1. CALL TO ORDER:

2. ROLL CALL:

3. AGENDA:

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 September 8, 2020
   B. Approval of Subordination Agreement – Resolution 2020-17
   C. Approval of Mortgage Satisfaction - Resolution 2020-18

5. PUBLIC HEARINGS:

   A. Approval to Convey Real Property at 200 Concord Exchange South – Resolution 2020-14

6. GENERAL BUSINESS:

   A. Authorizing an Application for the Minnesota Department of Employment and Economic Development’s Contamination Cleanup Program for the Redevelopment of 201 – 205 Concord Exchange North, Resolution 2020-15
   B. Authorizing an Application for the Metropolitan Council’s Tax Base Revitalization Account for the Redevelopment of 201 – 205 Concord Exchange North, Resolution 2020-16
   C. Approval of Lease Agreement with JBL Properties, LLC / Twin City Pallet Company - 139 Grand Avenue East, Resolution 2020-19
   D. Authorization to Execute a Preliminary Development Agreement with DRS Investment VIII LLC
7. **ITEMS FOR FUTURE FOLLOW-UP:**

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

8. **ADJOURNMENT:**

   Respectfully Submitted,

   [Signature]

   Ryan Garcia, EDA Executive Director
Regular Meeting  
September 8, 2020  
City Council Chambers – South St. Paul City Hall

1. CALL TO ORDER

President Francis called the meeting to order at 7:34 p.m.

2. ROLL CALL

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

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

3. AGENDA

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

Motion carried 7 ayes / 0 nays.

4. CONSENT

A. EDA Meeting Minutes of August 3, 2020
B. Approval of Assignment of Purchase Agreement with Beard Group, Inc.

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

Motion carried 7 ayes / 0 nays

5. GENERAL BUSINESS

A. Review and Approve 2021 EDA levy and budget, Resolution 2020-12
Motion/Second: Commissioner Seaberg moved and Commissioner Flatley seconded approval of Resolution 2020-12, Approving the 2021 EDA Levy and Budget.

Motion carried 7 ayes / 0 nays

B. Review and Approve 2021 HRA levy and budget, Resolution 2020-13

Motion/Second: Commissioner Forester moved and Commissioner Kaliszewski seconded approval of Resolution 2020-13, Approving the 2021 HRA Levy and Budget.

Motion carried 7 ayes / 0 nays

6. FUTURE FOLLOW-UP ITEMS

There were none.

7. ADJOURNMENT

Motion/Second: Commissioner Forester moved and Commissioner Seaberg seconded the motion to adjourn the meeting at 7:45 p.m.

Motion carried 7 ayes / 0 nays

Approved:

Renee Schmitt
Renee Schmitt, Secretary
Agenda Item: Approval of Subordination Agreement – Resolution 2020-17

Action to be considered:
Motion to approve Resolution 2020-17.

Overview:
In 2014, the HRA provided a rehabilitation loan totaling $25,000.00, with the HRA’s mortgage recorded against the property and subordinated to a principal loan at that time. The mortgagee is refinancing the principal loan, and the lender has requested the HRA’s mortgage be subordinated to the principal loan on the home. Such approvals have been granted from time to time by the HRA, and in this case the loan agreement provides the HRA with the ability to subordinate our financial interest and position. Therefore, the EDA is advised to approve Resolution No. 2020-17, which will authorize the designated officers of the City’s Housing and Redevelopment Authority to execute all necessary documentation required to record the subordination agreements.

Funding Sources and other fiscal considerations:
This is a procedural action and does not change the HRA’s position or ability to recollect the debt owed on this loan in the future.

Attachments:
Resolution 2020-17
RESOLUTION NO. 2020-17

WHEREAS, the City of South St. Paul Housing and Redevelopment Authority (“HRA”) historically administered a Home Rehabilitation Loan Program (“Program”), providing financing and low interest loans for the renovation of single-family properties in South St. Paul and to prevent the emergence of blighting conditions in the City’s neighborhoods; and

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

WHEREAS, the HRA issued a mortgage through the Program for Applicant # 1030 in the aggregate amount of $25,000.00, with the mortgage filed in the office of the Dakota County Registrar of Titles on August 25, 2014 as Document Number T735096; and

WHEREAS, Applicant # 1030 is refinancing the single-family residence subject to the HRA’s mortgages, and a request has been received from the lender to subordinate the HRA’s lien on the property, which the EDA finds will not materially or adversely subject the HRA to undue harm or risk.

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

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

Adopted this 5th day of October, 2020.

James P. Francis, President Ryan D. Garcia, Executive Director
Real Estate Subordination Agreement

THIS SUBORDINATION AGREEMENT (“MAY RESULT OR RESULTS ”) IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

This Real Estate Subordination Agreement (“Agreement”) is executed as of October 5, 2020, by The Housing and Redevelopment Authority of South St. Paul, having an address of 125 3rd Avenue North, 2nd Floor, South St. Paul, MN 55075 (“Subordinator”), in favor of Wells Fargo Bank, N.A., having an address for notice purpose of:

Wells Fargo Bank N.A.
420 Montgomery Street
San Francisco, CA 94104
Whereas, Subordinator is the owner and holder of, or creditor under, the indebtedness described in and secured by a Deed of Trust or Mortgage dated 08/13/2014, executed by MICHAEL J. ADKINS AND CYNTHIA M. ADKINS, husband and wife.

And which was recorded on 08/25/2014 as Document Number T735096, of the land records of Dakota County, Minnesota, as same may have been or is to be modified prior hereto or contemporaneously herewith (the “Senior Lien”), encumbering the land described therein (said land and such improvements, appurtenances and other rights and interests regarding said land, if any, as are described in the Senior Lien being called herein collectively the (“Property”) (see attached Exhibit “A”); and

Whereas, Wells Fargo Bank N.A has been requested to make a loan, line of credit or other financial accommodation to MICHAEL J. ADKINS AND CYNTHIA M. ADKINS, husband and wife. (joint and severally, “Borrower”), to be secured by, without limitation, a deed of trust or mortgage, (the “Junior Lien”), covering without limitation, the Property and securing the indebtedness described therein including the payment of a promissory note, line of credit agreement or other borrowing agreement made by Borrower and/or others payable to the order of Wells Fargo Bank N.A, in the maximum principal face amount $179,000.00 (“Principal Amount”), including provisions for acceleration and payment of collections costs (the "Obligation”) the Junior Lien and the Obligation to contain such other terms and provisions as Wells Fargo Bank N.A and Borrower shall determine; and

Now, Therefore, for valuable consideration, Subordinator hereby subordinates the Senior Lien to Wells Fargo Bank N.A. Junior Lien, subject to the terms of this Agreement. The Subordinator’s Senior Lien is subordinated to Wells Fargo Bank N.A Junior Lien only to the extent of the Principal Amount of the Obligation and any amounts advanced pursuant to the terms of the Obligation or the security instrument for the payment of insurance premiums, taxes, costs of collection, protection of the value of the property or Wells Fargo Bank N.A rights in the Property or foreclosure. All other rights of Subordinator now or hereafter existing in or with respect to the Property (including but not limited to all rights and to proceeds of insurance and condemnation) are hereby subordinated, and are and shall remain completely and unconditionally subordinate, to the Junior Lien and the rights of Wells Fargo Bank N.A regardless of the frequency or manner of renewal, extension, consolidation or modification of the Junior Lien or the Obligation.

This Agreement shall inure to the benefit of the Subordinator and Wells Fargo Bank N.A and their respective successors and assigns, including any purchaser(s) (at foreclosure of otherwise) of the Property of any part thereof, and their respective successors and assigns.
Acknowledgment:

State of Minnesota
County of Dakota

On _______________________, before me _______________________________________, a Notary Public in and for said State, personally appeared Lori Hansen and William Flatley, personally known to me to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(seal)

__________________________  __________________________
By: Lori Hansen            By: William Flatley
Its: Chairperson          Its: Secretary

Signature of Person taking Acknowledgement

Print Name: ________________________________

Commission Expiration Date: _________________
EXHIBIT A

LEGAL DESCRIPTION

That part of Lots 3 and 4 and the east 30.00 feet of Lot 2, Block 3, South Park Division No. 6, according to the recorded plat thereof on file and of record in the office of the County Recorder, Dakota County, Minnesota, described as follows:

Beginning at the southwest corner of the east 30.00 feet of Lot 2, said Block 3, said point being marked by a Judicial Landmark set pursuant to Order of the District Court, First Judicial District, State of Minnesota, County of Dakota, Court File No. C4-99-9547; thence on an assumed bearing of EAST, along the south line of said Lot 2 a distance of 24.72 feet to a Judicial Landmark set pursuant to said Court File No. C4-99-9547; thence on a bearing of EAST, along said south line of Lot 2 a distance of 5.20 feet to a point on a 35.26 foot radius tangential curve concave to the southwest; thence southeasterly, along said curve, being the southerly lines of Lots 2, 3 and 4, said Block 3, central angle 45 degrees 54 minutes 18 seconds, a distance of 28.25 feet, said point being marked by a Judicial Landmark set pursuant to said Court File No. C4-99-9547; thence North 50 degrees 34 minutes 37 seconds East, 92.49 feet to the intersection with the southeasterly line of said Lot 4, said point being marked by a Judicial Landmark set pursuant to said Court File No. C4-99-9547; thence North 45 degrees 35 minutes 33 seconds East along said southeasterly line of said Lot 4, a distance of 43.47 feet to the most easterly corner of said Lot 4, said point being marked by a Judicial Landmark, set pursuant to said Court File No. C4-99-9547; thence North 20 degrees 12 minutes 41 seconds West, along the northeasterly line of said Lot 4, a distance of 48.22 feet to a point on a 40.00 foot radius tangential curve concave to the southwest, said point being marked by a Judicial Landmark set pursuant to said Court File No. C4-99-9547; thence Northwesterly along said curve, being the northeasterly lines of said Lots 3 and 4, central angle 69 degrees 47 minutes 19 seconds a distance of 48.72 feet; thence on a bearing of WEST, tangent to said curve, 98.08 feet to the northwest corner of the east 30.00 feet of said Lot 2; thence South 02 degrees 03 minutes 53 seconds West, along a line directed towards the afore described point of beginning, a distance of 0.80 feet, said point being marked by a Judicial Landmark set pursuant to said Court File No. C4-99-9547; thence South 02 degrees 03 minutes 53 seconds West, 149.09 feet to the afore described point of beginning and there terminating.

AND

That part of Lot 5, Block 3, South Park Division No. 6, according to the recorded plat thereof on file and of record in the office of the County Recorder, Dakota County, Minnesota, described as follows:

Commencing at the Southwest corner of the east 30.00 feet of Lot 2, Block 3, South Park Division No. 6; then East along the southerly line of said Lot 2 a distance of 29.92 feet to the Southwest corner of Lot 3, Block 3; thence continuing along the southerly lines of Lots 3 and 4, Block 3 along a curve with a radius of 35.26 feet, delta angle of 45 degrees 54 minutes 18 seconds and a measured length of 28.25 feet to an iron monument; thence
Northeasterly along Line A (Line A commencing at said last described iron monument on the Southerly boundary of said Lot 4 and extending on a straight line to a point on the Easterly boundary of said Lot 5 distant 4.00 feet from the most Northerly corner of said Lot 5) to its intersection with the Easterly boundary of Lot 5 which is the point of beginning; thence continuing Northwesterly along said Easterly Boundary of Lot 5 a distance of 4.00 feet to the most Northerly corner of said Lot 5; thence South 45 degrees 35 minutes 33 seconds West along the Northerly boundary of said Lot 5 to an iron monument marking its intersection with Line A; thence Northeasterly along said Line A to the point of beginning, and there terminating.

Loan #: 0522713536
**Agenda Item:** Approval of Satisfaction of Mortgage – #1040 – Resolution No. 2020-18

**Action to be considered:**

Motion to approve Resolution No. 2020-18.

**Overview:**

Applicant #1040 received an HRA rehabilitation loan of $2,121.00 in 2014, with a mortgage recorded at that time. The loan was paid back in full and the mortgage thus satisfied; therefore, the EDA is advised to approve Resolution No. 2020-18, which will authorize the designated officers of the City’s Housing and Redevelopment Authority to execute all necessary documentation required to record the satisfaction of mortgage.

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

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

WHEREAS, the South St. Paul Housing and Redevelopment Authority of the City of South St. Paul, Minnesota issued a mortgage to Applicant #1040 in the amount of $2,121.00

WHEREAS, such mortgage recorded on September 4, 2014 in Dakota County has been satisfied in full by the applicant;

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

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

Adopted this 5th day of October 2020

___________________________________ __________________________________
President, James P. Francis    Executive Director, Ryan Garcia
DATE: October 5, 2020

THAT CERTAIN MORTGAGE owned by the undersigned, dated September 2, 2014, executed by Scott E. Andrews, a single person, as mortgagor, to Housing and Redevelopment Authority for the City of South St. Paul, as mortgagee, and recorded on September 4, 2014, as Document Number 3028036, in the Office of the County Recorder or Registrar of Titles of Dakota County, Minnesota, is with the indebtedness thereby secured, fully paid and satisfied.

Lori Hansen, Chairperson

William Flatley, Secretary
State of Minnesota, County of Dakota ____________________________

This instrument was acknowledged before me on ______________________, by Lori Hansen, Chairperson and ___________________
(month/day/year)
William Flatley, Secretary of the Housing and Redevelopment Authority of the City of South St. Paul

__________________________________________
(Stamp)
__________________________________________
(signature of notarial officer) Debra M. Breitenfeldt
Title (and Rank): ____________________________
My commission expires: ______________________ (month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)
Housing and Redevelopment Authority
of the City of South St. Paul
125 Third Avenue North
South St. Paul, MN 55075
(651) 554-3270
**Agenda Item: Approval to Convey Real Property at 200 Concord Exchange South – Resolution 2020-14**

**Action to be considered:**
Following Public Hearing, motion to adopt EDA Resolution No. 2020-14 approving the sale of public (EDA) owned property, subject to the terms and conditions of a purchase and sale agreement with Thomas Nguyen

**Overview:**
Thomas Nguyen, previous owner-occupant of 201 – 205 Concord Exchange North, has expressed an interest in acquiring and renovating the EDA-owned building at 200 Concord Exchange South. The property is a vacant, approximately 3,500 square foot commercial building located just south of Northern Lights Auto. The building was constructed in the late 1960s and has housed a variety of commercial users in the past – most recently Titan Construction (a general contractor) until going into foreclosure and being acquired by the HRA in 2010. Mr. Nguyen has executed a purchase agreement for the property that would propose acquisition from the EDA at a price of $100,000, renovation of the existing, distressed building, and occupancy by his mortgage brokerage.

**Analysis:**

*Summary of the Property*
200 Concord Exchange South is an approximately 3,500 square foot commercial building (2/3 office, 1/3 garage/shop/warehouse) that rests on a 1/3 acre property on South Concord Exchange. The HRA acquired the property in May 2010 for $145,000. As we understand it from former HRA and City staff, the HRA’s intention upon acquisition was to assemble this site with the site directly to the south and demolish the structures; however, the owner to the south has been disinterested in selling that property. Complicating matters, the two buildings are adjoined by a common party wall on the property line, so the HRA resolved that they could not demolish “their side” of the wall without incurring liability for restoring the neighboring property’s wall. Thus, the building has been vacant since 2010. The interior of the building is in relative disarray, with building materials left by the previous owner, evidence of pre-demolition within the building, and evidence of roof faults throughout. Our annual carrying costs for this property are approximately $1,500, related primarily to property maintenance. For all intents and purposes, the building is an EDA liability in its current state.

As mentioned, the site measures approximately 1/3 acre (14,000 square feet in total) although more than half of that land area is steeply sloping bluffland (the western portion of the site). Effectively, the EDA-owned property is only about 6,500 “buildable” square feet in total, and ranges in depth from between 50’ (at the south end of the property) to 80’ (at the north end) between the sidewalk and toe of the bluff. In other words, this is a small, oddly shaped lot.
that would be relatively difficult to build upon should the existing building be demolished and the site positioned for sale and new development.

**Proposed Use**
Thomas Nguyen is interested in buying the existing building as-is for a price of $100,000 and investing over $250,000 to renovate the facility to house the offices of his mortgage brokerage, Choice Mortgage Group. An office use is a permitted (by right) use within the CGMU District, therefore it would require no special planning or zoning permissions to operate. The proposed use would seem to be a good fit for this property.

**Funding Sources and other fiscal considerations:**
The property is currently property tax exempt and has been since 2010. Upon acquisition and renovation, it is anticipated that the property will generate approximately $6,500 in annual taxes.

**Attachments:**
Orientation Map
Resolution 2020 – 14
Purchase Agreement
PAUL ECONOMIC DEVELOPMENT AUTHORITY
DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. 2020-14

RESOLUTION AUTHORIZING THE SALE AND CONVEYANCE OF REAL PROPERTY

WHEREAS, the South St. Paul Economic Development Authority (EDA) owns certain real property located in the City of South St. Paul, County of Dakota, State of Minnesota, including the parcel located at 200 Concord Exchange South, which is legally described on the attached Exhibit A (Property); and

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

WHEREAS, the EDA has entered into a Purchase Agreement (Purchase Agreement) with Ythomas Tan Nguyen, a Single Person, (Buyer) for the sale of the Property, subject to final approval of the sale of the property by the EDA to the Redeveloper, the terms and conditions of which include the use that the Buyer will be allowed to make of the Property, which shall be for renovation and occupancy of an approximately 3,500 square foot existing commercial building; and

WHEREAS, the EDA has published a notice of public hearing for the sale of the Property pursuant to Minnesota Statutes, Section 469.105, and such notice was published on September 20, 2020 in the St. Paul Pioneer Press, a local newspaper of general circulation notice;

WHEREAS, the EDA held a public hearing on October 5, 2020 pursuant to Minnesota Statutes, Section 469.105 regarding the sale of the Property to the Buyer at which all interested persons were given an opportunity to be heard; and

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

WHEREAS, the EDA is selling the Property to the Buyer pursuant to the authority set forth in Minnesota Statutes, Section 469.105 and the EDA has satisfied all provisions contained in such statutes.
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the South St. Paul Economic Development Authority:

1. The EDA hereby approves the sale and conveyance of the Property to the Buyer pursuant to the terms of the Purchase Agreement, and it is hereby found and determined that Buyer possesses the qualifications and the financial responsibility to acquire, renovate, and occupy the Property in accordance with all relevant zoning and building ordinances, codes, statutes and standards.

2. The purchase price and all other terms and conditions of the Purchase Agreement are hereby approved and the required officers of the EDA, staff, and consultants are hereby authorized to execute the necessary documents to sell and convey the Property to the Buyer pursuant to the terms of the Purchase Agreement.

Adopted this 5th day of October, 2020.

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

Real property located in Dakota County Minnesota legally described as follows:
Lot One (1), Subdivision of the East ½ of Block 2, Bryant’s Addition to the City of So. St. Paul, Dakota County Minnesota.
All that part of Lots Two (2), Three (3) and Four (4), Subdivision of the East ½ of Block 2, Bryant’s Addition to the City of So. St. Paul, Dakota County, Minnesota, lying Northerly of a line described as follows:
Commencing at the Northeast corner of said Lot Two (2); thence Southeasterly along the East line of Lots Two (2) and Three (3) a distance of 48.31 feet to the point of beginning of the line to be described; thence deflect 80 degrees 46 minutes 30 seconds to the right to a point on the Westerly line of said Lots Two (2), Three (3) and Four (4) and there terminating.
Abstract property
PID: 36-15240-02-022
PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (Agreement) is entered into as of this __ day of __________________, 2020, by and between Thomas Tan Nguyen, a single person (“Buyer”), and the South St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the laws of the State of Minnesota (“Seller”).

RECITALS

A. Seller is the owner of certain real property located at 200 Concord Exchange South in South St. Paul, Minnesota with a Parcel Identification Number of 36-15240-02-02 and legally described on Exhibit A attached hereto (Property).

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

NOW, THEREFORE, Buyer and Seller agree as follows:

1. **Sale**.

   1.1 **Sale.** Subject to the terms and provisions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property.

   1.2 **Effective Date.** The effective date of this Purchase Agreement shall be October 6, 2020 (the “Effective Date”).

   1.3 **Purchase Price.** The purchase price to be paid by Buyer to Seller for the Property shall be One Hundred Thousand Dollars and no/100s ($100,000.00) (the “Purchase Price”), payable as follows: (a) Five Thousand and No/100 Dollars ($5,000), as earnest money, to be paid to DCA Title Inc. (“Title”) upon execution of this Agreement; and (b) the balance on the Closing Date (as defined in Section 6) subject to those adjustments, prorations, and credits described in this Agreement, in cash or certified funds or by wire transfer pursuant to instructions from Seller.

2. **Available Surveys, Tests, and Reports.** Within fifteen (15) days after the Effective Date, Seller shall provide Buyer with (a) copies of all surveys, soil tests and environmental reports previously conducted on the Property, and (b) contracts and all other documents and material information relating to the Property (the “Due Diligence Materials”) which may be in the possession of Seller or to which Seller may have immediate access.

3. **Buyer’s Investigations.** At any time following the Effective Date, Seller shall allow Buyer and Buyer’s agents access to the Property without charge and at all times for the
purpose of Buyer’s investigation and testing of the Property, including surveying and testing of soil and groundwater (“Buyer’s Investigations”). Buyer shall provide to Seller copies of all written test results and reports conducted as part of Buyer’s Investigations. Buyer agrees to pay all of the costs and expenses associated with Buyer’s Investigations, to cause to be released any lien on the Property arising as a result of Buyer’s Investigations, and to repair and restore, at Buyer’s expense, the Property to the condition that existed prior to the Buyer’s Investigations.

4. **Insurance; Risk of Loss.** Seller assumes all risk of destruction, loss, or damage to the Property prior to the Closing Date. If, prior to the Closing Date, all or any portion of the Property or access thereto is condemned, taken by eminent domain, or damaged by cause of any nature, or the Property is rendered untenable, Seller shall immediately give Buyer notice of such condemnation, taking, or damage. After receipt of notice of such condemnation, taking or damage (from Seller or otherwise), Buyer shall have the option (to be exercised within thirty (30) days after Seller’s written notice) either (a) to require Seller to (i) convey the Property at Closing (as defined in Section 6) to Buyer in its damaged condition, upon and subject to all of the other terms and conditions of this Agreement without reduction of the Purchase Price, (ii) assign to Buyer at Closing all of Seller’s right, title and interest in and to any claims Seller may have to insurance proceeds, condemnation awards and/or any causes of action with respect to such condemnation or taking of or damage to the Property or access thereto, and (iii) pay to Buyer at Closing by certified or official bank check all payments made prior to the Closing Date under such insurance policies or by such condemning authorities, or (b) to terminate this Agreement by giving notice of such termination to Seller, whereupon this Agreement shall be terminated, any amount previously paid by Buyer to Seller shall be refunded to Buyer and thereafter neither party shall have any further obligations or liabilities to the other. If the right to terminate this Agreement is not exercised within such thirty (30) day period, such right shall be deemed to have been waived. Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Buyer’s prior written consent, which consent shall not be unreasonably withheld.

5. **Contingencies.**

5.1 **Buyer’s Contingencies.**

5.1.1 Unless waived by Buyer in writing, Buyer’s obligation to proceed to Closing shall be subject to (a) performance by Seller of its obligations hereunder, (b) the continued accuracy of Seller’s representations and warranties provided in Section 9.1, and (c) Buyer’s satisfaction, in Buyer’s sole discretion, as to the contingencies described in this Section 5.1:

5.1.1.1 **Inspection.** On or before the Contingency Date (defined below), Buyer shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by Buyer’s Investigations, physical inspection, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property, and all other inspections and due diligence regarding the Property, including any association rules or regulations applicable to any of the Property or any Due
Diligence Materials. Notwithstanding the foregoing, any acceptance by Buyer pursuant to this Section 5.1.1.1 shall be subject to Section 11.2.

5.1.1.2 Governmental Approvals. On or before the Contingency Date, Buyer shall have obtained on terms reasonably satisfactory to Buyer: (i) any rezoning, permits or other governmental approvals necessary at the Property for the renovation of the approximately 2,500 square foot office building with attached garage and related site improvements ("Buyer’s Intended Use"); (ii) all easements for utilities, services and access necessary for the construction and operation of Buyer’s Intended Use of the Property; and (iii) all utilities or services necessary for the construction and operation of Buyer’s Intended Use of the Property.

5.1.1.3 Access. On or before the Contingency Date, Buyer shall have satisfied itself, in Buyer’s sole discretion, that access to and from roads and the Property is adequate for Buyer’s Intended Use of the Property, including without limitation, access to the Property from median cuts and curb cuts.

5.1.1.4 Utilities. On or before the Contingency Date, Buyer shall have satisfied itself, in Buyer’s sole discretion, that water and gas mains, electric power lines, sanitary and storm sewers and other utilities are available or can be made available to the Property.

5.1.1.5 Title Insurance. On or before the Closing Date, Buyer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to Buyer in Buyer’s sole discretion, not disclosing any encumbrance not acceptable to Buyer in Buyer’s sole discretion.

The foregoing contingencies are for Buyer’s sole and exclusive benefit and one (1) or more may be waived in writing by Buyer in its sole discretion. Seller shall reasonably cooperate with Buyer’s efforts to satisfy such contingencies. Unless otherwise expressly stated herein, Buyer shall bear all cost and expense of satisfying Buyer’s contingencies. If any of the foregoing contingencies have not been satisfied on or before the applicable contingency date, then this Agreement may be terminated, at Buyer’s option, by written notice from Buyer to Seller. Such written notice must be given on or before the applicable contingency date, or, Buyer’s right to terminate this Agreement pursuant to this Section shall be waived. If Buyer terminates this Agreement pursuant to this Section, then any amount previously paid by Buyer to Seller shall immediately be refunded to Buyer. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property.

5.1.2 If Buyer elects not to exercise any of the contingencies set out herein, such election may not be construed as limiting any representations or obligations of Seller set out in this Agreement, including without limitation any
indemnity or representations with respect to environmental matters. Further, Buyer shall not be deemed to have waived any of the foregoing contingencies on account of its execution of this Agreement.

5.1.3 As used in this Agreement, the “Contingency Date” shall mean no later than 11:59 p.m. on November 30, 2020.

5.2 **Seller’s Contingencies.** Seller’s obligation to proceed to Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions:

5.2.1 **Buyer Performance.** Buyer shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by or prior to the Closing Date.

5.2.2 **Buyer Representations.** All representations and warranties of Buyer contained in this Agreement shall be accurate as of the Closing Date.

5.2.3 **No Default.** There shall be no uncured default by Buyer of any of its obligations under this Agreement as of the Closing Date, not otherwise waived by Seller.

If any contingency contained in this Section 5.2 has not been satisfied on or before the date described herein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from Seller to Buyer. If termination occurs all documents deposited by Buyer shall be immediately returned to Buyer, and all documents deposited by Seller shall be immediately returned to Seller and neither party will have any further rights or obligations with respect to this Agreement or the Property. All the contingencies in this Section 5.2 are specifically for the benefit of Seller, and Seller shall have the right to waive any contingency in this Section 5.2 by written notice to Buyer.

6. **Closing.** The Closing of the purchase and sale contemplated by this Agreement (“Closing”) shall occur on or before December 31, 2020 (“Closing Date”). Seller agrees to deliver legal and actual possession of the Property to Buyer on the Closing Date.

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

6.1.1 **Warranty Deed.** A warranty deed, with state deed tax paid, conveying title to the Property to Buyer, free and clear of all encumbrances, except the Permitted Encumbrances (the “Deed”). Such Deed shall include as a covenant running with the land the conditions of Minnesota Statutes, Sections 469.090 to 469.108 relating to the use of the land. If the covenant is violated the authority may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the deed.
6.1.2 **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.

6.1.3 **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.

6.1.4 **Bring-Down Certificate.** A certificate dated as of the Closing Date, signed by an authorized officer of Seller, certifying that the representations and warranties of Seller contained in this Agreement are true as of the Closing Date (“Bring-Down Certificate”).

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

6.1.6 **General Deliveries.** All other documents reasonably determined by Title to be necessary to transfer the Property to Buyer and to evidence that Seller (a) has satisfied all 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 liens or encumbrances, (c) has obtained all consents from third parties necessary to effect 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 Buyer with respect to the Property with the so-called “standard exceptions” deleted, and (e) has duly authorized the transactions contemplated hereby.

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

6.2.1 **Payment of Purchase Price.** The Purchase Price, in accordance with the terms of Section 1.3.

6.2.2 **FIRPTA Affidavit.** An affidavit of Buyer certifying that Buyer is not a “foreign person”, “foreign partnership”, foreign trust”, “foreign estate” nor a “disregarded entity” as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

6.2.3 **Buyer’s Affidavit.** A standard owner’s affidavit (ALTA form) from Buyer 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.
6.2.4 **Settlement Statement.** A settlement statement with respect to this transaction.

6.2.5 **Bring-Down Certificate.** A certificate dated as of the Closing Date, signed by an authorized officer of Buyer, certifying that the representations and warranties of Buyer contained in this Agreement are true as of the Closing Date (“Bring-Down Certificate”).

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

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

7.1 **Title Evidence and Closing Fee.** Buyer will pay all costs of the Title Commitment with respect to the Property. Buyer will pay all costs of the Survey, if any, and all premiums for any title insurance policy it desires with respect to the Property. Buyer will pay any and all reasonable closing fees or charges imposed by Title.

7.2 **Transfer Taxes; Sales Taxes.** Seller shall pay all state deed tax and conservation fee regarding the Deed. Seller shall pay all sales tax due, if any, regarding this transaction.

7.3 **Recording Costs.** Seller will pay the cost of recording all documents necessary to place record title to the Property in Seller including, but not limited to, costs of recording any documents necessary to cure any Objections, as hereinafter defined. Buyer will pay all recording costs with respect to the recording of the Deed.

7.4 **Real Estate Taxes and Special Assessments.** General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between Seller and Buyer on a daily basis as of 12:00 a.m. CST on the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable to the Closing Date and subsequent thereto. Seller shall pay all real estate taxes that exist against the Property for any year prior to Closing. At Closing, Seller shall pay in full all special assessments levied as of the Effective Date with respect to any of the Property. At Closing, Buyer shall pay all special assessments that are pending against the Property as of the Date of Closing. Buyer shall be responsible for the payment of any special assessments that are levied after the Closing Date.
7.5 **Utilities.** All utility expenses, including water, fuel, gas, electricity, sewer and other services furnished to or provided for the Property shall be prorated between Seller and Buyer on a daily basis as of the Closing Date, with Seller paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable to the Closing Date and subsequent thereto.

7.6 **Operating Costs and Income.** All other operating costs and income of the Property shall be prorated between Seller and Buyer as of 12:01 a.m. CT on the Closing Date, with Seller paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable to the Closing Date and subsequent thereto.

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

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

8. **Title Examination.** Within a reasonable time following the Effective Date, Buyer shall obtain the following: (i) a commitment for an owner’s title insurance policy (ALTA Form 2006) issued by Title for the Property, and copies of all encumbrances described in the commitment (Commitment); and, if it desires, (ii) an ALTA-certified survey bearing the legal description of the Property, and showing the area, dimensions and location of the Property (Survey) (the Survey together with the Commitment shall be known as the “Title Evidence”).

8.1 **Buyer’s Objections.** Within twenty (20) calendar days after Buyer’s receipt of the last of the Title Evidence, Buyer may make written objections (Objections) to the form or content of the Title Evidence. The Objections may include without limitation, any easements, restrictions or other matters which may interfere with Buyer’s Intended Use of the Property or matters which may be revealed by the Survey. Any matters reflected on the Commitment which are not objected to by Buyer within such time period shall be deemed to be permitted encumbrances (Permitted Encumbrances). Buyer shall have the renewed right to object to the Commitment as the same may be revised or endorsed from time to time.

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

- **8.2.1** Terminate this Agreement with respect to all of the Property.

- **8.2.2** Waive one (1) or more of its Objections and proceed to Closing.

If Buyer so terminates this Agreement, neither Seller nor Buyer shall be liable to the other for any further obligations under this Agreement and any amount previously paid by Buyer to Seller shall be refunded to Buyer.
9. **Warranties and Representations**

9.1 **By Seller.** Seller warrants and represents the following to Buyer, and acknowledges that Buyer has relied on such representations and warranties in agreeing to enter into this Agreement:

9.1.1 Seller is a public body corporate and politic under the laws of the State of Minnesota and has all requisite corporate power and authority to carry on its business as now conducted, to enter into this Agreement and to perform all of its obligations under this Agreement. Seller acknowledges that it has authority of its governing board to perform all of its obligations and agreements under this Agreement.

9.1.2 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 may be bound.

9.1.3 There are no actions, suits or proceedings pending or threatened against or affecting Seller or any of its properties, before any court or arbitrator, or any governmental department, board, agency or other instrumentality which (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.

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

9.1.5 There are no development agreements or other agreements or understandings with respect to public or private improvements regarding the Property.

9.1.6 There are no wells or sewage treatment systems located on any portion of the Property. There has been no methamphetamine production on or about any portion of the Property. 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.

9.1.7 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.

9.1.8 There are no leases or tenancies with respect to the Property. There are no agreements or other contracts of any nature or type relating to, affecting or serving the Property and there shall be none as of the Closing Date.

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

9.1.10 The representations, warranties, and other provisions of Sections 9.1 – 9.1.9 shall survive closing.

Buyer acknowledges and agrees that, except as expressly specified in this Section 9 of this Agreement, Seller has not made, and Seller hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or rising by operation of law, with respect to the Property, including but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or Environmental Conditions (as the same is defined in Section 11 hereof), 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 Buyer, or any other matter or item regarding the Property. Subject to the Environmental Investigation or Study and the Environmental Mitigation or Remediation as stated in Sections 11.2.1 and 11.2.2 respectively, Buyer agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by Seller on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. Buyer is an experienced purchaser of property such as the Property and Buyer has made or will make its own independent investigation of the Property. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the Deed.

9.2 By Buyer. Buyer 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:

9.2.1 This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms. Buyer 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 Buyer pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant hereto have each been duly authorized by all necessary action on the part of Buyer and such execution, delivery and performance does and will not conflict with or result in a violation of Buyer’s organizational agreement or any judgment or order.

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

The representations, warranties and other provisions of this Section 9.2 shall survive Closing.

10. **Additional Obligations of Seller.**

10.1 **Licenses and Permits.** Seller shall transfer to Buyer all transferable rights, if any, in any permits or licenses held by Seller with respect to the Property.

10.2 **Condition of Property at Closing.** On the Closing Date, Seller shall deliver to Buyer exclusive vacant possession of the Property, as-is and where is, and shall have no obligation to remove or cause to be removed any personal property, building material, or any other items incidentally located upon, at, or within the Property.

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

10.4 **Non-Assumption of Contracts or Other Obligations.** The parties understand and agree that Buyer 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 Buyer of any agreements, indebtedness, obligations or liabilities of Seller which are owing with respect to the operation of the Property prior to the Closing Date.

10.5 **Approvals.** Buyer may elect to seek certain approvals in order for Buyer to develop the Property for Buyer’s Intended Use, including rezoning the Property or
receipt of a conditional use permit (Approvals). Seller, at no out-of-pocket cost to Seller, will reasonably cooperate with Buyer’s efforts to obtain the Approvals at or prior to Closing. Seller hereby grants Buyer the right to file and prosecute applications and petitions for the Approvals and any special use permits and variances desired by Buyer; provided, however, any special use permits or variances shall (a) be contingent on the occurrence of the Closing and shall not be binding upon Seller or the Property unless and until the Closing occurs, or (b) be approved in writing in advance by Seller.

11. **Environmental Matters.**

11.1 **Definitions.** For purposes of this Agreement,

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

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

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

Buyer acknowledges and agrees that 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 Environmental Conditions of the Property. Buyer is aware that a Phase I Environmental Site Assessment was completed by Landmark Environmental, LLC in April 2010. Buyer is aware of the results of the Phase I Assessment. Subject to the Environmental Investigation or Study and the Environmental Mitigation or Remediation, as stated in Sections 11.2.1 and
11.2.2 respectively, Buyer agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by Seller on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. Buyer is an experienced purchaser of property such as the Property and Buyer has made or will make its own independent investigation of the Property. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the Deed.

11.2 Environmental Cost and Buyer Indemnification Obligation.

11.2.1 Environmental Investigation or Study. Any environmental investigation and/or study of the Property shall be pre-approved by a representative of the Seller and then completed by Buyer at the Buyer’s sole cost and expense.

11.2.2 Environmental Mitigation or Remediation. Any State of Minnesota mandated environmental mitigation and/or remediation of the Property (“Environmental Remediation”) shall be pre-approved by a representative of the Seller and then completed by Buyer at the Buyer’s sole cost and expense.

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

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


12.1 Indemnity by Seller. Seller agrees to indemnify Buyer and to hold Buyer harmless from and against any and all loss, liability, damage, cost, expense (including attorneys’ fees and expenses), cause of action, regulatory proceeding, suit, claim, demand or judgment arising out of or relating to (a) the inaccuracy of any of the warranties and representations made by Seller pursuant to this Agreement and any related agreements, or (b) the operation of the Property prior to the Closing Date, including, without limitation, all liabilities, losses and claims with respect to federal, state and local tax and other obligations, in each case which accrue prior to the Closing Date, or (c) claims by adjacent property owners for damages resulting from the environmental contamination of adjacent
properties due to the migration of any Environmental Conditions which occurred prior to the Closing Date. Seller’s obligations hereunder shall survive the Closing or any termination of this Agreement. Consummation of this Agreement and any related agreements by Buyer with knowledge of any of the foregoing shall not constitute a waiver or release by Buyer of any claims with respect thereto.

12.2 **Indemnity by Buyer.** In addition to the Buyer’s indemnification obligation set forth in Section 11.2.3, Buyer agrees to indemnify Seller and to hold Seller harmless from and against any and all loss, liability, damage, cost, expense (including attorneys’ fees and expenses), cause of action, regulatory proceeding, suit, claim, demand or judgment arising out of or relating to (a) subject to Section 3, any Buyer’s Investigations, (b) the inaccuracy of any of the warranties and representations made by Buyer pursuant to this Agreement and any related agreements which accrue prior to the Closing Date or (c) the operation of the Property after to the Closing Date, including, without limitation, all liabilities, losses and claims with respect to federal, state and local tax and other obligations, in each case which accrue after to the Closing Date. Buyer’s obligations hereunder shall survive the Closing or any termination of this Agreement. Consummation of this Agreement and any related agreements by Seller with knowledge of any of the foregoing shall not constitute a waiver or release by Seller of any claims with respect thereto.

13. **Commissions.** Each party represents that all negotiations on its behalf relative to this Agreement and the transactions contemplated by this Agreement have been carried on directly between the parties, without the intervention of any party as broker, finder or otherwise. Each party hereby indemnifies the other from and against all losses, damages, costs, expenses (including reasonable fees and expenses of attorneys), causes of action, suits or judgments of any nature arising out of any claim, demand or liability to or asserted by any broker, agent or finder, claiming to have acted on behalf of the indemnifying party in connection with this transaction.

15. **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 Buyer:**
Thomas Tan Nguyen  
1680 Oakbrooke Court  
Eagan, MN 55122

**If to Seller:**
South St. Paul Economic Development Authority  
125 Third Avenue North  
South St. Paul, Minnesota 55075  
Attn: Executive Director
16. **Default; Remedies.** If either Seller or Buyer fails to perform any of their respective obligations under this Agreement in accordance with its terms, and such failing party does not cure such failure within thirty (30) days after written notice thereof from the other party (provided that no notice or cure period shall be required for obligations to be performed at Closing), then the other party shall have the right to terminate this Agreement by giving the failing party written notice of such election. In the case of any default by Buyer, Seller’s sole and exclusive remedy shall be termination of this Agreement as provided above. Buyer shall also have the right to specifically enforce this Agreement. In any action or proceeding to enforce this Agreement or any term hereof, the prevailing party shall be entitled to recover its reasonable costs and attorneys’ fees.

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

18. **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 a writing executed by the parties.

19. **Binding Effect; Survival.** This Agreement binds and benefits the parties and their respective successors and assigns. Buyer may not assign this Agreement without the prior written consent of the Seller, including, without limitation, to any franchisee of Buyer. All representations and warranties, and indemnification obligations of the parties hereto shall survive the Closing.

20. **Governing Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any legal action related to this Agreement shall be venued in Dakota County District Court.

21. **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.

22. **Time of the Essence.** Time is of the essence of this Agreement.

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

SELLER:

SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By ____________________________  
James P. Francis  
Its: President

By ____________________________  
Ryan Garcia  
Its: Executive Director

STATE OF MINNESOTA )
) ss
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this _____ day of _______, 2020, by James P. Francis and Ryan Garcia, respectively the President and the Executive Director of the South St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the laws of the State of Minnesota, on behalf of said Authority.

______________________________
Notary Public
BUYER:

THOMAS TAN NGUYEN

By: ____________________________

___________________

STATE OF MINNESOTA )
) ss
COUNTY OF DAKOTA )

The foregoing instrument was acknowledged before me this _____ day of ______, 2020, by Thomas Tan Nguyen, a single person.

_________________________________
Notary Public
Legal Description of the Property

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

Lot One (1), Subdivision of the East ½ of Block 2, Bryant’s Addition to the City of So. St. Paul, Dakota County, Minnesota.

All that part of Lots Two (2), Three (3) and Four (4), Subdivision of the East ½ of Block 2, Bryant’s Addition to the City of So. St. Paul, Dakota County, Minnesota, lying Northerly of a line described as follows:

Commencing at the Northeast corner of said Lot Two (2); thence Southeasterly along the East line of Lots Two (2) and Three (3) a distance of 48.31 feet to the point of beginning of the line to be described; thence deflect 80 degrees 46 minutes 30 seconds to the right to a point on the Westerly line of said Lots Two (2), Three (3) and Four (4) and there terminating.

Abstract property

PID: 36-15240-02-022

EXHIBIT A
BUYER:

THOMAS TAN NGUYEN

By: [Signature]

STATE OF MINNESOTA   
COUNTY OF DAKOTA   

The foregoing instrument was acknowledged before me this 10 day of Sept., 2020, by Thomas Tan Nguyen, a single person.

[Notary Public Signature]

Debra M. Breitenfeldt
Notary Public
EDA Agenda Item Report
Date: October 5, 2020
EDA Executive Director:  

Agenda Items:
Authorizing an Application for the Minnesota Department of Employment and Economic Development’s Contamination Cleanup Program for the Redevelopment of 201 – 205 Concord Exchange North, Resolution 2020-15

Authorizing an Application for the Metropolitan Council’s Tax Base Revitalization Account for the Redevelopment of 201 – 205 Concord Exchange North, Resolution 2020-16

Action to be considered:
Motion to approve Resolution 2020-15, authorizing the Executive Director to submit an application for the Contamination and Cleanup Grant Program to the Minnesota Department of Employment and Economic Development (DEED) for environmental clean-up activities at 201 - 205 Concord Exchange North.

Motion to approve Resolution 2020-16, authorizing the Executive Director to submit an application for the Metropolitan Council’s Tax Base Revitalization Account (TBRA) for environmental clean-up activities at 201 - 205 Concord Exchange North.

Overview:
The Contamination Cleanup and Investigation Grant Program helps communities pay for assessing and cleaning up contaminated sites for private or public redevelopment. Grants pay up to 75 percent of the costs to investigate and clean up sites that have recognized environmental concerns impacting soil and groundwater. Both publicly and privately owned sites with known or suspected soil or groundwater contamination qualify. Cities, port authorities, housing and redevelopment authorities, economic development authorities, or counties are eligible for funding. For the Fall 2020 application cycle, more than $5 million in funding will be awarded to eligible projects. Applications for the program are due on November 2, 2020.

As the EDA is aware, Staff has been working very closely with the Beard Group on the proposed redevelopment of the northwest quadrant of Concord Exchange North and Grand Avenue. This complex and visionary infill, luxury market-rate apartment development represents an opportunity to revitalize a distressed and challenging site, however soil, soil vapor, and groundwater conditions challenge the project’s financial feasibility. To secure the project’s success, Staff feels it to be imperative that we take advantage of the resources
provided by DEED and the Metropolitan Council for the cleanup and redevelopment of sites that are inhibited by adverse environmental conditions.

DEED’s Cleanup program will fund a maximum of 75% of eligible project costs, and requires that at least 12% of project costs come from “unrestricted sources” such as developer equity or public financial assistance, while the Met Council’s Tax Base Revitalization Account (TBRA) can fund up to 13% of the required match. To this end, Staff is also asking the EDA to approve Resolution 2020-16, which authorizes an application to the Met Council TBRA program for this project. We are still working with our environmental consultant for this site (Braun Intertec) to finalize the Response Action Plan (RAP), to determine the exact amount of each funding source we will seek to leverage for this project. Staff proposes approval of Resolutions 2020-15 and 2020-16 so that we can proceed with applying for as much grant funding as possible and also meet the application deadline to keep the project moving forward. If successful with grant funding, we would analyze overall project costs and sources of funding to determine what, if any, level of public financial assistance (through a newly-created Redevelopment Tax Increment Finance District) would be warranted for the project to proceed.

**Funding Sources and other fiscal considerations:**
Collectively, DEED and TBRA funding can cover up to 88% of eligible cleanup costs. Match amounts will be in the form of Developer financing/equity for the project.

**Attachments:**
Orientation Map
Resolution 2020 – 16
Resolution 2020 - 17
South St. Paul Economic Development Authority  
Dakota County, Minnesota

RESOLUTION NO. 2020-15

RESOLUTION TO AUTHORIZE SUBMISSION OF AN APPLICATION FOR THE CONTAMINATION CLEANUP GRANT FOR THE REDEVELOPMENT OF 201 - 205 CONCORD EXCHANGE NORTH

WHEREAS, the City of South St. Paul, Minnesota (the “City”), through its Economic Development Authority (the “EDA”) desires to manage and remediate contaminated sites to allow for redevelopment; and

WHEREAS, the Minnesota Department of Employment and Economic Development (“DEED”) provides opportunities for local governments to apply for grants for the purpose of reducing the potential threat to public health and the environment, creating new jobs, increasing tax base, and providing other public benefits by redeveloping polluted and underproductive sites; and

WHEREAS, the City and its constituent agencies has successfully used DEED grant funds to conduct environmental management and remediation throughout BridgePoint Business Park, at Mississippi Landing, and at several development sites on Hardman Avenue.

NOW, THEREFORE, BE IT RESOLVED that the EDA does hereby approve the Contamination Cleanup grant application submitted to DEED on or before November 2, 2020 by the EDA for the implementation of a Response Action Plan for the development of “The Yards” residential project at 201 - 205 Concord Exchange North Site; and

BE IT FURTHER RESOLVED that the City of South St. Paul is located within the seven county metropolitan area defined in section 473.121, subdivision 2, and is participating in the local housing incentives program under section 473.254; and

BE IT FURTHER RESOLVED that the EDA act as the legal sponsor for the project contained in the Contamination Cleanup Grant Program to be submitted on or before November 2, 2020 and that its President and Executive Director are hereby authorized to apply to DEED for funding of this project on behalf of the EDA; and

BE IT FURTHER RESOLVED that the EDA has the legal authority to apply for financial assistance, and the institutional, managerial, and financial capability to ensure adequate project administration; and

BE IT FURTHER RESOLVED that the sources and amounts of the local match identified in the application are committed to the project identified; and
BE IT FURTHER RESOLVED that the EDA has not violated any Federal, State, or local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice;

BE IT FURTHER RESOLVED that upon approval of its application by the State, the EDA may enter into an agreement with the State of Minnesota for the above-referenced project, and that the EDA certifies that it will comply with all applicable laws and regulations as stated in all contract agreements;

NOW, THEREFORE, BE IT FINALLY RESOLVED THAT the President and Executive Director are hereby authorized to execute such agreements as are necessary to implement the project on behalf of the applicant

Adopted this 5th day of October, 2020.

_________________________________  _______________________________
President, James P. Francis    Executive Director, Ryan Garcia
CERTIFICATION

STATE OF MINNESOTA
COUNTY OF DAKOTA
CITY OF SOUTH ST. PAUL

I do hereby certify the above resolution is a true and accurate copy of the Resolution adopted by the Economic Development Authority in and for the City of South St. Paul at an authorized meeting held on the 5th day of October, 2020 as shown by the minutes of the meeting in my possession.

Dated this ____ day of __________, 20___

___________________________________
Renee Schmitt, Secretary
RESOLUTION NO. 2020-16

RESOLUTION TO AUTHORIZE SUBMISSION OF AN APPLICATION FOR THE TAX BASE REVITALIZATION ACCOUNT FOR THE REDEVELOPMENT OF 201 - 205 CONCORD EXCHANGE NORTH

WHEREAS, the City of South St. Paul, Minnesota (the “City”) is a participant in the Livable Communities Act’s Local Housing Incentives Account Program for 2020 as determined by the Metropolitan Council, and the Economic Development Authority of the City of South St. Paul (the “EDA”) is therefore eligible to make application to apply for funds under the Tax Base Revitalization Account (“TBRA”); and

WHEREAS, the City has identified a contamination cleanup project at 201 - 205 Concord Exchange North in the City (the “Property”) that meets the TBRA’s purposes of enhancing the city tax base and promoting job creation and is consistent with and promotes the purposes of the Metropolitan Livable Communities Act and the policies of the Metropolitan Council’s adopted metropolitan development guide; and

WHEREAS, the EDA has the institutional, managerial and financial capability to ensure adequate project and grant administration; and

WHEREAS, the EDA certifies that it will comply with all applicable laws and regulations as stated in the contract grant agreements; and

WHEREAS, the EDA finds that the required contamination cleanup will not occur through private or other public investment within the reasonably foreseeable future without Tax Base Revitalization Account grant funding; and

WHEREAS, the EDA represents that it has undertaken reasonable and good faith efforts to procure funding for the activities for which TBRA funding is sought but has not found nor secured from other sources sufficient funding for the cleanup and states that this representation is based on the following reasons and supporting facts:

- An application is being presented to the Minnesota Department of Employment and Economic Development’s (“DEED”) Contamination Cleanup Grant Program to help offset the extraordinary costs related to implementation of a Response Action Plan (the “RAP”) for the Property. The EDA understands that DEED’s program is highly competitive, and intends to make most efficient use of all available funding sources to implement the RAP for the property.
- A preliminary development agreement has been executed between the Beard Group, Inc. (the “Developer”) and the EDA, and a Tax Increment Financing (“TIF”) Agreement is currently being negotiated and drafted. Site preparation
costs including demolition, geotechnical site correction, filling and grading, and underground parking are so sufficient that TIF will be needed to cover these costs and maintain financial viability for the redevelopment project at the Property.

- The Minnesota Department of Employment and Economic Development (“DEED”) Redevelopment Grant Program has been suspended in 2020, thereby reducing the availability of program sources that might have offset the extraordinary costs related to implementation of a Response Action Plan for the Property.

NOW, THEREFORE, BE IT RESOLVED THAT the EDA authorizes the Executive Director to submit an application to the Livable Communities Act Tax Base Revitalization Account for contamination cleanup activities at 201 – 205 Concord Exchange North; and

BE IT FURTHER RESOLVED that if a TBRA grant is awarded for this project, the EDA acknowledges that it will be the grantee and agrees to act as legal sponsor to administer and be responsible for grant funds expended for the project contained in the TBRA grant application submitted on or before November 2, 2020.

Adopted this 5th day of October, 2020.

_________________________________  ______________________________
President, James P. Francis    Executive Director, Ryan Garcia
CERTIFICATION

STATE OF MINNESOTA
COUNTY OF DAKOTA
CITY OF SOUTH ST. PAUL

I do hereby certify the above resolution is a true and accurate copy of the Resolution adopted by the Economic Development Authority in and for the City of South St. Paul at an authorized meeting held on the 5th day of October as shown by the minutes of the meeting in my possession.

Dated this ____ day of __________, 20___

___________________________________
Renee Schmitt, Secretary
**Agenda Item**: Approval of Lease Agreement with JBL Properties, LLC / Twin City Pallet Company – 139 Grand Avenue East, Resolution 2020-19

**Action to be considered:**
Motion to approve Resolution 2020-19, authorizing a Lease Agreement with JBL Properties, LLC

**Overview:**
As previously discussed, the EDA has agreed to acquire the property located at 139 Grand Avenue East from JBL Properties, LLC, with closing scheduled this month. 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 and EDA agreed that the EDA would consider a “leaseback” arrangement to provide the business with timing flexibility to secure and move to a new location after closing. JBL has continued its search for a replacement property, but at the current time have not secured a new location to purchase and either occupy or construct facilities for their operating business.

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: period of 181 days following Commencement (Closing) Date
  - Extension Term: No more than 607 Days after end of Initial Term, terminable by tenant at any time.
  - Total of ~ 2 years, 2 months

- **Base Rent**
  - Tenant is responsible for all utilities, maintenance and management of the property.
  - EDA is responsible for property tax and special assessments levied (property will become property tax exempt in Pay 2022)
  - Initial Term: $1 for 6-month term
  - Extension: $10,000 per month for first 3 months, $15,000 per month after that

- **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 more than two years and two months after the closing date. At present, there is no defined date that Twin City Pallet will vacate the premises. A replacement property for the Company has not been identified, and JBL is contemplating securing a site for new construction, which they cannot finance until the 139 Grand Avenue closing occurs and they can use closing proceeds for that purpose.

Staff anticipates that there may be some concern from the EDA about the length of the lease term. Staff requests that the EDA take the long view on this opportunity, and would offer the opinion that the benefits of the proposed arrangement outweigh the perceived/potential drawbacks of a 2+ year lease term:

- From the EDA’s perspective, we do not currently have a viable, interested redevelopment partner for the “Hardman Triangle” site as a whole. It is Staff’s strong opinion that we need to exercise extreme diligence and fully position the larger district for holistic, comprehensive redevelopment.
- Staff’s opinion is that continuing to collect rent and occupy this site with a functioning business/tenant buys the EDA time to take the additional necessary steps to position the Hardman Triangle as a whole for redevelopment.
- Rent payments help to “buy down” the EDA’s acquisition costs to a certain degree. Although we will close at a purchase price of $1,630,000, we have been awarded $500,000 from Dakota County’s ELF program for this acquisition, and lease payments for this site would total $285,000 if run to term. These are significant financial considerations.
- While Staff is bullish on the attractiveness of our market for mixed-use development, there is a very high probability that this site (and the Hardman Triangle as a whole) will not be put to its highest and best use as mixed-use unless and until at least two of the following take place: a) the Concord Street reconstruction is completed; b) “The Yards” at NW Concord Exchange/Grand (250+ units of market-rate residential) is completed and stabilized; c) “Concord Flats” at NW Concord Exchange/Veterans Memorial (150+- units of market-rate residential) is completed and stabilized. These events are projected to occur by mid- to late-2022 based on current conditions.
- Should Twin City Pallet vacate or be forced to vacate prior to the Hardman Triangle being more ripe for redevelopment, the EDA will be under significant pressure to demolish existing structures on site. Doing so may hinder our ability to leverage the Redevelopment Tax Increment Finance tool in the future for this site (which requires a finding of blight, which is generally speaking heavily reliant on the presence of substandard buildings).

In short, Staff’s opinion is that we should not feel extreme urgency to remove Twin City Pallet from the property. There is, in Staff’s opinion, a very low probability that their presence on the site will somehow stand in the way of the redevelopment envisioned by the City for the Hardman Triangle within the prescribed lease term.

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, TIF administration, and redevelopment costs.

**Attachments:**
- Orientation Map
- Resolution 2020-19
- Draft Lease Agreement
139 GRAND AVENUE EAST
RESOLUTION NO. 2020-19

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT

WHEREAS, the South St. Paul Economic Development Authority (EDA) is in the process of acquiring title to real property located at 139 Grand Avenue East in the City of South St. Paul, Dakota County, Minnesota (Property) from JBL Properties, LLC (Seller); and

WHEREAS, pursuant to Minnesota Statutes, Section 469.101, the EDA has the authority to lease any of its lands or property; and

WHEREAS, Seller and its principal officers are one and the same with those of Twin City Pallet Company, Inc. (Tenant), which Tenant has occupied the Property since 1987 in the conduct of its business operations as a pallet manufacturing business consistent with its 1987 Conditional Use Permit Approval; and

WHEREAS, at Closing, the EDA will enter into a Lease Agreement (Lease Agreement) with Tenant, for the continued use of the Property for a period of time, consistent with existing use; and

WHEREAS, the EDA has determined that the temporary lease of the Property to the Tenant is in the best interests of the City of South St. Paul and the EDA.

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

1. The EDA hereby approves the lease of the Property to the Tenant pursuant to the terms of the Lease Agreement, subject to minor modification as approved by the City Attorney.

2. All terms and conditions of the Lease Agreement are hereby approved and the required officers of the EDA, staff, and consultants are hereby authorized to execute the necessary documents to lease the Property to the Tenant pursuant to the terms of the Lease Agreement.

Adopted this 5th day of October, 2020.

_________________________________________   _____________________________
James P. Francis, President     Ryan D. Garcia, Executive Director
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 the date on which Landlord acquires ownership of the Premises pursuant to the terms of that certain Purchase Agreement dated May 6, 2020 entered into by and between Landlord as the buyer and JBL Properties, LLC, a Minnesota limited liability company as the seller ("Commencement Date") and terminating at 11:59 p.m. on the 182nd consecutive day following the Commencement Date (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 term of the Lease beyond the Initial Term, Tenant shall notify Landlord of its intention to extend the term of the Lease ("Extension Term"). Tenant’s notification to Landlord of its intention to extend the term of the Lease must be submitted by Tenant in writing at least 30 days prior to the end of the Initial Term. The Extension Term shall be for not more than 607 days following the Initial Term. Tenant may terminate this Extension Term at any time but agrees to forfeit any Rent paid prior to such termination.

ARTICLE 3
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 Rent for the Initial Term of the Lease. Landlord hereby acknowledges receipt of the entire amount of Rent as of the Effective Date.

B. Extension Term Rent. Tenant shall pay to Landlord Rent in the amount of Ten Thousand and 00/100 Dollars ($10,000.00) per month for the first three months of Extension Term and Fifteen Thousand and 00/100 Dollars ($15,000.00) per month for the balance of the Extension Term, payable on or before the 1st day of each month.

6
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, including reasonable attorney fees and costs, arising from Tenant’s failure to
remove 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.

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, including reasonable attorney fees and costs, arising from Tenant’s failure to remove personal property.

**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
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, including reasonable attorney fees and costs, 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: Authorization to Execute a Preliminary Development Agreement with DRS Investment VIII LLC

Action to be considered:
Motion to authorize the executive director and president of the EDA to execute a preliminary development agreement with DRS Investment VIII LLC for the proposed “Concord Flats” residential project.

Summary:
At its December 9, 2019 and August 10, 2020 Worksessions, the EDA discussed the “Concord Flats” project being proposed by Master Development/DRS Investment VIII LLC (“DRS”) at the northwest corner of Veterans Memorial Drive and Concord Exchange North. As the EDA may recall, the proposed project consists of a 4-story market-rate apartment building with enclosed/underbuilding parking and approximately 160 units. As the project has come more clearly into focus, Staff believes that a more formal arrangement between the Developer and EDA is necessary, as we have begun investing in due diligence items to evaluate the project’s feasibility with only a minimal TIF Application Fee received from the Developer.

The EDA owns approximately 1.5 acres of property that has been leased to the owners of the property at 161 Concord Exchange North (currently “The Drover” apartment community) for non-exclusive parking rights (i.e., the lots remain available to the public for parking but occupants of the building can park in any open spot). In 2018, the EDA negotiated a development agreement with DRS Investment VI that included the following clause: “…the EDA and the Redeveloper agree to work in good faith and with reasonable diligence to prepare a plan for redevelopment” of the EDA-owned parking lots. As the EDA is aware, in recent months Staff and the Developer have worked to refine and better define the development plan and financing approach for this site. A preliminary but-for and pro forma analysis by Staff indicates that a financing gap exists and that a public-private partnership will be necessary to make the project financially viable.

DRS and EDA Staff have negotiated a preliminary development agreement that will frame our public-private partnership through its next stages. This agreement would be an important first step in our collaboration by defining each party’s roles and expectations as we work towards a final development plan and ultimately the formal, legally binding agreements needed to deliver that development. The most significant next steps relate to:

- Applying for any potential Grant Funding assistance through Dakota County or other governmental entities
• Engaging our financial consultant (Ehlers) to independently review a pro forma for “but for” determination and proposed TIF assistance
• Engaging Kennedy & Graven and LGM for the drafting of formal TIF agreement and Development agreement, respectively.

Because these are significant commitments from the EDA, we feel it is most prudent to enter into a formal agreement, with financial consideration to the EDA, if we are to advance these analyses with our consulting teams.

**Funding Sources and other fiscal considerations:**
The Agreement provides for a developer-paid escrow of up to $25,000 to assist in the costs of financial, legal, and site analysis and due diligence. Should development proceed with DRS, a comprehensive development agreement, including any amounts, terms and conditions related to public financial assistance for the development, will be prepared and presented for public approval in accordance with statutory and policy guidance.

**Attachments:**
Orientation Map
Preliminary Development Agreement
CONCORD FLATS – ORIENTATION MAP
THE SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY,
THE CITY OF SOUTH ST. PAUL
AND
DRS INVESTMENT VIII, LLC

PRELIMINARY DEVELOPMENT AGREEMENT

THIS PRELIMINARY DEVELOPMENT AGREEMENT (this “Agreement”), dated the day of ___________ 2020, by and between the South St. Paul Economic Development Authority, a public body corporate and politic under the laws of the State of Minnesota (the “EDA”) and DRS Investment VIII, LLC., a limited liability company (the “Developer”);

WITNESSETH:

WHEREAS, the EDA desires to promote development of certain property within the City, located generally between Concord Exchange North, Veterans Memorial Drive, and Grand Avenue West (the “Property”) as depicted in Exhibit A attached hereto; and

WHEREAS, the Property is made up of parcels owned or to be owned by the EDA; and

WHEREAS, the EDA has determined that it is in the best interests of the EDA that the Developer be designated as the sole developer of the Property during the term of this Agreement; and

WHEREAS, the EDA intends that the site design for the Property be generally consistent with the 2040 Comprehensive Plan, the 2003 Grand Avenue Gateway Development Framework, and the Concord Gateway Mixed-Use Zoning District and provide for all of the following uses on the Property:

1. A 4- to 5-story, market-rate residential apartment building consisting of 120 to 170 units (the “Building”); and

2. A district parking facility that maximizes the efficiency and leverages the topography of the site, potentially located beneath the market-rate apartment building (“Parking”).

WHEREAS, the Developer desires to acquire and develop all or a portion of the Property for purposes of constructing thereon a multi-family development along with complementary public uses (the “Development”); and

WHEREAS, the EDA and Developer are interested in further planning and negotiation for the Developer’s proposal for the Development; and

WHEREAS, Developer has indicated to the EDA that it will seek financial assistance from the City and/or the EDA to make the Development feasible; and
WHEREAS, the City or the EDA will need to determine if various studies, as may be determined to be reasonably necessary, should be conducted, including without limitation an environmental impact or related study, an infrastructure feasibility study, an economic impact study, and any other required analysis of the Development (the “Studies”) and will need to determine that the proposed Development of the Property will have a positive impact on the City;

and

WHEREAS, the City and the EDA are willing to discuss with Developer available financial assistance, grants, gifts or loans for the Development; and

WHEREAS, various land use, zoning, and subdivision issues and actions related to the Development and the Property are required to be approved by the City in order to facilitate the Development by the Developer; and

WHEREAS, the EDA agrees to cooperate with the Developer to review and process various land use, zoning, and subdivision issues and actions related to the Development and the Property in order to facilitate the Development by the Developer; and

WHEREAS, the EDA is willing to consider and Developer is desirous to undertake the Development if (i) a satisfactory agreement can be reached regarding EDA’s commitment for public costs necessary for the Development; (ii) satisfactory mortgage and equity financing, or adequate cash resources for the Development can be secured by Developer; and (iii) the feasibility and soundness of the Development and other necessary preconditions have been determined to the satisfaction of the parties.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and obligations set forth herein, the parties agree as follows:

1. Future Negotiations.

The parties agree to continue negotiations in an attempt to formulate a definitive plan for review and approval of all land use, zoning and subdivision approvals and any necessary development agreements or contracts based on the following:

(a) Developer’s Proposal, which shows the scope of each phase of the proposed Development in its latest form as of the date of this Agreement, together with any changes or modifications required by City or EDA;

(b) Mutually satisfactory development agreements or contracts to be negotiated and agreed upon in accordance with negotiations contemplated by this Agreement;

(c) City and the EDA establishing marketable title to the Property to accommodate the Development; and

(d) Other terms and conditions of this Agreement.
2. **Statement of Intent.**

Although not conclusive or binding on either party, it is the intention of the parties that this Agreement: (a) documents the present understanding and commitments of the parties; (b) will allow the EDA and City to determine the amount of available financial assistance for the Development; (c) will lead to negotiation and execution of a mutually satisfactory development agreements or contracts prior to the termination date of this Agreement; and (d) will lead to an appropriate land use, zoning, and subdivision application or applications. The development agreements or contracts (together with any other agreements entered into between the parties hereto contemporaneously therewith) when executed and any land use, zoning, and subdivision approvals, will supersede all obligations of the parties hereunder.

3. **Term; Duties.**

   (a) During the term of this Agreement, EDA and City agree to:

     (i) Proceed to seek all necessary information with regard to the anticipated public costs, if any, associated with the Development.

     (ii) Should negotiations be successful, enter into a development agreement with the Developer for the Building, Parking, and thereafter, if applicable, a development agreement for any future phases of Development.

     (iii) If the parties enter into a development agreement, take such action as may be reasonably necessary to acquire marketable title to the Development Property.

   (b) During the term of this Agreement, Developer agrees to:

     (i) Develop and submit its detailed proposal, including the plans and specifications, for the Development.

     (ii) Conduct a due diligence review of the Property, including without limitation: title, survey, environmental (Environmental Phase I & Phase II reports), soils, and market studies, all of which must be acceptable to the Developer in its sole discretion. It is mutually understood and agreed that the EDA has completed, without Developer’s assistance or financial contribution, Geotechnical Assessments and Phase I and Phase II environmental reports within six months of this agreement. EDA shall obtain all necessary approvals from the MPCA of a response action plan for any contamination on the Property and deliver to Developer and its lender a No Association Determination.

     (iii) Obtain approval by the EDA, City (including its Engineer, Planning and Inspection Department, and any other governing authority) for approval of the site plan, exterior elevations and finishes, and such other zoning approvals as may be required. Developer’s initial concept plan is attached as Exhibit B. It is mutually agreed and understood that Developer may alter the concept plan during the course of its due diligence review and planning process for the Development.

     (iv) Obtain any other necessary governmental approval from any governing authority.
(v) Obtain financing on terms acceptable to Developer, including but not limited to financial assistance (such as pay-as-you-go TIF in a mutually agreeable amount), grants from other governmental entities (as applicable), private loans and equity investment for the Development.

(vi) Should negotiations be successful, enter into a development agreement with the EDA for the Building, Parking, and thereafter, if applicable, a development agreement for any future phases of Development.

4. Financial Assistance; TIF.

(a) EDA understands that the Developer is seeking financial assistance from the City or the EDA. During the term of this Agreement, Developer shall:

   (i) Submit to EDA a design proposal to be reviewed by EDA showing the location, size, and nature of the proposed Development, including layouts, renderings, elevations, and other graphic or written explanations of the Development. The design proposal shall be accompanied by a proposed schedule for the starting and completion of the Development.

   (ii) Submit an over-all cost estimate for the design and construction of the Building, Parking and if applicable, a separate over-all cost estimate for any subsequent phases.

   (iii) Submit a time schedule for each phase of the Development.

   (iv) Undertake and obtain such other preliminary economic feasibility studies, income and expense projections, and such other economic information as Developer may desire to further confirm the economic feasibility and soundness of the Development.

   (v) Submit to EDA the Developer’s financing plan showing that the proposed Development of Phase 1 and Parking is financially feasible, and if applicable, a separate financial plan for any subsequent phases.

   (vi) Furnish satisfactory, financial data to EDA evidencing Developer’s ability to undertake each phase of the Development.

   (vii) Furnish information in its possession or provide additional information to assist the City and EDA with determining the appropriate amount of financial assistance needed for the Development, including fully cooperating with the City or EDA’s financial consultants and legal counsel.

(b) Developer understands that the Tax Increment Financing sought for the proposed Development must comply with state statute and the EDA’s TIF policy. The EDA agrees in any development agreement or contract entered into as contemplated herein that the EDA will review and consider such financing as allowed by law, but no provision shall be construed as an affirmative approval of such financing until such time that a separate Tax Increment Financing agreement is entered into by both parties. EDA will
cooperate with Developer to adjust the final TIF amount so that the net assistance received by Developer from Developer’s TIF loan will cover the City portion of the public parking facility.

5. Feasibility.

It is expressly understood that execution and implementation of any development agreement or contract (together with any other agreements entered into between the parties hereto contemporaneously therewith) and any land use, zoning and subdivision approvals shall be subject to:

(a) A determination by the City and the EDA in their sole discretion that the undertakings are feasible based on (i) satisfaction of City Code requirements; (ii) the purposes and objectives of any development plan created or proposed for the Development; (iii) the Studies, if any; and (iv) the best interests of the City and the EDA.

(b) A determination by Developer that the Development is feasible and in the best interests of Developer.

6. Costs; Escrow.

Developer shall be solely responsible for all costs incurred by Developer. In addition, upon the full execution of this Agreement, the Developer will reimburse the EDA and the City the sum of $10,000 to be used for their Administrative Costs (as defined below), including previously incurred costs, in its efforts regarding the analysis and determination of the feasibility of the Developer’s proposal. Following full execution of this Agreement, the Developer will submit an escrow to the EDA in the total amount of $15,000, with $5,000 due to the EDA on each the following dates: November 1, 2020, January 1, 2021, and March 1, 2021 as long as this Agreement has not been terminated or replaced with a formal development agreement for the Development prior to any such date. For the purposes of this Agreement, the term “Administrative Costs” means out of pocket costs incurred by the EDA or the City, together with staff and consultants (including engineering, surveys, legal, financial advisor, acquisition specialist, relocation consultant, environmental analysis, environmental advisor, planning advisor, etc.), all attributable to or incurred in connection with the review of the development agreement, Development or other related contracts or agreements (together with any other agreements entered into between the parties hereto contemporaneously therewith), the negotiation and preparation of the definitive development agreement or agreements, and other documents and agreements in connection with the Development. Any application or escrow fees generally collected by the City for planning applications such as the Developer may file in relation to the Development will be collected separately pursuant to the City’s applicable ordinances.

7. Effective Date; Expiration.

This Agreement is effective from the date hereof through April 30, 2021. After such date, neither party shall have any obligation hereunder except as expressly set forth to the contrary herein.
8. **Termination.**

This Agreement may be terminated upon fourteen (14) days written notice by EDA to Developer, or Developer to EDA, if:

(a) An essential precondition to the execution of a contract cannot be met; or

(b) If, in the respective sole discretion of the City, EDA or Developer, an impasse has been reached in the negotiation or implementation of any material term or condition of this Agreement.

9. **Sole Developer.**

Developer is designated as sole developer of the Development of the Property during the term of this Agreement. The EDA agrees not to market the Property or to make, accept, negotiate, or otherwise pursue any other offers for sale or purchase of the Development portion of the Property until this Agreement expires or is terminated pursuant to Section 7 herein.

10. **Severability.**

If any portion of this Agreement is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of the Agreement.

11. **Breach; Waiver.**

In the event any covenant contained in this Agreement should be breached by one party and subsequently waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach.

12. **Notice.**

Notice or demand or other communication between or among the parties shall be sufficiently given if sent by mail, postage prepaid, return receipt requested or delivered personally:

(a) As to EDA: Economic Development Authority of the City of South St. Paul
125 3rd Avenue N
South St. Paul, MN 55075
Attn: Executive Director

(b) As to Developer: DRS Investment VIII LLC
5353 Wayzata Blvd, Suite 211
St Louis Park, MN 55416
Attn: Douglas Simek

13. **Counterparts.**

This Agreement may be executed simultaneously in any number of counterparts, all of
which shall constitute one and the same instrument.

14. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

15. **Incorporation.**

The Recitals set forth in the preamble to this Agreement and the Exhibits attached to this Agreement are incorporated into this Agreement as if fully set forth herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the Developer has caused this Agreement to be duly executed in its name and behalf and the EDA has caused this Agreement to be duly executed in its name and behalf as of the day and year first above written.

DEVELOPER:

DRS INVESTMENT VIII, LLC.

By: ______________________________

Its: ______________________________
EDA:

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF SOUTH ST. PAUL

By: _____________________________
President James P. Francis

By: _____________________________
Executive Director Ryan Garcia
EXHIBIT A

DESCRIPTION/DEPICTION OF PROPERTY

Property owned by the EDA: 36-72850-03-231
Property owned by the South St. Paul Housing and Redevelopment Authority (HRA): 36-72850-06-142 and portion of parcels 36-72850-07-110 and 36-72850-08-120
Vacated Pitt Street and portions of existing Veterans Memorial Drive
EXHIBIT B

DRAFT DEVELOPMENT PROPOSAL (SUBJECT TO UPDATE AND REVISION)

(attached)
IN WITNESS WHEREOF, the Developer has caused this Agreement to be duly executed in its name and behalf and the EDA has caused this Agreement to be duly executed in its name and behalf as of the day and year first above written.

DEVELOPER:

DRS INVESTMENT VIII, LLC.

By: ____________________________

Its: ____________________________