City of South St. Paul
Economic Development Authority Agenda
Monday, June 29, 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: 133 880 3150

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 June 1, 2020
   B. Acknowledging and Consenting to a Modified Debt Repayment Schedule by CLIMB
      Theater, Resolution 2020 – 9
   C. Approval of Conflict Waiver with LeVander, Gillen and Miller

5. GENERAL BUSINESS:
   A. Review and Action on a proposed fence in the Wilson Heights Subdivision—1445 &
      1455 Stickney Avenue
   B. Approval of First Amendment to Purchase Agreement with JBL Properties, LLC
   C. Approval of Lease Agreement with JBL Properties, LLC
   D. Approval of Purchase Agreement with Beard Group, Inc
E. Discussion and Preliminary Guidance – 2021 Budget

F. Review and Action on a proposed fence in the Wentworth Hollow Subdivision – 700 Wentworth Avenue

6. ITEMS FOR FUTURE FOLLOW-UP:

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

7. ADJOURNMENT:

Respectfully Submitted,

Ryan Garcia, EDA Executive Director
1. **CALL TO ORDER**

President Francis called the meeting to order at 9:35 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, City Planner / Zoning Administrator Michael Healy, and Legal Counsel Peter Mikhail.

3. **AGENDA**

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

Motion carried 7 ayes / 0 nays

4. **CONSENT**

A. EDA Meeting Minutes of May 4, 2020

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

Motion carried 7 ayes / 0 nays

5. **GENERAL BUSINESS**

A. Approval of Amendment #1 to Development Agreement – 121 Hardman Court.

Mr. Garcia provided an overview of the proposed amendment to the development agreement, which proposes a reduction in purchase price from $210,000 to $173,000. The purchase price reduction is proposed to compensate for the additional, unforeseen expense of expanding a
stormwater management area which would accommodate development of 121 Hardman Court and the neighboring EDA-owned 285 Hardman Court.

Motion/Second: Commissioner Seaberg moved and Commissioner Flatley seconded a motion to approve Amendment #1 to the Development Agreement, subject to minor modifications by the City’s Legal Counsel.

Motion carried 7 ayes/0 nays

B. Review and action on a proposed fence in the Wilson Heights Subdivision

Mr. Garcia reported that per the recorded covenants that encumber all property in the Wilson Heights neighborhood, the South St. Paul Housing and Redevelopment Authority (HRA) is designated as the Architectural Committee and that no fence may be constructed in this neighborhood without first being reviewed and approved by the Architectural Committee. In 2015, the City Council passed a resolution that transferred most of the HRA’s roles and responsibilities to the EDA.

Adjoining property owners at 1445 and 1455 North Stickney Avenue have requested review and approval of fencing at both properties. Discussion ensued, with several neighborhood members expressing a desire for additional diligence and discussion about whether the proposed fences were consistent with the spirit and intent of the recorded covenants. Several EDA commissioners also expressed a desire for additional neighborhood involvement prior to responding formally to the request.

The EDA resolved to direct staff to coordinate additional opportunity for the neighborhood to discuss the request and the covenants and moved to continue the action on the request to a future EDA meeting.

Motion/Second: Commissioner Kaliszewski moved and Commissioner Hanson seconded a motion to continue action on the request to a future EDA meeting, after engaging the neighborhood in an opportunity to provide additional input on the proposal. Included in the motion was direction to include Commissioners Forester and Kaliszewski in any neighborhood meetings coordinated in relation to this request.

Motion carried 7 ayes/0 nays

6. FUTURE FOLLOW-UP ITEMS

Commissioner Seaberg requested an update on a Planned Unit Development and Preliminary Plat that was approved by the City Council in January 2020. Mr. Garcia relayed that the developer had not yet submitted a Final Plat application nor the additional site plan information required of their PUD approval, and that the deadline to do so was August 2020.

7. ADJOURNMENT
Motion/Second: Commissioner Seaberg moved and Commissioner Forester seconded the motion to adjourn the meeting at 10:44 PM.

Motion carried 7 ayes/ 0 nays

Approved: June 29, 2020

Renee Schmitt
Renee Schmitt, Secretary
Agenda Item: Acknowledging and Consenting to a Modified Debt Repayment Schedule by CLIMB Theater, Resolution 2020 - 9

Action to be considered:
Through Consent, motion to approve Resolution 2020 - 9.

Overview:
In 2008, the HRA agreed to issue conduit debt to the CLIMB Theater for the purposes of refinancing a residential property located at 326 First Avenue South and their office and rehearsal facility in Inver Grove Heights. Essentially, the HRA lent their name to the issuance of a note (issued by Vermillion State Bank) to CLIMB so that the interest rate (being tax exempt) would be more affordable for the borrower. The HRA has no payment obligation or exposure, nor does it collect any debt payment, with relation to this note.

CLIMB Theater has requested a 6-month interest only schedule for their debt repayment to Vermillion, due to a drastic reduction in revenue since the onset of COVID-19 (they work closely with schools on performing arts classes, etc). Vermillion has agreed to this adjustment, and CLIMB has remained steady and current up to this point in repaying the note. The current balance is just over $170,000, and it is due to be paid in full by 2023.

Staff feels it would be best to document the EDA’s acknowledgement of and consent to this modification, thus we have prepared Resolution 2020 – 9 for your approval.

Funding Sources and other fiscal considerations:
N/A.
South St. Paul Economic Development Authority
Dakota County, Minnesota

RESOLUTION NO. 2020-9

WHEREAS, the City Council transferred all administration of the South St. Paul Housing and Redevelopment Authority (“HRA”) programs and projects to the South St. Paul Economic Development Authority (“EDA”) by City Council Resolution 2015-197; and

WHEREAS, one such project involved the extension of conduit debt to the benefit of Climb Theater for reinvestment in real property located in South St. Paul and in Inver Grove Heights (the “Project”); and

WHEREAS, on May 13, 2008 the HRA adopted Resolution Number 08-2951 which approved the issuance and sale of a commercial facility revenue note which provided low-cost financing (the “Debt”) for the Project; and

WHEREAS, Vermillion State Bank (“Bank”) holds the Note on the Debt and Climb Theater has faithfully serviced the Debt since 2008; and

WHEREAS, in March of 2020, the COVID-19 Pandemic was declared a National, State, and Local emergency and had broad-ranging impacts on for-profit and non-profit entities within the community, including Climb Theater; and

WHEREAS, Climb Theater requested and Vermillion State Bank has agreed to provide a 6-month interest-only period on the Note, through extension of a modified note which runs from June 4, 2020 through December 4, 2020 and is identified by the Bank as loan number 54187722; and

WHEREAS, at the conclusion of the aforesaid six-month interest-only period, repayment of the Debt will continue unabated, and the maturity date of the Debt will be extended by six months; and

WHEREAS, the EDA finds that there is no financial or practical harm or risk to the EDA by consenting to this modification to the debt; and

NOW, THEREFORE, BE IT RESOLVED by the Economic Development Authority of the City of South St. Paul that the EDA acknowledges and consents to the modification to the Debt proposed by Vermillion State Bank.

Adopted this 29th day of June, 2020.

______________________________  _________________________________
President, James P. Francis     Executive Director, Ryan Garcia
RESOLUTION NO. 08-2951

RESOLUTION APPROVING THE ISSUANCE AND SALE OF A COMMERCIAL FACILITY REVENUE NOTE, SERIES 2008 AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING THERETO (CLIMB THEATRE, INC. PROJECT)

WHEREAS,

(a) The purpose of Minnesota Statutes, Chapter 469.152 to 469.1651 (the “Act”), as found and determined by the legislature, is to promote the welfare of the state by the active attraction and encouragement and development of economically sound industry and commerce to prevent so far as possible the emergence of blighted and marginal lands and areas of chronic unemployment;

(b) Factors necessitating the active promotion and development of economically sound industry and commerce are the increasing concentration of population in the metropolitan areas and the rapidly rising increase in the amount and cost of governmental services required to meet the needs of the increased population and the need for development of land use which will provide an adequate tax base to finance these increased costs and the need for access to employment opportunities for such population;

(c) The Board of Commissioners of the Housing and Redevelopment Authority in and for the City of South St. Paul, Minnesota (the “HRA”) has received from CLIMB Theatre, Inc., a Minnesota nonprofit corporation organized under the laws of the State of Minnesota (the “Borrower”), a proposal that the HRA assist in financing a Project hereinafter described through the issuance of a Revenue Note, referred to in this resolution as the “Revenue Note” or “Note”, pursuant to the Act;

(d) The HRA desires to facilitate the selective development of the community, retain and improve the tax base and help to provide the range of services and employment opportunities required by the population, including theater services; and the Project will assist the HRA in achieving those objectives and will enhance the image and reputation of the community;

(e) The Project to be financed or refinanced by the Revenue Note is the refinancing an approximately 2,928 square foot temporary housing facility for student interns located at 326 First Avenue South in the City of South St. Paul (the “City”) and an approximately 15,000 square foot office and rehearsal space facility located at 6415 Carmen Avenue East in the City of Inver Grove Heights, Minnesota (the “Project”). The Project will be owned and operated by the Borrower;

(f) The HRA has been advised by representatives of the Borrower that conventional, commercial financing to pay the capital cost of the Project is available only on a limited basis and at such high costs of borrowing that the economic feasibility of operating the Project would be significantly reduced;
(g) No public official of the HRA has either a direct or indirect financial interest in the Project nor will any public official either directly or indirectly benefit financially from the Project; and

(h) A public hearing on the Project was held May 13, 2008, after notice was published and materials made available for public inspection at the City Hall, all as required by the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended, at which public hearing all those appearing who desired to speak were heard and written comments were accepted.

BE IT RESOLVED by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of South St. Paul, Minnesota (the "HRA"), as follows:

SECTION 1. LEGAL AUTHORIZATION AND FINDINGS.

1.1 Findings. The HRA hereby finds, determines and declares as follows:

(a) The HRA is a body corporate and politic and a political subdivision of the State of Minnesota and is authorized under the Act to assist the revenue producing project herein referred to, and to issue and sell the Note, as hereinafter defined, for the purpose, in the manner and upon the terms and conditions set forth in the Act and in this Resolution.

(b) The issuance and sale of the Commercial Facility Revenue Note, Series 2008 (CLIMB Theatre, Inc. Project) (the "Note") by the HRA, pursuant to the Act, is in the best interest of the HRA, and the HRA hereby determines to issue the Note and to sell the Note to Vermillion State Bank in Vermillion, Minnesota or another local bank (the "Lender"), as provided herein. The HRA will loan the proceeds of the Note (the "Loan") to the Borrower in order to finance the Project.

(c) Pursuant to a Loan Agreement (the "Loan Agreement") to be entered into between the HRA and the Borrower, the Borrower has agreed to repay the Note in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Note. In addition, the Loan Agreement contains provisions relating to the maintenance and operation of the Project, indemnification, insurance, and other agreements and covenants which are required or permitted by the Act and which the HRA and the Borrower deem necessary or desirable for the financing of the Project. A draft of the Loan Agreement has been submitted to the Board of Commissioners.

(d) Pursuant to a Pledge Agreement (the "Pledge Agreement") to be entered into between the HRA and the Lender, the HRA has pledged and granted a security interest in all of its rights, title, and interest in the Loan Agreement to the Lender (except for certain rights of indemnification and to reimbursement for certain costs and expenses). A draft of the Pledge Agreement has been submitted to the Board of Commissioners.
(e) Pursuant to a Mortgage, Security Agreement and Fixture Financing Statement (the "Mortgage") to be executed by the Borrower in favor of the Lender, the Borrower has secured payment of amounts due under the Loan Agreement and Note by granting to the Lender a mortgage and security interest in the property described therein. A draft of the Mortgage has been submitted to the Board of Commissioners.

(f) The Note will be a special limited obligation of the HRA. The Note shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the HRA or the City be subject to any liability thereon. No holder of the Note shall ever have the right to compel any exercise of the taxing power of the HRA or the City to pay the Note or the interest thereon, nor to enforce payment thereof against any property of the HRA or the City. The Note shall not constitute a debt of the HRA or the City within the meaning of any constitutional or statutory limitation.

(g) On the basis of information available to this Board it appears, and the Board hereby finds, that the Project constitutes properties, real and personal, used or useful in connection with one or more revenue producing enterprises within the meaning of Subdivision 2(b) of Section 469.153 of the Act; that the Project furthers the purposes stated in Section 469.152; that the availability of the financing under the Act and willingness of the HRA to furnish such financing will be a substantial inducement to the Borrower to undertake the Project, and that the effect of the Project, if undertaken, will be to assist in the prevention of the emergence of blighted and marginal land, to help prevent chronic unemployment, to help the surrounding area retain and eventually improve the tax base, to provide the range of service and employment opportunities required by the population, to help prevent the movement of talented and educated persons out of the state and to areas within the State where their services may not be as effectively used, and to promote more intensive development and use of land within the City and surrounding communities.

(h) It is desirable, feasible and consistent with the objects and purposes of the Act to issue the Note, for the purpose of financing the costs of the Project.

1.2 Authorization and Ratification of Project. The HRA hereby authorizes the Borrower, in accordance with the provisions of the Act and subject to the terms and conditions imposed by the Lender, to provide for the acquisition and improvement of the Project by such means as shall be available to the Borrower and in the manner determined by the Borrower, and without advertisement for bids as may be required for the construction and acquisition of other municipal facilities, and the HRA hereby ratifies, affirms, and approves all actions heretofore taken by the Borrower consistent with and in anticipation of such authority.

SECTION 2. THE NOTE.

2.1 Authorized Amount and Form of Note. The Note issued pursuant to this Resolution shall be in substantially the form submitted to the Board of Commissioners with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof, and the total aggregate principal amount of the Note that may be outstanding hereunder is expressly limited to $800,000, unless a duplicate
Note is issued pursuant to Section 2.7. The Note shall bear interest at a variable rate as set forth therein.

2.2 The Note. The Note shall be dated as of the date of delivery to the Lender, shall be payable at the times and in the manner, shall bear interest at the rate, and shall be subject to such other terms and conditions as are set forth therein.

2.3 Execution. The Note shall be executed on behalf of the HRA by the signatures of its Chair and Executive Director and shall be sealed with the seal of the HRA; provided that the seal may be intentionally omitted as provided by law. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if it had remained in office until delivery. In the event of the absence or disability of the Chair or the Executive Director such officers of the HRA as, in the opinion of the HRA Attorney, may act in their behalf, shall without further act or authorization of the Board of Commissioners execute and deliver the Note.

2.4 Delivery of Initial Note. Before delivery of the Note there shall be filed with the Lender (except to the extent waived by the Lender) the following items:

(1) an executed copy of each of the following documents:
   (a) the Loan Agreement;
   (b) the Pledge Agreement;
   (c) the Mortgage;

(2) an opinion of Counsel for the Borrower as prescribed by the Lender and Bond Counsel;

(3) the opinion of Bond Counsel as to the validity and tax exempt status of the Note;

(4) a 501(c)(3) determination letter from the Internal Revenue Service evidencing that the Borrower is exempt from income taxation under Section 501(c)(3) of the Code;

(5) such other documents and opinions as Bond Counsel may reasonably require for purposes of rendering its opinion required in subsection (3) above or that the Lender may reasonably require for the closing.

2.5 Disposition of Proceeds of the Note. Upon delivery of the Note to Lender, the Lender shall, on behalf of the HRA, disburse the proceeds of the Note for payment of Project Costs in accordance with the terms of the Loan Agreement.

2.6 Registration of Transfer. The HRA will cause to be kept at the office of the HRA Executive Director a Note Register in which, subject to such reasonable regulations as it may prescribe, the HRA shall provide for the registration of transfers of ownership of the Note. The
Note shall be initially registered in the name of the Lender and shall be transferable upon the Note Register by the Lender in person or by its agent duly authorized in writing, upon surrender of the Note together with a written instrument of transfer satisfactory to the Executive Director, duly executed by the Lender or its duly authorized agent. The following form of assignment shall be sufficient for said purpose.

For value received ____________ hereby sells, assigns and transfers unto ____________ the within Note of the Housing and Redevelopment Authority in and for the City of South St. Paul, Minnesota, and does hereby irrevocably constitute and appoint ____________ attorney to transfer said Note on the books of said HRA with full power of substitution in the premises. The undersigned certifies that the transfer is made in accordance with the provisions of Section 2.9 of the Resolution authorizing the issuance of the Note.

Dated: ____________________________________________________________________

Registered Owner

Upon such transfer the Executive Director shall note the date of registration and the name and address of the new Lender in the applicable Note Register and in the registration blank appearing on the Note.

2.7 Mutilated, Lost or Destroyed Note. In case the Note issued hereunder shall become mutilated or be destroyed or lost, the HRA shall, if not then prohibited by law, cause to be executed and delivered, a new Note of like outstanding principal amount, number and tenor in exchange and substitution for and upon cancellation of such mutilated Note, or in lieu of and in substitution for such Note destroyed or lost, upon the Lender’s paying the reasonable expenses and charges of the HRA in connection therewith, and in the case of a Note destroyed or lost, the filing with the HRA of evidence satisfactory to the HRA with indemnity satisfactory to it. If the mutilated, destroyed or lost Note has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Note prior to payment.

2.8 Ownership of Note. The HRA may deem and treat the person in whose name the Note is last registered in the Note Register and by notation on the Note whether or not such Note shall be overdue, as the absolute owner of such Note for the purpose of receiving payment of or on account of the Principal Balance, redemption price or interest and for all other purposes whatsoever, and the HRA shall not be affected by any notice to the contrary.

2.9 Limitation on Note Transfers. The Note will be issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Note may not be assigned or transferred in whole or part, nor may a participation interest in the Note be given pursuant to any participation agreement, except (i) in amounts not less than $100,000 and (ii) to not more than 35 persons each of whom have knowledge and experience in financial business matters and that are capable of evaluating the merits and rules of the investment in the Note and are not purchasing for more than one account or with a view to
distributing the Note or their interest therein. Any such sale, assignment or participation shall also be (i) in full good faith compliance with all applicable securities registration, broker, anti-fraud and other provisions of the applicable state and federal laws, (ii) with full and accurate disclosure of all material facts to the prospective purchaser(s) or transferee(s), and (iii) under effective federal and state registration statements (which neither the HRA nor the Borrower shall in any way be obligated to provide) or under exemptions from such registrations.

2.10 Issuance of a New Note. Subject to the provisions of Section 2.9, the HRA shall, at the request and expense of the Lender, issue a new note, in aggregate outstanding principal amount equal to that of the Note surrendered, and of like tenor except as to number, principal amount, and the amount of the semiannual installments payable thereunder, and registered in the name of the Lender or such transferee as may be designated by the Lender.

SECTION 3. MISCELLANEOUS.

3.1 Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

3.2 Authentication of Transcript. The officers of the HRA are directed to furnish to Bond Counsel certified copies of this Resolution and all documents referred to herein, and affidavits or certificates as to all other matters which are reasonably necessary to evidence the validity of the Note. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the HRA as to the correctness of all statements contained therein.

3.3 Authorization to Execute Agreements. The forms of the proposed Loan Agreement, the Pledge Agreement and the Mortgage are hereby approved in substantially the form heretofore presented to the Board of Commissioners, together with such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by Bond Counsel prior to the execution of the documents, and the Chair and Executive Director of the HRA are authorized to execute the Loan Agreement and the Pledge Agreement in the name of and on behalf of the HRA and such other documents as Bond Counsel consider appropriate in connection with the issuance of the Note. In the event of the absence or disability of the Chair or the Executive Director such officers of the HRA as, in the opinion of the HRA Attorney, may act on their behalf, shall without further act or authorization of the Board of Commissioners do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers. The execution of any instrument by the appropriate officer or officers of the HRA herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof.
3.4 Approval. In anticipation of the approval of the Project by the State of Minnesota, Department of Employment and Economic Development and all other necessary entities and the issuance of the Note to finance all or a portion of the Project, and in order that completion of the Project will not be unduly delayed when approved, the Borrower is hereby authorized to make such expenditures and advances toward payment of that portion of the costs of the Project to be financed from the proceeds of the Note as the Borrower considers necessary, including the use of interim, short term financing, subject to reimbursement from the proceeds of the Note if and when delivered but otherwise without liability on the part of the HRA.

3.5 Qualified Tax Exempt Obligation. In order to qualify the Note as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), the HRA hereby makes the following factual statements and representations;

(a) the Note is not treated as a “private activity bond” under Section 265(b)(3) of the Code;

(b) the HRA hereby designates the Note as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code;

(c) the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which will be issued by the HRA (and all entities whose obligations will be aggregated with those of the HRA) during the calendar year 2008 will not exceed $10,000,000; and

(d) not more than $10,000,000 of obligations issued by the HRA during the calendar year 2008 have been designated for purposes of Section 265(b)(3) of the Code.

Adopted by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of South St. Paul, Minnesota, this 13th day of May, 2008.

Chair

ATTEST:

Executive Director
RESOLUTION NO. 08-2950

RESOLUTION CALLING FOR A PUBLIC HEARING ON
THE ISSUANCE OF A REVENUE NOTE AND
AUTHORIZING THE PUBLICATION OF A NOTICE OF HEARING
(CLIMB THEATRE, INC. PROJECT)

(a) WHEREAS, Minnesota Statutes, Sections 469.152 through 469.1651, relating
to municipal industrial development (the “Act”), gives municipalities the power to issue revenue
obligations for the purpose of promoting the welfare of the state by the active attraction and
encouragement and development of economically sound industry and commerce to prevent so far as
possible the emergence of blighted and marginal lands and areas of chronic unemployment; and

(b) WHEREAS, the Board of Commissioners of the Housing and Redevelopment
Authority in and for the City of South St. Paul, Minnesota (the “HRA”), has received from CLIMB
Theatre, Inc., a Minnesota nonprofit corporation and 501(c)(3) organization (the “Borrower”), a
proposal that the HRA undertake a program to assist in financing a Project hereinafter described,
through the issuance of a revenue note or obligation (in one or more series) (the “Note”) pursuant to
the Act; and

(c) WHEREAS, before proceeding with consideration of the request of the
Borrower it is necessary for the HRA to hold a public hearing on the proposal pursuant to the Act:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the
Housing and Redevelopment Authority in and for the City of South St. Paul, Minnesota, as follows:

1. A public hearing on the proposal of the Borrower will be held at the time and
place set forth in the form of Notice of Public Hearing attached hereto as Exhibit A.

2. The Executive Director of the HRA is hereby authorized and directed to cause
notice of the hearing to be given one publication in the official newspaper of the HRA and a
newspaper of general circulation available in the City of South St. Paul, not less than 14 days nor more
than 30 days prior to the date fixed for the hearing, substantially in the form of the attached Notice of
Public Hearing.

Adopted by the Board of Commissioners of the Housing and Redevelopment Authority in and
for the City of South St. Paul, Minnesota, this 8th day of April, 2008.

Chair

ATTEST:

Moved by: Commissioner Grannis
Seconded by: Commissioner Hansen

April 8, 2008
3 Ayes 0 Nays

Executive Director

2199981v2
I promise to pay you, at your address listed above, the principal sum of $183,890.55, together with interest at the rate of 4.62%. The rate may not change more than 2% up or down. The amount of each scheduled payment will change. The amount of the final payment will change.

□ Open End Credit: You and I agree that I may borrow up to the maximum amount more than one time. All other conditions of this note apply to this feature. This feature expires on .

□ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 06/04/20 at the rate of 4.62% per year until DECEMBER 04, 2020.

□ Variable Rate: This rate may then change as stated below.

□ Index Rate: The future rate will be the following index rate:

□ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

□ Frequency and Timing: The rate on this note may change as often as

□ Limitations: During the term of this loan, the applicable annual interest rate will not be more than % or less than % of the index, and the rate may not change more than % each

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

The amount of each scheduled payment will change. The amount of the final payment will change.

ACCURAL METHOD: You will calculate interest on a Actual/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

□ on the same fixed or variable rate basis in effect before maturity (as indicated above).

□ at a rate equal to 18.00 %

□ LATE CHARGE: If I make a payment more than 10 days after it is due, I agree to pay a late charge of 5.000% of the payment amount with a minimum of $5.00.

□ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are not included in the principal amount above:

□ Authority: The interest rate and other charges for this loan are authorized by

PAYMENTS: I agree to pay this note as follows:

□ Interest: I agree to pay accrued interest

□ On Demand, But If No Demand Is Made Then:

□ Monthly Beginning - JULY 04, 2020

□ Principal: I agree to pay the principal

□ On Demand, But If No Demand Is Made Then:

□ At Maturity - DECEMBER 04, 2020

□ Installments: I agree to pay this note in payments. The first payment will be $ and will be due . A payment of $ will be due . The final payment of the entire unpaid balance of principal and interest will be due

ADDITIONAL TERMS:

□ SECURITY: This note is separately secured by (describe separate document by type and date):

REAL ESTATE MORTGAGE COMMERCIAL SECURITY AGREEMENT

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

SCOTT T NORMAN

PURPOSE: The purpose of this loan is

RENEW EXISTING DEBT

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2), I HAVE RECEIVED A COPY ON TODAY'S DATE.

CLIMB THEATRE, INC.

ANTON JONES, ARTISTIC DIRECTOR/ CFO

KATHERINE LANGSTON, TREASURER
REAL ESTATE OR RESIDENCE SECURITY: If I am giving you any real estate or a residence that is personal property, as security for this note, I have signed a separate security agreement. Default and your remedies may be determined by the "Default" and "Remedies" paragraphs hereon, the security agreement is not prohibited by law or contrary to the security agreement.

DEFINITIONS: As used on page 1, "I", "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and any other party) who would be liable on this note. "You" or "your" means the Lender and its successors and assigns. 

APPLICABLE LAW: Minnesota law governs this note. Any term of this note which violates Minnesota law is not effective, unless the law permits you to agree to a variation.

If any provision of this agreement is unenforceable, the rest of the agreement remains in force. I may not change this agreement without your express written consent. Time is of the essence of this agreement.

COMMISSIONS OR OTHER REMUNERATION: I understand and agree that you may receive and retain other remuneration as consideration. Any term of this note which violates Minnesota law is not effective, unless the law permits you to agree to a variation. If any provision of this agreement is unenforceable, the rest of the agreement remains in force. I may not change this agreement without your express written consent. Time is of the essence of this agreement.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve remuneration by you or paid back to you as commissions or other remuneration.

PAYMENTS: You will apply each payment I make on this note first to any amount due to you for charges which are neither interest nor principal. You will apply the rest of each payment to any unpaid interest, and then to the unpaid principal. If you and I agree to any different application of payments, we will so state in amendments to this note.

I may prepay all or part of this loan without penalty unless we agree to something different on this note. Any amendment I make will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If you give me my loan money in more than one advance, each advance will start to earn interest only when I receive it. The rate of interest on this note at any time will apply to all the money you advance at that time. Regardless of anything in this document, that may imply otherwise, I will not pay you any interest, nor will I charge you a rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the credit you give me (before or after maturity).

If you send any erroneous notice of interest, we mutually agree to correct it. If you permit any interest in excess of the law and this agreement allow, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You may not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loan or loans you may make. For example, signing an index on a note does not guarantee the rate on this note.

ACCRUAL METHOD: You will calculate the amount of interest I will pay on the outstanding principal, at the rate stated in the note. I may apply any reasonable accrued interest to calculate interest.

POST MATURITY RATE: in deciding when the "Post Maturity Rate" (as page 1 applies, "maturity" means 1.) The date of the last scheduled payment indicated on page 1 of this note, or 2) The date you accelerate payment of this note pursuant to paragraph 10.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I will make this one advance of principal. However, you may add other amounts to the principal if you make any payments described in paragraphs 4(b) and 11 of this note. You will charge me a rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the credit you give me (before or after maturity).

PAYMENT TO LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances due and thereunder give me my notice. However, you must keep separate records of all advances you make under this note.

POST MATURE: If I don't pay this loan, you have the right to accelerate payment of the balance due. I will be liable for any late charges due. You will have the right to recover all amounts due under this note, including interest, and any late charges or other sums payable under this note.

If you give any of your rights, with or without notice, it will not affect my duty to pay this note.

Any extension of credit to any of us, or renewal of this note by all or less than all of us, will not release me from my duty to pay. (Of course, you are not required to give me notice or to obtain my consent prior to renewing this note. You may extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without notice or notice. You may do this without releasing me of any liability to you under this note. I will not assign my obligations under this agreement without your prior written approval.

FINANCIAL INFORMATION: I will provide you, at your request, accurate, correct and complete financial statements or information you need.

NOTICE: Unless otherwise required by law, you will give any notice to me by delivering it or mailing it by first class mail to my latest address. I may change my address by giving you written notice of such change. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address you give me.
Agenda Item: Approval of Conflict Waiver with LeVander, Gillen, and Miller

Action to be considered:
Through Consent, motion to authorize the President and Executive Director to execute a conflict waiver with LeVander, Gillen, and Miller (LGM).

Overview:
The City Attorney’s office has notified Staff that their firm – in addition to representing the EDA on the 121 Hardman Avenue Development Agreement – also serves as legal counsel to AVM Construction (buyer of the property). This was discovered only recently, and the firm has provided the attached waiver to confirm that there has been no review of any Development Agreement documents by AVM’s counsel at LGM. This was an unintentional and unfortunate oversight in this case, but Staff is comfortable recommending authorization to execute the enclosed waiver.

Funding Sources and other fiscal considerations:
N/A.
June 24, 2020

AVM Group L.L.C.
8540 Birch Boulevard
Inver Grove Heights, MN 55076

Dear Mr. Biggs:

LeVander, Gillen & Miller (the “Firm”) represents the City of South St. Paul with respect to all civil matters, including those of the Economic Development Authority (“EDA”). As you know, the Firm has also represented AVM Group L.L.C. in general business matters.

AVM Group L.L.C. is in the process of purchasing 121 Hardman Avenue from the EDA for a development project (“Project.”) The Rules of Professional Conduct define an attorney’s duty to an existing and former client, in this case, our duties to AVM Group L.L.C. Under the Rules, the Firm cannot represent the EDA with respect to the Project without your informed consent. Further, even with your consent, the Rules prohibit the Firm from using information related to the Firm’s representation of AVM Group L.L.C. to its disadvantage.

To avoid any appearance of a potential conflict of interest, neither I nor any of the Firm’s attorneys will work on the Project and we will be screened from all aspects of the matter. With the exclusion from the matter, we respectfully request that AVM Group L.L.C. consent to the Firm’s representation of the EDA in the Project. If you consent, please sign a copy of this letter and return it to me.

Thank you for your thoughtful consideration.

Very truly yours,

Donald L. Hoefi
LeVander, Gillen & Miller, P.A.
AVM Group L.L.C. consents to the foregoing representation.

AVM Group L.L.C.

By: Andrew B. Biggs
It's: President
June 24, 2020

President James P. Francis and Members of the South St. Paul EDA
125 3rd Ave. N.
South St. Paul, MN 55075

Dear President Francis and Members of the EDA:

As you know, LeVander, Gillen & Miller (the “Firm”) represents the City of South St. Paul with respect to all civil matters, including the Economic Development Authority. Our Firm also represents AVM Group L.L.C., who is buying 121 Hardman Avenue for a development (“the Project”), in general business matters. Please be clear that the attorneys within the Firm who represent AVM Group L.L.C. have not reviewed any documents related to this Project or represented AVM Group L.L.C. in the Project.

The Rules of Professional Conduct define an attorney’s duty to an existing or former client, in this case, the duties to AVM Group L.L.C.. Under the Rules, our Firm cannot represent the EDA with respect to the Project without AVM Group L.L.C.’s informed consent. Further, even with its consent, the Rules prohibit our Firm from using information related to our representation of AVM Group L.L.C. to its disadvantage. To avoid any appearance of a potential conflict of interest, the Firm will not permit any attorneys in the Firm to work on the Project and we will screen all attorneys who represent AVM Group L.L.C. from all aspects of the Project.

With the understanding that all attorneys who represent AVM Group L.L.C. will be excluded from the matter, AVM Group L.L.C. has consented to the Firm’s continued representation of the EDA on the Project. The purpose of this letter is to inform you and request that that the EDA, too, consent to the Firm’s continued representation on the Project. We believe the Firm can continue to capably and zealously represent the EDA. Under the circumstances, we request that the City give its consent by signing a copy of this letter and returning it to me.

Thank you for your thoughtful consideration.

Very truly yours,

Korine L. Land
LeVander, Gillen & Miller, P.A.

c: Joel Hanson, City Administrator
The City of South St. Paul consents to the foregoing representation.

_____________________________________
President James P. Francis
Date: ______________________, 2020.

_____________________________________
Executive Director Ryan Garcia
Date: ______________________, 2020.
EDA Agenda Item Report

Date: June 29, 2020
EDA Executive Director: [Signature]

Agenda Item: Review and action on a proposed fence in the Wilson Heights Subdivision

Action to be considered:
The EDA has two alternatives for consideration:

Approval of a request by adjoining homeowners at 1445 and 1455 Stickney Avenue for the construction of fencing.

OR

Denial of a request by adjoining homeowners at 1445 and 1455 Stickney Avenue for the construction of fencing.

Based upon neighborhood feedback, Staff recommends denial of the request as presented.

Overview:
Two homeowners are seeking approval for the construction of a fence in the Wilson Heights Subdivision, with property addresses at 1445 and 1455 Stickney Avenue. Per the terms of Restrictive Covenants (attached) established in 2003 at the time of platting for Wilson Heights, the South St. Paul HRA serves as the “Architectural Committee”. The Covenants provide that “No fence may be constructed unless reviewed and approved by the Architectural Committee”. Council Resolution 2015-197 transferred all “control, authority, and operation” of HRA programs and projects from the HRA to the EDA. Thus, the EDA is obligated to act as the “Architectural Committee” within the Wilson Heights Subdivision. In staff’s opinion, this is unconventional and should be discussed and considered at a future meeting.

The EDA (as “Architectural Committee”) is being asked to review and approve the construction of series of fences on two single-family residential properties located at 1445 and 1455 Stickney Avenue. At the June 1, 2020 EDA meeting, the board directed staff to solicit and facilitate feedback from the surrounding neighborhood as it relates to the request. Of the 19 property owners included in the Covenants (owners of Lots 1 through 19 in the subdivision), 14 participated in an emailed survey. Property owners were asked two substantive questions as it relates to the covenants:

1. Do you want the EDA to allow properties in the Wilson Heights neighborhood to have fences?
2. If the EDA does choose to allow fences, do you want there to be any extra rules for fences in the Wilson Heights neighborhood that are different than the
standard City fence ordinance? Please answer this question even if your ‘first choice’ is to have all fences prohibited.

Responses to the emailed survey are provided in the attached memorandum from the City Planner. In summary, of the 14 participants, 12 said that “no fences” should be allowed. In response to the second question, responses varied but generally the sentiment was that chain link fencing in particular should be a non-starter in the neighborhood no matter what.

In addition to the survey, a virtual focus group session was hosted by City Staff to answer questions and provide a venue for both the applicants and the neighborhood in general to share additional information. While the discussion drifted more broadly into a discussion about whether and how the covenants and their administration might be changed, as it relates to the specific requests the participants generally echoed the opinions that were revealed through the survey process: fences should not be allowed, but if they are, front yard and chain link fences should be prohibited.

If the EDA approves the construction of these fence elements, a fence permit application would be processed through the City’s normal process. An application has been submitted, and it appears that in its current configuration the application would require a variance (they are proposing a privacy fence in the “front yard” of 1445 Stickney, which by code calls Wilson Avenue its “front yard” as that is the shorter side of this corner lot. Otherwise, the proposed fencing meets the City’s ordinance requirements for issuance of a fence permit.

While there is some simmering discussion with the neighborhood about amending the covenants to relieve the HRA/EDA of its Architectural Review responsibilities, it may make sense for the board to return at the next meeting and adopt additional policy guidance related to these matters. In case the covenants are not taken over by the neighborhood, it would improve the process in the future for the EDA to have a little more clarity and direction as to how to respond to fence requests in Wilson Heights, including instituting an Architectural Review fee. These requests – if continued to be evaluated by the EDA – will require an inordinate amount of staff time to process if neighborhood input is sought for each request.

**Funding Sources and other fiscal considerations:**
N/A.
with Swoop
Smooth Finish

Ideal for transitioning from low to high fence.
**Agenda Item: Approval of First Amendment to Purchase Agreement with JBL Properties LLC**

**Action to be considered:**
Motion to approve the First Amendment to Purchase Agreement with JBL Properties LLC.

**Overview:**
On May 5, 2020, a purchase agreement between the EDA and JBL Properties, LLC was executed to govern the EDA’s acquisition of property at 139 Grand Avenue East (See Item 6-D at this link for more information: [https://www.southstpaul.org/AgendaCenter/ViewFile/Agenda/ 05042020-896](https://www.southstpaul.org/AgendaCenter/ViewFile/Agenda/ 05042020-896). The purchase agreement identified that closing was to take place on or before June 30, 2020. Unfortunately, our environmental due diligence is not yet complete and we will need additional time prior to closing to confirm what, if any, recognized environmental conditions exist at the site. Thus, we are suggesting amending the Closing Date to on or before August 31, 2020.

**Funding Sources and other fiscal considerations:**
The property will become property tax exempt in Pay 2022. Property taxes will be prorated as of the date of closing with the EDA responsible for any property taxes and special assessments levied after the closing date.
FIRST AMENDMENT TO PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT (this “Agreement”) is entered into as of June 29, 2020 (the “Effective Date”), by and between the South St. Paul Economic Development Authority, a Minnesota public body corporate and politic (“EDA”), and JBL Properties, LLC, a Minnesota limited liability company (“Seller”).

RECITALS

Recital No. 1. EDA and Seller entered into a purchase agreement on May 6, 2020 (“Purchase Agreement”) for the purchase and sale of real property identified in the Purchase Agreement.

Recital No. 2. EDA has requested an extension of the closing date for Section 6 regarding the closing shall occur no later than August 31, 2020, unless otherwise agreed to by the parties.

Recital No. 3. Seller does not object to an extension for the closing.

NOW, THEREFORE, EDA and Seller agree to the following:

1. That the closing date for Section 6 regarding the closing shall occur no later than August 31, 2020, unless otherwise agreed to by the parties.

[remainder of page intentionally blank]
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: ___________________________
Name: _________________________
Its: ___________________________
139 GRAND AVENUE EAST

Long Cheng

Binder HVAC

SSP Steel Supply

2020 Brands

UFCW

Quala
Agenda Item: Approval of Lease Agreement with JBL Properties, LLC

Action to be considered:
Motion to approve a Lease Agreement with JBL Properties, LLC for 139 Grand Avenue East.

Overview:
As previously discussed, the EDA is in the process of acquiring the property located at 139 Grand Avenue East from JBL Properties, LLC. The property is currently occupied by the seller’s business, Twin City Pallet Company. In the course of our negotiations to acquire the 139 Grand Avenue property, the seller requested that the EDA consider a “leaseback” arrangement to provide the business with timing flexibility to secure and move to a new location. JBL’s opportunity to close on an alternative property is dependent upon closing the sale of their property at 139 Grand Avenue East.

Staff has prepared the enclosed lease agreement for consideration and approval. The following are key provisions of the agreement:

- **Lease Term**
  - Tenant may continue to use property for their business, in conformance with all existing approvals and codes
  - Initial Term: Closing Date through December 31, 2020
  - Second Extension: March 1, 2021 – 365 Days after Commencement (Closing) Date. Must be requested (in writing) by tenant by February 1, 2020

- **Base Rent**
  - Tenant is responsible for all utilities, maintenance and management of the property.
  - EDA is responsible for property tax and special assessments levied
  - Initial Term: $1 for entire term
  - First Extension: $5,000 for entire term
  - Second Extension: $15,000 per month

- **Surrender of Premises and Removal of Personal Property**
  - When tenant vacates, all personal property (i.e., any pallets, waste material, etc) must be removed from the property
  - Tenant is financially responsible for any and all personal property not removed upon expiration/termination of the lease

In summary, the lease would go into effect at the time the EDA closes on acquisition of the property and will run for no longer than 1 year after the closing date. At present, there is no defined date that Twin City Pallet will vacate the premises. The EDA is reminded that the
proposed lease directly ties back to the previously agreed-upon Purchase Agreement; that is to say that the acquisition cost in particular was agreed upon in large part because there is value to the seller in the flexibility offered vis à vis the lease. As the EDA can see, we should be motivated to advance to closing as quickly as possible, and the seller should be (and is) motivated to vacate as quickly as possible. Staff feels this proposal represents a “win-win” opportunity for the EDA and the business/property owner.

**Funding Sources and other fiscal considerations:**
The property is located within the Concord Street #2 Tax Increment Finance District. Lease revenues can be used for other eligible costs in the District, including payment of assessments and taxes, marketing of property, and redevelopment costs.
LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this ___ day of ______ 2020 (the "Effective Date"), by and between the South St. Paul Economic Development Authority, a Minnesota public body corporate and politic (the "Landlord"), and JBL Properties, LLC, a Minnesota limited liability company (the "Tenant"). Landlord and Tenant may be referred to collectively herein as the “parties” or each a “party”.

ARTICLE 1
PREMISES

Landlord, for and in consideration of the rents, covenants and conditions hereinafter contained to be performed and observed by Tenant, does hereby demise and lease to Tenant the real property legally described on Exhibit A attached hereto (the "Real Estate"), addressed as 139 Grand Ave., South St. Paul, Minnesota, with all improvements located therein, existing fixtures and any appurtenant parking areas, driveways and landscaped areas (collectively, the “Improvements”) (the Real Estate and Improvements are collectively referred to herein as the “Premises”).

ARTICLE 2
TERM

A. Initial Term. Tenant shall have and hold the Premises for and during the term commencing on ______________, 2020 ("Commencement Date") and terminating at 11:59 p.m. on December 31, 2020 (the “Initial Term”), notwithstanding any extended lease terms described below. This Lease is terminable at will by Tenant upon vacation and written notice to Landlord.

B. In the event Tenant desires to extend the Initial Term beyond December 31, 2020, subject to Landlord’s consent to the extension, which shall not be unreasonably withheld, Tenant shall agree to the following conditions:

1. First Extension Term: Request for the extension must be submitted by Tenant in writing by December 1, 2020. The First Extension Term covers the period from January 1, 2021 – February 28, 2021. Tenant may terminate this First Extension Term at any time but agrees to forfeit the Rent described in Article 3.B.

2. Second Extension Term: Request for a Second Extension Term must be submitted by Tenant in writing by February 1, 2021. The Second Extension Term covers any portion of days not to exceed 365 days after the Commencement Date. Tenant may terminate this Second Extension Term no later than the 21st day of any month and agrees that if the Second Extension Term is so terminated Tenant will vacate the Premises on or before the 1st day of the following month.
ARTICLE 3
BASE RENT

A. Initial Term Rent. Tenant shall pay to Landlord the sum of One and 00/100 Dollar ($1.00) as the full amount of Base Rent for the Initial Term of the Lease. Landlord hereby acknowledges receipt of the entire amount of Base Rent as of the Effective Date.

B. First Extension Term Rent. Tenant shall pay to Landlord Rent in the amount of Five Thousand and 00/100 Dollars ($5,000.00) for the First Extension Term, payable on or before January 1, 2021.

C. Second Extension Term Rent. Tenant shall pay to Landlord Rent in the amount of Fifteen Thousand and 00/100 Dollars ($15,000.00) per month, due and payable on or before the 1st day of each month.

ARTICLE 4
ADDITIONAL RENT

All amounts which Tenant is required to pay under the terms and provisions of this Lease, other than Base Rent, including but not limited to the amounts payable by Tenant pursuant to Articles 9, 11, and 12, shall be considered as “Additional Rent”.

ARTICLE 5
USE OF PREMISES

The Premises shall be used by Tenant for a commercial pallet company. Tenant has obtained all necessary or required permits and licenses for its use of the Premises and shall use the Premises in strict compliance with any applicable local, state or federal rules, regulations, laws, zoning, and environmental or Hazardous Material (as later defined) laws or regulations. Tenant agrees not to commit a nuisance in or upon the Premises so as to substantially interfere with the comfort and safety of others.

ARTICLE 6
TENANT’S ACCEPTANCE OF THE PREMISES/CONDITION

Landlord will not be obligated to construct or install any improvements in or to the Premises. Landlord makes no representation, covenant or warranty of any kind, character or nature concerning the Premises or otherwise. Tenant accepts the Premises in “as-is”, “where-is”, and “with all faults” condition.

ARTICLE 7
FIXTURES, FURNITURE, AND EQUIPMENT

Landlord agrees that all trade fixtures, furniture, equipment, or other personal property of whatever kind and nature kept or installed on the Premises by Tenant shall not become the property
of the Landlord or a part of the realty no matter how affixed to the Premises and shall be removed by Tenant, on or before the termination of this Lease or any extension, unless not removed by Tenant upon termination of this Lease.

Tenant agrees that Tenant shall be financially responsible for any and all personal property not removed upon termination of this Lease and Landlord shall have all rights and remedies at law and in equity to recover any damages for the removal of Tenant’s personal property.

ARTICLE 8
ALTERATIONS, TITLE TO AND REMOVAL OF IMPROVEMENTS

Except for non-structural alterations or improvements that in the aggregate do not exceed $5,000.00 during any calendar year period, Tenant may not without Landlord’s prior written consent, remodel or make any alterations to the Premises.

Tenant shall have no authority to create or place any lien or encumbrance of any kind whatsoever upon or in any manner to bind the interest of the Landlord in the Premises, and Tenant covenants and agrees promptly to pay all sums legally due and payable by it on account of any labor performed on the Premises upon which any lien is or could be asserted.

ARTICLE 9
REPAIRS, MAINTENANCE AND SIGNAGE

Tenant shall, at all time during the Term and any extension thereof, at its own cost and expense, keep and maintain the Premises. If the improvements on the Premises are damaged or destroyed, Tenant may at its sole option and expense repair and restore the improvements or Tenant may terminate the Lease and vacate the Premises. Tenant shall be permitted to maintain current signage on the Premises during the Term of the Lease. Tenant shall maintain all signage at its sole cost and expense.

ARTICLE 10
REAL ESTATE TAXES AND SPECIAL ASSESSMENTS

Landlord shall be responsible for the payment of all real estate taxes and current and future installments of special assessments covering the Premises during the Term and any extension thereof.

ARTICLE 11
UTILITIES

During the Term, any extension thereof, and thereafter in the event Tenant holds over, Tenant agrees that it shall pay all costs for water, sewer, gas and electric, heating and cooling, garbage and any other utilities used, or consumed upon or in connection with the Premises, as and when the charges for the same shall become due and payable.
ARTICLE 12
INSURANCE

Tenant hereby covenants and agrees that it shall at all times during the Term and any extension thereof, obtain and maintain and keep in force and effect the following insurance, a copy of which shall be provided to Landlord upon execution of this Lease by Tenant:

A. A comprehensive general liability insurance policy with a combined limit of not less than Seven Hundred Fifty Thousand and 00/100 Dollars ($750,000.00) per occurrence and One Million Five Hundred Thousand and 00/100 Dollars ($1,500,000.00) in the aggregate, against claims for personal injury, death or property damage occurring in, on or about the Premises. Any deductible amount shall be paid by Tenant; and

B. A policy covering Tenant’s contents and other personal property, inventory, machinery, and trade fixtures, satisfactory to Landlord, which shall include a waiver of subrogation as to Landlord.

ARTICLE 13
ASSIGNMENT AND SUBLETTING

Tenant shall not sublet, sell, assign, mortgage, pledge, or in any manner transfer this Lease or any estate or interest thereunder, without the prior written consent of Landlord. Any assignment or subletting permitted by Landlord hereunder shall not release Tenant from any of its Lease obligations.

ARTICLE 14
DEFAULT AND REMEDIES OF LANDLORD

If Tenant shall fail to: (i) promptly keep and perform any other obligations of this Lease, strictly in accordance with the terms of this Lease, and shall continue in default for a period of thirty (30) days after written notice thereof by Landlord of default and demand of performance (and Tenant is not diligently proceeding to cure a non-monetary default), then and in any such event and as often as any such event shall occur; and upon such default: (1) Landlord may declare the Term or any extension thereof ended, and enter into said Premises with process of law and expel Tenant or any person occupying the same in or upon said Premises; such reentry shall not work a forfeiture of the rents to be paid nor affect the covenants to be performed by Tenant.

ARTICLE 15
AMENDMENTS

No waivers, alterations or modifications of this Lease or any agreements in connection therewith shall be valid unless in writing duly executed by both Landlord and Tenant herein.
ARTICLE 16
RECORDING
This Lease shall not be recorded.

ARTICLE 17
SURRENDER OF PREMISES
Tenant shall, after the last day of the Term or Extension Term, if applicable, or upon any earlier termination, surrender and yield the Premises to Landlord and all personal property shall be removed.

ARTICLE 18
SERVICE OF NOTICE
Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless the same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, as follows:

If to Landlord at: South St. Paul Economic Development Authority
Attn: EDA Executive Director
125 3rd Ave. N.
South St. Paul, MN 55075

With a copy to: Peter G. Mikhail
LeVander, Gillen & Miller, P.A.
633 South Concord St., Suite 400
South St. Paul, MN 55075

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

With a copy to: William J. Kranz
Montpetit Kranz, PLLC
105 Hardman Court
South St. Paul, MN  55075

or to such other address as either party may designate by notice given from time to time in accordance with this Article 18. Any notice given in accordance with the provisions of this Article 18 shall be deemed to have been given as of the date occurring two (2) days after such notice shall have been placed for mailing with the United States Postal Service. The amounts payable by Tenant to Landlord hereunder shall be paid to the address designated by Landlord from time to time.
ARTICLE 19
HOLDING OVER

In the event Tenant continues to occupy the Premises after the last day of the Term hereby created, or after the last day of the Extension Term, if applicable, Tenant shall pay all incidental and consequential damages sustained by Landlord as a result of any such holdover, including but not limited to damages for the delay in Landlord’s construction or demolition plans for the Premises.

ARTICLE 20
CAPTIONS

The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such Articles of this Lease or in any way affect this Lease.

ARTICLE 21
INVALIDITY OF PROVISIONS

If any term, covenant, condition or provision of this Lease or the application thereof, to any person or circumstance shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 22
LANDLORD’S ACCESS TO PREMISES

Landlord shall have reasonable rights of access to the Premises after reasonable notice and during normal business hours for the purpose of inspecting the condition thereof from time to time throughout the Term of this Lease and any extensions thereof. In the event of an emergency, Landlord shall have the immediate right to access the Premises, without prior notice to Tenant.

ARTICLE 23
ENTIRE AGREEMENT

This Lease entered into between Landlord and Tenant as to the Premises supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Premises and it contains all of the covenants, agreements and other obligations between the parties in respect to said Premises.

ARTICLE 24
LIABILITY OF LANDLORD

Landlord and its members, partners, officers, directors, shareholders, attorneys, parents and
subsidiaries, related or affiliated corporations or other entities of Landlord will have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease.

ARTICLE 25
GOVERNING LAW; VENUE

This Lease will be governed by and construed according to the laws of the State of Minnesota. Any actions or proceedings arising under this Lease, in connection with the Premises will be venued in state or federal courts located in Dakota County, Minnesota, to the exclusion of all other venues. Tenant hereby expressly consents to the exercise of personal jurisdiction over Tenant by such courts.

ARTICLE 26
AUTHORITY

Landlord and Tenant hereby represent and warrant that each individual executing this Lease on behalf of said entity is duly authorized to execute and deliver this Lease on behalf of said entity and that this Lease is binding upon said entity in accordance with its terms.

ARTICLE 27
BROKERS

Landlord warrants to Tenant that it had no dealings with any broker or agent in connection with this Lease. Tenant engaged Cushman & Wakefield in connection with the Lease. Notwithstanding the foregoing, each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person, with whom the other party has or purportedly has dealt.

ARTICLE 28
TIME OF THE ESSENCE

With respect to all acts of the Tenant and Landlord required under or pursuant to this Lease, time is of the essence.

ARTICLE 29
COUNTERPARTS

This Lease may be executed in counterparts, each of which shall be deemed an original, but which taken together shall constitute one and the same instrument. Electronic or facsimile signatures shall be deemed sufficient to create a binding obligation hereunder and shall have the same force and effect as an original signature of such party.
ARTICLE 30
HAZARDOUS MATERIALS

Tenant shall not keep or have in or on the Premises any article or thing which is deemed “hazardous” or “extra hazardous” by any responsible insurance company or under federal, state or local law, rule, regulation, code or ordinance except in compliance with all requirements of applicable law. To the extent caused by Tenant or its employees, agents, or invitees, Tenant shall indemnify and save harmless Landlord against all liabilities, damages, claims, fines, penalties, costs and other expenses, including, reasonable attorneys’ fees, which may be imposed upon, incurred by, or asserted against Landlord by reason of any use or condition of the Premises or any part thereof, including, without limitation, liability resulting from the use, storage, generation, or release of any “hazardous substance,” “hazardous waste,” “pollutant” or “contaminant” (as such terms may be now or hereafter defined under any applicable federal, state, or local statute, ordinance, or regulation, collectively referred to as “Hazardous Material”).

[The remainder of this page was intentionally left blank.]
IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

LANDLORD:  
SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By: ____________________________________________  
   James P. Francis  
   Its: President

By: ____________________________________________  
   Ryan Garcia  
   Its: Executive Director
TENANT:
JBL PROPERTIES, LLC

By: ________________________________
   Name: ________________________________
   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 103.36 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 Northeasterly of 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
PID: 36-03800-00-072
Agenda Item: Approval of Purchase Agreement with Beard Group, LLC

Action to be considered:
Motion to approve a Purchase Agreement with Beard Group, LLC.

Overview:
At its March 2, 2020 meeting, the EDA approved a preliminary development agreement with Beard Group, Inc. related to the redevelopment of an approximately 4-acre site at the northwest corner of Concord Exchange and Grand Avenue. The March 2 agreement serves as a good-faith framework for further definition and negotiation as the development project advances from being a general concept to a more well-defined development project with a definitive scope, financing plan and timeline. Since March 2, the developer and EDA have been undertaking significant due diligence efforts, specifically conducting environmental and geotechnical assessments and title/survey review, and the developer is positioned to formally enter a purchase contract with the owner of 201 – 205 Concord Exchange and close on the acquisition by August 2020.

While this is an important milestone for the project, the developer and their lender are only comfortable pursuing acquisition of the 201 – 205 property at the negotiated sales price ($1,150,000) as a redevelopment property underwritten as a multifamily housing development (as proposed and generally agreed upon via the March 2 agreement). To put it simply, the 201 – 205 property (as a mostly vacant, obsolete Class B office property) does not have a significant enough value to serve as collateral. There is risk to the developer and lender in acquiring this property without any formal approval of their project from the City, or definition of formal development terms and roles with the EDA.

To keep this project moving forward, staff and the developer have prepared a Purchase Agreement that would provide the developer with a “backstop” for their acquisition of 201 – 205 Concord Exchange in the event that the City does not approve their development and enter a development agreement with the developer for the proposed project. **To be absolutely clear – this purchase agreement would only advance to a closing and see the EDA acquire this property in the event that the EDA and Developer fail to enter a development agreement (which includes an approved development plan).** If Beard acquires the property and we advance to a development agreement with them, the PA is automatically terminated and we never acquire the property.

While somewhat unconventional, staff feels that the proposed approach is the appropriate approach at this time due to a lack of immediately available EDA funds to pursue the acquisition on our own. While the current owner of 201 – 205 has been cautious in his dealings with the developer, they have indicated agreement to sell the property if a closing can be accomplished relatively quickly. We feel the redevelopment project (and really any development project in this quadrant) is at risk if there is additional delay in gaining site control.
over the 201 – 205 properties. While the predevelopment agreement lays the foundation for collaboration with the developer to see the project through, it will likely take at least 90 days to prepare, finalize, and approve a formal development plan and binding development agreement.

The EDA will note that the purchase agreement stipulates a closing date in January 2022. This provision offers ample time for the details of the development to materialize and an agreement to be struck between the EDA and Beard.

In summary, this agreement represents a commitment on the part of the EDA to acquire the 201 – 205 Concord Exchange North property, no later than January 2022, **ONLY** if the following two events **BOTH** occur:

1. Beard Group acquires the 201 – 205 Concord Exchange Property from Thomas Nguyen, current property owner.
2. EDA DOES NOT approve a contract for private redevelopment with Beard Group for the 201 – 205 Concord Exchange property and surrounding EDA-owned properties.

The “risk” to the EDA in approving this agreement is that – in a worst case scenario where we can’t or don’t approve a development by Beard – in early 2022 (or earlier, if things fall apart and we want to move more quickly), we would acquire title to the property at 201 – 205 Concord Exchange. Such an acquisition would establish EDA control over the entire 4-acre property at the northwest corner of Concord Exchange and Grand Avenue. In staff’s opinion, this “worst case scenario” would still represent a significant opportunity to the EDA for advancing the City’s redevelopment vision.

**Funding Sources and other fiscal considerations:**
The property is located within the Concord Street #2 Tax Increment Finance District.
PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made effective as of July 1, 2020 ("Effective Date"), by and between The Beard Group, Inc., a Minnesota corporation, 750 Second St. NE, Hopkins, MN 55343 ("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").

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 following property pursuant to the terms and conditions herein set forth (collectively, the "Property"):

   A. **Real Property.** The improved real property located at 201 and 205 Concord Exchange North, South St. Paul, Dakota County, Minnesota 55075, legally described on attached Exhibit A, together with all privileges, rights, easements, hereditaments and appurtenances thereto belonging and all right, title and interest of Seller in and to any streets, alleys, passages and other rights of way included therein or adjacent thereto (before or after the vacation thereof) and together with all improvements located thereon (collectively, the "Real Property").

   B. **Personal Property.** Personal property owned by Seller, if any, located on the Real Property that is essential to the maintenance and operation of the Property (collectively, the "Personal Property").

   C. **Records.** All records in Seller’s possession related to the Property.

1.2 **Purchase Price.** The purchase price to be paid by EDA to Seller for the Property shall be One Million One Hundred Fifty Thousand and No/100 Dollars ($1,150,000.00), plus all acquisition costs actually incurred and paid by Seller in purchasing the Property (e.g. closing costs, title commitment cost and title policy premium, real estate taxes, and interest paid by Seller on the foregoing amounts, but excluding any development costs incurred by Seller (e.g. architect and engineering fees, environmental review costs, and survey costs)); provided, however, the total acquisition costs shall not to exceed $25,000.00 (the “Purchase Price”). On the Closing Date (as hereinafter defined), the Purchase Price, subject to increase or decrease due to prorations and adjustments required pursuant to this Agreement, shall be paid by Buyer in immediately available funds to Guaranty Commercial Title, LLC (the “Title Company”) to be disbursed pursuant to the Settlement Statement (as hereinafter defined).

2. **Contingency.**
2.1 **EDA Contingency.** The obligations of EDA under this Agreement are wholly contingent upon Seller acquiring marketable fee title to the Property prior to the Closing Date. In the event that Seller fails to acquire such fee title to the Property prior to the Closing Date, this Agreement shall be terminated automatically effective on the Closing Date without any further action by the Parties, including without limitation the requirement of written notice; and each and every obligation of the parties hereunder shall be null and void. Notwithstanding anything to the contrary contained herein: Should this Agreement be so terminated, the parties to it shall promptly execute a written termination of this Agreement upon the request of either party.

2.2 **Seller Contingency.** The obligations of Seller under this Agreement are wholly contingent upon Seller acquiring marketable fee title to the Property prior to the Closing Date. In the event that Seller fails to acquire such fee title to the Property prior to the Closing Date, this Agreement shall be terminated effective immediately on the Closing Date without any further action by the Parties, including without limitation the requirement of written notice; and each and every obligation of the parties hereunder shall be null and void. Notwithstanding anything to the contrary contained herein: Should this Agreement be so terminated, the parties to it shall promptly execute a written termination of this Agreement upon the request of either party.

3. **Termination Upon Entry into a Contract for Private Redevelopment/EDA Contingency.** The EDA and Seller intend to enter into a Contract for Private Development that includes the Real Property and adjacent EDA-owned property. Upon execution of a Contract for Private Development that includes the Real Property, the parties agree that this Agreement shall automatically terminate effective on the date of execution of said Contract for Private Development.

4. **Closing.** Unless modified by mutual 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 on or before January 4, 2022 (the “Closing Date”). Seller agrees to deliver legal and actual possession of the Property to EDA on Closing Date. Closing shall occur at a mutually agreeable location.

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

A. **Limited Warranty Deed.** A limited warranty deed conveying title to the Property to EDA, free and clear of all encumbrances, except the Permitted Encumbrances (the “Deed”).

B. **Bill of Sale.** A Bill of Sale conveying to Buyer all of Seller’s interest in and to the Personal Property, if any.

C. **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.

D. **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).

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

F. **“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.

G. **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.

4.2 **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.

5. **Prorations.** Seller and EDA agree to the following prorations and allocation of costs regarding this Agreement:
5.1 **Closing Fee.** EDA and Seller shall each pay one half (1/2) of any reasonable closing fee or charge imposed by Title.

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

5.3 **Recording Costs.** Seller will pay the cost of recording all documents necessary to place record title to the Property in the condition warranted and represented by Seller in this Agreement. EDA will pay all recording costs with respect to the recording of the Deed.

5.4 **Real Estate Taxes and Special Assessments.** General real estate taxes applicable to any of the Property due and payable in the year prior to the year in which the Closing Date occurs and all prior years shall be paid by Seller. Taxes and special assessments due and payable in the year in which the Closing Date occurs shall be prorated between Seller and EDA as of the Closing Date. EDA shall assume the obligation to pay the Taxes and installments of special assessments due and payable in the year subsequent to the year in which the Closing Date occurs and thereafter.

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

5.6 **Survival.** The obligations set forth in this Section 5 survive the Closing.

6. **Warranties and Representations.**

6.1 **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. There are no unrecorded contracts of any nature or type relating to, affecting or serving the Property, to which the Seller is a party, that will be binding on the Property after the Closing.

H. 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 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, 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, 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. EDA 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. EDA is an experienced purchaser of property such as the Property and EDA 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.

6.2 **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 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.

7. **Additional Obligations of Seller.**

7.1 **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.

7.2 **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.
7.3 **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.

7.4 **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 for affiliates of Seller.

8. **Operation Prior to Closing.** During the period from the Effective Date to the Closing Date, Seller shall operate and maintain the Property in the ordinary course of business in accordance with prudent, reasonable business standards, including the maintenance of adequate liability insurance, including vandalism and malicious mischief in amounts currently maintained. However, Seller shall execute no contracts, leases or other agreements regarding the Property that are not terminable on or before the Closing Date, without the prior written consent of EDA.

9. **Broker.** Seller and EDA represent to each other that they have dealt with no brokers, finders or the like in connection with this transaction, and agree to indemnify each other and to hold each other harmless against all other claims, damages, costs or expenses of or for any fees or commissions resulting from their separate actions or agreements regarding the execution or performance of this Agreement, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorneys’ fees.

10. **Assignment.** Neither party may assign its rights under this Agreement without the prior written consent of the other party.

11. **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:  
William H. Beard  
The Beard Group, Inc.  
750 2nd Street NE, Suite 100  
Hopkins, MN 55343  

with copy to:  
Laura L. Krenz  
Ballard Spahr LLP  
2000 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

12. **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. If EDA defaults under this Agreement and such default is not remedied by EDA within thirty (30) days after written notice of default is given by Seller to EDA, Seller shall be entitled to all remedies available at law or equity, including without limitation the right to require specific performance by the EDA, and EDA hereby agrees to waive any and all defenses to such an action. In the case of any default by Seller, EDA’s sole and exclusive remedy shall be to terminate this Agreement, by giving written notice to the Seller.

13. **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.

14. **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 for a period of one (1) year.

15. **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.

16. **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. **Represented by Counsel.** Each party has been represented and advised by counsel in the transaction contemplated hereby.
18. **Time of the Essence.** Time is of the essence of this Agreement.

[remainder of page intentionally blank]
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
THE BEARD GROUP, INC. (SELLER)

By: __________________________
    William H. Beard
Its:    President
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real estate located in the County of Dakota, State of Minnesota, described as follows:

Lots 19, 20, 21, 22, 23, and 24, Block 4, 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 plat thereof now on file and of record in the office of the County Recorder.

Also that part of Concord Exchange North (formerly known as Concord Street), as dedicated in 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, adjoining Lots 19, 20 and 21, Block 4, The Stockyards Rearrangement of Block one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of South St. Paul, described as beginning at the most Northerly corner of said Lot 19; thence Northeasterly along the extension of the Northwesterly line of said Lot 19, a distance of 0.81 feet; thence Southeasterly parallel with the Northeasterly line of said Lots 19, 20 and 21 a distance of 50.50 feet; thence Southwesterly at right angles a distance of 0.81 feet to the Northeasternly line of said Lot 21; thence Northwesterly along said Northeasterly line of said Lots 19, 20 and 21 to the point of beginning.

Dakota County, Minnesota
(Abstract Property)

PID # 36-72850-04-200 and 36-72850-04-240
Agenda Item: Discussion and Preliminary Guidance on 2021 Budget

Action to be considered:
Discussion Only. No action is requested at this time.

Overview:
Staff is working on the preliminary EDA (and HRA) budgets for 2021. There are a couple of topics we’d like to discuss with the board prior to presenting a draft budget for review and approval later this summer.

- **Open to Business Program.** Dakota County CDA, in partnership with cities in Dakota County, are exploring options to continue providing small business technical assistance within our communities in 2021 and beyond. Since 2013, the CDA has contracted with Metropolitan Consortium of Community Developers (MCCD) to offer the Open to Business Program, but that contract ends on December 31, 2020. The CDA and city partners are exploring other ways to offer the same or similar service. Options being explored include in-house staff capacity and issuance of a Request for Proposal (RFP) to identify other organizations, in addition to MCCD, that offer business technical assistance. This program has been budgeted in recent years at approximately $5,500, and CDA is requesting that communities continue to budget at this level for 2021 while options are explored.

- **Progress Plus.** Since 2017, the City has budgeted $5,500 annually as an investment in the Progress Plus economic development partnership. By design, Progress Plus is the Economic Development Foundation of the River Heights Chamber and intends to help relocating and expanding businesses “cut through red tape” and help developments navigate the public approvals process. Given the change in long-time leadership at the Chamber/Progress Plus, staff is interested in exploring whether the time is appropriate to consider a recalibration or refocus of this model of partnership. Staff notes that - with all due respect to the intent and purpose of Progress Plus – there has not been a particularly apparent issue of undue “red tape” in South St. Paul (at least not that has been pointed out at a staff level). At the end of the day, there is certainly value in a public/private partnership to advance economic development in the community, and perhaps the Progress Plus model is a perfectly fine model to retain as-is.
Funding Sources and other fiscal considerations:
These two services represent about just under 5% of the EDA’s annual budget at a combined expenditure of about $11,000.
EDA Agenda Item Report

Date:  June 29, 2020

EDA Executive Director:  

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**Agenda Item:** Review and action on a proposed fence in the Wentworth Hollow Subdivision

**Action to be considered:**

Review and approval or denial of a request by the homeowner at 700 Wentworth Avenue to install a wood privacy fence. Staff is neutral on this request. It appears that a number of other properties in the Plat have installed fences. Unfortunately, staff has been able to find evidence of formal “Architectural Committee” approval of only one fence in the neighborhood (in 2008). That said, staff is not aware of any concerns, complaints, or objections raised by other property owners about any of these fences or the current request.

**Overview:**

The homeowner at 700 Wentworth Avenue (Tom Seaberg) is seeking approval for the construction of a fence in the Wentworth Hollow Subdivision. Per the terms of Restrictive Covenants (attached) established in 2001 at the time of platting for Wentworth Hollow, the South St. Paul HRA serves as the “Architectural Committee”. The Covenants provide that “No fence may be constructed unless reviewed and approved by the Architectural Committee”. Council Resolution 2015-197 transferred all “control, authority, and operation” of HRA programs and projects from the HRA to the EDA. Thus, the EDA is obligated to act as the “Architectural Committee” within the Wentworth Hollow Subdivision. Obviously, this is quite similar to the current process in place for the Wilson Heights neighborhood.

The EDA (as “Architectural Committee”) is being asked to review and approve the construction of a 72” tall privacy fence, of the same or similar material and finish as the existing fence on the immediate west property, over an approximately 11’ section of the single-family residential property, generally between the northwest corner of the house and the neighbor’s fence. The Covenants provide no objective standards by which the Architectural Committee should review these requests, thus Staff’s opinion is that this is purely a “judgment call” for the EDA to make.

If the EDA approves the construction of the fence, a fence permit application would be processed (it has been submitted) through the City’s normal process. The proposed fencing meets the City’s ordinance requirements for issuance of a fence permit.

**Funding Sources and other fiscal considerations:**

N/A.