TO: EDA PRESIDENT AND BOARD
FROM: EXECUTIVE DIRECTOR
DATE: JULY 11, 2016

City of West Saint Paul

SUBJECT:

Town Center I – Preliminary Development Agreement

BACKGROUND INFORMATION:

At the last EDA Work Session, the Board reviewed a concept plan presented by representatives from PEBB Enterprises. They directed staff to move forward and negotiate with PEBB Enterprises to reach an agreement on project funding. The Board also directed the City Attorney to work with staff and PEBB Enterprises on a preliminary development agreement and bring back to the Board for discussion.

If the Board approves of the attached preliminary development agreement, then staff will add this item to the regular EDA Meeting Agenda for formal approval.

It should be noted that a preliminary development agreement does not approve of any given project, but it does agree that the EDA will work with a specific developer for a specific amount of time to put together a project, including a funding plan.

EXPENSES:

		Amount
Fund:	To be identified in dev. agreement	
Department:	EDA	
Account:	N/A	To be identified in development agreement

STAFF RECOMMENDATION:

Review and direct staff.

ATTACHMENTS:

Preliminary Development Agreement

PRELIMINARY DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into this_____day of July, 2016, by and between the West St. Paul Economic Development Authority (the "EDA"), a corporate body public and politic, 1616 Humboldt Avenue, West St. Paul, Minnesota 55118, and PEBB Acquisitions, LLC a Florida limited liability company (the "Developer") 7900 Glades Road, Suite 600, Boca Raton, FL 33434.

WITNESSETH:

WHEREAS, the EDA and Developer desire to enter into a Preliminary Development Agreement for the consideration of the redevelopment of the area depicted on Exhibit A ("Redevelopment Property"); and

WHEREAS, the EDA is the owner of certain real properties within the Redevelopment Property (the "EDA Properties"), identified on Exhibit B; and

WHEREAS, the Developer has presented to the EDA a concept plan (the "Development") for the Redevelopment Property which proposal contemplates the EDA's conveyance of the EDA Properties to the Developer, attached hereto as Exhibit C; and

WHEREAS, the Redevelopment Property is located within the City of West St. Paul's (the "City") Town Center Mixed Use District, which was specifically created to attract high quality commercial and mixed use developments; and

WHEREAS, the EDA seeks assurance that the Developer will work diligently together with the EDA toward the assemblage of the Redevelopment Property so that there is an orderly and phased development that is consistent with the expectations of the EDA's concept for the Town Center Mixed Use District, including the landscaping designs for Robert Street; and

WHEREAS, the EDA and Developer intend to proceed with the Development if: (i) a design for a phased master plan for the Development can be agreed upon by the EDA and the Developer; (ii) a satisfactory agreement can be reached regarding the purchase price to be paid by the Developer for the EDA Properties and remaining properties to be assembled as part of the Redevelopment Property; (iii) satisfactory financing for the Development can be secured; and (iv) the economic 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 covenants and obligations of the parties hereto, the EDA and the Developer hereby agree as follows:

Section 1. Preliminary Nature of Agreement. The EDA and Developer agree that this Agreement is intended to be preliminary in nature. Before the EDA and Developer can make a decision on whether to proceed with the implementation of the Developer's Development concept or any modification thereof, it will be necessary to assemble and consider information relative to the uses, design, economics and other aspects of the Development. The purpose of

this Agreement is to allow the Developer an opportunity to assemble such necessary information, to refine or modify the above referenced Development concept, and to negotiate with the EDA concerning the execution of a purchase and development agreement (the "Development Agreement") which, if executed, will set forth the rights and responsibilities of the EDA and the Developer with respect to the Development.

During the term of this Agreement, the EDA agrees that it will not enter into or negotiate a similar agreement or Development Agreement with any party other than the Developer for a project on the Redevelopment Property.

Section 2. Present Intent of Parties. It is the intention of the parties that this Agreement document their present understanding and commitments and that if the following conditions can be fulfilled to the satisfaction of the EDA and Developer that the parties will proceed in an attempt to formulate a mutually satisfactory Development Agreement:

(a) The Developer demonstrates the feasibility of the Development as refined pursuant to this Agreement;

(b) The Developer provides such documentation regarding the economic feasibility of the Development as the EDA may wish to receive during the term of this Agreement;

(c) The completion of all undertakings required by this Agreement in a satisfactory and timely manner;

(d) The satisfaction of such other conditions as are determined to be appropriate by written agreement by the parties as provided for in Section 10; and

(e) The Development is generally consistent with the proposal submitted to the EDA on June 13, 2016.

Section 3. Development Design. The Developer's concept for the Development on the Redevelopment Property is preliminary in nature and must be refined or modified before implementation. The concept as proposed involves the construction of a commercial/retail development together with related improvements.

Section 4. Developer Undertakings. During the term of this Agreement the Developer shall use commercially reasonable efforts to do the following:

(a) Continue to refine or modify its site and building plans for the Development.

(b) Seek to secure tenants for the Development; provided that the Developer has no authority by virtue of this Agreement to lease or otherwise encumber the EDA Properties, without the EDA's written consent.

(c) Submit to the EDA a proposed schedule for the Development as well as the timing of the closing on financing.

(d) Seek to secure a commitment for financing sufficient for construction of the Development or fund the Development with equity.

(e) Using title information and a survey provided by the EDA, update evidence of title to the EDA Properties and provide to the EDA any objections to title.

(f) Submit to the EDA a project pro forma detailing all costs of the Development and the sources and uses of all funds to be raised to finance the Development, including justification for the amount proposed to be paid by the Developer, if any, to acquire the EDA Properties and City assistance necessary to proceed with development of the Redevelopment Property.

(g) Undertake preliminary engineering and soil testing of the Redevelopment Property as Developer determines, in its sole discretion. For this purpose, the Developer and its contractors shall have the right to enter upon the EDA Properties at reasonable times and after notice to the EDA. The Developer shall indemnify, defend and hold the EDA harmless from and against any claims or damage, of whatsoever nature, arising out of the entry onto the EDA Properties and shall repair any damage caused to the EDA Properties.

(h) Using environmental reports and studies provided by the EDA and such other studies and testing deemed necessary by Developer, determine the acceptability of the environmental condition of the Redevelopment Property.

(i) Use commercially reasonable efforts to acquire the Redevelopment Property or secure options or purchase agreements or assignments of purchase agreements with the owners of such property.

(j) Identify public improvements expected or required to be completed as part of the Development.

(k) Work with the EDA or City to provide information necessary to apply for funding grants from governmental grant sources.

(l) Make all required presentations to the City Council, the EDA and the Planning Commission in connection with approvals of the Development.

Except as otherwise provided herein, all of the information described above shall be prepared or collected at the sole expense of the Developer. The Developer agrees that it will provide the EDA with status reports on progress made with respect to its activities under this Agreement when requested by the EDA.

Section 5. EDA Undertakings. During the term of this Agreement, the EDA will undertake the following:

(a) Assist in identifying public improvements necessary to be constructed in connection with the Development.

(b) Identify construction, permit, application, utility and any other fees and the amount of such fees that the Developer may be expected to pay in connection with the Development.

(c) Identify the approval process and timeframes for development approvals that may be expected for the Development.

(d) Identify the sources of public financial assistance that may be made available to the Developer in connection with the Development such as tax increment financing, state, local and federal grants and land write down assistance. If any such financial assistance is actually provided in connection with the Development, the amount, timing and terms of such assistance will be set forth in the definitive Development Agreement and no commitment is being made in this Agreement that any such assistance will be provided to the Developer.

(e) Provide to the Developer title information based on which the Developer can update evidence of title to the EDA Properties.

(f) Cause to be prepared drafts of the Development Agreement.

(g) Provide to the Developer any surveys, existing tenant leases, service contracts and environmental reports related to the EDA Properties that are in the possession of the EDA.

(h) Analyze information provided by the Developer to determine if the conveyance of the EDA Properties for a purchase price that is less than its market value is justified.

(i) Continue to assist with and facilitate the acquisition of the remaining properties within the Redevelopment Property either by entering into assignable purchase agreements or acquiring the properties.

Section 6. Contingencies. The parties acknowledge and agree that proceeding with the Development is subject to a number of contingencies that are required. Except as otherwise being for the benefit of Developer as set forth herein, the contingencies are for the benefit of both parties and must be waived by both parties in writing. Such contingencies include, but are not limited to, the following:

(a) The Developer acquires all or part of the Redevelopment Property by direct purchase or has options or purchase agreements for such properties within the Development.

(b) The EDA and the Developer having obtained all necessary approvals for the Development from any participating governmental authority.

(c) The Developer having obtained such zoning modifications, rezoning, planned unit

development approvals, conditional use permits and such other zoning approvals as are necessary to allow the Development to move forward.

(d) Title to the EDA Properties is acceptable to the Developer in its sole discretion.

(e) The Developer having conducted such soils, well, engineering, hazardous waste, environmental and other testing as it determines necessary.

(f) The Developer having obtained financing for the Development acceptable to Developer.

(g) The economic feasibility of the Development being acceptable to Developer.

(h) The Developer agreeing to provide the City with necessary temporary and permanent easements it needs within the Redevelopment Property.

(i) The assemblage of the remaining properties within the Redevelopment Property to allow the Developer to complete the contemplated Development.

Section 7. Negotiation of Development Agreement. During the term of this Agreement, the EDA and the Developer shall proceed in good faith with the negotiation of a Development Agreement relative to the Development if the conditions of Section 2 are satisfied. The decision to enter into a Development Agreement shall be in the sole discretion of each of the parties. If the parties have negotiated in good faith but are not able to agree to acceptable Development Agreement terms, it shall so notify the other party, whereupon this Agreement shall terminate and neither party shall have any rights or obligations to the other or to any third party under or with respect to this Agreement, except as provided in Section 9 regarding costs incurred prior to such termination and except as to a right of first refusal described herein. If the Developer determines during the term of this Agreement that undertaking the Development is not financially feasible, it will promptly notify the EDA of such determination and the parties will terminate this Agreement.

Section 8. Effect of Approvals. No approval given by the EDA hereunder or in connection herewith shall be deemed to constitute an approval of the Development for any purpose other than as stated herein and the process outlined in this Agreement shall not be deemed to supersede any concept review, conditional use permit, vacation, subdivision, or other zoning or planning approval process of the EDA or the City relative to the development of real estate.

Section 9. Payment of Costs. In consideration of the EDA's covenants and agreements set forth herein, the Developer agrees that it will pay costs incurred by the EDA in connection with the preparation of this Agreement and costs incurred from the effective date for financial analysis, the negotiation, preparation and implementation of the Development Agreement. The Developer shall deposit $5,000 with the EDA upon execution by Developer of this Agreement. The EDA shall have the right to draw upon such amounts to pay its costs as provided herein. If the amount on deposit becomes depleted, the EDA shall have the right to request that the Developer replenish such funds upon which the Developer shall remit to the EDA additional funds to be held on deposit and used to pay costs. If on termination of this Agreement, the amounts held by the EDA are insufficient to pay the EDA's costs, the Developer shall be liable for any deficiency. If this Agreement is terminated in accordance with the terms

hereof, any sums remaining on deposit with the EDA, after the EDA pays or reimburses itself for costs incurred to the date of termination, shall be returned to the Developer within 14 days of termination. No other financial obligations shall exist between the parties, other than those that may be negotiated and contained in the Development Agreement.

Section 10. Modifications. This Agreement may be modified and the term hereof may be extended only through written amendments hereto signed by both of the parties to this Agreement.

Section 11. Exclusive Rights. In consideration of the time, effort and expenses to be incurred by Developer in pursuing the undertakings set forth herein and in further consideration of the funds paid to the EDA, the receipt of which is hereby acknowledged, the EDA hereby agrees that for the term of this Agreement it will not provide or enter into any Development Agreement or an agreement for provision of financial assistance to any third party in connection with any proposed development within the Town Center Mixed Use District. During such period the Developer shall have the exclusive right to work with the EDA in establishing a definitive Development Agreement for the Redevelopment Property. Said exclusive rights shall continue, unless earlier terminated as provided herein, for the period described within Section 12 of this agreement.

Section 12. Neither party shall record this Agreement.

Section 13. Termination. This Agreement shall be effective until December 31, 2016. If for any reason a Development Agreement has not been entered into by the parties by such date or any mutually approved extension thereof, this Agreement shall be null and void and neither party shall have any liability or obligations to the other, except as provided in Section 9 regarding EDA costs incurred prior to the termination of this Agreement.

This agreement may be terminated by the EDA as to all or a portion of the Redevelopment Property upon the giving of written notice to the Developer that the Developer is not diligently pursuing its required activities under this Agreement. Developer shall have a reasonable time, but in no event less than 30 days to effect a cure of such default, or to demonstrate that it is diligently pursuing such cure. The EDA may also terminate this agreement for the failure of the Developer to make any payment due in accordance with Section 9 if such payment is not made within 15 days of notice requesting payment.

This Agreement may be terminated by Developer as set forth in Section 7.

Section 14. 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 this Agreement.

Section 15. Notices. Notice, demand, or other communication from one party to the other shall be deemed effective if sent by U.S. mail, postage prepaid, return receipt requested or delivered personally to a party at its address in the first paragraph of this Agreement, or at such other address or other acceptable form of communication as such party may designate in writing to the other party.

Section 16. Assignability. Developer may not directly or indirectly assign or transfer any of Developer's rights, obligations and interests under this Agreement, to any person or entity without the prior written consent or approval of the EDA, which consent or approval must be requested in writing and received by the EDA not less than five (5) business days prior to the Closing Date and which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the EDA hereby consents to Developer's assignment of Developer's rights, obligations and interests under this Agreement to an entity in which the Developer, or any member or members of the Developer, is a member, partner or officer. Upon any such assignment or other transfer, Developer and such assignee or transferee shall be jointly and severally liable for the obligations of the Developer under this Agreement, which liability shall survive the assignment or transfer and the Closing.

IN WITNESS WHEREOF, the EDA has caused this Agreement to be duly executed in its name and behalf and the Developer has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By_____
David Meisinger, President

By_____
James Hartshorn, Executive Director

Date_____

PEBB ACQUISITIONS, LLC

By _____

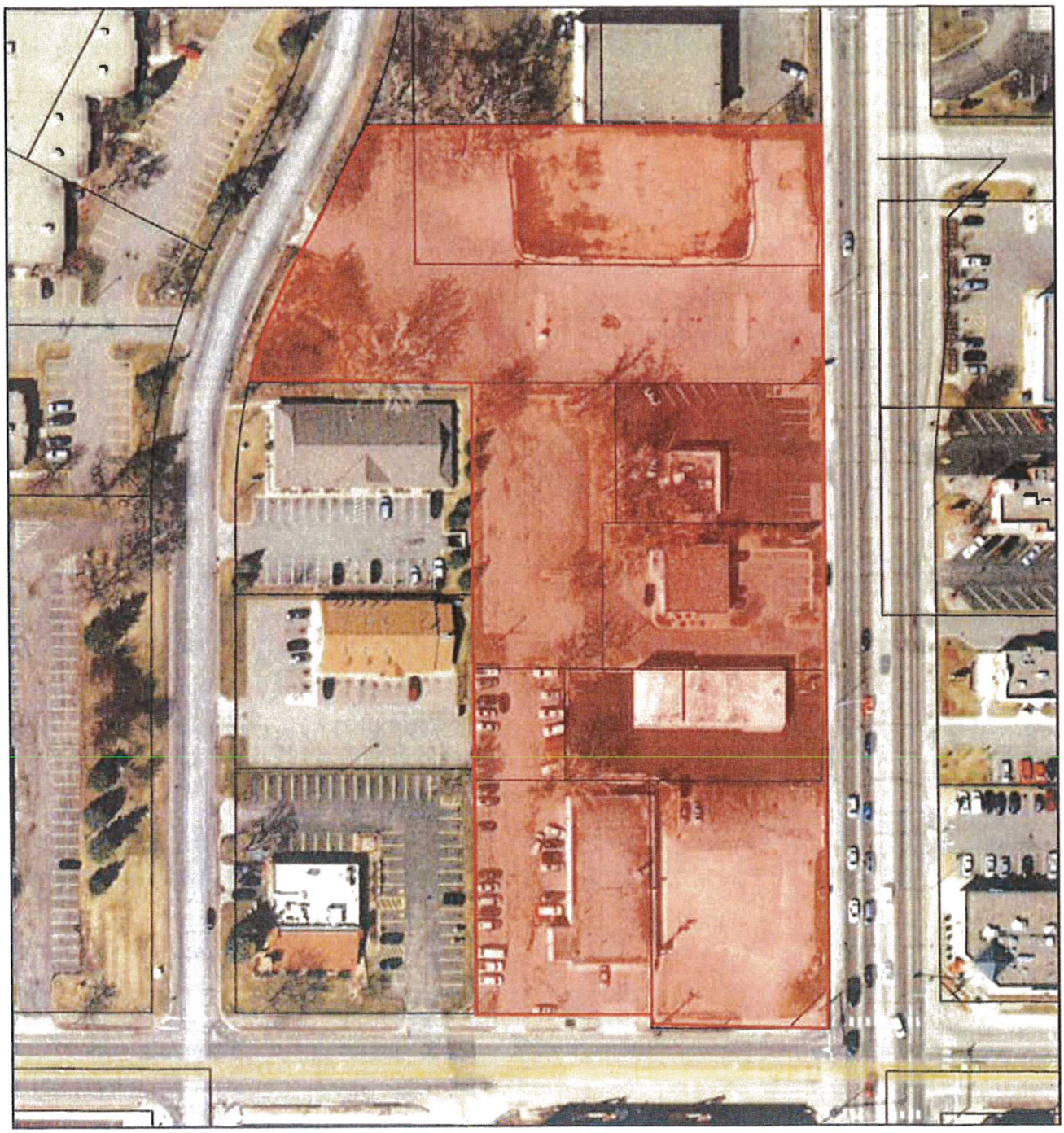
Ian Weire

Its: Manager

Date 7/7/16

EXHIBIT A

Depiction of Redevelopment Property



November 24, 2015

1:1,200

0 55 110 220 ft

0 15 30 60 m

EXHIBIT B

Legal Description of EDA's Properties

Parcel A: 1589 Robert Street South (vacant property formerly occupied by Car-X)

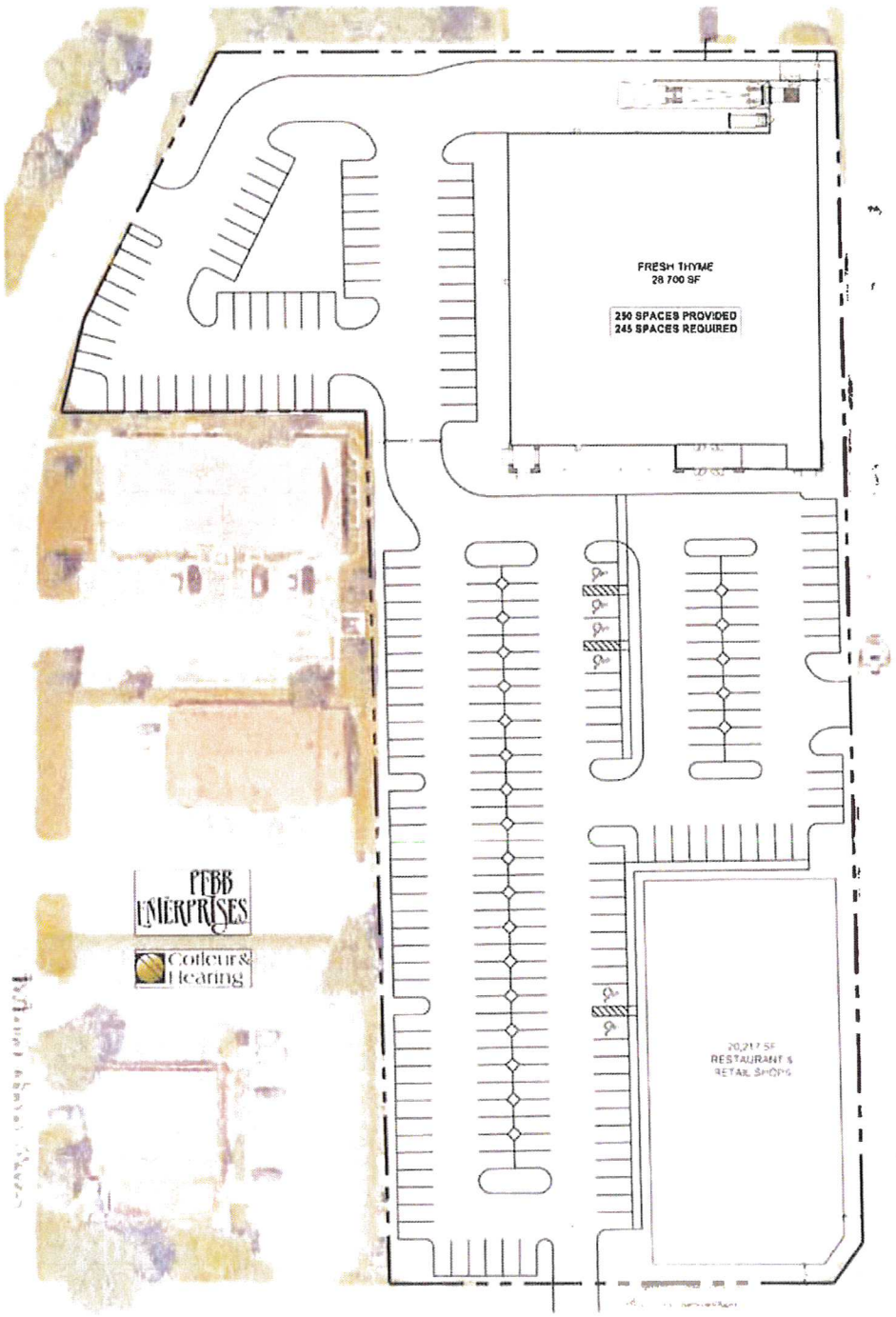
Lots 4, 5, 6 and 7, Block 1, Erchingers Addition to South St. Paul, Dakota County, Minnesota

PIN 42-24200-01-070
Abstract

Parcel B: 1539 Robert Street South (vacant property formerly occupied by Blockbuster)

Lots 3 and 4, Block 1, City Center Addition, according to the recorded plat thereof, Dakota County, Minnesota

PIN 42-17800-01-030 and 42-17800-01-040
Abstract and Torrens

EXHIBIT C

Concept Plan