ECONOMIC DEVELOPMENT AUTHORITY MEETING

MUNICIPAL CENTER COUNCIL CHAMBERS

1616 HUMBOLDT AVENUE, WEST ST. PAUL, MN 55118

MONDAY, APRIL 27, 2020

IMMEDIATELY FOLLOWING THE REGULAR CITY COUNCIL MEETING

Due to the Spread of COVID-19, City of West St. Paul public meetings will be held virtually until further notice. Members of the public may monitor meetings by tuning in to Cable Channel 18 or online at www.townsquare.tv/webstreaming during the posted meeting times. Meetings can be viewed on-demand starting the day following the original airing at www.wspmn.gov/agendacenter. Items requesting public input will do so via telephone call-in during live broadcasts only. Please view meetings during their original posted times to participate.

1. Call To Order

2. Roll Call

3. Adopt Agenda

4. Commissioner Comments

5. EDA Consent Agenda Items

5.A. Minutes Of April 13, 2020 - Regular EDA

Documents:

04-13-20 REGULAR EDA MINUTES.PDF

6. Public Hearing

7. New Business

7.A. Thompson Oaks Redevelopment Project Phase II - Development Agreement

Documents:

EDA REPORT - THOMPSON OAKS REDEV PROJ PH II - DEVELOPMENT AGREEMENT.PDF
DEVELOPMENT AGREEMENT - OPPIDAN II - 4-27-20.PDF

8. Old Business

9. Adjourn

If you need an accommodation to participate in the meeting, please contact the ADA Coordinator at 651-552-4108 or email ADA@wspmn.gov at least 5 business days prior to the meeting

www.wspmn.gov EOE/AA

City of West St. Paul
Economic Development Authority Minutes
April 13, 2020

1. Call to Order

President Napier called the meeting to order at 7:00 p.m.

2. Roll Call

Present:	President Dave Napier Commissioners Wendy Berry, Lisa Eng-Sarne, Anthony Fernandez, John Justen, Bob Pace and Dick Vitelli
Absent:	None
Also Present:	City Manager Ryan Schroeder City Attorney Amanda Johnson Executive Director Jim Hartshorn Finance Director Char Stark City Clerk/Secretary Shirley Buecksler

3. Adopt the Agenda

Motion was made by Commissioner Vitelli and seconded by Commissioner Berry to adopt the agenda, as presented.

Vote: 6 ayes / 0 nays. Motion carried.

4. EDA Consent Agenda Items

Motion was made by Commissioner Pace and seconded by Commissioner Berry to approve the following items on the Consent Agenda, as presented:

A. Minutes of February 10, 2020
   - EDA Work Session
B. Minutes of February 10, 2020
   - Regular EDA Meeting
C. Minutes of March 9, 2020
   - EDA Work Session
D. Financial Statement Through December 31, 2019
E. Financial Statement Through February 29, 2020

Vote: 6 ayes / 0 nays. Motion carried.

5. Commissioner Comments

President Napier said this is a tough time for our businesses and the ones we work so hard to support.

Commissioner Vitelli commented on this morning's newspaper article that quoted our City Manager. This impact is going to affect our sales tax revenue. We will have to plan for that. We have a plan not to pay off the future bond; however, Commissioner Vitelli said he would prefer incoming coming in. So that residents are aware, this will affect our budget.

Commissioner Justen said these are tough times and we need to help out our local businesses. He referred to his earlier comments from this evening's City Council meeting:

As a small business owner who is shut down for an extended period of time, Commissioner Justen wanted to reach out to other small business owners and their employees to let them know that he could not be more attentive to this situation and said that he understands what you're going through. My sympathy is with you.

For the good of everyone, Commissioner Justen said there are two ways to support local businesses:

1) Observe social distancing. The better we do at this, the sooner we flatten this thing, and the sooner we will be able to open. There is no guarantee that we will open on May 4. Every small business lives by how much they have in the bank and their day-to-day business activities. We are closed because we are trying to keep people safe. But the longer we are closed because of people's behavior, the more small businesses you're going to see coming out of this in worse and worse shape. Please observe social distancing not only for yourselves, your relatives, the elderly, the immuno-comprised, but also because this is the only way you will see our bars, restaurants and small businesses back.
2) If you are a small business and you are still open, I ask you to take a serious look if you are essential. I see the need to keep things going but, at the same time, if you are not essential and you stay out there, it may just make this longer for us and make these rules more strict. If you are questioning if you should be open, then you should be closed, he said.

6. Public Hearings

There were no Public Hearings.

7. New Business

A. Loan Servicing Agreement – Community Reinvestment Fund

In March, the EDA Board entered into a Loan Administrator Agreement with Neighborworks Home Partners to administer a new Housing Improvement Loan program.

However, Executive Director Hartshorn said they do not actually service these loans. Staff recommends approval of the Loan Servicing Agreement with Community Reinvestment Fund, Inc. to service the housing rehab loans.

Motion was made by Commissioner Fernandez and seconded by Commissioner Vitelli to approve the Loan Servicing Agreement with Community Reinvestment Fund, Inc.

Vote: 6 ayes / 0 nays. Motion carried.

8. Old Business

A. Extension of the Oppidan Development Agreement

On July 8, 2019, the EDA entered into a Development Agreement with KTJ339, LLC (aka Oppidan) to construct a multi-family apartment building at the former Thompson Oaks golf course, with a construction cost of $27,202,946. Within the Development Agreement was the requirement that the real estate closing occur on or before April 1, 2020, that construction plans be submitted by that same date, and that construction commence by June 1, 2020 with completion by December 31, 2021.

Recently, KTJ has requested two extensions on the closing dates and construction starts, primarily due to COVID impacts upon other agency approvals and financing commitment uncertainties. Staff has granted those relatively minor extension requests.

KTJ, again due to the uncertainties created by the COVID pandemic, has requested an additional extension. Of note is that the developer has conducted all other requirements within the development approvals to this point in time. Construction plans have been submitted, and it is anticipated that all approvals of those plans will be in hand prior to the end of April.

The request is that the real estate closing be extended to September 1, 2020. It would be anticipated that a construction start would occur closing on the heels of the property exchange and that project completion could still occur within the initial deadline dates. On that point, this is a pay as you go abatement project. Hence, the City would not anticipate negative financial impacts should 100% completion not be complete by that date.

Motion was made by Commissioner Fernandez and seconded by Commissioner Berry to grant the extension request to KTJ339, LLC to September 1, 2020.

Vote: 6 ayes / 0 nays. Motion carried.

9. Adjourn

Motion was made by Commissioner Justen and seconded by Commissioner Fernandez to adjourn the meeting at 7:10 p.m.

All members present voted aye. Motion carried.

David J. Napier
President
City of West St. Paul

CITY OF WEST ST. PAUL

EDA Report

To: **EDA President and Board**

From: **Executive Director Jim Hartshorn**

Date: **April 27, 2020**

Thompson Oaks Redevelopment Project Phase II - Development Agreement

BACKGROUND INFORMATION:

As phase II of the Thompson Oaks Golf Course redevelopment project, the developer (KTJ 339,LLC) is proposing to purchase 10 acres, along the eastern area of the former golf course for $1,268,000. The developer proposes to construct 64 market-rate town homes – see attached map/layout. An abatement district will be created for nine years to cover the grant match. If we need additional funds to subsidize Oppidan or whomever, the district would need to be extended beyond the nine years or we reduce the land price. The developer will cover customary/normal development costs.

The developer will deposit $20,000 for earnest money upon execution of the Development Agreement. They also shall provide an easement for the River-to-River Trail. Staff is applying for DEED grant funding to assist with mitigation costs. The attached Development Agreement will be an attachment of the grant application.

FISCAL IMPACT:

		Amount
Fund:	**N/a**	**N/a**
Department:	**EDA**	
Account:	**N/a**	

STAFF RECOMMENDATION:

Approve the attached Development Agreement.

ATTACHMENTS:

1. Development Agreement

CONTRACT FOR PRIVATE REDEVELOPMENT

THIS AGREEMENT, made on or as of the _____ day of _____, 2020, by and between the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic ("EDA"), the City of West St. Paul, a Minnesota municipal corporation ("City") and KTJ 339, LLC, a Minnesota limited liability company ("Developer").

WITNESSETH:

WHEREAS, the EDA was created pursuant to Minnesota Statutes, Sections 469.090 to 469.108, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of West St. Paul ("City"); and

WHEREAS, in furtherance of the objectives of the EDA Act, the EDA has undertaken various projects to promote the creation of housing, economic and job opportunities within the City, known as a "Redevelopment Project"; and

WHEREAS, among the powers possessed by the EDA is the power to carry out within a Redevelopment Project undertakings and activities for the elimination or prevention of the development or spread of slums or blighted, deteriorating areas and for economic development; and

WHEREAS, there is located within the City real property, more particularly described in Exhibit A (the "Development Property"), that is in need of redevelopment in order to help maximize housing opportunities, economic and job opportunities for the community; and

WHEREAS, in order to achieve the objectives of the EDA, the EDA is prepared to sell the Development Property to Developer; and

WHEREAS, the EDA believes that the redevelopment of the Development Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Project has been undertaken.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I
Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

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

"Certificate of Completion" means the certificate, in the form contained in Exhibit C attached hereto, which will be provided to the Developer pursuant to Article IV of this Agreement.

"City" means the City of West St. Paul, Minnesota.

"Closing" or "Closing Date" means on or before April 1, 2021, unless otherwise agreed to by the parties.

"Condemnation Award" means the amount remaining from an award to the Developer for the acquisition of title to and possession of the Minimum Improvements or any material part thereof, after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such award.

"Construction Plans" means the final plans for construction of the Minimum Improvements to be submitted by the Developer and approved by the City.

"Contingency Date" means February 28, 2021, unless otherwise agreed to by the parties.

"County" means Dakota County.

"Developer" means KTJ 339, LLC, a Minnesota limited liability company, or its successors and assigns.

"Development Property" or "Property" means the real property described in Exhibit A of this Agreement.

"Development Property Deed" means the quit claim deed in the form attached hereto as Exhibit D, by which the EDA will convey the Development Property to the Developer.

"Earnest Money" means the earnest money deposit of Twenty Thousand Dollars and 00/100s ($20,000.00) to be deposited with the EDA upon execution of this Agreement by Developer.

"EDA" means the West St. Paul Economic Development Authority, a public body corporate and politic organized under the laws of the State of Minnesota, or its successor or assign.

"EDA Act" or "Economic Development Authority Act" means Minnesota Statutes sections 469.090 through 469.1082 as amended.

"Effective Date" means June 24, 2020.

"Estimated Project Costs" are the project costs as indicated by the Developer's Pro forma, which is $2,560,000.

"Event of Default" means an action by the Developer or the EDA listed in Article VIII of this Agreement.

"Holder" means the owner of a Promissory Note or Notes and Mortgage Deed.

"Maturity Date" means the date when the Developer has satisfied its obligations under the Agreement and the EDA has issued the Certificate of Completion.

"Minimum Improvements" means the acquisition of land and construction of a 64-unit market rate residential apartment building and related improvements. The Minimum Improvements are more fully depicted in Exhibit B, which is attached hereto and incorporated herein.

"Mortgage Deed" means any Mortgage Deed made by the Developer, which is secured in whole or in part, by the Development Property and which is a Permitted Encumbrance pursuant to the provisions of this Agreement.

"Net Proceeds" means any proceeds paid by an insurer to the Developer or the EDA under a policy or policies of insurance required to be provided and maintained by the Developer pursuant to Article VI of this Agreement and remaining after deducting all expenses incurred in the collection of such proceeds.

"Permitted Encumbrance" means any matter shown on such Title Commitment and not objected to by the Developer (other than such consensual liens).

"Preliminary Plans" means, collectively, the plans, drawings and specifications for the construction of the Minimum Improvements which are depicted on Exhibit B and attached hereto.

"Project" or "Redevelopment Project" means the redevelopment of the Development Property into residential apartment building.

"Purchase Price" means $1,268,000.00, unless adjusted pursuant to Section 3.1.

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

"State" means the state of Minnesota.

"Title Company" means First American Title Insurance Company, National Commercial Services, 121 South 8th Street, Suite 1250, Minneapolis, Minnesota 55402.

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

Section 1.2. Rules of Interpretation.

(a) This Agreement shall be interpreted in accordance with and governed by the laws of Minnesota.

(b) The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(c) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

(d) Any titles of the several parts, articles and sections of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE II
Representations and Warranties

Section 2.1. Representations by the EDA. The EDA makes the following representations:

(a) The EDA is a public body corporate and politic under the laws of Minnesota. Under the provisions of the EDA Act, the EDA has the power to enter into this Agreement and carry out its obligations hereunder. The persons executing this Agreement and related agreements and documents on behalf of the EDA have the authority to do so and to bind the EDA by their actions.

(b) The execution, delivery and performance by EDA of this Agreement will not violate any provision of any law, statute, rule or regulation or any order, writ,

judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to EDA, or result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which EDA is a party or by which it or any of its properties may be bound.

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

(d) EDA has not received written notice, and has no knowledge, of (i) 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, (ii) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property, (iii) 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 (iv) 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.

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

(f) The EDA is not a "foreign person," "foreign corporation," "foreign trust," "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder.

(g) The EDA has received no notice or communication from any local, State or federal official that the activities of the Developer or the EDA in the Development Property may be or will be in violation of any environmental law or regulation. The EDA is aware of no facts the existence of which would cause it to be in violation of any local, State or federal environmental law, regulation or review procedure.

(h) There are no leases or tenancies with respect to the Property. There are no unrecorded agreements or other contracts of any nature or type relating to, affecting or serving the Property.

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

(j) The activities of the EDA are undertaken for the purpose of removing, preventing, or reducing blight, blighting factors, or the causes of blight, and for the purposes of increasing the tax base and housing opportunities within the City.

(k) EDA will warrant the Development Property has or will have street access to infrastructure sufficient to ensure the property is buildable for the Minimum Improvements.

(l) The EDA and the City have approved this Agreement.

The representations, warranties and other provisions of this Section 2.1 shall survive Closing; provided, however, EDA shall have no liability with respect to any breach of a particular representation or warranty if Developer shall fail to notify EDA in writing of such breach within two (2) years after the Closing Date, and provided further that EDA shall have no liability with respect to a breach of the representations and warranties set forth in this Agreement if Developer has actual knowledge of EDA's breach thereof prior to Closing and Developer consummates the acquisition of the Property as provided herein.

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

Section 2.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a Minnesota limited liability company, duly organized and in good standing under the laws of Minnesota and is not in violation of any provisions of its company documents or its operating agreement. The Developer has the power to enter into this Agreement and carry out its obligations hereunder. The persons executing this Agreement and related agreements and documents on behalf of the Developer have the authority to do so and to bind the Developer by their actions.

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

(c) Developer will deposit the Earnest Money with the EDA within five (5) business days after the Effective Date.

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

(e) Upon its acquisition of the Development Property at Closing, the Developer will complete the Minimum Improvements in accordance with all local, state, federal laws or regulations.

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

(g) Upon its acquisition of the Development Property at Closing, the Developer will be prepared to immediately commence construction of the Minimum Improvements and will have the financial capacity to meet the obligations specified in this Agreement.

(h) The Developer will have satisfied the terms and conditions contained in this Agreement prior to the Maturity Date or posted surety bonds for future fulfillment of all requirements contained in the Agreement.

(i) The Developer shall cooperate with the EDA with respect to any litigation, other than litigation in which the EDA and the Developer are adverse parties, commenced with respect to the Project or Minimum Improvements.

(j) In the event that this Agreement is terminated by the EDA as a result of an Event of Default, the Developer agrees that they will, within ten (10) days of written demand by the EDA, reimburse the EDA for all of its costs and expenses, including

reasonable fees for attorneys and consultants, incurred in connection with the negotiation, preparation and implementation of this Agreement.

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

The representations, warranties and other provisions of this Section 2.2 shall survive Closing.

Section 2.3. Environmental Conditions

(a) As Is. As of the Closing Date, Developer shall take the Property in an "as is" condition and shall assume the risk of any and all adverse environmental conditions, except for any ongoing soil mitigation efforts undertaken by the EDA. The EDA represents and warrants that during its ownership, to its knowledge, it has taken no actions that would negatively impact the environmental condition of the Development Property.

(b) Copies of Information. Upon the execution of this Agreement, the EDA shall provide Developer with true and correct copies of all studies, correspondence and other data in the EDA's possession with respect to the environmental condition of the Development Property.

ARTICLE III
Conveyance of Property

Section 3.1. Sale of Development Property. Subject to compliance with the terms of this Agreement, the EDA agrees to sell to Developer, and Developer agrees to buy from the EDA, the Development Property, subject only to Permitted Encumbrances, for the Purchase Price.

Section 3.2. Available Surveys, Tests, and Reports. Within ten (10) days of the Effective Date, EDA shall cause to be delivered to Developer, (a) copies of any surveys, soil tests and environmental reports previously conducted on the Property and (b) copies of existing title work for the Property ("Due Diligence Materials") which may be in the possession of the EDA.

Section 3.3. Developer's Investigations. For a period up to and including the Contingency Date, EDA shall allow Developer and Developer's agents access to the Property without charge and at all times for the purpose of Developer's investigation and testing of the Property, including surveying and testing of soil and groundwater ("Developer's Investigations"); provided, however, Developer shall not perform any invasive testing unless (a) EDA gives its prior approval of Developer's consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) Developer gives EDA reasonable prior notice of such testing. EDA shall have the right to accompany Developer during any of Developer's Investigations of the Property. Developer shall provide to EDA copies of all third-

party, non-confidential written test results and reports conducted as part of Developer's Investigations. Developer agrees to pay all of the costs and expenses associated with Developer's Investigations, to cause to be released any lien on the Property arising as a result of Developer's Investigations and to repair and restore, at Developer's expense, any damage to the Property caused by Developer's Investigations. Developer shall indemnify and hold EDA harmless from all costs and liabilities, including, but not limited to, reasonable attorneys' fees, arising from Developer's Investigations. The indemnification obligations provided herein shall survive the termination or cancellation of this Agreement.

Section 3.4. Developer's Contingencies. Developer's obligation to proceed to Closing shall be subject to the satisfaction of each of the following conditions:

(a) Inspection. On or before the Contingency Date, Developer shall have determined, in its sole discretion, that it is satisfied with the results of and matters disclosed by Developer's Investigations, 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 Due Diligence Materials.

(b) Soil Mitigation. On or before the Contingency Date, Developer shall have determined, in its sole discretion, that it is satisfied with the results of and any and all completed, current or ongoing soil mitigation efforts undertaken by the EDA so that the Developer can construct the Minimum Improvements.

(c) Intended Use. On or before the Contingency Date, Developer shall have determined the acceptability of the Property for its intended use and incidental uses thereto (collectively, the "Proposed Use"). All costs and expenses related to applying for and obtaining any governmental permits and approvals for the Property for the Proposed Use shall be the responsibility of the Developer.

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

(e) Access. On or before the Contingency Date, Developer shall have satisfied itself, in Developer's sole discretion, that access to and from roads and the Property is adequate for Developer's Proposed Use of the property.

(f) Utilities. On or before the Contingency Date, Developer shall have satisfied itself, in Developer's sole discretion, that water and gas mains, electric power lines, sanitary and storm sewers, and other utilities are available to the Property.

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

(h) Financing. On or before the Closing Date, Developer shall secure grants, funding and financing that is satisfactory to Developer in Developer's sole discretion for the purpose of acquiring and constructing the Minimum Improvements, which may include, but is not limited to entering into a Tax Abatement Agreement with the EDA.

The foregoing contingencies are for Developer's sole and exclusive benefit and one or more may be waived in writing by Developer in its sole discretion. EDA shall reasonably cooperate with Developer's efforts to satisfy such contingencies, at no out of pocket cost to EDA or assumption of any obligation or liability by Developer. Developer shall bear all cost and expense of satisfying Developer's contingencies. If any of the foregoing contingencies have not been satisfied on or before the applicable date, then this Agreement may be terminated, at Developer's option, by written notice from Developer to EDA. Such written notice must be given on or before the applicable date, or Developer's right to terminate this Agreement pursuant to this Section shall be waived. If Developer terminates this Agreement pursuant to this Section, then any amount previously paid by Developer to EDA, including the Earnest Money, shall immediately be refunded to Developer. Upon termination, neither party shall have any further rights nor obligations against the other regarding this Agreement or the Property, except for such obligations as survive termination of this Agreement.

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

Section 3.5. EDA's Contingencies. EDA's obligation to proceed to Closing shall be subject to the satisfaction, on or prior to the Contingency Date, of each of the following conditions:

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

(b) Developer's Representations. All representations and warranties of Developer contained in this Agreement shall be accurate as of the Closing Date.

(c) No Default. There shall be no uncured default by Developer of any of its obligations under this Agreement as of the Closing Date, unless waived by EDA.

(d) Financing. On or before the Closing Date, EDA shall secure grants, funding and financing that is satisfactory to EDA for the purpose of mitigating any

environmental issues.

(e) Tax Abatement Agreement. On or before the Closing Date, if deemed to be required by the EDA, Developer shall enter into a Tax Abatement Agreement with the EDA or the City.

(f) River to River Trail Section. On or before the Closing Date Developer shall provide an easement for the River to River Trail in a location that is approved by the City and Developer either as part of a plat approval or in a separate easement agreement.

If any contingency has not been satisfied on or before the date described therein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from EDA to Developer and neither party shall have any further rights or obligations with respect to this Agreement or the Property. If termination occurs, EDA shall return the Earnest Money to Developer. All the contingencies are for the benefit of EDA, and EDA shall have the right to waive any contingency in this Section 3.6 by written notice to Developer.

Section 3.6. Closing. The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on or before the Closing Date. The EDA agrees to deliver legal and actual possession of the Property to Developer on the Closing Date. Closing shall occur at Title Company.

(a) EDA's Closing Documents and Deliveries. On the Closing Date, EDA shall execute and/or deliver, as applicable, to Developer the following:

1. Quit Claim Deed. A quit claim deed conveying title to the Development Property to Developer, free and clear of all encumbrances, except the Permitted Encumbrances. Such Development Property Deed shall include as a covenant running with the land the conditions of Minnesota Statutes, Sections 469.090 to 469.1082 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.

2. Title Policy. A Proforma Title Policy or a suitably marked up Commitment for Title Insurance initialed by Title Company, in the form required by this Agreement, including usual and customary endorsements required by Developer.

3. FIRPTA Affidavit. A non-foreign affidavit as required by applicable law.

4. EDA's Affidavit. A standard owner's affidavit (ALTA form) from EDA 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.

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

6. General Deliveries. All other documents reasonably determined by Title Company to be necessary to evidence that Developer has duly authorized the transactions contemplated hereby and evidence the authority of Developer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant to this Agreement or may be required of Developer under applicable law.

(b) Developer Closing Documents and Deliveries. On the Closing Date, Developer shall execute and/or deliver, as applicable, to EDA the following:

1. Payment of Purchase Price. The Purchase Price, less Earnest Money, shall be payable on the Closing Date, subject to those adjustments, pro-rations and credits described in this Agreement, in certified funds or by wire transfer pursuant to instructions from EDA.

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

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

4. Bring Down Certificate. A certificate dated as of the Closing Date, signed by an authorized officer of Developer, certifying that the representations and warranties of Developer contained in this Agreement are true as of the Closing Date.

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

(c) Costs and Prorations. EDA and Developer agree to the following prorations and allocation of costs regarding this Agreement:

1. General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between Developer and EDA on a daily basis as of 12:00 a.m. CT on the Closing Date based upon a calendar

fiscal year, with EDA paying those allocable to the period prior to the Closing Date and Developer being responsible for those allocable to the Closing Date and subsequent thereto. EDA shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending, postponed or deferred with respect to any of the Property as of the Closing Date. Developer shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date, including, without limitation, those related to Developer's development of the Property.

2. The Developer will obtain and pay for an ALTA Survey.

3. The EDA shall pay all title charges for the issuance of the Title Commitment.

4. Developer shall pay all premiums for any title insurance policy it desires with respect to the Development Property.

5. Developer shall pay all costs of recording the Development Property Deed and this Agreement.

6. The EDA shall pay for the cost of recording any other documents necessary to convey the Development Property as required by this Agreement.

7. EDA shall pay all state deed tax regarding the Development Property Deed.

8. Developer and EDA shall each pay one half (1/2) of any reasonable closing fee or charge imposed by Title Company.

9. There are no brokerage or real estate fees or commissions due and payable by the EDA as part of this transaction.

10. EDA and Developer shall each pay their own attorneys' fees incurred in connection with this transaction.

11. The obligations set forth in this Section 3.7(c) survive the Closing.

Section 3.7. Title Examination. Developer shall obtain a commitment for an owner's title insurance policy issued by Title for the Development Property (the "Title Evidence").

(a) Developer Objections. Within ten (10) days after Developer's receipt of the last of the Title Evidence, Developer may make written objections ("Objections") to the form or content of the Title Evidence. The Objections may include without limitation, any easements, restrictions or other matters which may interfere with the proposed use of the Property or matters which may be revealed by any survey. Any matters reflected on the Title Evidence which are not objected to by Developer within such time period or waived by Developer in accordance with Section

3.7(b)(2) shall be deemed to be permitted encumbrances ("Permitted Encumbrances"). Notwithstanding the foregoing, the following items shall be deemed Permitted Encumbrances:

1. Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record, if any;

2. Reservation of minerals or mineral rights by the State of Minnesota, if any;

3. Utility and drainage easements which do not interfere with the Proposed Use; and

4. Applicable laws, ordinances, and regulations.

Developer shall have the renewed right to object to the Title Evidence as the same may be revised or endorsed from time to time.

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

1. Terminate this Agreement with respect to all of the Property.

2. Waive one or more of its objections and proceed to Closing.

Section 3.8. If Developer so terminates this Agreement, neither EDA nor Developer shall be liable to the other for any further obligations under this Agreement, except for such obligations as survive termination of this Agreement, and any amount previously paid by Developer to EDA, including the Earnest Money, shall be refunded to Developer.

ARTICLE IV
Construction of Minimum Improvements

Section 4.1. Construction of Developer and Minimum Improvements. By March 1, 2021, unless otherwise agreed to by the parties in writing, the Developer shall submit Construction Plans to the City. The Construction Plans shall provide for the construction of Minimum Improvements and shall be in substantial conformity with the Preliminary Plans depicted on Exhibit B, attached hereto. All Minimum Improvements constructed on the Development Property shall be constructed, operated and maintained in accordance with the terms of the Construction Plans, this Agreement, the Comprehensive Plan, and all local, Minnesota and federal laws and regulations (including, but not limited to, Environmental Controls and Land Use Regulations). Developer will use commercially reasonable efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, in a timely manner, the requirements of applicable Environmental Controls and Land Use

Regulations which must be met before Developer's Minimum Improvements may be lawfully constructed.

Section 4.2. Ground Material. The Developer shall ensure that adequate and suitable ground material shall exist in the areas of utility improvements and shall guarantee the removal, replacement or repair of substandard or unstable material through the warranty period. The cost of said removal, replacement or repair is the responsibility of the Developer.

Section 4.3. Grading/Drainage Plan and Easements**.** The Developer shall construct drainage facilities adequate to serve the Project in accordance with the Development Plans. The Developer agrees to grant to the City all necessary outlots, easements or stormwater maintenance agreements for the preservation and maintenance of the drainage system, for drainage basins and for utility service and for utility looping. The Developer shall enter into any easement agreements and stormwater management agreements with the City that are deemed necessary to fulfill the obligations of this section. The grading and drainage plan shall include lot and building elevations, drainage swales to be sodded, storm sewer, catch basins, erosion control structures and ponding areas necessary to conform to the overall City storm sewer plan. The grading of the site shall be completed in conformance with the Development Plans, subject only to such design criteria and engineering design and construction specifications as are used in the Development Plans notwithstanding any amendment or change to City standards for development subsequent to approval of the Final Plat.

Developer shall dedicate drainage and utility easements as shown on the Final Plat. Additional utility and drainage easements that may be required by the City may be granted by an acceptable document as approved by the City.

Section 4.4. Grading of Private Streets. The Developer must grade, in accordance with the grading plan provided to and approved by the City, all private streets, boulevards, driveways and other public lands, if any, and other lands shown in the approved grading plan and as required in Exhibit F. If the Developer does not perform the work required by this paragraph, the City will complete all work required of the Developer. The Developer will be financially responsible for payments for this work, which will be assessed as provided in Section 10.1.

Section 4.5. Street Sweeping. The Developer is responsible for the removal of all construction debris and earth materials within the public right-of-way during construction. The City will inspect the roadways to ensure the Developer is keeping all public roadway surfaces clean. If any portion of a public roadway surface is found in an unacceptable condition, the City will have appropriate equipment dispatched to the site an all costs associated with the clean-up effort will be billed to the Developer.

Section 4.6. Street Signs. The Developer shall be financially responsible for the installation of street identification signs and non-mechanical and non-electrical traffic control signs. Street signs will be approved pursuant to City standards. The actual number and location of signs to be installed shall be determined by the City and actual installation shall be performed by City authorized personnel.

Section 4.7. Erosion Control. The Developer shall provide and follow a plan for erosion control and pond maintenance in accord with the Best Management Practices (BMP) as delineated by the Minnesota Pollution Control Agency. Such plan shall be detailed on the Construction Plans and shall be subject to approval of the City. The Developer shall install and maintain such erosion control structures as appear necessary under the Construction Plans or become necessary subsequent thereto. The Developer shall be responsible for all damage caused as the result of grading and excavation within the Minimum Improvements including, but not limited to, restoration of existing control structures and clean-up of public right-of-way. As a portion of the erosion control plan, the Developer shall re-seed or sod any disturbed areas in accordance with the Construction Plans. The City reserves the right to perform any necessary erosion control or restoration as required, if these requirements are not complied with after Formal Notice by the City. The Developer shall be financially responsible for payment for this extra work.

Section 4.8. Private Streets. Certain streets constructed within the development, will be private streets owned and maintained by the Developer. The City and Developer shall enter into a Construction, Repair and Maintenance Agreement for Private Roads to govern the conditions related to the private street, including but not limited to maintenance and reconstruction requirements, snowplowing, and damage to City owned utilities that are located within the streets' corridor.

Section 4.9. Trail. The Developer shall construct a bituminous trail that will connect to the River to River Trail as shown in the Development Plans.

Section 4.10. Zoning; Other Approvals. The EDA agrees to exercise its reasonable efforts to grant or obtain such land use planning review and approvals as may be required in connection with the development of the Minimum Improvements by applicable Land Use Regulations. The parties agree that the development of the Minimum Improvements is in the public interest, will provide significant and important benefits to the City and its residents, and is a desirable and appropriate use of the Development Property. Developer acknowledges and agrees that the EDA cannot and does not undertake in this Development Agreement to bind itself to grant or obtain any approvals, permits, variances, zoning or rezoning applications or other matters within the legislative or quasi-judicial discretion of the EDA or the governing body of any other political subdivision or public agency. The EDA nevertheless agrees that upon request of Developer, it will cooperate with Developer to seek and secure approvals, permits, variances, and other matters as may be required prior to the acquisition by Developer of all portions of the Development Property affected thereby, to cause such matters to be timely considered by the EDA, City and Planning Commission or the governing body of other political subdivisions or public agencies with jurisdiction, and to otherwise cooperate with Developer to facilitate implementation of the Minimum Improvements.

Section 4.11. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer shall commence construction of the Minimum Improvements no later than May 1, 2021. Subject to Unavoidable Delays, the Developer shall have substantially completed the construction of the Minimum Improvements no later than November 30, 2023. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans and

Developer will not modify the size or exterior appearance of the Minimum Improvements without the consent of the EDA and the City, which consent shall not be unreasonably withheld. The Developer shall make such reports to the EDA regarding construction of the Minimum Improvements as the EDA deems necessary or helpful in order to monitor progress on construction of the Minimum Improvements.

Section 4.12. Certificate of Completion.

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

(b) The Certificate of Completion provided for in this Section 4.7 shall be in such form as will enable it to be recorded in the proper County office for the recordation of deeds and other instruments pertaining to the Development Property. If the EDA shall refuse or fail to provide such certification in accordance with the provisions of this Section 4.7, the EDA shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default of a material term of this Agreement, and what measures or acts will be necessary, in the opinion of the EDA, for the Developer to take or perform in order to obtain such certification.

Section 4.13. Reconstruction of Minimum Improvements. If the Minimum Improvements are damaged or destroyed before completion thereof and issuance of a Certificate of Completion, the Developer agrees, for itself and its successors and assigns, to reconstruct the Minimum Improvements within one year of the date of the damage or destruction. The Minimum Improvements shall be reconstructed in accordance with the approved Construction Plans, or such modifications thereto as may be requested by the Developer and approved by the EDA in accordance with Section 4.1 of this Agreement, which approval will not be unreasonably withheld. The Developer's obligation to reconstruct the Minimum Improvements pursuant to this Section 4.8 shall end when the Certificate of Completion is issued.

ARTICLE V
Other Obligations of Developer

Section 5.1. Building Permit Fees. Developer acknowledges that building permit fees will be payable by Developer or Successor Developer for Minimum Improvements.

Section 5.2. Administrative Costs. The EDA has incurred and will continue to incur administrative costs in reviewing, analyzing, negotiating and studying the Minimum Improvements and this Development Agreement. In consideration of the time, effort and expenses to be incurred in pursuing the undertakings set forth herein, on or before execution of this Agreement, Developer agrees to pay a $5,000 deposit for the costs of certain consulting fees, including planning, financial, attorneys, engineering, testing and any special meetings. If the obligations of Developer under this Agreement result in a reduction of the $5,000 cash deposit to a level of $1,000 or less, then at such point, Developer shall make an additional cash deposit with the EDA to raise the total cash on deposit with the EDA to $5,000. This process of redeposit shall be continued until all of the monetary obligations of Developer pursuant to this Section are paid in full. The obligations set forth in this shall remain in full force and effect and shall survive any termination until all monetary obligations of Developer are paid in full. If, after completion of the tasks contemplated by this Agreement and if, after appropriate payment to the EDA, there remains on deposit any sum, then such sum shall be paid over to Developer by the EDA within 30 days after such completion and payment. If Developer terminates this Agreement because of the EDA's default, Developer shall be entitled to payment of any remaining balance. If the EDA terminates this Agreement because of Developer's default, the deposit shall be retained by the EDA. Notwithstanding anything to the contrary contained herein, Developer's total obligation for all costs contemplated by this Section 5.3 shall be capped at $50,000.

Section 5.3. Minimum Improvement Costs. The Developer shall pay for the Minimum Improvements; that is, all costs of persons doing work or furnishing skills, tools, machinery or materials, or insurance premiums or equipment or supplies and all just claims for the same; and the City shall be under no obligation to pay the contractor or any subcontractor any sum whatsoever on account thereof, whether or not the City shall have approved the contract or subcontract.

The Developer is responsible for contracting and paying for the street and utility testing costs. The City's designated inspector on the Project will coordinate the street and utility testing activities. All testing reports shall be sent to the City with a copy to the Developer.

Section 5.4. Miscellaneous and Area Charges. The Developer shall reimburse the City for all miscellaneous costs and Area Charges incurred or to be incurred by the City in connection with this Development Agreement. Such costs shall be paid in cash prior to building permit approval and are identified on Exhibit G.

Section 5.5. Enforcement Costs. The Developer shall pay the City for costs incurred in the enforcement of this Development Agreement, including engineering costs and reasonable attorneys' fees.

Section 5.6. Time of Payment. Developer shall pay all bills from the City within thirty (30) days after billing. Bills not paid within thirty (30) days shall bear interest at the rate of eight percent (8%) per year.

Section 5.7. Miscellaneous Requirements. Any additional requirements as specified by

the EDA are incorporated herein.

ARTICLE VI
Insurance and Condemnation

Section 6.1. Insurance.

(a) The Developer shall provide and maintain insurance in the following types and amounts at all times during the process of construction the Minimum Improvements, and shall provide to the EDA upon it request proof of payment of the requisite premiums and proof of current insured status:

1. Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis" in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy. The interest of the EDA shall be protected in accordance with a clause in form and content satisfactory to the EDA;

2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than $1,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

3. Workers' compensation insurance, with statutory coverage.

The policies of insurance required pursuant to clauses (1) and (2) above shall be in a form and content satisfactory to the EDA and shall be placed with financially sound and reputable insurers licensed to transact business in the State. The policy of insurance delivered pursuant to clause (1) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to the EDA in the event of cancellation of such policy or change affecting the coverage thereunder.

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer shall maintain or cause to be maintained, at their sole cost and expense, and from time to time at the request of the EDA shall furnish proof of the payment of premiums on, insurance as follows:

1. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, boiler explosion, water damage, demolition cost, debris removal and

collapse in an amount not less than the full insurable replacement value of the Minimum Improvements.

2. Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), and automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property in the minimum amount for each occurrence and for each year of One Million Five Hundred Thousand Dollars ($1,500,000.00), which shall be endorsed to show the EDA as additional insured.

3. Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of his liability for worker's compensation.

(c) All insurance required in Article VI of this Agreement shall be taken out and maintained with responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. The Developer shall deposit annually with the EDA policies evidencing all such insurance coverages, or a certificate or certificates or binders of the respective insurers stating that such insurance is in full force and effect. Unless otherwise provided in Article VI of this Agreement, each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to the Developer and the EDA at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer shall furnish the EDA evidence satisfactory to the EDA that the policy has been renewed or replaced by another policy conforming to the terms of this Agreement. In lieu of separate policies, the Developer shall deposit with the EDA a certificate or certificates of the respective insurers as to the amount of coverage in force.

(d) The Developer agrees to notify the EDA immediately in the case of damage exceeding five thousand dollars ($5,000.00) in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event that any such efforts to repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or the extent necessary to accomplish such repair, reconstruction and restoration, the Developer shall apply the Net Proceeds of any insurance settlement or payment relating to such damage received by the Developer to the payment or reimbursement of the costs. Net Proceeds of any insurance settlement or payment relating to such damage up to five thousand dollars ($5,000.00) shall be paid directly to the Developer.

In the event the Minimum Improvements or any portion thereof are destroyed in fire or other casualty and the damage or destruction is estimated to equal or exceed five thousand dollars ($5,000.00), then the Developer shall, unless otherwise mutually agreed, within one hundred and eighty (180) days after such damage or destruction, use their best efforts to proceed to repair, reconstruct and restore the damaged Minimum Improvements to substantially the same condition or utility value as existed prior to the event causing such damage or destruction and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer shall apply the Net Proceeds of any insurance settlement or payment relating to such damage or destruction received by the Developer from the EDA to the payment or reimbursement of the costs thereof. Any Net Proceeds remaining after completion of construction shall be disbursed to the Developer.

(e) If the Developer is in compliance with the terms and conditions of this Agreement, then any Net Proceeds of insurance relating to such damage or destruction received by the EDA shall be released on a schedule as determined by the EDA to the Developer upon the receipt of:

1. A certificate of an authorized representative of the Developer specifying the expenditures made or to be made or the indebtedness incurred in connection with such repair, reconstruction and restoration and stating that such Net Proceeds, together with any other monies legally available for such purposes, will be sufficient to complete such repair, construction and restoration; and

2. If Net Proceeds equal or exceed five thousand dollars ($5,000.00) in amount, the written approval of such certificate by an independent architect or engineer.

The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance settlement or payment received by the Developer for such purposes are sufficient to pay for the same. Any Net Proceeds remaining after completion of such repairs, construction and restoration shall be remitted to the Developer.

Section 6.2. Condemnation. In the event that title to and possession of the Minimum Improvements or any material part thereof shall be taken in condemnation or by the exercise of eminent domain authority by any governmental body or other person (except the EDA) prior to the Maturity Date, the Developer shall, with reasonable promptness after such taking, notify the EDA as to the nature and extent of such taking. Upon receipt of any Condemnation Award and subject to the rights of the first Mortgagee, the Developer shall use the entire Condemnation Award to reconstruct the Minimum Improvements (or, in the event only a part of the Minimum Improvements have been taken, then to reconstruct such part) within the Project.

ARTICLE VII
Prohibitions Against Assignment and Transfer; Indemnification

Section 7.1. Representation as to Redevelopment. The Developer represents and agrees that its purchase of the Development Property, and other undertakings pursuant to this Agreement, are, and will be used, for the purpose of redevelopment of the Development Property and not for speculation. The Developer further recognizes that, in view of (a) the importance of the redevelopment of the Development Property to the general welfare of the community; and (b) the substantial financing and other public aids that have been made available by the EDA for the purpose of making such redevelopment possible, the identity of the Developer is of particular concern to the community and the EDA. The Developer further recognizes that it is because of Developer's qualifications and identity that the EDA is entering into this Agreement with the Developer, and in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby to be performed.

Section 7.2. Assignment of Agreement. This Agreement may be assigned by mutual written agreement of the parties, which shall not be unreasonably withheld. The parties agree to cooperate and execute all documents necessary to effectuate such assignment or transfer of development rights.

Section 7.3. Release and Indemnification Covenants.

(a) The Developer covenants and agrees that the EDA, the City and the City Council, and its officers, agents, servants and employees are not liable for and agrees to release, indemnify and, hold harmless the EDA, the City and the City Council, officers, agents, servants and employees against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements, except for loss or damage resulting in willful misconduct or willful negligence of the EDA, the City or the City Council, officers, agents, servants or employees.

(b) Except for any willful misrepresentations or any willful or wanton misconduct or negligence of the following named parties, the Developer agrees to protect and defend the EDA, the City and the City Council, and its officers, agents, servants and employees, now and forever, and further agrees to hold the EDA harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) Except as otherwise specifically provided in this Agreement, the EDA, the City and the City Council, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of Developer, their officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person

other than the EDA, the City or the City Council members, officers, agents, servants or employees.

(d) All covenants, stipulations, promises, agreements and obligations of the EDA contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the EDA and not of any City Council member, officer, agent, servant or employee of the City or the EDA in his or her individual capacity.

(e) Developer shall indemnify, release, and hold harmless the EDA, its officers, agents, servants and employees, as well as the City, the City Council, and its officers, agents, servants and employees, against all costs, damages or expenses the EDA may incur in enforcing any obligation, agreement or covenant that runs with the Development Property, including attorneys' fees.

ARTICLE VIII
Events of Default

Section 8.1. Events of Default Defined. The term "Event of Default" shall mean any one or more of the following events:

(a) Failure by the Developer to pay when due any payments required to be paid under this Agreement.

(b) Failure by the EDA or the Developer to proceed to Closing on the Development Property after compliance with or the occurrence of all conditions precedent to Closing.

(c) Failure by the Developer to commence and complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Article IV of this Agreement, including the timing thereof, unless such failure is caused by an Unavoidable Delay.

(d) Failure by the Developer to pay real estate taxes or special assessments on the Development Property and Minimum Improvements as they become due.

(e) Failure by Developer to comply with the terms and conditions of the Tax Abatement Agreement.

(f) Failure by the Developer to observe or perform any other covenant, condition, obligation or agreement on his part to be observed or performed hereunder.

(g) If the Developer:

1. Files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or state law; or

2. Makes an assignment for the benefit of its creditors; or

3. Admits in writing its inability to pay its debts generally as they become due; or

4. Is in default under any mortgage and fails to cure such default within thirty (30) days of a written demand from the EDA to do so; or

5. Is adjudicated bankrupt or insolvent, or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer and shall not be discharged without ninety (90) days after such appointed, or if the Developer shall consent to or acquiesce in such appointment.

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in Section 8.1 of this Agreement occurs, the EDA may exercise its right under Section 8.2(a) below without notice to Developer and may take any one or more of the actions described in Section 8.2(b)-(f) after providing thirty (30) days written notice, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default cannot be cured within thirty (30) days, the Developer does not provide assurance to the EDA reasonably satisfactory to the EDA that the Event of Default will be cured as soon as reasonably possible:

(a) The EDA may suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the EDA, that the Developer will cure their default and continue their performance under the Agreement.

(b) The EDA may cancel and rescind or terminate this Agreement.

(c) The EDA may withhold the Certificate of Completion.

(d) The EDA may withhold the Net Proceeds from the insurance policies provided to the EDA pursuant to Section 6.1 of this Agreement and in accordance with the terms of the policies.

(e) The EDA may require the Developer to re-convey all remaining undeveloped properties and properties with incomplete projects within the Development Property to the EDA, free and clear of all liens and encumbrances.

(f) The EDA may take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the EDA to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement. Developer shall indemnify the EDA, EDA's officers, employees and agents against all costs, damages or expenses the EDA may incur in enforcing any obligation, agreement or covenant, including attorneys' fees.

Section 8.3. No Remedy Exclusive. No remedy conferred upon or reserved to the EDA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative.

Section 8.4. No Additional Waiver Implied by One Waiver. In the event any condition contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE IX
FINANCIAL OBLIGATIONS

Section 9.1. Developer's Letter of Credit Amount. Prior to release of the Final Plat for recording, the Developer shall deposit with the City an irrevocable LOC for the amounts required in Exhibits E and F. In lieu of an irrevocable LOC, Developer may deposit cash or other security acceptable to City.

All cost estimates shall be acceptable to the City Engineer. The bank and form of the irrevocable LOC shall be subject to approval by the City Finance Director and shall continue to be in full force and effect until released by the City. The irrevocable LOC shall be for a term ending two (2) years after acceptance by the City. In the alternative, the letter of credit may be for a one-year term provided it is automatically renewable for successive one-year periods from the present or any future expiration dates, and further provided that the irrevocable LOC states that at least sixty (60) days prior to the expiration date the bank will notify the City if the bank elects not to renew for an additional period. The irrevocable LOC shall secure compliance by the Developer with the terms of this Development Agreement. The City may draw down on the irrevocable LOC or cash deposit, without any further notice than that provided in Section 14.1 relating to a Developer Default, for any of the following reasons:

(a) a Developer Default; or

(b) upon the City receiving notice that the irrevocable LOC will be allowed to lapse prior to two (2) years after acceptance by the City.

The City shall use the LOC proceeds to reimburse the City for its costs and to cause the Minimum Improvements to be constructed to the extent practicable; if the City Engineer determines that such Minimum Improvements have been constructed and after retaining 10% of

the proceeds for later distribution pursuant to Section 9.2, the remaining proceeds shall be distributed to the Developer.

With City approval, the irrevocable LOC may be reduced pursuant to Section 9.2 from time to time as financial obligations are paid.

Section 9.2. Escrow Release and Escrow Increase; Minimum Improvements. The Developer may request that the LOC or cash deposits required by the Development Agreement be reduced at the time of substantial completion of certain elements of the Project. Within thirty (30) days after receipt of any such request, the City shall reduce the LOC or cash deposits to 150% of the value of only the outstanding incomplete improvements, as determined by the City Engineer.

If it is determined by the City that the Construction Plans were not strictly adhered to, or that work was done without City inspection, the City may require, as a condition of acceptance, that the Developer post an irrevocable LOC, or cash deposit equal to 125% of the estimated amount necessary to correct the deficiency or to protect against deficiencies arising therefrom. In the event that work, which is concealed, was done without permitting City inspection, then the City may, in the alternative, require the concealed condition to be exposed for inspection purposes.

Section 9.3. Developer's Cash Fees and Cash Escrow Requirements. At the time of (and as a condition to) the issuance of building permits, Developer shall deposit the Engineering Escrow (as identified on Exhibit G) with the City for those items and in the amounts required in Exhibit G. The City shall use the Engineering Escrow to reimburse the City for its costs of Plan Review and Inspections of and with respect to the Site Improvements identified on Exhibit E. If such escrow amounts are insufficient to fully reimburse the City for such costs, the City shall submit an invoice to Developer for any deficiencies, which shall be paid within 30 days by Developer.

ARTICLE X
Additional Provisions

Section 10.1. Failure to Construct Minimum Improvements. If the Developer fails to construct the Minimum Improvements, the City at its option, may install and construct the Minimum Improvements. In such case, the City, at its option, may specially assess the cost wholly or in part therefore under Minnesota Statutes Chapter 429, or may draw on the irrevocable LOC or cash deposit. If the City specially assesses the cost of any portion thereof, then the Developer hereby waives any and all procedural and substantive objections to the installation of the improvements and the special assessments, including, but not limited to, notice and hearing requirements and any claim that the special assessments exceed the benefit to the Development Property. The Developer waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Developer acknowledges that the benefit from the improvements equal or exceed the amount of the special assessments.

Section 10.2. Conflict of Interests; EDA Representatives Not Individually Liable. No member, official, or employee of the EDA shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects personal interests or the interests of any corporation,

partnership or association in which the person is directly or indirectly interested. No member, official, or employee of the EDA shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the EDA or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 10.3. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement, it will comply with all applicable equal employment and nondiscrimination laws and regulations.

Section 10.4. Restriction on Use. The Developer, for itself and its successors and assigns, agrees to devote the Property and Minimum Improvements only to such land use or uses as may be permissible under the City's land use regulations.

Section 10.5. Provisions Not Merged With Development Property Deed. None of the provisions of this Agreement is intended to or shall be merged by reason of delivery of the Development Property Deed and the Development Property Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.6. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.7. Notices and Demands. Except as otherwise provided in this Agreement, a notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

(a)	Developer:	KTJ 339, LLC c/o Oppidan Investment Company 400 Water Street, Suite 200 Excelsior, MN 55331
(b)	EDA:	West St. Paul Economic Development Authority Attn: Jim Hartshorn, EDA Executive Director 1616 Humboldt Ave. West St. Paul, Minnesota 55118
(c)	City:	City of West St. Paul Attn: City Manager 1616 Humboldt Ave. West St. Paul, MN 55118

Section 10.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.9. Disclaimer of Relationships. The Developer acknowledges that nothing contained in this Agreement nor any act by the EDA or the Developer shall be deemed or construed by the Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the EDA and the Developer.

Section 10.10. Approvals. Approvals by the EDA shall not be unreasonably withheld, conditioned or delayed.

Section 10.11. Survival of Provisions. The provisions of this Agreement and the representations, warranties and indemnities contained herein shall survive the execution and delivery of the Development Property Deed and the conveyance thereunder, shall not be merged therein, and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 10.12. Recording. The parties agree that this document shall be recorded against the Development Property at the Dakota County Recorder's Office.

Section 10.13. Tax Abatement. Tax abatement for the Development Property shall be addressed in a separate agreement between Developer and the City.

[The remainder of this page has been intentionally left blank]

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 their names on or as of the date first written.

EDA:
WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By: _____
David J. Napier
Its: President

By: _____
James Hartshorn
Its: Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by David J. Napier and James Hartshorn, the President and Executive Director respectively, of the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

_____
Notary Public

City:
WEST ST. PAUL

By: _____
David J. Napier
Its: Mayor

By: _____
Ryan Schroeder
Its: City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by David J. Napier and Ryan Schroeder, the Mayor and City Manager respectively, of the City of West St. Paul, a Minnesota municipal corporation organized and existing under the Constitution and laws of Minnesota, on behalf of the City.

_____
Notary Public

Developer:
KTJ 339, LLC

By: _____
Dave Scott, Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared Dave Scott, who being by me duly sworn, did say that he is the Vice President of KTJ 339, LLC, a Minnesota limited liability company named in the foregoing instrument, and that it was signed on behalf of said corporation and acknowledged said instrument to be the free act and deed of the company.

_____
Notary Public

This document was drafted by:

Korine L. Land, #262432
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
651-451-1831

EXHIBIT A

DEVELOPMENT PROPERTY

Legal Description

The Development Property consists of an approximately 4-5 acre to-be-platted parcel of real property in Dakota County, Minnesota, the approximate boundaries of which located within the parcels of property having the PIDs listed below:

[Part of:
PID: _____
PID: _____
Portion of PID: _____]

The parties shall cooperate in good faith to establish the boundaries of the Development Property during the site plan and subdivision approval processes. Final agreement on the boundaries of and legal description of Development Property, and approval of a subdivision plat reflecting such final agreed boundaries and legal description, shall be a condition to Developer's obligation to proceed to Closing. The subdivision plat will be recorded at or before Closing.

EXHIBIT B

DEPICTION OF MINIMUM IMPROVEMENT

EXHIBIT C

FORM OF
CERTIFICATE OF COMPLETION

WHEREAS, the West St. Paul Economic Development Authority (the "Grantor"), by a deed recorded in the office of the County Recorder in Dakota County, Minnesota, as Document No. _____, has conveyed to KTJ 339, LLC, a Minnesota limited liability company (the "Grantee"), the following described land in County of Dakota and State of Minnesota, to-wit:

(to be completed prior to execution)

and

WHEREAS, said deed was executed pursuant to that certain Contract for Private Development by and between the Grantor and the Grantee dated the ____ day of _____, 2020 and recorded in the office of the County Recorder in Dakota County, Minnesota, as Document No. _____, which Contract for Private Development contained certain covenants and restrictions regarding completion of the Minimum Improvements; and

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

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

Dated: _____, ____.

WEST ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY

By _____
David J. Napier
Its President

By _____
James Hartshorn
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument as acknowledged before me this _____ day of _____, 2020, by David J. Napier and James Hartshorn, the President and Executive Director, respectively, of the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

_____
Notary Public

EXHIBIT D

FORM OF
DEVELOPMENT PROPERTY DEED

THIS INDENTURE, between the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the constitution and laws of Minnesota (the "Grantor"), and KTJ 339, LLC, a Minnesota limited liability company (the "Grantee").

WITNESSETH, that Grantor, in consideration of the sum of $_____ and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, quit claim and convey to the Grantee, their heirs and assigns forever, all the tract or parcel of land lying and being in the County of Dakota and State of Minnesota described as follows, to-wit (such tract or parcel of land is hereinafter referred to as the "Property"):

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

Provided:

SECTION 1

It is understood and agreed that this Deed is subject to the covenants, conditions, restrictions and provisions of an agreement entered into between the Grantor and Grantee on the _____ day of _____, 2020 identified as "Contract for Private Development" (hereinafter referred to as the "Agreement") and that the Grantee shall not convey the Property, or any part thereof, without the consent of the Grantor, until a Certificate of Completion of this Agreement as to the Property or such part thereof then to be conveyed, has been placed of record with Dakota County. This provision, however, shall in no way prevent the Grantee from mortgaging this Property in order to obtain funds for the purchase of Property hereby conveyed and from erecting improvements in conformity with the Agreement, any applicable redevelopment plan and applicable provisions of the Zoning Ordinance of the City of West St. Paul, Minnesota.

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

Promptly after completion of the improvements in accordance with the provisions of the Agreement, the Grantor will furnish the Grantee with an appropriate instrument so certifying. Such certification by the Grantor shall be (and it shall be so provided in the certification itself) a conclusive determination of the satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligation of the Grantee, and their heirs and

assigns, to construct the improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Grantee to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the purchase of the Property hereby conveyed or the improvements, or any part thereof.

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

SECTION 2

In the event the Grantee herein shall, prior to the recording of the certificate of completion referred to above:

(a) Fail to begin construction of the improvements provided for in this Deed and the Agreement in conformity with the Agreement and such failure is not due to Unavoidable Delays and is not cured within thirty (30) days after written notice to do so; or

(b) Default in or violate its obligations with respect to the construction of the improvements provided for in this Deed and the Agreement, or shall abandon or substantially suspend construction work, and such default, violation or failure is not due to Unavoidable Delays and any default or violation, abandonment or suspension is not cured, ended or remedied within thirty (30) days after written demand by the Grantor to do so; or

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

(d) Cause, in violation of the Agreement or of this Deed, any transfer of the Property or any part thereof, and such violation shall be not cured within sixty (60) days after written demand by the Grantor to the Grantee; or

(e) Fail to comply with any of its other covenants under the Agreement and fail to cure any such noncompliance within thirty (30) days after written demand to do so; or

(f) Default under the terms of a mortgage loan authorized by the Agreement and the holder of the mortgage exercises any remedy provided by the mortgage documents or exercises any remedy provided by law or equity in the event of a default in any of the terms or conditions of the mortgage;

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

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

SECTION 3

The Grantee agrees for themselves and their heirs and assigns to or of the Property or any part thereof, hereinbefore described, that the Grantee and such heirs and assigns shall:

(a) Devote the Property to, and only to and in accordance with, the uses specified in any applicable redevelopment plan as amended and extended;

(b) Not discriminate on the basis of race, color, creed, national origin, age or sex in the sale, lease, rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

It is intended and agreed that the above and foregoing agreements and covenants shall be covenants running with the land, and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be binding, to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Grantor against the Grantee, their heirs and assigns, and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the Grantor shall be deemed beneficiary of the agreements and covenants provided herein. Such agreements and covenants shall run in favor of the Grantor without regard to whether the Grantor has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Grantor shall have the right,

in the event of any breach of any such agreement or covenant to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled. Grantor shall be entitled to recover the costs for such enforcement, including attorneys' fees.

SECTION 4

This Deed is also given subject to:

(a) Provision of the ordinances, building and zoning laws of the City of West St. Paul, state and federal laws and regulations in so far as they affect this real estate.

(b) Taxes payable subsequent to the date of this conveyance.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Grantor has caused this Deed to be duly executed in its behalf by its President and Executive Director and has caused its corporate seal to be hereunto affixed this _____ day of _____, 2020.

WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

By: _____
David J. Napier
Its: President

By: _____
James Hartshorn
Its: Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by David J. Napier and James Hartshorn, the President and Executive Director respectively, of the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

_____
Notary Public

This instrument was drafted by:

Korine L. Land, #262432
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
651-451-1831
TITLE NOT EXAMINED

SEND TAX STATEMENT TO:

EXHIBIT E
SITE IMPROVEMENTS

[Chart below to be finalized and completed prior to Closing]

Site Improvement LOC	**Estimated Construction Cost**
Sanitary Sewer	
Watermain	
Storm Sewer	
Streets	
Street Lighting	
Trail stubs and Trails	
Subtotal:	
LOC (125%)	
Total Site Improvement LOC:	

EXHIBIT F
DEVELOPER'S LETTER OF CREDIT REQUIREMENTS FOR

Grading LOC	**Unit**	**Qty**	**Unit Cost**	**Total**
Site Grading Restoration: Topsoil	CY			
Clear and grub trees	AC			
Misc. Site Grading	LS			
Soil correction	EA			
Erosion Control: Silt Fence	LF			
Excavation to basement	SY			
Street Sweeper w/ Pickup Broom	HR			
Rough Grade to street grade	CY			
Total Grading Restoration Cost				$
Grading LOC 150%				

SITE GRADING & EROSION CONTROL ITEMS

[Chart above to be finalized and completed prior to Closing]

EXHIBIT G
DEVELOPER'S CASH REQUIREMENTS AND INDIRECT COST CASH ESCROW

CASH ESCROW
ENGINEERING

Engineering Escrow	**Total**
2% of Site Improvement Subtotal (Ex. E) Plan Review Escrow	
5% of Site Improvement Subtotal (Ex. E) Inspection Escrow	
Total Escrow:	

CASH
AREA CHARGES

Area Charges	**Cost/Acre**	**Acres**	**Total**
Sanitary Area Charge*			
Storm Area Charge			
Total Area Charges:			

*to be completed following submission and review by Met Council

CASH
BUILDING ESCROW

Building Escrow	**Cost/Acre**	**Acres**	**Total**
Erosion Control	$3,000	5	$15,000