be deemed given upon personal delivery, three (3) days after the date postmarked or one (1) business day after delivery to such overnight courier.

If to EDA: South St. Paul Economic Development Authority
125 3rd Ave. N.
South St. Paul, MN 55118
Attn: Ryan Garcia, EDA Executive Director

with a copy to: Amanda Johnson
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300

Eagan, MN 55121

If to Developer: Blue River Holdings LLC
501 Concord Street North

South St. Paul, MN 55075
Attn: Dr. David Abramowicz

17.3 EDA Representatives Not Individually Liable. No member, official, or employee of the EDA shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the EDA or for any amount which may become due to Developer or successor or on any obligations under the terms of the Agreement.

17.4 Equal Employment Opportunity. Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement, it will comply with all applicable equal employment and nondiscrimination laws and regulations.

17.5 Restrictions on Use. Developer, for itself and its successors and assigns, agrees to devote the Property and Minimum Improvements only to such land use or uses as may be permissible under the City's land use regulations.

17.6 Entire Agreement; Modification. This written Agreement constitutes the complete agreement between the parties with respect to this transaction and supersedes any prior oral or written agreements between the parties regarding this transaction. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in writing executed by the parties.

17.7 Binding Effect; Survival. The provisions of this Agreement and the representations, warranties and indemnities contained herein shall survive the execution and delivery of the Deed and the conveyance thereunder, shall not be merged therein, and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

17.8 Disclaimer of Relationships. Developer acknowledge that nothing contained in this Agreement nor any act by EDA or Developer shall be deemed or construed by Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between EDA and Developer.

17.9 Developer's Assignment. Developer may assign this Agreement with the prior written consent of the EDA. No assignment shall relieve Developer from its obligations under this Agreement.

17.10 Governing Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

17.11 Rules of Interpretation. The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof. References herein to any particular section or subdivision hereof are to the section or subdivision of

this Agreement as originally executed.

17.12 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, and all of the signatures to this Agreement taken together shall constitute one and the same agreement, and any of the parties hereto may execute such agreement by signing any such counterpart. Facsimile or “PDF” signatures on this Agreement shall be treated as originals until the actual original signatures are obtained.

17.13 Represented by Counsel. Each party confirms that it has had the opportunity to be represented and advised by counsel in this transaction.

17.14 Titles of Sections. Any titles of the sections, or any subsections, of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

17.15 Recording. The parties agree that this document shall be recorded against the Property at the Dakota County Recorder’s Office.

17.16 Time of the Essence. Time is of the essence of this Agreement.

[remainder of page intentionally blank]

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in Dakota County, Minnesota legally described as follows:

PIDs: 36-64300-20-030, 36-64300-20-050, 36-64300-20-060, 36-64300-20-071 (abstract property):

Lots 2, 3, 4, 5, 6, 7, Block 20, Riverside Park Addition to the City of St. Paul, according to the plat thereof on file and of record in the office of the County Recorder, Dakota County, Minnesota.

PID: 36-64300-20-091 (abstract property):

Lot 9, the South ½ of Lot 8, and the North ½ of Lot 8, Block 20, Riverside Park Addition to the City of St. Paul, Dakota County, Minnesota.

PID: 36-64300-20-100 (abstract property):

Lot 10 in Block 20 in Riverside Park Addition to the City of St. Paul, Dakota County, Minnesota.

EXHIBIT B
FORM OF CERTIFICATE OF COMPLETION

WHEREAS, the South St. Paul Economic Development Authority (the “Grantor”), by a deed dated _____, _____, and recorded in the office of the County Recorder in Dakota County, Minnesota, as Document No. _____, has conveyed to Blue River Holdings LLC, a Minnesota limited liability company (the “Grantee”), the following described land in County of Dakota and State of Minnesota, to-wit:

PIDs: 36-64300-20-030, 36-64300-20-050, 36-64300-20-060, 36-64300-20-071 (abstract property):

Lots 2, 3, 4, 5, 6, 7, Block 20, Riverside Park Addition to the City of St. Paul, according to the plat thereof on file and of record in the office of the County Recorder, Dakota County, Minnesota.

PID: 36-64300-20-091 (abstract property):

Lot 9, the South ½ of Lot 8, and the North ½ of Lot 8, Block 20, Riverside Park Addition to the City of St. Paul, Dakota County, Minnesota.

PID: 36-64300-20-100 (abstract property):

Lot 10 in Block 20 in Riverside Park Addition to the City of St. Paul, Dakota County, Minnesota.

(the “Deed”); and

WHEREAS, said Deed was executed pursuant to that certain Development Agreement by and between the Grantor and Grantee, dated _____, _____ and recorded in the office of the County Recorder in Dakota County, Minnesota, as Document No. _____, which Development Agreement contained certain covenants and restrictions regarding completion of the Minimum Improvements; and

WHEREAS, said Grantee has performed said covenants and conditions in a manner deemed sufficient by the Grantor to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all construction of the Minimum Improvements specified to be done and made by the Grantee has been completed and the covenants and conditions in the Development Agreement have been performed by the Grantee therein, and the County Recorder in Dakota County, Minnesota, are hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions relating to completion of the Minimum Improvements and the removal of the conditions, restrictions and limitations found in Sections 1 and 2 of the Deed.

Dated: _____, ____.

SOUTH ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY

By _____
James P. Francis
Its President

By _____
Ryan Garcia
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__ by James P. Francis and Ryan Garcia, the President and Executive Director respectively, of the South St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

Notary Public

EXHIBIT C
FORM OF DEED

WARRANTY DEED

eCRV _____

DEED TAX DUE: _____

DATE: _____, 202__

THIS INDENTURE, between the South St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the constitution and laws of Minnesota (the “Grantor”), and Blue River Holdings LLC, a Minnesota limited liability company (the “Grantee”).

WITNESSETH, that Grantor, in consideration of the sum of \$150,000.00 and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, warrant and convey to the Grantee, its heirs, successors and assigns forever, all the tract or parcel of land lying and being in the County of Dakota and State of Minnesota described as follows, to-wit (such tract or parcel of land is hereinafter referred to as the “Property”):

See attached Exhibit A.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging in now or hereafter pertaining, to the said Grantee, their heirs and assigns, forever,

Provided:

SECTION 1

It is understood and agreed that this Deed is subject to the covenants, conditions, restrictions and provisions of an agreement entered into between the Grantor and Grantee on the _____ day of _____, 2021 identified as “Development Agreement” (hereinafter referred to as the “Agreement”) and that the Grantee shall not convey the Property, or any part thereof, without the consent of the Grantor, until a Certificate of Completion of this Agreement as to the Property or such part thereof then to be conveyed, has been placed of record with Dakota

County. This provision, however, shall in no way prevent the Grantee from mortgaging this Property in order to obtain funds for the purchase of Property hereby conveyed and from erecting improvements in conformity with the Agreement, any applicable redevelopment plan and applicable provisions of the Zoning Ordinance of the City of South St. Paul, Minnesota.

It is specifically agreed that the Grantee shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Minimum Improvements thereon, as provided in the Agreement.

Promptly after completion of the improvements in accordance with the provisions of the Agreement, the Grantor will furnish the Grantee with an appropriate instrument so certifying. Such certification by the Grantor shall be (and it shall be so provided in the certification itself) a conclusive determination of the satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligation of the Grantee, and their heirs and assigns, to construct the improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Grantee to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the purchase of the Property hereby conveyed or the improvements, or any part thereof.

All certifications provided for herein shall be in such form as will enable them to be recorded with the County Recorder, Dakota County, Minnesota. If the Grantor shall refuse or fail to provide any such certification in accordance with the provisions of the Agreement and this Deed, the Grantor shall, within thirty (30) days after written request by the Grantee, provide the Grantee with a written statement indicating in adequate detail in what respects the Grantee has failed to complete with the improvements in accordance with the provisions of the Agreement or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Grantor, for the Grantee to take or perform in order to obtain such certification.

SECTION 2

In the event the Grantee herein shall, prior to the recording of the Certificate of Completion:

- a. Fail to begin construction of the improvements provided for in this Deed and the Agreement in conformity with the Agreement and such failure is not due to Unavoidable Delays and is not cured within thirty (30) days after written notice to do so, or such other amount of time as may be commercially reasonable; or
- b. Default in or violate its obligations with respect to the construction of the improvements provided for in this Deed and the Agreement, or shall abandon or substantially suspend construction work, and such default, violation or failure is not due to Unavoidable Delays and any default or violation, abandonment or suspension is not cured, ended or remedied within thirty (30) days after written demand by the Grantor to do so; or
- c. Fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by the Agreement

with the Grantor, or shall suffer any levy or attachment to be made, or any mechanic's liens, or any other unauthorized encumbrances or liens to attach, and such taxes or assessments shall not have been paid or the encumbrance or lien removed or discharged, or provisions satisfactory to the Grantor made for such payments, removal or discharge, within 30 days after written demand by the Grantor to do so; provided, that if the Grantee shall first notify the Grantor of his intention to do so, it may in good faith contest any mechanic's or other lien filed or established and in such event the Grantor shall permit such mechanic's or other lien to remain undischarged and unsatisfied during the period of such contest and any appeal, but only if the Grantee provides the Grantor with a bank letter of credit or other security in the amount of the lien, in a form satisfactory to the Grantor pursuant to which the bank will pay to the Grantor the amount of any lien in the event that the lien is finally determined to be valid and during the course of such contest the Grantee shall keep the EDA informed respecting the status of such defense; or

- d. Cause, in violation of the Agreement or of this Deed, any transfer of the Property or any part thereof, and such violation shall be not cured within sixty (60) days after written demand by the Grantor to the Grantee; or
- e. Fail to comply with any of its other covenants under the Agreement and fail to cure any such noncompliance within thirty (30) days after written demand to do so; or
- f. Default under the terms of a mortgage loan authorized by the Agreement and the holder of the mortgage exercises any remedy provided by the mortgage documents or exercises any remedy provided by law or equity in the event of a default in any of the terms or conditions of the mortgage;

then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revest in the Grantor the estate conveyed by this Deed to the Grantee, its heirs, successor or successors in interest, but only if the events stated in Section 2(a-f) have not been cured within the time periods provided above, or if the events cannot be cured within such time periods, and the Grantee does not provide assurances to the EDA, reasonably satisfactory to the EDA, that the events will be cured as soon as reasonably possible.

The Grantor certifies that the Grantor does not know of any wells on the described real property.

SECTION 3

The Grantee agrees for itself and its heirs, successors and assigns to or of the Property or any part thereof, hereinbefore described, that the Grantee and such heirs and assigns shall not discriminate on the basis of race, color, creed, national origin, age or sex in the sale, lease, rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

It is intended and agreed that the above and foregoing agreements and covenants shall be covenants running with the land, and that they shall, in any event, and without regard to technical

classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be binding, to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Grantor against the Grantee, its heirs, successors and assigns, in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the Grantor shall be deemed beneficiary of the agreements and covenants provided herein. Such agreements and covenants shall run in favor of the Grantor without regard to whether the Grantor has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Grantor shall have the right, in the event of any breach of any such agreement or covenant to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled. Grantor shall be entitled to recover the costs for such enforcement, including attorneys' fees.

SECTION 4

This Deed is also given subject to:

- a. Provision of the ordinances, building and zoning laws of the City of South St. Paul, state and federal laws and regulations in so far as they affect this real estate.
- b. Taxes payable subsequent to the date of this conveyance.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Grantor has caused this Deed to be duly executed in its behalf by its President and Executive Director and has caused its corporate seal to be hereunto affixed this _____ day of _____, 202__.

SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By: _____
James P. Francis
Its: President

By: _____
Ryan Garcia
Its: Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by James P. Francis and Ryan Garcia, the President and Executive Director respectively, of the South St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

Notary Public

This instrument was drafted by:

LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121
651-451-1831
TITLE NOT EXAMINED

SEND TAX STATEMENT TO:

Blue River Holdings LLC
501 Concord Street North
South St. Paul, MN 55075

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in Dakota County, Minnesota legally described as follows:

PIDs: 36-64300-20-030, 36-64300-20-050, 36-64300-20-060, 36-64300-20-071 (abstract property):

Lots 2, 3, 4, 5, 6, 7, Block 20, Riverside Park Addition to the City of St. Paul, according to the plat thereof on file and of record in the office of the County Recorder, Dakota County, Minnesota.

PID: 36-64300-20-091 (abstract property):

Lot 9, the South ½ of Lot 8, and the North ½ of Lot 8, Block 20, Riverside Park Addition to the City of St. Paul, Dakota County, Minnesota.

PID: 36-64300-20-100 (abstract property):

Lot 10 in Block 20 in Riverside Park Addition to the City of St. Paul, Dakota County, Minnesota.



EDA Agenda Item Report

Date: September 16, 2024

EDA Executive Director:

5-B

AGENDA ITEM:

Request to Enter into Project Development Agreement Contract with Johnson Controls Inc. for John Carroll and Nan McKay High-rises, Resolution 2024-21

ACTION TO BE CONSIDERED:

Motion to approve Resolution 2024 – 21

SUMMARY:

The Nan McKay and John Carroll Highrise Buildings, as you may be aware, have several large and expensive projects that need to be completed at both buildings. The purpose of this Project Development Agreement (PDA) is to confirm the intent of Johnson Controls and the South St. Paul Housing and Redevelopment Authority to develop a proposed solution and infrastructure plan utilizing the most efficient resources possible, at the lowest cost to us, in order to complete these projects..

In addition to this, the South St. Paul HRA has had a twenty (20) year-long Energy Performance Contract (EPC) with HUD that has been successfully managed by JCI for its entirety. This contract will expire this year (2024) along with the Rate Reduction Incentives (RRI) that we have been receiving annually through this contract. JCI will ensure that a new EPC is in place for the upcoming years, so that we can continue receiving these incentives from HUD.

Typically, HUD requires us to use a process to obtain bids from multiple vendors; however, Johnson Controls is a single source vendor, meaning they are authorized by HUD to be used by us without the need to get multiple bids or quotes for the same project.

On top of planning these much-needed projects at the high-rise buildings, Johnson Controls will also ensure that all grants and rebates are obtained for any items that qualify. If during the project planning stage, we find that the EPC or PDA would be unsuccessful monetarily, we are not obligated to pay JCI, as stated in the agreement.

Some of the projects that will be considered in this PDA are as follows:

- Federal Pacific Electric Panel Replacement
- Highrise Roof Replacement Project
- HVAC Upgrades to more efficient Heat Pump units
- New HVAC MUA for Common Areas
- Lighting Upgrades to LED
- Efficient Water Fixtures
- Solar Photovoltaic

- Building Envelope Efficiency
- Others to be considered.

Each of these projects can also be found in the South St. Paul HRA's 2025 Annual Plan along with the 2025 Capital Funding Activities Plan, which are both discussed first with our Resident Advisory Board, and then reviewed and generally approved by Council at the HRA's Annual Meeting in October 2024.

Staff's opinion is that these projects are necessary in the very near future to ensure that the longevity of the building is not negatively impacted. Staff's opinion is that it is equally necessary to enter into an agreement with Johnson Controls, who we have partnered successfully with for over 20 years, to assist us in planning these projects and building a new EPC, while securing all funding, rebates, and incentives available. It should be noted that if project planning in its early stage reveals no positive results, the South St. Paul HRA will not be obligated to pay JCI the contracted amount in this agreement.

FUNDING SOURCES AND OTHER FISCAL CONSIDERATIONS:
Public Housing Capital and Operating Grants (from HUD).

ATTACHMENTS:
Johnson Controls – Project Development Agreement
Energy Performance Contract Information
Resolution 2024-21

SSPHRA Prior EPC Program Success

2004	Original Contract	\$ 2,066,439.35	Water conservation, refrigerators, controls. repair pneumatics, MUA unit upgrades, boiler system repairs, new motors and VRF controls, common area self contained temperature regulator valves. Garage door with opener.
2008	Boiler	\$ 1,055,166.65	Term Extension from 12 years to 20 years. Three High Efficiency dual fuel boilers installed.
2012	FEMA Grant	\$ 562,929.00	Bring both SSP HRA high-rise buildings up to 100% fire code with the implementation of a new fire alarm system that provides audible and intelligible emergency messaging to occupants during fire/life safety events.
2015	Boiler	\$ 714,500.00	High Efficiency Dual Fuel Boilers installed.
Total Improvements		\$ 4,399,035.00	
Capital Contribution		\$ 1,783,439.00	
Total Grants		\$ 1,162,929.00	
Total Financed		\$ 886,667.00	
Principal & Interest		\$ 1,934,507.00	
Earned Incentives (20 yrs)		\$ 3,508,289.00	
Additional Incentives Earned		\$ 1,573,782.00	



ECP Additional Incentives Earned

\$1,573,782

How Could an Energy Performance Contract Benefit SSPHRA?

An Energy Performance Contract (EPC) could benefit the South Saint Paul Authority in several ways:

Cost Savings: EPCs allow housing authorities to achieve energy and water savings without upfront capital investment. Private lenders provide funds for installing energy conservation measures (ECMs), and the debt is repaid using utility savings generated over up to 20 years.

Modernization of Equipment: EPCs allow Housing Authorities to upgrade HVAC equipment, Lighting Fixtures, Water Fixtures and other equipment to the most modern, efficient and reliable solutions on the market.

Energy Efficiency: EPCs enable cost-effective retrofits, improving energy efficiency across Housing Facilities. These upgrades enhance resident comfort while reducing utility expenses which are utilized to pay for the EPC project.

Guaranteed Success: Johnson Controls often provides guarantees of success and ongoing measurement and verification of performance. This ensures that the expected savings are achieved. This puts the risk of performance and outcomes of the EPC project on Johnson Controls; not the Housing Authority.

Sustainability: EPCs contribute to environmental sustainability by reducing energy consumption and the carbon footprint.

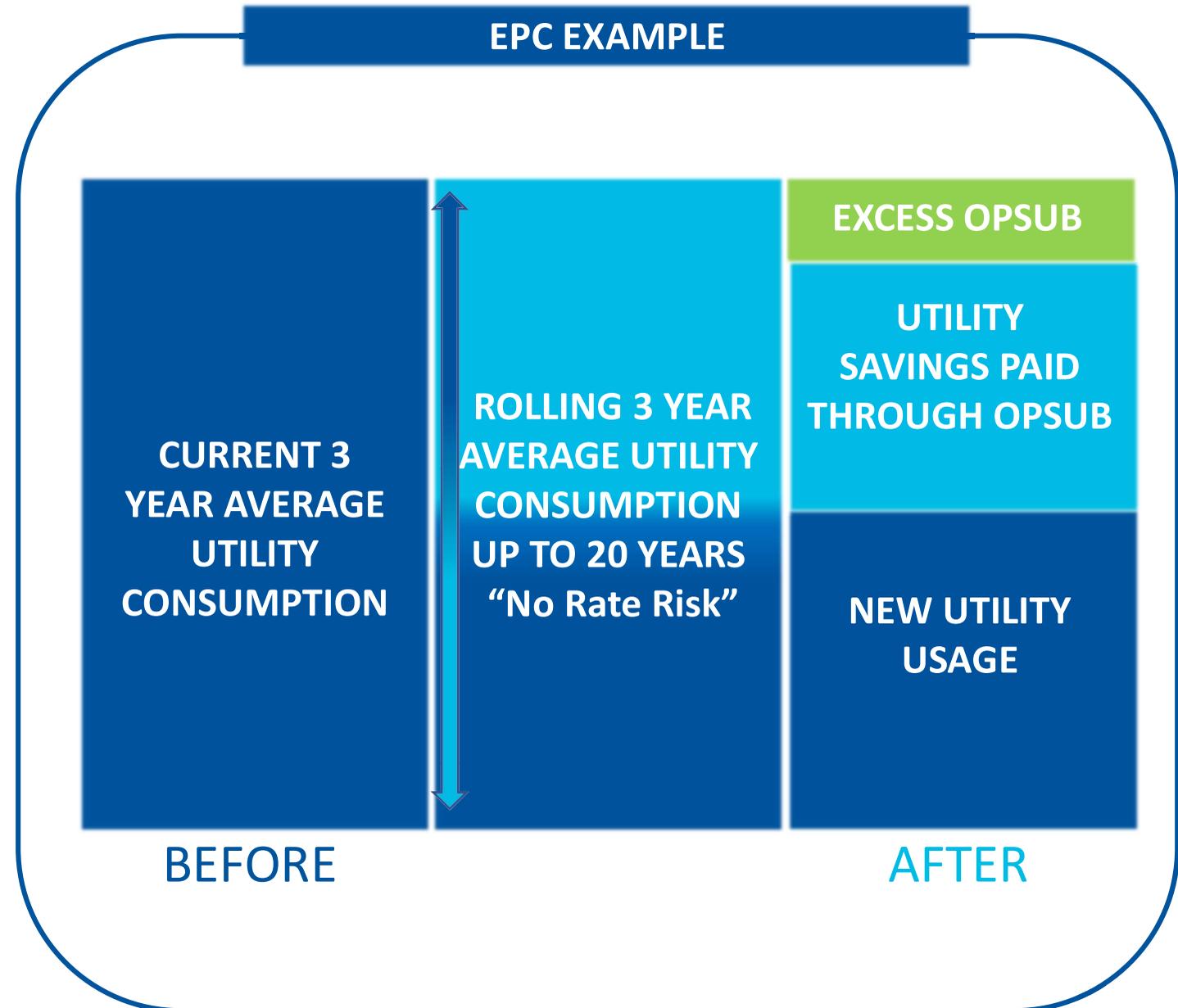
Unique Funding Solutions: EPCs completed with Johnson Controls utilize many funding sources including Grants, Rebates, ITCs and other sources to ensure that the Housing Authority's Budget is not put at risk.

Risk Transfer: With an EPC, Johnson Controls acts as the Designer, Implementer and General Contractor of the EPC project. Johnson Controls, as the HUD approved EPC Company owns the risk of price controls, sub-trade pricing and performance and the overall successful outcomes of the EPC project.

Energy Performance Contracting

The ability, to use utility savings and cost avoidance to offset the cost of major improvements and environmental sustainability solutions for Housing Authorities

The Program Summary - The Energy Performance Contract program (EPC) is a financing technique that uses energy and/or water cost savings from reduced energy and/or water consumption to repay the cost of installing Energy Conservation Measures (ECMs).



Process & Next Steps

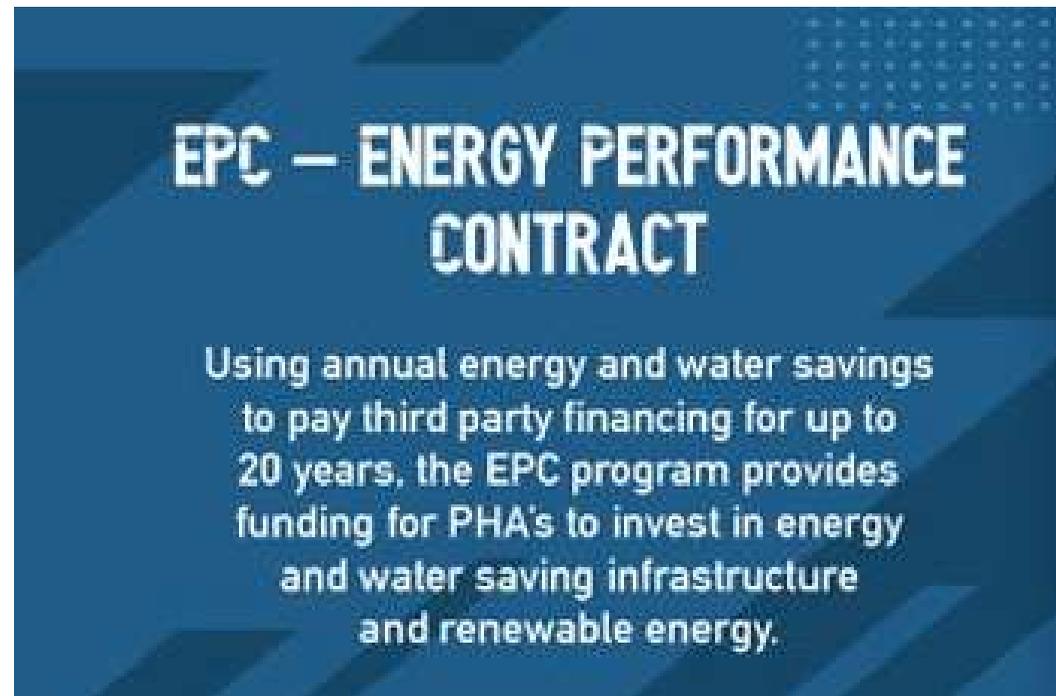


Activity	Timing
Sign Project Development Agreement (PDA)	September, 2024
Finalize Engineering and Pricing	October – November 2024
Submit Project Scope and Cashflow to HUD for Approval	November, 2024
Contract Execution	December, 2024
Construction Mobilization	Spring, 2025
Ongoing Savings Verification Services	20 years

HUD Approved Energy Performance Contracting

The Energy Performance Contract program (EPC) is a financing technique that uses energy and/or water cost savings from reduced energy and/or water consumption to repay the cost of installing Energy Conservation Measures (ECMs). EPC can pay for today's facility upgrades with tomorrow's energy and/or water savings. Performance contracting is used in other sectors, including federal facilities, schools, and universities.

[HUD EPC Informational Website](#)



PROJECT DEVELOPMENT AGREEMENT BETWEEN

City of South St. Paul HRA
125 Third Ave. No.
South St. Paul, MN 55075

AND

Johnson Controls, Inc.
3850 N. Main Street
East Peoria, IL 61611

The purpose of this Project Development Agreement (PDA) is to confirm the intent of Johnson Controls (JC) and the South Saint Paul Housing and Redevelopment Authority (Customer) named above to develop a proposed solution and infrastructure plan utilizing the Equalis Contract. This agreement will provide the basis of the scope of the PDA, the obligations of both parties, the financial metrics to be met, the intended outcomes and timeline.

1. Scope of Services

It is the Parties' mutual understanding this Project Development Agreement will:

- a. Provide for the development of Energy Conservation Measures (ECMs) at the Customer's facilities; where possible, assist the Customer by providing additional improvements to reduce a Customer's utility spend, deferred maintenance backlog or desired Energy Conservation Measures not affordable otherwise;
- b. Assist the Customer in capitalizing on the Inflation Reduction Act, Energy Performance Contracting Program and any other funding sources identified and arranging for project financing;
- c. Utilize the Customer's most recent 36 months of utility consumption data, generally covering the time period of 09/01/2020 to 09/30/2023. Consumption data will be utilized as part of this agreement and includes the following utilities that are applicable: electricity, natural gas, water, and sewer;

Housing Authority Locations:

- 1) Nan McKay Building
200 Marie Ave, South Saint Paul, MN 55075
- 2) John Carroll 300 Grand Ave
South Saint Paul, MN 55075

2. Development Schedule

It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others to work diligently under their direction to achieve the Milestone Schedule identified herein:

*These milestones may be modified by subsequent work plans mutually agreed upon by both parties.

Notify Minneapolis HUD Field Office of Intent to Enter into EPC Program	7/08/2024
Johnson Controls Notified Selected by South Saint Paul HRA	8/15/2024
Execution of Project Development Agreement (PDA)	8/22/2024
Customer Kick-off Meeting	9/6/2024
Start Field Audits at Selected Sites	9/6-10/30/2024
Weekly Coordination Meetings (as required)	TBD
Board Meeting Presentation and Update (if required)	9/2024
Final Scope Workshop	9/2024
Measurement and Verification Workshop	9/2024
Financial Workshop	9/2024
Final Scope and Contract Review Workshop	10/2024
JCHA Board Meeting Approval of Financing & JCI Energy Services	10/7/2024
HUD Submission For Approval	10/9/2024
HUD Approval Received	12/1/2024
Energy Services Agreement Approved	12/15/2024
3 rd Party Financing & JCI Construction Contract Signed and Executed	12/20/2024
Notice to Proceed Issued	12/27/2024
Project Construction	12 months
Measurement & Verification Workshop and Reporting	Up to 20 years

3. Deliverables

Upon completion of the project development, JCI shall deliver to the Customer:

- a. A written description of each ECM proposed to be implemented;
- b. A financial pro forma cash flow documenting the proposed project. The pro forma will include applicable annual costs and savings that affect the project outcome such as financing, energy, water, sewer, labor and maintenance, incentives and rebates, and Redirected M&O Budget Savings Contribution values
- c. A preliminary schedule for implementation of the project;
- d. Comprehensive Energy Audit;
- e. HUD submission documentation and package meeting 24 CFR 990.170 and 24 CFR 990.185
- f. A summary of the Measurement & Verification for Annual OpSub Submission plan;
- g. A firm offer by JCI to implement a project that meets the Energy Performance Contracting Program requirements including a positive cash flow at term.

4. Customer Priority ECMs

JCI will provide some Energy Conservation Measures (ECMs) that are essential to creating a project that meets the Customer’s financial buying criteria. Examples of such ECMs may include but not be limited to ECMs such as lighting modifications, water saving fixture modifications, HVAC upgrades, Solar PV and control system modifications. Normally, in addition to those ECMs which are essential creating a project that provides a positive cash flow, JCI can include other

ECMs that help the Customer to achieve certain other desired results, such as building improvements (Windows) or implementing improvements from the Customer's deferred maintenance budget.

Listed herein is a list of Customer Priority ECMs. The Customer Priority ECMs are listed in priority order in terms of importance to the Customer achieving their objectives. JCI and the Customer acknowledge that JCI will provide as many of the Customer Priority ECMs listed as possible while still meeting achieving the criteria listed in the Deliverables paragraph.

The Customer acknowledges that the project may or may not include all the Customer Priority ECMs listed:

1. HVAC Upgrades to more efficient Heat Pump units
2. New HVAC MUA for Common Areas
3. Lighting Upgrades to LED
4. Efficient Water Fixtures
5. Solar Photovoltaic
6. Building Envelope Efficiency
7. Others to be considered

5. Records and Data

During the project development, the Customer will furnish to JCI upon its request, accurate and complete data concerning current; equipment performance data if available, costs, budgets, facilities requirements, future projected loads, facility operating requirements, collective bargaining agreements, etc.

JCI will provide a separate document with a formal request for the required data shortly after touring the Customer facilities. The Customer shall make every effort to provide that information within 10 days of request.

6. Preparation of Implementation Contract

JCI will develop the framework of the subsequent Implementation Agreement and the Financing Agreement. JCI and Customer shall work diligently during the project development to complete and populate contract documents. The form of the documents will vary depending on Customer requirements, state statute where applicable and JCI requirements, but where prudent shall utilize JCI standard documents.

7. Project Development Cost and Payment Terms

Customer agrees to the cost for JCI to provide project development services identified here in is \$19,500.00 and is payable within 60 days after JCI provides the Deliverables identified herein.

- a. Obligation to pay if JCI satisfies requirements - Customer shall pay the amount indicated if JCI satisfies the requirements set forth in Paragraph 3 "Deliverables" and the Customer elects not to implement a project with JCI.

However, Customer will have no obligation to pay this amount if:

- a. JCI and the Customer enter into the Implementation Agreement, (outlined in Paragraph 6) within 60 days after JCI provides the Deliverables. Costs for project development will be transferred to the total cost of the Implementation Agreement and be subject to the payment terms outlined in the Agreement.
- b. The project fails to provide a set of ECMs with a positive cash flow, (outlined in Paragraph 3) in which case the Customer is not obligated to pay JCI for the development services.

8. Indemnity

JCI and the Customer agree that JCI shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of JCI. To the extent permitted by law, JCI and the Customer agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their employees or any negligent act or omission by their employees or agents. Neither JCI nor the Customer will be responsible to the other for any special, indirect, or consequential damages.

9. Disputes

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at the time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the parties. Judgment may be entered upon the award in the highest State or Federal court having jurisdiction over the matter. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of this dispute.

10. Confidentiality

This agreement creates a confidential relationship between JCI and Customer. Both parties acknowledge that while performing this Agreement, each will have access to confidential information, including but not limited to systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development, and other information relating to the other party ("Proprietary Information"). Except as authorized in writing both parties agree to keep all Proprietary Information confidential. JCI may only make copies of Proprietary Information necessary for performing its services. Upon cessation of services, termination, or expiration of this Agreement, or upon either party's request, whichever is earlier, both parties will return all such information and all documents, data and other materials in their control that contain or relate to such Proprietary Information.

JCI and Customer understand that this is a confidential project and agree to keep and maintain confidentiality regarding its undertaking of this project. JCI shall coordinate its services only through the designated Customer representative and shall provide information regarding this project to only those persons approved by Customer. JCI will be notified in writing of any changes in the designated Customer representative.

11. Miscellaneous Provisions

Any evaluation or implementation of disinfection or related technology is intended to be used as a tool for helping Customer manage its response to the unknown and challenging environment in which Customer is working to address the unprecedented COVID-19 pandemic, or to be prepared for future outbreaks of COVID-19 or other pandemics. JCI cannot guarantee that the products provided will prevent the spread of COVID-19 or any other disease or keep any person safe. JCI EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE PRODUCTS WILL ELIMINATE, PREVENT, TREAT OR MITIGATE THE SPREAD, TRANSMISSION, OR OUTBREAK OF COVID-19 OR ANY OTHER PATHODEN, DISEASE, VIRUS, OR OTHER CONTAGION.

This Agreement cannot be assigned by either party without the prior written consent of the other party. This Agreement is the entire Agreement between JCI and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the Customer. Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement.

This document represents the business intent of both parties and should be executed by the parties who would ultimately be signatory to a final agreement.

JOHNSON CONTROLS, INC.	CUSTOMER
By Bradford G. Estadt	By Ryan Garcia
Signature	Signature
Title Area General Manager	Title Director of Economic and Community Development
Date	Date

**SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY
DAKOTA COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2024-21

**RESOLUTION AUTHORIZING THE SOUTH ST PAUL HOUSING AND REDEVELOPMENT
AUTHORITY TO ENTER INTO A COOPERATIVE PURCHASING AGREEMENT THROUGH
REGION 10/EQUALIS GROUP FOR PARTICIPATION IN AN ENERGY PERFORMANCE
CONTRACT**

WHEREAS, the Housing and Redevelopment Authority in and for the city of South St. Paul, Minnesota (the “HRA”) was created by Resolution of the South St. Paul City Council on May 4, 1964 for the purpose of, among other things, carrying out a Public Housing Program within the City; and

WHEREAS, the HRA has owned, operated, and managed the John Carroll and Nan McKay Senior Public Housing High Rise Facilities throughout their more than 50-year history in South St. Paul; and

WHEREAS, on March 16, 2015, the City established the South St. Paul Economic Development Authority (the “EDA”) and conferred upon it all statutory powers of a housing and redevelopment authority and of an economic development authority; and

WHEREAS, on December 21, 2015, the City transferred all programs, projects, funds and employees of the HRA to the EDA; and

WHEREAS, on December 21, 2015, the EDA accepted the transfer from the HRA, effective January 1, 2016; and

WHEREAS, on December 22, 2015, the HRA acknowledged, agreed and accepted the transfer to the EDA; and

WHEREAS, Region 10/Equalis Group Cooperative Purchasing Agreement is “procurement conducted by, or on behalf of, one or more Public Purchasing Units” as defined by the American Bar Association Model procurement Code for State and Local Governments; and

WHEREAS, the South St Paul Housing and Redevelopment Authority (the “HRA”), is a member of Region 10/Equalis Group and has investigated and reviewed Region 10/Equalis Group’s’ Request for Proposal (RFP) for ENERGY CONSERVATION AND CONSERVATION PERFORMANCE CONTRACTING SERVICES. In addition, the HRA had reviewed Region 10/Equalis Group’s RFP evaluation form, <https://equalisgroup.org/performancecontracting/> and found Johnson Controls to be ranked #1; and

WHEREAS, the HRA is interested in implementing Energy Conservation Measures and upgrades for participation in an Energy Performance Contract with Johnson Controls, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the South St. Paul Economic Development Authority that the EDA authorizes Ryan Garcia, Executive Director of the HRA, by an affirmative vote of a majority of the members of its' Board this Resolution, to negotiate and sign the proposed Project Development Agreement with Johnson Controls, Inc.

Adopted this 16th day of September, 2024.

James P. Francis, President

Ryan D. Garcia, Executive Director