City of South St. Paul
Economic Development Authority Agenda
Monday, May 4, 2020
IMMEDIATELY FOLLOWING THE CONCLUSION OF THE 7:00 P.M. MEETING OF THE CITY COUNCIL

Please be advised that the regular meeting location is City Hall Council Chambers located at 125 3rd Ave. N., South St. Paul, but pursuant to Minn. Stat. 13D.021, under the current emergency declaration due to the COVID-19 health pandemic, some or all of the commissioners may participate in remote locations using Web-Ex. Please be advised that City Hall is closed to the public, therefore, any member of the public wishing to monitor the meeting may do so electronically by logging in as follows:

WebEx Meeting
For the Public
Join by phone: 1-312-535-8110
Access Code: 285 905 412

1. CALL TO ORDER:

2. ROLL CALL:

3. AGENDA:
   A. Approval of Agenda
      Action – Motion to Approve
      Action – Motion to Approve as Amended

4. CONSENT AGENDA:
   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. EDA Meeting Minutes of April 6, 2020
   B. Approval of Satisfaction of Mortgage – Resolution 2020 – 5
   C. Approval of Satisfaction of Mortgage – Resolution 2020 – 6
   D. Approval of Satisfaction of Mortgage – Resolution 2020 – 7

5. PUBLIC HEARINGS:
   A. Approval to Convey Project Real Property at 121 Hardman Court – Resolution 2020-8

6. GENERAL BUSINESS:
A. Acceptance of Proposal and Approval to Award Contract for Sprinkler Head Project at the John Carroll (300 Grand Avenue West) and Nan McKay (200 Marie Avenue) Highrises
B. Acceptance of Proposal and Approval to Award Contract for Parking Lot Repaving Project at at the John Carroll (300 Grand Avenue West) and Nan McKay (200 Marie Avenue) Highrises
C. Approval of an Amendment to Lease Agreement – 135 Grand Avenue East
D. Approval of a Purchase Agreement with JBL Properties, LLC for Real Property located at 139 Grand Avenue East

7. 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.

8. ADJOURNMENT:

Respectfully Submitted,

Ryan Garcia, EDA Executive Director
1. CALL TO ORDER

Chair Francis called the meeting to order at 7:44 PM.

2. ROLL CALL

Members Present: President Francis, Commissioners Flatley, Hansen, Seaberg, Forester, Kaliszewski and Dewey.

Staff Present: EDA Executive Director Ryan Garcia, City Administrator Joel Hanson, and Legal Counsel Peter Mikhail.

3. AGENDA

Motion/Second: Commissioner Dewey moved and Commissioner Forester seconded approval of the agenda.

Motion carried 7 ayes / 0 nays

4. CONSENT

A. EDA Meeting Minutes of March 2, 2020

Motion/Second: Commissioner Hansen moved and Commissioner Flatley seconded approval of the consent agenda.

Motion carried 7 ayes / 0 nays

5. GENERAL BUSINESS

A. Approval of an Amendment to Lease Agreement – 135 Grand Avenue East

Mr. Garcia presented an overview of the Agreement, which proposes an extension to an existing lease with MLCV 2020 Holdings for the industrial property at 135 Grand Avenue East. Mr. Garcia clarified that the options to extend the lease beyond December 31, 2020 required the
tenant to submit a request in writing no less than 30 days prior to expiration, and for the EDA to accept or reject such request no less than 10 days prior. Commissioners discussed the lease rate, and following clarification Commissioner Hansen motioned to reject the proposed amendment and guided staff to return to the EDA with a modified agreement instituting a higher base rent amount.

Motion/Second: Commissioner Hansen moved and Commissioner Seaberg seconded rejection of the Amendment to Lease Agreement.

Motion carried  7 ayes/ 0 nays

B. Resolution 2020 - 3 - Termination of Development Agreement – 285 Hardman Avenue South

Motion/Second: Commissioner Flatley moved and Commissioner Forester seconded approval or Resolution 2020 - 3.

Motion carried  7 ayes/ 0 nays

C. Resolution 2020 - 4 – Business Development Loans – Temporary Deferrals

Mr. Garcia provided discussed the staff proposal to allow for the deferral of repayment on current EDA-funded loans for the period between April 1, 2020 through December 31, 2020. Commissioner Seaberg sought and Mr. Garcia provided clarification that the loans would receive deferral on the back end of the loan. Based on discussion, Mr. Mikhail suggested the language in the final clause be changed from “will be deferred” to “may be deferred”.

Motion/Second: Commissioner Hansen moved and Commissioner Flatley seconded approval or Resolution 2020 – 4, as amended to change the language in the “Be it further resolved…” clause from “will be deferred” to “may be deferred”.

Motion carried  7 ayes/ 0 nays

6. FUTURE FOLLOW-UP ITEMS

There were none.

7. ADJOURNMENT

Motion/Second: Commissioner Forester moved and Commissioner Kaliszewski seconded the motion to adjourn the meeting at 8:25 PM.

Approved: May 4, 2020
Agenda Item: Approval of Satisfaction of Mortgage – Applicant #658

Action to be considered:

Motion to approve Resolution No. 2020-5

Overview:

Applicant #658 received an HRA rehabilitation loan of May in 2003, with a mortgage recorded at that time. The mortgagee recently paid back the loan in full, thus satisfying the mortgage. Therefore, the EDA is advised to approve Resolution No. 2020-5, which will authorize the designated officers of the City’s Housing and Redevelopment Authority to execute all necessary documentation required to record the Satisfaction of Mortgage.

Funding Sources and other fiscal considerations: N/A
WHEREAS, the City Council transferred all administration of the South St. Paul Housing and Redevelopment Authority (HRA) programs to the South St. Paul Economic Development Authority (“EDA”) by City Council Resolution 2015-197; and

WHEREAS, one of those programs was a rehabilitation loan program, for which there are several outstanding loans; and

WHEREAS, the South St. Paul Housing and Redevelopment Authority of the City of South St. Paul, Minnesota issued a mortgage to Applicant #658 in the amount of $2,700.00;

WHEREAS, such mortgage recorded on June 17, 2003 in Dakota County has been satisfied in full by the applicant;

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

1. The EDA shall secure the signatures of the appropriate representatives of the HRA to execute the required documents to satisfy the loan and mortgage.

Adopted this _____ day of __________________.

___________________________________  __________________________________
President, James P. Francis    Executive Director, Ryan Garcia
Agenda Item: Approval of Satisfaction of Mortgage – Applicant #637

Action to be considered:

Motion to approve Resolution No. 2020-6

Overview:

Applicant #637 received an HRA rehabilitation loan of September in 2002, with a mortgage recorded at that time. The mortgagee recently paid back the loan in full, thus satisfying the mortgage. Therefore, the EDA is advised to approve Resolution No. 2020-6, which will authorize the designated officers of the City’s Housing and Redevelopment Authority to execute all necessary documentation required to record the Satisfaction of Mortgage.

Funding Sources and other fiscal considerations: N/A
WHEREAS, the City Council transferred all administration of the South St. Paul Housing and Redevelopment Authority (HRA) programs to the South St. Paul Economic Development Authority (“EDA”) by City Council Resolution 2015-197; and

WHEREAS, one of those programs was a rehabilitation loan program, for which there are several outstanding loans; and

WHEREAS, the South St. Paul Housing and Redevelopment Authority of the City of South St. Paul, Minnesota issued a mortgage to Applicant #637 in the amount of $17,000.00;

WHEREAS, such mortgage recorded on October 17, 2002 in Dakota County has been satisfied in full by the applicant;

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

1. The EDA shall secure the signatures of the appropriate representatives of the HRA to execute the required documents to satisfy the loan and mortgage.

Adopted this _____ day of __________________.

___________________________________  __________________________________
President, James P. Francis    Executive Director, Ryan Garcia
Agenda Item: Approval of Satisfaction of Mortgage – Applicant #567

Action to be considered:

Motion to approve Resolution No. 2020-7

Overview:

Applicant #567 received an HRA rehabilitation loan of August in 2001, with a mortgage recorded at that time. The mortgagee recently paid back the loan in full, thus satisfying the mortgage. Therefore, the EDA is advised to approve Resolution No. 2020-7, which will authorize the designated officers of the City’s Housing and Redevelopment Authority to execute all necessary documentation required to record the Satisfaction of Mortgage.

Funding Sources and other fiscal considerations: N/A
WHEREAS, the City Council transferred all administration of the South St. Paul Housing and Redevelopment Authority (HRA) programs to the South St. Paul Economic Development Authority (“EDA”) by City Council Resolution 2015-197; and

WHEREAS, one of those programs was a rehabilitation loan program, for which there are several outstanding loans; and

WHEREAS, the South St. Paul Housing and Redevelopment Authority of the City of South St. Paul, Minnesota issued a mortgage to Applicant #567 in the amount of $4,250.00;

WHEREAS, such mortgage recorded on September 17, 2001 in Dakota County has been satisfied in full by the applicant;

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

1. The EDA shall secure the signatures of the appropriate representatives of the HRA to execute the required documents to satisfy the loan and mortgage.

Adopted this _____ day of __________________.

___________________________________  __________________________________
President, James P. Francis    Executive Director, Ryan Garcia
Agenda Item: Approval to Convey Project Real Property 121 Hardman Court – EDA Resolution No. 2020-8

Action to be considered:
Following Public Hearing, motion to adopt EDA Resolution No. 2020-8 approving the sale of public land, subject to the terms and conditions of a purchase and sale agreement and development agreement with AVM Group, LLC.

Overview:
Background
On February 24, 2020 the EDA agreed to general terms of a land sale to AVM Group LLC for the construction of a 21,000 square foot office/warehouse building at the EDA-owned property at 121 Hardman Court. This property is an approximately 2.4-acre (105,000 square foot) vacant Light Industrial-zoned lot located at the southeast quadrant of the Hardman Court cul-de-sac. The property has been under the ownership of the HRA/EDA for several years, and the HRA previously prepared this site and adjacent sites for development by conducting environmental testing, cleanup, and monitoring, installation of the public road and utilities, land subdivision, and installation of regional stormwater facilities, among other things. The proposed purchaser envisions relocating their general contracting firm entirely to this location, and has begun the process of pursuing approvals through the City’s Plan Commission.

Staff offers the following rundown of essential provisions of the proposed Agreement for the EDA’s information:

Key Dates

- **August 3, 2020 (Contingencies)** – The agreement requires that all surveys, inspections, testing, title commitment, and governmental approvals must be completed by this date.
- **July 1, 2020 – (Closing)** – The agreement requires that the date of closing shall be no later than this date, unless mutually agreed upon by both parties.
- **August 30, 2021 (Completion)** – The agreement identifies that construction will be completed no later than this date, subject to unavoidable delay.

Notable Provisions

- **Purchase Price** – The agreement establishes a purchase price of $210,000 for the site, with $10,000 held as earnest money and the balance ($200,000) payable at closing.
- **Environmental** – Although the City conducted testing and cleanup activities at the property, a condition of the Minnesota Pollution Control Agency’s approval of our actions included the requirement that a soil vapor mitigation system be installed at the time of building development. Per the agreement, the Buyer will pay for the first $20,000 in costs to implement this mitigation, and we would split the costs 50-50 with the buyer for any costs above and beyond the $20,000 – up to an additional $15,000 of EDA expense.
• **Minimum Improvements** – The agreement establishes that the buyer will construct a 21,200 office/warehouse facility. The buyer’s plans have been submitted for City review and indicate a 21,200 square foot building meeting the City’s minimum architectural requirements for this district. AVM would occupy approximately ¼ of the total area of the building, and offer the balance of the facility for lease to other light industrial users. There are no committed lessees at the building as of yet.

**Funding Sources and other fiscal considerations:**
City costs for the environmental mitigation measures are proposed to be derived from the City’s closing proceeds.
121 HARDMAN COURT

[Map showing the location of 121 Hardman Court and surrounding areas]
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, including the parcel located at 121 Hardman Court, 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 AVM Group LLC, a Minnesota Limited Liability Company, (Redeveloper) for the sale and redevelopment of the Property, including the requirement for the Redeveloper to execute a Development Agreement at the time of closing, subject to final approval of the sale of the property by the EDA to the Redeveloper, the terms and conditions of which include the use that the Redeveloper will be allowed to make of the Property, which shall be for an approximately 21,200 square foot multi-tenant office and warehouse facility; 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 April 19, 2020 in the St. Paul Pioneer Press, a local newspaper of general circulation notice;

WHEREAS, the EDA held a public hearing on May 4, 2020 pursuant to Minnesota Statutes, Section 469.105 regarding the sale of the Property to the Redeveloper 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 Redeveloper 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 Redeveloper 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:

1. The EDA hereby approves the sale and conveyance of the Property to the Redeveloper pursuant to the terms of the Purchase Agreement and Development Agreement, and it is hereby found and determined that Redeveloper possesses the qualifications and the financial responsibility to acquire and develop the Property in accordance with the Redevelopment Plans incorporated into the Purchase Agreement and Development Agreement.
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 Redeveloper pursuant to the terms of the Purchase Agreement.

Adopted this 4th day of May, 2020.

_______________________________   _____________________________
James P. Francis, President     Ryan D. Garcia, Executive Director
Exhibit A

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

121 Hardman Court, South St. Paul, MN  55075; PID: 36-48843-01-050

Lot Five (5), Block One (1), MISSISSIPPI LANDING 4TH ADDITION, according to the recorded plat thereof.

Torrens Property
CONTRACT

FOR

PRIVATE DEVELOPMENT

By and Between

SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

And

AVM GROUP LLC
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into as of __________, 2020 (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 AVM Group LLC, a Minnesota limited liability company (“Buyer”).

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 (“City”).

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 Buyer on the terms and conditions of this Agreement.

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

Recital No. 5. Developer (Buyer will act as 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 this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety, morals and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants and the mutual obligations contain herein, Buyer, EDA, and Developer 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. “Buyer” means AVM Group LLC, a Minnesota limited liability company.

   C. “Certificate of Completion” means the certificate, in the form contained in Exhibit C attached hereto, which will be provided to Buyer pursuant to Section 10.7 of this Agreement.
D. “Closing” means the closing of the purchase and sale contemplated by this Agreement.

E. “Closing Date” means on or before July 1, 2020 unless otherwise agreed to by the parties.

F. “Construction Plans” means the final plans for construction of the Minimum Improvements to be submitted by Developer and approved by the EDA.

G. “Contingency Date” shall mean ninety (90) days from the Effective Date.

H. “Deed” means the general warranty deed in the form attached hereto as Exhibit D, by which the EDA will convey the Property to Buyer.

I. “Developer” means AVM Group LLC, a Minnesota corporation.

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

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

L. “Minimum Improvements” means the construction of an approximately 21,200 square foot office/warehouse building, generally depicted on Exhibit B and as such plans may be modified to meet the minimum standards relating to Light Industrial development as regulated by Chapter 118 of the South St. Paul Municipal Code.

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

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

O. “Sale” means any sale, conveyance, lease, exchange, forfeiture other transfer of the Buyer’s interest in the Minimum Improvements or the Property, whether voluntary or involuntary.

P. “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.

Q. “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 Buyer, and Buyer shall purchase the same from
       EDA.

   2.2. **Purchase Price.** The purchase price to be paid by Buyer to EDA for the
       Property shall be Two Hundred Ten Thousand Dollars ($210,000.00) (the “Purchase
       Price”) payable as follows: (a) Ten Thousand and No/100 Dollars ($10,000.00), as earnest
       money, to be paid to DCA Title, Inc. (“Title”), at contract signing; 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
       Seller.

3. **Available Surveys, Tests, and Reports.** Within ten (10) days of the Effective
   Date, EDA shall cause to be delivered to Buyer and Developer, (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 Buyer and
   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 and Buyer, at Developer and Buyer’s expense, so that Developer
   and Buyer may rely on such site analyses or surveys as if prepared for Developer and Buyer in the
   first instance, but EDA makes no representation as to whether any such reissuance or
   recertification will be available.

4. **Developer and Buyer’s Investigations.** For a period of up to sixty (60) calendar
   days following the Effective Date, EDA shall allow Buyer and Developer and Buyer and
   Developer’s agents access to the Property without charge and at all times for the purpose of Buyer
   and Developer’s investigation and testing of the Property, including surveying and testing of soil
   and groundwater (“Developer and Buyer’s Investigations”); provided, however, Buyer and
   Developer shall not perform any invasive testing unless (a) EDA gives its prior written approval
   of Buyer and Developer’s consultant that will perform the testing, which approval shall not be
   unreasonably withheld, conditioned or delayed, and (b) Buyer and Developer gives EDA
   reasonable prior notice of such testing. EDA shall have the right to accompany Buyer and
   Developer during any of Buyer and Developer’s Investigations of the Property. Buyer and
   Developer shall provide to EDA copies of all third-party, non-confidential written test results and
   reports conducted as part of Buyer and Developer’s Investigations. Buyer and Developer agree to
   pay all of the costs and expenses associated with Buyer and Developer’s Investigations, to cause
   to be released any lien on the Property arising as a result of Buyer and Developer’s Investigations
and to repair and restore, at Buyer and Developer’s expense, any damage to the Property caused by Buyer and Developer’s Investigations which, however, shall not include any duty by Buyer and Developer to remediate any pre-existing environmental conditions discovered or disturbed at the Property. Buyer and 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 Buyer and 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 Buyer notice of such condemnation, taking or damage. After receipt of notice of such condemnation, taking or damage (from EDA or otherwise), Buyer 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 Buyer 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 Buyer 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 Buyer 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 Buyer’s prior written consent, which consent shall not be unreasonably withheld.

6. **Contingencies.**

6.1. **Buyer and Developer’s Contingencies.**

A. Unless waived by Buyer and Developer in writing, Buyer and 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) Buyer and Developer’s satisfaction, in Buyer and 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, Buyer and Developer shall have determined, in their sole discretion, that they are satisfied with (a) the results of and matters disclosed by Buyer and 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, Buyer and Developer shall have determined the acceptability of the Property for use as an office and warehouse 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 Buyer and Developer.

(3) On or before the Closing Date, Buyer and 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 Buyer and Developer.

(4) On or before the Contingency Date, and without limitation of the terms of Section 6.1(A)(3), Buyer and 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 Buyer and Developer in their sole discretion.

(5) On or before the Contingency Date, Buyer and Developer shall have satisfied themselves, in Buyer and 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, Buyer and Developer shall have satisfied themselves, in Buyer and 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 sixty (60) days following the Effective Date, Buyer and 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 Buyer and Developer in Buyer and Developer’s sole discretion, not disclosing any encumbrance not acceptable to Buyer and
Developer in Buyer and Developer’s sole discretion (the “Approved Commitment”).

(8) On or before the Closing Date, Buyer and Developer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in the form of the Approved Commitment, subject only to such changes in title as are Permitted Encumbrances or as are acceptable to Buyer and Developer in Buyer and Developer’s sole discretion.

(9) 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.

(10) On or before the Contingency Date, Buyer and 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.

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

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

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

The foregoing contingencies are for Buyer and Developer’s sole and exclusive benefit and one (1) or more may be waived in writing by Buyer and Developer in their sole discretion. EDA shall reasonably cooperate with Buyer and Developer’s efforts to satisfy such contingencies, at no out of pocket cost to EDA or assumption of any obligation or liability by Buyer and Developer. Buyer and Developer shall bear all cost and expense of satisfying Buyer and 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 Buyer and Developer’s option, by written notice from Buyer and Developer to EDA. Such written notice must be given on or before the applicable date, or Buyer and Developer’s right to terminate this Agreement pursuant to this Section shall be waived. 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 Buyer and 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.

C. As used in this Agreement, the “Contingency Date” shall mean sixty (60) days from the Effective Date.

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. Buyer and 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 Buyer and Developer contained in this Agreement shall be accurate as of the Closing Date.

C. There shall be no uncured default by Buyer and Developer of any of Buyer and 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 Buyer and 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. 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 Buyer and Developer.

7. Closing. The Closing shall occur on the Closing Date, unless otherwise agreed to by the parties, but shall occur no later than thirty (30) days after the completion of the Buyer’s Due Diligence. All documents and instruments required for the Closing shall be delivered to the Title Company at least one (1) business day prior to the Closing Date.

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

A. General Warranty Deed. A general warranty deed conveying title to the Property to Buyer, 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 Buyer 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 Buyer and 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 Buyer 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 Buyer with respect to the Property with the so-called “standard exceptions” deleted, and (e) has duly authorized the transactions contemplated hereby.

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

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

B. **Settlement Statement.** A settlement statement with respect to this transaction.
C. **Evidence of Authority.** Buyer shall provide EDA with copies of the resolutions showing Buyer 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 Buyer’s name.

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

8. **Prorations.** EDA and Buyer 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. Buyer shall pay all costs of the ALTA Survey of the Property. Buyer shall pay all premiums for any title insurance policy it desires with respect to the Property. Buyer 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.** Buyer 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 Buyer 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 Buyer 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. Buyer 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 Buyer’s development of the Property.

8.5 **Attorneys’ Fees.** EDA and Buyer shall each pay its own attorneys’ fees incurred in connection with this transaction, unless otherwise stated in this Agreement.

8.6 **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 Buyer 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, Buyer shall obtain, at Buyer’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 **Buyer’s Objections.** Within ten (10) days after Buyer’s receipt of the last of the Title Evidence, Buyer 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 Buyer within such time period or waived by Buyer 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. Buyer 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 Buyer’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, Buyer 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.

If Buyer so terminates this Agreement, neither EDA 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).

10. **Construction of Minimum Improvements.**

10.1 **Construction of Minimum Improvements.** Within 180 days after 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 may elect to seek certain Approvals as defined in Section 6.1(A)(3) in order for Developer to develop the Property for the Proposed Use, including rezoning the Property
or 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 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 November 1, 2020. “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 August 30, 2021. 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 Buyer with a Certificate of Completion in the form of Exhibit C 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 Buyer and 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 Buyer, provide Buyer with a written statement, indicating in adequate detail in what respects Buyer and Developer have 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 Buyer and 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 Buyer and/or Developer under a valid and collectible insurance policy in connection with such specific claim, issue or matter, Buyer and/or 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 Buyer and/or Developer and approved by the EDA in accordance with Section 10 of this Agreement, which approval will not be unreasonably withheld. Buyer’s or 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 $1,000,000 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, Buyer 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, Buyer 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. Buyer acknowledges that the Property was subject to a Response Action Plan (“RAP”) approved by the Minnesota Pollution Control Agency (“MPCA”) and that the Housing and Redevelopment Authority in and for the City of South St. Paul owned the property prior to its conveyance to the Seller. Buyer acknowledges that the MPCA issued a Commissioner’s Certificate of Completion of Response Actions for the Property (“Commissioner’s Certificate”). Buyer acknowledges and agrees that Seller has not made, and Seller hereby expressly disclaims, any representation, warranty, or covenant of any kind with respect to the environmental condition of the Property. Buyer acknowledges that environmental contamination has been identified on the Property and that the approved RAP for the Property requires the installation of a passive vapor mitigation system, consisting of a vapor barrier and vent piping beneath the floor slab during building construction. Buyer acknowledges receipt of the Commissioner’s Certificate dated June 28, 2013.

12.3 Environmental Mitigation or Remediation; Seller Cost Contribution. Any State of Minnesota mandated environmental mitigation and/or remediation of the Property and any State of Minnesota mandated vapor mitigation system beyond that used in standard construction (“Environmental Remediation”) shall be pre-approved by a representative of the Seller and then completed by Buyer at the Buyer’s sole cost and expense. To the extent that actual costs are incurred and paid by Buyer in excess of twenty thousand dollars ($20,000.00), Seller agrees to reimburse Buyer for one half (1/2) of any necessary costs associated with any approved Environmental Remediation over twenty-thousand dollars ($20,000.00) up to an additional fifteen thousand dollars ($15,000.00). In no event shall Seller’s total financial obligation related to Environmental Remediation exceed fifteen thousand dollars ($15,000.00). Seller agrees to escrow with Title, from Seller’s Closing proceeds, Fifteen Thousand and no/100 dollars ($15,000.00) to be used to reimburse Buyer for actual, invoiced costs that are incurred and paid by Buyer and that are directly associated with Environmental Remediation (“Environmental Mitigation Escrow”). If, after the satisfactory conclusion of all Environmental Remediation, the entirety of the Environmental Mitigation Escrow is not used to reimburse Buyer for actual, invoiced costs that are incurred and paid by Buyer and that are directly associated with Environmental Remediation, then the remaining balance shall be immediately returned to Seller.

12.4 Buyer Indemnification Obligation. Except for the obligation of Seller to pay the Environmental Mitigation Escrow as provided in Section 12.3, Buyer agrees to pay and protect, indemnify and release Seller from and hold Seller 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 Seller 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, Buyer’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 Seller or Buyer.

12.5 **Reporting Requirements.** Seller and Buyer agree to comply with all reporting requirements set out in any Environmental Law.

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

13.1 **Prohibition Against Sale of Minimum Improvements.** Buyer and 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. Buyer and 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 Buyer and Developer are of particular concern to the EDA. Buyer and Developer further recognize that it is because of such qualifications and identity that the EDA is entering into the Agreement with Buyer and Developer, and, in so doing, is further willing to accept and rely on the obligations of Buyer and Developer for the faithful performance of all undertakings and covenants hereby by it to be performed. For the foregoing reasons, Buyer and 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 Buyer nor shall Buyer suffer any such sale to be made, without the prior written approval of the EDA.

A. As security for the obligations of Buyer under this Agreement, Buyer represents and agrees that prior to the issuance of the Certificate of Completion, Buyer 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 Buyer from selling or issuing additional membership interests in Buyer. Buyer and any entity succeeding to all or part of Buyer’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 Buyer 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 Buyer under this Agreement not retained by Buyer, 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 Buyer under this Agreement and is approved by the EDA. In the event of a consolidation, merger or sale in accordance with this subsection, Buyer 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. Buyer, 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 Buyer, or is related to Buyer, 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 Buyer’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 Buyer’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)(11), Buyer 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.


14.1 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 Buyer and Developer to proceed to Closing on the Property after compliance with or the occurrence of all conditions precedent to Closing;

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

D. Use by Buyer and 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 Buyer and Developer in violation of Section 13.1 of this Agreement and without the prior written permission by the EDA;

F. If Buyer and 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. Terminate or rescind this Agreement;

C. 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

D. 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 Buyer and Developer.** Pursuant to Minn. Stat. §469.105 subd. 5, if Buyer and 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 Buyer and Developer, it being the intent of this provision that the conveyance of the Property to Buyer and Developer shall be made upon and a deed containing a condition subsequent to the effect that in the event that Buyer and 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 Buyer and Developer. In such circumstances, all title, rights and interests of Buyer and Developer and any assigns or successors in interest to and in the Property, shall revert to the EDA. If Buyer and 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 Registrar of Titles in and for the County of Dakota and State of Minnesota memorializing the commencement of Minimum Improvements and releasing Buyer and 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 Buyer and 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 revesting 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 revesting 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 Buyer, 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 Buyer or its Successor Developer; and

B. Second, to reimburse Buyer, Developer or Successor Developer, up to the amount equal to (i) the Purchase Price paid by Buyer; 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 Buyer and 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 Buyer and 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 Buyer and Developer, and acknowledges that Buyer and 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 Buyer and 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 Buyer and 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 Buyer and Developer has actual knowledge of EDA’s breach thereof prior to Closing and Buyer and Developer consummates the acquisition of the Property as provided herein.

Buyer and 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 rising 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 Buyer and Developer, or any other matter or item regarding the Property. Buyer and Developer agree that except as expressly specified in this Agreement and/or in any documents executed and delivered by the EDA at Closing, Buyer and 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. Buyer and Developer are an experienced purchaser of property such as the Property and Buyer and Developer have 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 Buyer and Developer.** Buyer and 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. Buyer 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. Buyer and 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 Buyer and 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 Buyer and Developer, (b) violate or contravene any provision of the articles of incorporation or bylaws of Buyer and 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 Buyer and Developer is a party or by which it or any of its properties may be bound.
C. Buyer and Developer have received no notice or communication from any local, state or federal official that the activities of the Buyer and Developer or the EDA on the Property may be or will be in violation of any environmental law or regulation. Buyer and 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. Buyer and Developer will complete the Minimum Improvements in accordance with all local, state, federal laws or regulations.

E. Buyer and 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. Buyer and 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. Buyer and Developer shall cooperate with EDA with respect to any litigation, other than litigation in which EDA and Buyer 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 Buyer and Developer under this Agreement, Buyer and Developer agree that Buyer and 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 Buyer and 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 Buyer and 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: Korine L. Land LeVander, Gillen & Miller, P.A. 633 South Concord Street, Suite 400 South St. Paul, MN 55075

If to Buyer: AVM Group LLC 8540 Birch Blvd Inver Grove Heights, MN 55076 Attn: Mike Klun

With a copy to: AVM Construction LLC 2401 Pilot Knob Road, Suite 142 Mendota Heights, MN 55120

17.3 **EDA Representatives Not Individually Liable.** No member, official, or employee of the EDA shall be personally liable to Buyer and 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 Buyer and Developer or successor or on any obligations under the terms of the Agreement.

17.4 **Equal Employment Opportunity.** Buyer and 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.** Buyer and 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.** Buyer and Developer acknowledge that nothing contained in this Agreement nor any act by EDA or Buyer and Developer shall be deemed or construed by Buyer and 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 Buyer and Developer.

17.9 **Buyer and Developer’s Assignment.** Buyer and Developer may assign this Agreement with the prior written consent of the EDA. No assignment shall relieve Buyer and 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 Registrar of Titles’ Office.

17.16 **Time of the Essence.** Time is of the essence of this Agreement.
IN AGREEMENT, the parties hereto have hereunto set their hands as of the Effective Date.

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 ____________, 2020 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
BUYER:
AVM Group LLC

By: __________________________________________
Name: Mike Klun
Its: Vice President

STATE OF MINNESOTA    )
                     ) ss.
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this ____ day of ________________, 2020 by Mike Klun, the Vice President of AVM Group LLC, a Minnesota limited liability company, on behalf of said limited liability company.

__________________________________________
Notary Public
EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

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

121 Hardman Court, South St. Paul, MN  55075; PID: 36-48843-01-050

Lot Five (5), Block One (1), MISSISSIPPI LANDING 4TH ADDITION, according to the recorded plat thereof.

Torrens Property
EXHIBIT B
MINIMUM IMPROVEMENTS
AVM GROUP BUILDING
SOUTH ST. PAUL, MINNESOTA

PROJECT TEAM

DEVELOPER
AVM CONSTRUCTION
2401 PILOT KNOB ROAD, SUITE 142
MENDOTA HEIGHTS, MN 55120

ARCHITECT
ROSA ARCHITECTURAL GROUP, INC.
1084 STERLING STREET N
ST. PAUL, MN 55119

CIVIL ENGINEER
REHDER & ASSOCIATES, INC.
3440 FEDERAL DRIVE, SUITE 110
EAGAN, MN 55122

LANDSCAPE ARCHITECT
AUNE FERNANDEZ LANDSCAPE ARCHITECTS
755 PRIOR AVE N, SUITE 103
ST. PAUL, MN 55104

SHEET INDEX

ARCHITECTURAL
T1.1 TITLE SHEET
A1.1 SITE PLAN
A2.1 FLOOR PLAN
A3.1 ELEVATIONS
A4.1 BUILDING SECTIONS
A5.1 ROOF PLAN

CIVIL
C1 GRADING, DRAINAGE & EROSION CONTROL PLAN
C2 UTILITY PLAN
C3 DETAILS & SPECIFICATIONS
L1.0 LANDSCAPE PLAN
EXHIBIT C
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 Registrar of Titles in Dakota County, Minnesota, as Document No. ______________, has conveyed to AVM Group LLC, a Minnesota limited liability company (the “Grantee”), the following described land in County of Dakota and State of Minnesota, to-wit:

121 Hardman Court, South St. Paul, MN 55075; PID: 36-48843-01-050

Lot Five (5), Block One (1), MISSISSIPPI LANDING 4TH ADDITION, according to the recorded plat thereof.

Torrens Property

(the “Deed”); and

WHEREAS, said Deed was executed pursuant to that certain Development Agreement by and between the Grantor, Grantee and AVM Group LLC, a Minnesota limited liability company, dated ______________, __________, and recorded in the office of the Registrar of Titles 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 Registrar of Titles 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 ______________________________

C-1
STATE OF MINNESOTA       )
                        ) ss.
COUNTY OF DAKOTA       )

The foregoing instrument was acknowledged before me this ____ day of ____________, 2020 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 D
FORM OF DEVELOPMENT PROPERTY DEED

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 AVM Group LLC, a Minnesota limited liability company (the “Grantee”).

WITNESSETH, that Grantor, in consideration of the sum of $100.00 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 __________________, 2020 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 Registrar of Titles, 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 re-vest in the Grantor the estate conveyed by this Deed to the Grantee, its heirs, successors 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 ___________________, 2020.

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 ____________, 2020 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: SEND TAX STATEMENT TO:

Korine L. Land, #262432 AVM Group LLC
LeVander, Gillen & Miller, P.A. 8540 Birch Blvd
633 South Concord Street, Suite 400 Inver Grove Heights, MN  55076
South St. Paul, MN 55075
651-451-1831
TITLE NOT EXAMINED
REAL PROPERTY

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

121 Hardman Court, South St. Paul, MN  55075; PID: 36-48843-01-050

Lot Five (5), Block One (1), MISSISSIPPI LANDING 4TH ADDITION, according to the recorded plat thereof.

Torrens Property
### Agenda Item: Acceptance of Proposal and Approval to Award Contract for Sprinkler Head Project at the John Carroll (300 Grand Avenue West) and Nan McKay (200 Marie Avenue) Highrises

### Action to be considered:
Motion to approve award of Contract for Sprinkler Head Replacement Project with Dynamic Fire Protection.

### Overview:
In February 2020, a request for proposals was issued for the replacement of all sprinkler heads within the John Carroll and Nan McKay buildings. The condition of existing heads in both buildings has been a documented finding (and 10-point deduction) in previous REAC and PHAS inspections at both properties, and previous attempts to bid the project resulted in bid errors and an insufficient number of competitive bids.

Three proposals were received for this project, summarized below:

<table>
<thead>
<tr>
<th>Company</th>
<th>Base Bid Nan McKay</th>
<th>Base Bid John Carroll</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Viking Fire Supply</td>
<td>$65,000</td>
<td>$92,000</td>
<td>$157,000</td>
</tr>
<tr>
<td>Dynamic Fire Protection</td>
<td>$48,675</td>
<td>$87,850</td>
<td>$136,525</td>
</tr>
<tr>
<td>Summit</td>
<td>$133,800</td>
<td>$178,900</td>
<td>$312,700</td>
</tr>
</tbody>
</table>

The lowest responsible bidder is found to be Dynamic Fire Protection at a total cost of $136,525 for the project. Dynamic is a newer entity founded in 2018 by industry veterans with over 30 years of combined experience, and provided several examples of similarly projects. Their references provided strong recommendations based upon their timeliness, professionalism, and precision.

Per the specifications for the project, Dynamic will begin within 45 days of a notice to proceed, and all project work is required to be completed within 68 days of the start of the project. Given the current public health situation, Staff has communicated to the contractor that we will be seeking guidance from HUD, CDC, and the State to assure the project is undertaken in a safe and healthy manner. Given the recent extension of the “Stay at Home” order, we anticipate that this project will not begin until early July at the earliest.

### Funding Sources and other fiscal considerations:
The project will be funded through the 2018 Public Housing Capital Fund Grant. These funds must be obligated no later than May 2021, as HUD provided the City with a 1-year extension due to the COVID-19 situation. The project is identified in the 5-Year Action Plan, approved by the board and HUD in 2018.
**Agenda Item:** Acceptance of Proposal and Approval to Award Contract for Parking Lot Repaving Project at the John Carroll (300 Grand Avenue West) and Nan McKay (200 Marie Avenue) Highrises

**Action to be considered:**
Motion to approve award of Contract for Parking Lot Repaving Project with Asphalt and Concrete, Inc.

**Overview:**
In April 2020, Nath Management solicited proposals for a project to repave all parking lots at the Nan McKay and John Carroll Buildings. The parking lot surfaces at both buildings have fallen in to relatively poor condition, and it has been at least 12 years since either was comprehensively repaired or replaced.

Two proposals were received for this project, summarized below:

<table>
<thead>
<tr>
<th>Company</th>
<th>Base Bid Nan McKay</th>
<th>Base Bid John Carroll</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allied Blacktop Company</td>
<td>$72,669</td>
<td>$52,185</td>
<td>$124,854</td>
</tr>
<tr>
<td>Asphalt and Concrete, Inc.</td>
<td>$75,685</td>
<td>$44,315</td>
<td>$120,000</td>
</tr>
</tbody>
</table>

The lowest responsible bidder is found to be Asphalt & Concrete, at a total cost of $120,000 for the entire project. Please note that although the Nan McKay component of the project is priced higher, ACI’s total cost of $120,000 was provided in response to our request to “bulk price” the project more competitively (rather than split the bid). The project will also include re-striping all parking areas and installation of new curb stops.

The repaving project is anticipated to take approximately 2 days per lot. Work is anticipated to begin in mid-May; we plan to meet with the contractor after award to prepare a sequencing plan and communications plan with the residents.

**Funding Sources and other fiscal considerations:**
The project will be funded through the 2019 Public Housing Capital Fund Grant. The project is identified in the 5-Year Action Plan, approved by the board and HUD in 2018.
Agenda Item: Approval of an Amendment to Lease Agreement – 135 Grand Avenue East

Action to be considered:
Motion to approve an Amendment to Lease Agreement for EDA-Owned property at 135 Grand Avenue East.

Overview:
In June 2019, the Economic Development Authority (EDA) acquired the property at 135 Grand Avenue East and assumed lessor rights via a lease agreement between the previous owner and the industrial tenant (MLCV 2020 Holdings). The lease agreement is set to terminate on June 30, 2020, and the tenant had been negotiating a lease at an industrial facility in a neighboring community. However, in light of the COVID-19 pandemic, the business has sought to defer their relocation for the time being as they concentrate on keeping their operations run as smoothly as possible through this disruption.

Based on feedback received at previous EDA meetings on this topic, Staff is proposing an amended lease agreement that would extend the end date of the lease through February 28, 2021, with a single, 4-month extension option. Staff also proposes an increase in the monthly lease payment from the current $12,000 per month to $19,250 per month effective July 1, 2020. We fully acknowledge the disruption that the pandemic has introduced, and feel that the extension as proposed is fair, reasonable, and appropriate. That said, the EDA has committed considerable resources towards an objective of fostering redevelopment of the “Hardman Triangle” district, within which 135 Grand Avenue is a key property, and should not similarly defer (indefinitely) action on that objective.

Funding Sources and other fiscal considerations:
The Property is located within the Concord Street TIF District, therefore all lease revenue is kept within the district for other eligible project costs. The current lease rate of $12,000/month gross is about ½ of the current market rate for Office/Production/Warehouse facilities. We suggest an increase to $19,250 per month for the extension (through February 28, 2021), and to $24,500 per month if an additional 4-month extension (through June 30, 2021) is requested on top of that.
FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("First Amendment") is made, entered into and effective as of the 1st day of July, 2020, by and between the South St. Paul Economic Development Authority, a public body corporate and politic under the laws of Minnesota ("Landlord") and MLCV 20/20 Holdings, LLC, a Minnesota limited liability company ("Tenant"); and

WHEREAS, J & S Ryan Properties, LLLP, a Minnesota limited liability limited partnership ("Original Lessor") and 2020 Promotion, LLC, a Minnesota limited liability company ("Original Lessee") entered into a Lease Agreement dated June 30, 2014, with respect to the property described in said Lease Agreement (the "Property"); and

WHEREAS, Original Lessee, Original Lessor, and MLCV 20/20 Holdings, LLC, a Minnesota limited liability company ("Assignee") entered into a Landlord’s Consent to Lease Assignment and Estoppel dated September 30, 2014, assigning the Lease Agreement dated June 30, 2014 from 2020 Promotion, LLC, a Minnesota limited liability company to MLCV 20/20 Holdings, LLC, a Minnesota limited liability company; and

WHEREAS, Original Lessor and Landlord entered into an Assignment and Assumption of Lease Agreement dated June 25, 2019, assigning to Landlord all of Original Lessor’s rights, title and interest, including the Lease Agreement dated June 30, 2014 and the Landlord’s Consent to Lease Assignment and Estoppel dated September 30, 2014; and

WHEREAS, the Assignment and Assumption of Lease Agreement dated June 25, 2019, Landlord’s Consent to Lease Assignment and Estoppel dated September 30, 2014 and Lease Agreement dated June 30, 2014 are collectively referred to as the "Lease;” and

WHEREAS, the current term of the Lease expires on June 30, 2020; and

WHEREAS, Tenant has requested an extension of the Lease; and

WHEREAS, Landlord does not object to an extension of the Lease upon the expiration of the Lease, which shall continue through June 30, 2020.

NOW THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this First Amendment and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

1. Effective July 1, 2020, the Lease shall be amended as follows:

AMENDMENTS

A. Section 1: Term of the Lease is hereby deleted in its entirety and replaced as follows:
Term. The term of this Lease, subject to the renewal option provided below, shall be for a period commencing on July 1, 2020, and terminating eight (8) months thereafter on February 28, 2021 (“Initial Term”).

B. Section 2: Rent of the Lease is hereby deleted in its entirety and replaced as follows:

Rent. Tenant shall pay as base rent during the Initial Term of this Lease, monthly installments of Nineteen Thousand Two Hundred Fifty Dollars ($19,250) in advance of the first day of each month.

In the event the parties elect to renew the Lease, Tenant shall pay as base rent during the Renewal Term, monthly installments of Twenty-Four Thousand Five Hundred Dollars ($24,500) in advance of the first day of each month.

C. Section 22: Notices of the Lease is hereby deleted in its entirety and replaced as follows:

Notices. All notices, requests, demands or other communications required or permitted by this Lease shall be in writing and delivery shall be deemed to be sufficient if delivered personally or by registered or certified mail, return receipt accepted, postage prepaid, addressed as follows:

If to Lessor: South St. Paul Economic Development Authority  
Attn: Executive Director  
125 Third Avenue North  
South St. Paul, MN 55075

If to Lessee: MLCV 20/20 Holdings, LLC  
135 Grand Avenue East  
South St. Paul, MN 55075

Tenant agrees to give notice immediately to Landlord of any notice served upon Tenant which, in any manner, affects the Landlord’s interest in the Property.

D. Section 24: Renewal Option of the Lease is hereby deleted in its entirety and replaced as follows:

Renewal Option. If not sooner terminated, this Agreement may be renewed for one (1) renewal term of four (4) months (“Renewal Term”) by mutual written agreement of the parties hereto, executed not less than thirty (30) days prior to the expiration of the Initial Term.

E. New Lease Section as follows:

Termination. Landlord may terminate the Lease and all rights of Tenant hereunder upon sixty (60) days written notice to Tenant. Tenant shall be responsible for any and all rent payments due and owing during notice period. If Tenant fails to vacate the Property by the
effective termination date, Landlord may, without notice and without prejudice to any other remedy Landlord may have, enter upon and take possession of the Property and expel or remove Tenant and its effects without being liable to prosecution or any claim for damages thereof.

2. Except as provided for above, the terms and provisions of the Lease shall remain in full force and effect.

3. This First Amendment and all disputes or controversies arising out of or relating to this First Amendment or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Minnesota, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Minnesota.

4. Nothing contained herein shall be deemed a waiver by the Landlord of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Tenant or their successors or assigns, shall be subject to any governmental immunity defenses of the Landlord and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

5. This First Amendment may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by the parties and delivered to the other parties. Delivery of a copy of this First Amendment bearing an original signature by facsimile transmission or by electronic mail in “portable document format” shall have the same effect as physical delivery of the paper document bearing the original signature.

6. This First Amendment shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each party.

[The remainder of this page was intentionally left blank.]
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date hereinbefore first written.

LANDLORD:
SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY
a public body corporate and politic under the laws of Minnesota

By: __________________________
   James P. Francis
   Its: President

By: __________________________
   Ryan Garcia
   Its: Executive Director

STATE OF MINNESOTA )
COUNTY OF DAKOTA )

On this _____ day of ______________, 2020, before me a Notary Public within and for said County, personally appeared James P. Francis and Ryan Garcia to me personally known, who being each by me duly sworn, each did say that they are respectively the President and the Executive Director of the South St. Paul Economic Development Authority, a public body corporate and politic organized under the laws of Minnesota, named in the foregoing instrument, and that it was signed on behalf of said entity by authority of its Board and said President and Executive Director acknowledged said instrument to be the free act and deed of said entity.

______________________________
Notary Public
TENANT:
MLCV 20/20 HOLDINGS, LLC
a Minnesota limited liability company

By: _______________________________
    Joseph Nayquonabe
    Its: Chief Manager, President, Treasurer and Secretary

STATE OF MINNESOTA )
                  ) ss.
COUNTY OF __________ )

On this _____ day of ________________________, 2020, before me a Notary Public within and for said County, personally appeared Joseph Nayquonabe to me personally known, who being by me duly sworn, did say that he is the Chief Manager, President, Treasurer and Secretary of MLCV 20/20 Holdings, LLC, a Minnesota limited liability company, the entity named in the foregoing instrument, and that said instrument was signed on behalf of said entity by authority of its Board of Governors and said Chief Manager, President, Treasurer and Secretary acknowledged said instrument to be the free act and deed of the entity.

_______________________________________
Notary Public
**Agenda Item:** Approval of a Purchase Agreement with JBL Properties LLC for real property located at 139 Grand Avenue East

**Action to be considered:**
Motion to approve entering into a purchase agreement with JBL Properties LLC for the acquisition of real property at 139 Grand Avenue East.

**Overview:**
In late-February 2020, staff became aware of the owners of Twin City Pallet Company’s renewed motivation to sell their property at 139 Grand Avenue East. Given the EDA’s actions in recent history to assemble all of the properties to the west of 139 Grand Avenue East (125 & 135 Grand Avenue East), the EDA’s direction at a previous worksession was to engage the seller in an attempt to negotiate the acquisition of the property. The Seller has agreed to the general terms of a sale and option to leaseback of the property and at this point, Staff is seeking EDA approval of a Purchase Agreement to govern the terms of acquisition of the property.

This acquisition would give EDA site control of more than 50% of the developable acreage in the “Hardman Triangle”, specifically the entire frontage of Grand Avenue east of Concord Street between the corner and SSP Steel. This acquisition is critical if the EDA and potential development partners are to advance the implementation of the Hardman Triangle Redevelopment Plan. In recent months, the Seller had been much more actively marketing the 139 Grand Avenue property with at least preliminary interest from industrial users that would likely fit under the property’s existing Conditional Use Permit, which permits manufacturing and exterior storage on the property. By failing to act, it is quite likely that implementation of the City’s vision for the Hardman Triangle would be deferred for a significant period of time.

**Key Considerations**
The EDA is encouraged to review the Agreement in its entirety prior to Monday’s meeting, if possible, but Staff provides the following summary of key items of interest to note as the EDA considers the agreement:

- **Acquisition Price:** $1,630,000 – 9.5% below listing price; cost of environmental clean-up to a maximum of $250,000 may be deducted from purchase price
- **Contingency:** 90 calendar days
  - Environmental Site assessments; may extend an additional 60 days if necessary
  - Title Commitment
  - ALTA
- **Environmental:** Through a cooperative agreement with Dakota County, Dakota County CDA, and USEPA, Phase One, Phase Two, Building Material Surveys, and (if necessary) RAP development to be funded by USEPA’s areawide assessment grant.
- **Relocation:** Per agreement, Seller agrees to waiver of relocation benefits
- **Closing:** No later than June 30, 2020 – (to assure property tax exempt status for 2021)
- **Property Size:** Approximately 5.21 acres
- **Current occupant:** Twin City Pallet Company
  - Seller agrees to waiver of relocation
Separate leaseback agreement being prepared (not included in packet; terms presented here FYI)
- Rent-free from date of closing through 12/31/2020
- Next 60 days (January 1, 2021 through February 28, 2021) @ $10,000 total
- $15,000/month after that (month-to-month, from March 1, 2021 through no later than 7/31/2021); tenant can terminate early with no penalty
- *Dakota County Estimated Market Value for Tax Purposes:* $814,100
- *2020 Property Taxes & Special Assessments:* $29,894 (prorated as of date of closing)

**Funding Sources and other fiscal considerations:**
Acquisition for purposes of redevelopment is an eligible expense in the Concord Street Tax Increment Finance (TIF) District. Grant applications for the Dakota County CDA’s Redevelopment Incentive Grant (RIG) program ($250,000) and for Dakota County’s Environmental Legacy Fund ($850,000) are prepared and will be submitted if the purchase agreement is approved. In the event that a new TIF District is created specific to some or all of the Hardman Triangle in the near future, Staff proposes reimbursement of acquisition cost to the Concord TIF from such new district.
139 GRAND AVENUE EAST
(PURCHASE AGREEMENT)

139 Grand Avenue East (5.21 Acres)
EDA-Owned Property
PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made as of ________________, 2020 ("Effective Date"), by and between JBL Properties, LLC, a Minnesota company, 139 Grand Avenue East, South St. Paul, Minnesota 55075 ("Seller"), and the South St. Paul Economic Development Authority, a public body corporate and politic, 125 3rd Avenue North, South St. Paul, Minnesota 55075 ("EDA").

RECITALS

A. Seller is the fee owner of real property located at 139 Grand Avenue East in the City of South St. Paul, Minnesota, legally described on Exhibit A, attached hereto and incorporated herein by reference (the “Property”).

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

C. The Property is currently leased to Twin City Pallet Company, LLC, a Minnesota limited liability company (" Tenant"), and is subject to a lease agreement dated xxxxxxx xx, xxxx between Seller and Tenant ("Lease").

D. Seller agrees that the transaction as contemplated hereunder is a freely negotiated purchase and voluntary sale of real property that is available on the open market, and hereby agrees to waive any and all relocation assistance, services, payments and benefits due under Federal or Minnesota Statute.

NOW THEREFORE, for mutual consideration, the Seller and the EDA agree as follows:

1. Sale.

1.1 Sale. Subject to the terms and provisions of this Agreement, Seller shall sell to EDA, and EDA shall purchase from Seller, the Property on the date of Closing.

1.2 Purchase Price. The purchase price to be paid by EDA to Seller for the Property shall be One Million Six Hundred Thirty Thousand and No/100 Dollars ($1,630,000.00) (the “Purchase Price”), subject to any applicable purchase price reduction as described in Section 11.2 herein. Fifty Thousand and No/100 Dollars ($50,000.00) shall be paid directly to Seller by depositing same in escrow with Land Title, Inc. ("Title") within five (5) business days after the full execution of this Agreement, as earnest money ("Earnest Money"), which Earnest Money shall be credited at Closing against the portion of the Purchase Price payable to Seller and the balance of the Purchase Price shall be paid to Seller on the Closing Date (as defined in Section 6) subject to those adjustments, prorations and credits described in this Agreement, in cash or certified funds or by wire transfer pursuant to instructions from Seller. The Closing will occur at Title, unless otherwise agreed to
by the parties. If this Agreement is terminated by EDA as a result of a default by Seller, then the Earnest Money shall be returned to the EDA and neither Seller nor the EDA shall be liable to the other for any further obligations under this Agreement (except for such obligations as specifically survive termination of this Agreement).

1.3 **Relocation Benefits.** Seller is aware of Seller’s rights and payments that Seller is eligible to receive pursuant to the Uniform Relocation Assistance Act (the “Act”). Seller acknowledges that Seller has been given the opportunity to seek and receive the advice of legal counsel with respect to relocation, moving, reestablishment, and other costs, if any, that may be available to the Seller under the Act.

Seller hereby acknowledges that the payment of the Purchase Price does include an unallocated sum for Relocation Benefits. At Closing and as a condition precedent to Closing, Seller shall forever waive, release and covenant not to sue the EDA with respect to any claims that the Seller may have to receive any relocation assistance, relocation services, relocation payments and relocation benefits pursuant to the Act or under Minnesota Statute Chapter 117 or any other provisions of federal or state law with respect to the Property and/or the sale of the Property as provided in this Purchase Agreement. Seller acknowledges that Seller will make such waiver, release and covenant not to sue of Seller’s own volition and with full knowledge of the specific relocation benefits to which Seller is entitled.

Prior to and as a condition of Closing, Seller will be required to sign a Waiver and Release Agreement. EDA will arrange for a relocation consultant to meet with the Seller prior to Closing. The relocation consultant will determine the amount of relocation benefits for which Seller would be eligible.

2. **Available Surveys, Tests, and Reports.** Within five (5) days of the Effective Date, Seller shall cause to be delivered to EDA to the extent same are in the possession and control of Seller: (a) copies of any surveys, soil tests and environmental reports previously conducted on the Property; (b) copies of leases associated with the Property, (c) copies of existing title work for the Property (the “Due Diligence Materials”). Seller makes no representations or warranties regarding the accuracy or completeness of the Due Diligence Materials. EDA acknowledges that the sale of the Property is “AS-IS,” “WHERE IS,” and “WITH ALL FAULTS”, and that it is the obligation of EDA to conduct and complete its due diligence and investigations relating to the Property.

3. **EDA’s Investigations.** For a period up to ninety (90) calendar days following the Effective Date, Seller shall allow EDA and EDA’s agents access to the Property without charge and at all times for the purpose of EDA’s investigation and testing of the Property, including surveying and testing of soil and groundwater and any and all related environmental testing (“EDA’s Investigations”); provided, however, EDA shall not perform any invasive testing unless (a) Seller gives its prior approval of EDA’s consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) EDA gives Seller reasonable prior notice of such testing. EDA shall pay all costs and expenses of the EDA’s Investigations and shall indemnify and hold Seller and the Property harmless.
from all costs and liabilities, including but not limited to mechanics’ liens, relating to activities on the Property related to EDA’s Investigations, however, EDA shall not be responsible for liens, liability, loss, expense or costs arising out of the discovery or presence of Hazardous Substances (as such term is defined in Section 9.1(G)) on the Property or otherwise arising out of Seller’s noncompliance with any Environmental Law (as such term is defined in Section 9.1(G)) or other law or regulation. Seller shall have the right to accompany EDA during any of EDA’s Investigations of the Property. If requested by Seller, EDA shall provide to Seller copies of all third-party, non-confidential written test results and reports conducted as part of EDA’s Investigations. EDA shall pay all of the costs and expenses associated with EDA’s Investigations, to cause to be released any lien on the Property arising as a result of EDA’s Investigations and to repair and restore, at EDA’s expense, any damage to the Property caused by EDA’s Investigations. The indemnification obligations set forth herein shall survive termination or cancellation of this Agreement.

3.1 Extension of EDA’s Investigations. EDA will have the right to extend EDA’s Investigations, if determined necessary through environmental assessment, for up to an additional sixty (60) days (“Extension of EDA’s Investigations”) to allow further testing and analysis. If it is necessary to extend EDA’s Investigations, then prior to the end of the sixty calendar (60) days following the Effective Date, EDA will notify Seller in writing that it is extending EDA’s Investigations for an additional sixty (60) days.

4. Insurance; Risk of Loss. Seller 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, Seller shall immediately give EDA notice of such condemnation, taking or damage. After receipt of notice of such condemnation, taking or damage (from Seller or otherwise), EDA shall have the option (to be exercised in writing within thirty (30) days of receipt of such notice) either (a) to require Seller to (i) convey the Property at Closing (as defined in Section 6) to EDA 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 EDA at Closing all of Seller’s right, title and interest in and to any claims Seller 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, subject at all times to the terms and conditions of the Lease, and (iii) pay to EDA 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, subject at all times to the terms and conditions of the Lease, or (b) to terminate this Agreement by giving notice of such termination to Seller, whereupon this Agreement shall be terminated and thereafter neither party shall have any further obligations to the other, except for such obligations and liabilities that specifically 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.
5. **Contingencies.**

5.1. **EDA’s Contingencies.**

A. Unless waived by EDA in writing or waived by the passage of time in the manner set forth herein, EDA’s obligation to proceed to Closing shall be subject to (a) performance by Seller of its obligations hereunder, (b) the continued accuracy of Seller’s representations and warranties provided in Section 9.1, and (c) EDA’s satisfaction, in EDA’s sole discretion, as to the contingencies described in this Section 5.1 within the time periods set forth below:

1. On or before ninety (90) days following the Effective Date, EDA shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by EDA’s Investigations, EDA’s physical and environmental inspections of the Property (including, but not limited to surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property), (b) all costs associated with the mitigation, remediation, and clean-up related to the EDA Investigations, and (c) all other inspections and due diligence regarding the Property, including any Due Diligence Materials. Notwithstanding the foregoing, any acceptance by Buyer pursuant to this Section 5.1.A.(1) shall be subject to Section 11.2. If EDA has not terminated this Agreement on or before the Contingency Date, the contingency set forth in this paragraph shall be deemed waived.

If there is an Extension of EDA’s Investigations, then on or before one hundred fifty (150) days following the Effective Date, EDA shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by EDA’s Investigations, EDA’s physical and environmental inspections of the Property (including, but not limited to 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. Notwithstanding the foregoing, any acceptance by Buyer pursuant to this Section 5.1.A.(1) shall be subject to Section 11.2. If EDA has not terminated this Agreement on or before the Contingency Date, the contingency set forth in this paragraph shall be deemed waived.

2. On or before ninety (90) days following the Effective Date, EDA shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to EDA in EDA’s sole discretion, not disclosing any encumbrance not acceptable to EDA in EDA’s sole discretion (the
“Approved Commitment”). If EDA has not terminated this Agreement on or before the Contingency Date, the contingency set forth in this paragraph shall be deemed waived.

(3) On or before ninety (90) days following the Effective Date, EDA shall obtain an ALTA survey for the Property certified to EDA and Title.

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

(5) On or before the Closing Date, Seller shall have obtained all valid, necessary and sufficient waivers, assignments, subordinations, non-disturbance, attornments, approvals, authorizations, estoppel certificates and consents of each and every party whose waiver, subordination, non-disturbance, attornment, approval, authorization, estoppel certificate or consent shall be required to transfer the Property and consummate the transactions contemplated by this Agreement.

(6) On or before the Closing Date, Seller shall execute an assignment and assumption of surviving contracts, permits and licenses, warranties, and intangible property conveying to EDA with warranties the surviving contracts, permits and licenses, warranties and intangible property, free and clear of all encumbrances, together with the consent of all parties having the right to consent to such assignment, if necessary.

(7) On or before the Closing Date, Seller shall execute a Bring-Down Certificate certifying that all of the warranties and representations made by Seller in this Agreement remain true as of the date of closing.

(8) On or before the Closing Date, the termination or elimination of any and all option to purchase rights, Rights of First Refusal, or Rights of First Offer related to the Property to the satisfaction of the EDA.

The foregoing contingencies are for EDA’s sole and exclusive benefit and one (1) or more may be waived in writing by EDA in its sole discretion, or by the passage of time as set forth hereinabove. Seller shall reasonably cooperate with EDA’s efforts to satisfy such contingencies, at no out of pocket cost to Seller or assumption of any obligation or liability by EDA. EDA shall bear all cost and expense of satisfying EDA’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 EDA’s option, by written notice from EDA to Seller. If EDA terminates this Agreement as a result of a failure of an EDA contingency prior to the applicable date, the Earnest Money shall be returned to
the EDA and neither Seller nor the EDA shall be liable to the other for any further obligations under this Agreement (except for such obligations as survive termination of this Agreement). Such written notice must be given on or before the applicable date set forth herein above for such contingency, or EDA’s right to terminate this Agreement pursuant to such contingency shall be waived. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations that survive termination of this Agreement.

B. If EDA elects not to exercise any of the contingencies set out herein, such election may not be construed as limiting any representations or obligations of Seller set out in this Agreement.

C. As used in this Agreement, the “Contingency Date” shall mean the first (1st) business day occurring ninety (90) days following the Effective Date.

5.2 **Seller’s Contingencies.** Seller’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. EDA 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 EDA contained in this Agreement shall be accurate as of the Closing Date.

C. On or before the Closing Date, the termination or elimination of any and all option to purchase rights, Rights of First Refusal, or Rights of First Offer related to the Property, upon terms and conditions satisfactory to Seller in its sole and absolute discretion.

Seller may in its sole discretion waive any of the conditions precedent set out in this Section. If any of the foregoing contingencies have not been satisfied on or before the dates set forth herein, then this Agreement may be terminated, at Seller’s sole option, by written notice from Seller to EDA. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations that survive termination of this Agreement.

6. **Closing.** Unless modified by the agreement between the parties hereto, or extended as set forth herein, the closing of the purchase and sale contemplated by this Agreement (the “Closing”) shall occur no later than June 30, 2020 (the “Closing Date”). Seller agrees to deliver legal and actual possession of the Property. Closing shall occur at Title.

6.1 **Seller’s Closing Documents and Deliveries.** On the Closing Date, Seller shall execute and/or deliver, as applicable, to EDA the following:
A. **Warranty Deed.** A warranty deed conveying title to the Property to EDA, free and clear of all encumbrances, except the Permitted Encumbrances (the “Deed”).

B. **Assignment of Security Deposit (if applicable).** Seller shall assign any Security Deposits that have been made by the Tenant under the Lease of the Property and any accumulated interest on said accounts to EDA.

C. **Assignment of Lease and Guaranties.** Seller shall execute an assignment of the Lease and any related guaranties conveying to EDA with warranties, guaranties and any security deposits, prepaid rents or collections in force as of the Closing Date, free and clear of all encumbrances.

D. **Assignment and Assumption of Contracts, Permits and Licenses.** Seller shall execute an assignment and assumption of surviving contracts, permits and licenses, warranties, and intangible property conveying to EDA with warranties the surviving contracts, permits and licenses, warranties and intangible property, free and clear of all encumbrances, together with the consent of all parties having the right to consent to such assignment, if necessary.

E. **FIRPTA Affidavit.** An affidavit of Seller certifying that Seller 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.

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

G. **Settlement Statement.** A settlement statement with respect to this transaction.

H. **“Bring-Down” Certificate.** A Bring-Down Certificate certifying that all of the warranties made by Seller in this Agreement remain true as of the date of closing.

I. **General Deliveries.** All other documents reasonably determined by Title to be necessary to transfer the Property to EDA and to evidence that Seller (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 Seller’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 to be necessary to issue policies of title insurance to EDA with respect to the Property with the so-called “standard exceptions” deleted (excluding the survey exception), and (e) has duly authorized the transactions contemplated hereby.

6.2. **EDA Closing Documents and Deliveries.** On the Closing Date, EDA shall execute and/or deliver, as applicable, to Seller the following:

A. **Payment of Purchase Price.** The Purchase Price, in accordance with the terms of Section 1.2.

B. **Settlement Statement.** A settlement statement with respect to this transaction.

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

7. **Prorations.** Seller and EDA agree to the following prorations and allocation of costs regarding this Agreement:

7.1 **Commitment and Closing Fee.** Seller will pay all costs of the title search and preparation of the Commitment with respect to the Property. EDA will pay the cost of all premiums for any title insurance policy it desires with respect to the Property, and the costs of all endorsements. EDA and Seller shall each pay one half (1/2) of any reasonable closing fee or charge imposed by Title.

7.2 **Transfer Taxes.** Seller shall pay all state deed tax regarding the Deed.

7.3 **Recording Costs.** Seller will pay the cost of recording all documents necessary to place record title to the Property in Seller. EDA will pay all recording costs with respect to the recording of the Deed and the Assignment of Lease.

7.4 **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 Seller and EDA on a daily basis as of 12:00 a.m. CT on the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and EDA being responsible for those allocable to the Closing Date and subsequent thereto. Except as set forth herein with regard to special assessments associated with EDA’s development of the Property, Buyer 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. EDA shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date. Notwithstanding anything to the contrary set forth herein, in the event that there are special assessments levied against the Property after the Effective Date, which special assessment relate to EDA’s development of the Property, such special assessments shall be assumed by EDA at Closing.

7.5 **Environmental Review.** EDA shall pay all costs and expenses related to the Phase I and/or the Phase II Environmental Review of the Property.

7.6 **Rental Income.** All rental income of the Property shall be prorated between Seller and EDA as of 12:00 a.m. CT on the Closing Date, with Seller receiving those rents allocable to the period prior to the Closing Date and EDA receiving those rents allocable after the Closing Date and subsequent thereto.

7.7 **Attorneys’ Fees.** Seller and EDA shall each pay its own attorneys’ fees incurred in connection with this transaction.

7.8 **Survival.** The obligations set forth in this Section 7 survive the Closing.

8. **Survey Examination.** Within twenty (20) days following the Effective Date, EDA shall, at EDA’s expense, order an ALTA survey.

8.1 **EDA’s Objections.** Within twenty (20) days after EDA’s receipt of the Commitment and ALTA survey, EDA may make written objections (“Objections”) to the form or content of the Commitment and ALTA survey (“Title Objection Period”). The Objections may include without limitation, any easements, restrictions or other matters. In the event the Commitment discloses, or EDA becomes aware of, any lien on the Property created by Seller that can be discharged or satisfied by the payment of money (“Monetary Title Matters”), Seller shall discharge or satisfy such Monetary Title Matters on or prior to the Closing Date. If Seller fails to discharge or satisfy any such Monetary Title Matters as aforesaid, EDA, at its sole option, and in addition to any other rights and remedies it may have under this Agreement, at law and/or in equity, shall have the right to discharge and satisfy (or cause the Escrow Agent to discharge and satisfy) the same from the proceeds of the Purchase Price to be paid to Seller at closing. Any matters reflected on the Commitment and ALTA survey which are not objected to by EDA within the Title Objection Period or waived by EDA in accordance with Section 8.2(B) shall be deemed to be permitted encumbrances (“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, if any; (b) Reservation of minerals or mineral rights by the State of Minnesota, if any; (c) Applicable laws, ordinances, and regulations. EDA shall have the renewed right to object to the Commitment and ALTA survey as the same may be revised from time to time, as to new items contained in any revised Commitment and ALTA survey.
8.2 **Seller’s Cure.** Seller shall be allowed twenty (20) days after the receipt of EDA’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 Seller elects not to cure such Objections, the sole recourse of EDA shall be to do one of the following:

A. Terminate this Agreement by written notice to Seller, to be issued within ten (10) days after the expiration of Seller’s cure period; or.

B. Waive the Objections within ten (10) days after the expiration of the Seller’s cure period and proceed to Closing, in which event the Objections shall be deemed Permitted Encumbrances.

If EDA so terminates this Agreement under this Section 8.2, the Earnest Money shall be returned to the EDA and neither Seller nor the EDA shall be liable to the other for any further obligations under this Agreement (except for such obligations as specifically survive termination of this Agreement). If EDA fails to terminate this Agreement under this Section 8.2(A) in the time set forth therein, EDA shall be deemed to have elected to proceed under Section 8.2(B) and waive such Objections, in which the Objections shall be considered Permitted Encumbrances.

9. **Warranties and Representations.**

9.1 **By Seller.** Seller warrants and represents the following to EDA to be true as of the Effective Date, and acknowledges that EDA 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 Seller enforceable in accordance with its terms. Seller 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 Seller pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto have each been duly authorized by all necessary action on the part of Seller and such execution, delivery and performance does and will not conflict with or result in a violation of Seller’s organizational agreement or any judgment or order.

B. The execution, delivery and performance by Seller 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 Seller, 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 Seller is a party or by which it or any of its properties may be bound.

C. To Seller’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 Seller 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.

D. To Seller’s knowledge, there are no actions, suits or proceedings pending or threatened against or affecting Seller or the Property, 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 Seller, would have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

E. To Seller’s knowledge, there are no wells or sewage treatment systems located on any portion of the Property. To Seller’s knowledge, there has been no methamphetamine production on or about any portion of the Property. To Seller’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.

F. Seller 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.

G. To Seller’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 Seller’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.

H. Except for the Lease, there are no unrecorded contracts of any nature or type relating to, affecting or serving the Property, to which the Seller is a party.

I. There will be no indebtedness attributable to the Property which will remain unpaid after the Closing Date.

The representations, warranties and other provisions of this Section 9.1 shall survive Closing for a period of one (1) year from the Closing Date; provided, however that Seller shall have no liability with respect to a breach of the representations and warranties set forth in this Agreement if EDA has actual knowledge of Seller’s breach thereof prior to Closing and EDA consummates the acquisition of the Property as provided herein.

EDA acknowledges and agrees that, except as expressly specified in this Section 9 of this Agreement, Seller has not made, and Seller hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or rising 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 (as the same is defined by Section 11 of this Agreement), 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 Seller to EDA, or any other matter or item regarding the Property. Subject to Environmental Investigation or Study and the Environmental Mitigation or Remediation, as stated in Section 11.2 hereof, and the potential cost obligation of Seller as provided in Section 11.2 hereof, Buyer agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by Seller on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. Buyer is an experienced purchaser of property such as the Property and Buyer 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.
9.2 **By EDA.** EDA warrants and represents the following to Seller, and acknowledges that Seller has relied on such representations and warranties in agreeing to enter into this Agreement:

A. EDA has 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 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, (b) violate or contravene any provision of the articles of incorporation or bylaws of EDA, 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 EDA is a party or by which it or any of its properties may be bound.

The representations, warranties and other provisions of this Section 9.2 shall survive Closing; provided, however, EDA shall have no liability with respect to any breach of a particular representation or warranty if Seller shall fail to notify EDA in writing of such breach within one (1) year after the Closing Date.

10. **Additional Obligations of Seller.**

10.1 **Licenses and Permits.** Seller shall transfer to EDA all transferable rights, if any, in any permits or licenses held by Seller with respect to the Property. Seller shall execute all applicable transfer forms and applications to facilitate and affect any such transfer and to cooperate fully with EDA in its efforts to obtain all of the necessary licenses and permits for the Proposed Use.

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

10.3 **Non-Assumption of Contracts or Other Obligations.** The parties understand and agree that EDA is only acquiring certain of Seller’s real property assets and that this Agreement and any related agreements shall not be construed to be in any manner whatsoever an assumption by EDA of any agreements, indebtedness, obligations or liabilities of Seller which are owing with respect to the operation of the Property prior to the Closing Date.

10.4 **Mortgages.** On or before the Closing Date, Seller shall satisfy all mortgage and/or lien indebtedness with respect to all or any portion of the Property and shall obtain recordable releases of the Property from any and all such mortgages or other liens affecting all or any portion of the Property. Notwithstanding the foregoing, Seller
shall not be obligated to satisfy any liens that result from the EDA’s Investigations.

10.5 **Marketing.** At all times prior to the Closing Date, Seller shall not negotiate in any manner for the sale or transfer of the Property with any third party, except with as set forth in the Lease.

11. **Environmental Matters.**

11.1 **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. **“Seller-Caused 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 by the Seller or any employee, officer, assignee, lessee, affiliate, or other agent of the Seller prior to the Closing Date.

11.2 **Purchase Price Reduction for Seller-Caused Environmental Conditions.** Any State of Minnesota mandated environmental mitigation, remediation, and clean-up needed of the Property for Seller-Caused Environmental Conditions (“Environmental Remediation”) shall be defined in an approved Response Action
Plan ("RAP"), prepared at Buyer’s sole expense. Such RAP shall include an estimate of costs for mitigation, remediation, and clean-up specific to Seller-Caused Environmental Conditions ("Remediation Costs"). Notwithstanding the foregoing, the purchase price to be paid at closing shall be reduced by the amount of the Remediation Costs up to Two Hundred Fifty Thousand and no/100 Dollars ($250,000.00). If Remediation Costs exceed Two Hundred Fifty Thousand and no/100 Dollars ($250,000.00), EDA has the option in its sole discretion to terminate this Agreement pursuant to Section 5.1(A)(1).

11.3 **Reporting Requirements.** Seller and buyer agree to comply with all reporting requirements set out in any Environmental Law.

12. **Broker.** It is acknowledged that there is not a broker for EDA. Seller has a broker and all fees to the broker will be paid by Seller.

13. **Notice.** 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
Attn: Ryan Garcia, Executive Director
125 3rd Avenue North
South St. Paul, MN  55075

with a copy to: Korine L. Land
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN  55075

If to Seller: JBL Properties, LLC
139 Grand Avenue East
South St. Paul, MN 55075

with copy to: __________________________
______________________________
______________________________

14. **Default; Remedies.** If either Seller or EDA fails to perform any of its obligations under this Agreement in accordance with its terms, and such failing party does not cure such failure within thirty (30) days after written notice thereof from the other party (provided that no notice or cure period shall be required for obligations to be performed at Closing),
then the other party shall have the right to terminate this Agreement by giving the failing party written notice of such election. In the case of any default by EDA, Seller’s sole and exclusive remedy shall be the termination of this Agreement as provided above and, upon any such termination, the Earnest Money shall be forfeited to Seller as the full and final liquidated damages, with the exception of any liens arising out of EDA’s Investigations, the obligations and liability for which shall survive the termination of this Agreement and the release of the Earnest Money to Seller. In the case of any default by Seller, EDA’s sole and exclusive remedy shall be to terminate this Agreement, in which case the Earnest Money deposit shall be returned to EDA. In no event shall EDA be entitled to record a notice of Lis Pendens against the Property.

15. **Cumulative Rights.** No right or remedy conferred or reserved to Seller or EDA is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative in and in addition to every other right or remedy existing at law, in equity or by statute, now or hereafter.

16. **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, except as specifically set forth herein with regard to items waived as a result of passage of time.

17. **Binding Effect; Survival.** This Agreement binds and benefits the parties and their respective successors and assigns. All representations and warranties, and indemnification obligations of the parties hereto shall survive the Closing.

18. **EDA’s Assignment.** Following the occurrence of the Contingency Date, EDA may assign this Agreement without the prior written consent of the Seller (but with written notice to Seller). No assignment shall relieve EDA from its obligations under this Agreement.

19. **Governing Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, County of Dakota.

20. **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.

21. **Represented by Counsel.** Each party has been represented and advised by counsel in the transaction contemplated hereby.

22. **Time of the Essence.** Time is of the essence of this Agreement.
IN AGREEMENT, the parties hereto have hereunto set their hands as of the date hereinbefore first written.

SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY (EDA)

By: __________________________
    James P. Francis
Its:    President

By: __________________________
    Ryan Garcia
Its:    Executive Director
JBL PROPERTIES, LLC (SELLER)

By: ___________________________

Its:
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That part of Lots 1,2,3,4,5,6, and 7, Auditor’s Subdivision No. 8, and that part of Government Lots 5 and 6, Section 22, Township 28, Range 22, described as follows:

Commencing at the Southeast corner (or most Easterly corner) of Block 1, Stockyards Rearrangement of Blocks One, Two, Three, Four, Five, Six, Seven, Eight, Nine Ten, Eleven, and Twelve of South St. Paul, (hereinafter referred to as Stockyards Re-arrangement), thence Southeasterly along the Southeasterly extension of the Northeasterly line of said Block 1 a distance of 33.17 feet; thence Northeasterly along a line parallel with the Northeasterly extension of the Southeasterly line of said Block 1, Stockyards Rearrangement, (said line to be hereinafter referred to as Line A) a distance of 309.0 feet, the point of beginning of the parcel of land to be described, thence Northwesterly, at right angle a distance of 421.08 feet; thence Northeasterly, at right angle a distance of 177.0 feet to its intersection with a line 20 feet Northeasterly of the Northeasterly line of the SWIFT CHEMICAL COMPANY property; thence Northwesterly, at right angle a distance of 785.40 feet; thence Northeasterly, at right angle a distance of 103.66 feet to the Southwesterly right of way line of the Chicago Northwestern Railroad; thence Southeasterly, deflecting to the right 62° 02’ 11” along said Chicago Northwestern Railroad right of way line a distance of 181.13 feet; thence Southeasterly a distance of 55.11 feet along a tangential curve concave to the Southwest having a radius of 340.61 feet and a central angle of 9° 16’ 14” to an intersection with a line erected Northwesterly at a 90° angle from a point on the Northeasterly extension of said Line A distant 389.00 feet Northwesterly to the point of beginning; thence Southeasterly along said erected line a distance of 995.94 feet to the Northeasterly extension of said Line A; thence Southwesterly along said extension of Line A a distance of 389.00 feet to the point of beginning.

EXCEPT: That part of Lots 3,5,6 and 7, Auditors Subdivision No. 8, according to the recorded plat on file in the office of the County Recorder, Dakota County, Minnesota, described as follows: Commencing at the Southeast corner of Block 1, The Stockyards Rearrangement of Blocks one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of South St. Paul, according to the recorded plat thereof on file in the office of the County Recorder, Dakota County Minnesota; thence Southeasterly along the Easterly line of said Block 1 produced 33.17 feet; thence Northeasterly at right angle of 309.00 feet, to the point of beginning of the parcel to be described; thence Northwesterly at right angle 421.08 feet; thence Northeasterly at right angle 200.00 feet; thence Southeasterly at right angle 421.08 feet; thence Southwesterly at right angle 200.00 feet, to the point of beginning and there terminating.

Abstract Property

[Title Commitment legal description to govern]