

Worksession Materials

May 6, 2014

Council Worksession 5:00

Discussion related to CSI Project *

(Portions of worksession may be closed pursuant to MN Statute 13D.)

* Portion of work session may be closed by the City Council to discuss pending offers on the sale of real property pursuant to Minnesota Statutes 13D.05.



City of New Brighton
Community Development Department

MEMORANDUM

DATE: May 2, 2014
TO: Dean Lotter, City Manager
FROM: Grant Fernelius, Community Development Director
SUBJECT: May 6th Work Session – Update on CSI Project

In anticipation that we will be ready to bring forward a development package for Council consideration on May 13th, staff wanted to check in next Tuesday and provide a status report on the negotiations.

Introduction

The City and Ryan have been working on a draft redevelopment agreement since late March. Shortly after that document was prepared, we learned that CSI wanted to buy the land and use Ryan as the general contractor. As a result, the agreement had to be substantially revised to segregate the developer-related responsibilities between Ryan and CSI. Ordinarily this is something we could work through in due course, but the short time window has made it challenging. The talks have become more complicated because both the City and CSI are using the same law firm (Fredrickson & Byron) on this project. Each side had to sign a waiver and lawyers at the firm have had to create an “ethical wall” to avoid conflicts of interest. In the City’s case, Sue Steinwall’s role is limited to environmental matters; while CSI’s attorney (Chris Dolan) is focused on business and real estate issues (i.e. non-environmental) – CSI is relying on Ryan for environmental assurances. To the extent CSI wants environmental representation, they will need to go outside Fredrikson & Byron for help. On all other deal elements, the City is using Hoff, Barry & Kozar as redevelopment counsel.

Redevelopment Agreement

Attached is a current draft of the redevelopment agreement that has been prepared by the City and reviewed by Ryan. This document is still a work in progress and includes a few unresolved issues, as well as some missing exhibits. We are also waiting for additional comments from CSI’s attorney after a meeting earlier this week and should have more information at Tuesday’s work session. The purpose in sharing the document now is to give Council a sense of the scope of issues that will be part of the agreement. Staff hopes to have a verbal update at Tuesday’s work session so that a final agreement can be presented on May 13th. The following is a summary of the main deal points and unresolved issues.

Primary Deal Points

- *Site:* CSI will purchase approximately 10 acres of land, which includes development Blocks A and F and a soon to be vacated segment of Northwest Parkway. The site does not include the ponds on the south side of Block A – the City will continue to own and maintain the ponds as part of the New Brighton Exchange storm water system.
- *Purchase Price:* CSI will pay a fixed amount of \$500,000 for the site. The City had demanded a higher amount for the site initially, but agreed to a price reduction after intensive negotiations. There was significant competition for this project from neighboring communities – some of which involved assistance to write down the land costs. As an aside, George Hoff has written a legal opinion (see attached) that the City's land write down is not considered a business subsidy under State law. At closing, the City will escrow the land sales proceeds to pay for certain public improvements (see below) and environmental costs. This concept of writing down the land cost to pay for public improvements and environmental costs was used in both the Transoma and Pulte projects.
- *Minimum Improvements:* CSI and Ryan are programming a building of 125,000 SF, however they have requested flexibility under the contract to define the Minimum Improvements as a 116,000 SF building. To some extent this is a non-issue, since the land use plans show a 125,000 SF building.
- *Closing:* On or before June 15, 2014 or 30 days after the preliminary plat is approved, but not later than August 31, 2014.
- *Public Improvements:* As with other projects in New Brighton Exchange, the City has agreed to construct and pay for the bulk of the public improvements. Ryan has also agreed to pay for some costs too. The parties are finalizing the numbers in the next few days. The City's share of the public improvement costs would be funded from the land sales proceeds.

Unresolved Issues

Minimum Assessment

The City is requesting that CSI enter into a minimum assessment agreement, which would establish a floor for valuation purposes. This type of mechanism is used by cities to help guarantee that a development project meets financial expectations. We have not used assessment agreements in New Brighton Exchange, because of some complicated IRS rules related to the general obligation bonds that were issued. However, in talking with Ehlers and the City's bond

counsel at Kennedy & Graven, there is some flexibility to use an assessment agreement for this project. The rationale for the City's demand is threefold: 1) the City is providing a significant land write down); 2) we are selling more land than is needed for Phase 1; and 3) the City is offering fairly generous terms related to the option. In effect, CSI is tying up land for a long period of time that the City cannot market to other users. The assessment provides some protection that the project will meet the financial projections of the City. ***This issue is still in discussion.***

Option Land

CSI requested an option to buy additional land for future expansion. Initially, the company wanted an exclusive option (no cost) through December 31, 2020 for 2-4 acres on either Block B or E. Staff pushed back with a counter proposal (maximum of 2 acres on Block E) that granted an initial option period through March 2017 (no-cost) and then two additional option periods that could be extended with a payment of \$20,000 per acre. In addition, the City proposal would establish a minimum expansion threshold (75,000 SF+) in order to acquire the option land. The City does not want the option land to remain vacant and undeveloped indefinitely. Although CSI has said they don't intend to speculate, they are opposed to any strings attached to the option land. ***This issue is still in discussion.***

Extraordinary Costs

The City has offered to pay for the public improvements and environmental costs via a land write down. In other words, the City would use the land sales proceeds to fund these improvements. This concept was used for the Transoma and Pulte projects. The City's proposal capped participation to \$500,000 of these costs, meaning Ryan or CSI would have to pay any amount over this limit. The current cost estimate for all site-related expenses is in the range of \$800,000 to \$900,000. This estimate includes some additional geo-technical corrections that may be required on a portion of the site due poor (organic soils). When the City did the dump closure in 2007-2008, the primary focus was to remove known dump material, it wasn't a complete geotechnical correction, since we didn't know the exact location of future buildings. CSI has said that will not pay for any of these costs and that the City and Ryan need to figure out a cost-sharing arrangement. ***Staff and Ryan have had discussions on a counter proposal, but want to discuss this issue further on Tuesday to gauge Council support for an additional contribution. Ehlers has some supplemental information that will be shared on Tuesday on how the City could fund its share of these costs.***

Indemnification

CSI has included language that would require the City to identify the company for all damages arising from the environmental condition of the property. The City has done extensive work on the environmental front and we have a good handle on these costs. For the most part, we believe a vapor barrier and passive venting system will be needed. We have no information that there are additional environmental issues. The City's typical practice is to allow prospective buyers to have site access for due diligence purposes. In addition, we also make all of our environmental

reports available for inspection and work with the buyer on seeking liability assurances from the Minnesota Pollution Control Agency (MPCA). The City has not historically provided blanket indemnification for a prospective buyer. ***Staff has asked our environmental counsel (Sue Steinwall) to be present on Tuesday and advise the Council on what this means and potential solutions that be available address CSI's concerns.***

State Assistance

CSI has submitted their initial applications to DEED for assistance under the Minnesota Investment Fund (MIF) and Job Creation Fund (JCF) programs. On the May 13th, the only item for Council consideration will be a resolution of support for the company's JCF application. ***It is not clear how long this process will take or if the MIF loan materials will be ready by the time the redevelopment agreement is presented on May 13th.***

Next Steps

Over the course of the next week, staff hopes to work through the remaining contract issues with Ryan and CSI. If these issues can be resolved, the regular agenda on May 13th would include the following items:

- Resolutions supporting a loan application on behalf of CSI for up to \$2.0M from the Job Creation Fund (JCF).
- Resolution authorizing a Contract for Private Redevelopment between the City, CSI and Ryan.
- Consideration of the land use approvals (Site Plan, PUD, Preliminary and Final Plat).
- We may also have an amended grant agreement related to the repayment of the state bond funded sanitary sewer improvement. The pipe (valued at \$20,000) will be removed as part of this project. However, because it was funded with State bond money and the improvement is being destroyed, the City must repay the State for the value of the improvement lost.

HOFF, BARRY & KOZAR, P.A.

ATTORNEYS

GEORGE C. HOFF

Direct: 952.746.2706 | Email: ghoff@hbklaw.com

April 18, 2014

Grant Fernelius
Community Development Director
803 Old Highway 8 NW
New Brighton, MN 55112-2797

RE: Business Subsidy

Dear Mr. Fernelius,

You have asked for our opinion as to whether financial assistance by way of a discounted sale price of real estate and the City's function as possible conduit for State funds from the Department of Economic Development constitute a business subsidy under Minn. Stat. 116J.993 – 116J.995 (the "Act"). The short answer, depending on the use of the funds, is no.

A business subsidy is defined to include a "grant, contribution of ... real property..." among other things. Minn. Stat. 116J.993, subd. 3. As applies here, if a "grant" (i.e. money) is provided, that is obviously a subsidy. While, not explicit, if there is a discount provided on real property, that discount would appear to be either a "grant" or a "contribution" of real property. That is, if the City discounts the price of land, while not actual cash, it is the City foregoing cash payment for an asset which it owns and is essentially giving that to a developer; or, it is a "contribution" of a portion of the value of the real property. In any event, given the obvious purpose of the Act, while an argument could be made from a very strict reading of the statute that discounted real estate does not fall within the definition, the more conservative route is to treat discounted real estate, as well as direct cash contributions, as business subsidies.

While the Act appears to cast a broad net on what constitutes a subsidy, it has many exceptions. One of the exceptions is "redevelopment of property polluted by contaminants as defined in 116J.552". Minn. Stat. 116J.993, subd. 3(4). (For purposes of this opinion we are assuming that the site is contaminated as defined in the referenced statute.) The term redevelopment is undefined in the statute, and is thus given its plain meaning. Redevelopment is defined as "the act or process of redeveloping". www.webster.com/dictionary. The term redevelopment is not confined to remediation of the bad soils or other contamination on the site, or any other subset of the redevelopment of real property. Thus it can include activity which leads to the redevelopment, including the construction of a building on the site. Therefore, if the money that is provided is earmarked for uses that fall into the broad definition of redevelopment, the "grant" or "contribution of real property" falls within the above cited exception, and is not a business subsidy. (If, on the other hand, the savings or funds were to be used, for example, to pay bonuses or other personnel cost, the exception would not apply.)

The issue of the state funding that is being provided is a different issue than the land "write down" because it entails a grant or discounted (forgivable) loan as I understand it. Such a grant or loan would fall within the definition of a subsidy in the Act, absent an applicable exception. I have reviewed the material that you sent and the "use of funds" by the applicant is a bit confusing. In the JCF application, the section on sources and uses of funds is left blank. However, there was a separate sheet entitled "Estimated Sources and Uses of Funds" which indicates that the use of funds will be for "property acquisition, site remediation and public infrastructure". Under the analysis above, the first two clearly fall within the broad definition of redevelopment. The third could also qualify as the cost of the redevelopment of the infrastructure is necessary to the redevelopment of the contaminated site. However, this analysis is largely academic because the application itself specifies that DEED will be preparing a "Business Subsidy Agreement" to be executed by the Applicant and the Commissioner as it relates to any State funds provided. While the City will not be a signator to that agreement, it will be required to assist the applicant in compliance reporting. (JCF Application, pg. 1, para. 4-5). So a Business Subsidy Agreement will be required.

The use of funds in the MIF application is entirely unclear, so it is hard to tell if the rationale above applies. Obviously, the more conservative course is to prepare a Business Subsidy Agreement.

In summary, with respect to the land "write down", it is our view generally speaking, that it is a subsidy under the Act; but, that the exception discussed above applies and no Business Subsidy Agreement is necessary. However, the JCF grant will require a business subsidy agreement with the State which presumably will be in conformity with the Business Subsidy Policy which the City plans to adopt.

I hope this provides the information that you needed. If you have any questions, please give me a call.

Sincerely,



George C. Hoff
HOFF, BARRY & KOZAR, P.A.

GCH:jrr

DATED:

CONTRACT
FOR
PRIVATE REDEVELOPMENT
By and Between
THE CITY OF NEW BRIGHTON
And
RYAN COMPANIES U.S., INC.
And
CARDIOVASCULAR SYSTEMS, INC.
(CARDIOVASCULAR SYSTEMS PROJECT)

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CONTRACT FOR PRIVATE REDEVELOPMENT

THIS AGREEMENT, made on or as of _____, 2014 by and between the City of New Brighton (the "City"), of the State of Minnesota, having its principal offices at 803 Old Highway 8 NW, New Brighton, Minnesota 55112, Ryan Companies U.S., Inc. a Minnesota corporation (the "Redeveloper"), and Cardiovascular Systems, Inc., a Delaware corporation (the "Owner").

WITNESSETH:

WHEREAS, the City is a municipal corporation organized and existing pursuant to the Constitution and laws of the State of Minnesota and its charter and is governed by the Council of the City (the "Council");

WHEREAS, pursuant to the Municipal Development Districts Act, Minnesota Statutes Section 469.124 *et seq.*, as amended (the "Municipal Development Districts Act"), the Council is authorized to establish development districts in order to provide for the development and redevelopment of the City;

WHEREAS, pursuant to the Minnesota Tax Increment Financing Act, Minnesota Statutes Section 469.174 *et seq.*, as amended (the "Tax Increment Act"), the Council is authorized to finance the capital and administration costs of a development district with tax increment revenues derived from a tax increment financing district established within such development district;

WHEREAS, the City Council has established Development District No. 1 (the "Development District") pursuant to the Act, and adopted the Restated Development Program (the "Program") in connection with the creation of the Development District;

WHEREAS, the City Council created redevelopment Tax Increment Financing District No. 32 (NWQ Special Law) within the Development District (the "Tax Increment District"), which Tax Increment District includes the Redevelopment Property, and adopted a Tax Increment Financing Plan for the Tax Increment District pursuant to the Tax Increment Act to assist with the financing of the redevelopment contemplated by this Agreement;

WHEREAS, the major objectives of the Council in establishing the Development District and adopting the Program are to:

1. Promote and secure the prompt development or redevelopment of certain property in the Development District, which property is not now in productive use or in its highest and best use, in a manner consistent with the City's Comprehensive Plan, which will, where practicable, mitigate existing adverse environmental conditions, and will cause a minimum adverse impact on the environment, and thereby promote and secure the development or redevelopment of other land in the City.

2. Promote and secure additional employment opportunities within the Development District and the City for residents of the City and the surrounding area, thereby improving living standards, reducing unemployment and the loss of skilled and unskilled labor and other human resources in the City.

3. Secure the increased valuation of property subject to taxation by the City, the school district, Ramsey County and other taxing jurisdictions in order to better enable such entities to pay for governmental services and programs required to be provided by them.

4. Provide for the financing and construction of public improvements in and adjacent to the Development District necessary for the orderly and beneficial development or redevelopment of the Development District and adjacent areas of the City.

5. Promote the concentration of new desirable residential, commercial, office, and other appropriate development or redevelopment in the Development District so as to develop and maintain the area in a manner compatible with its accessibility and prominence in the City.

6. Encourage local business expansion, improvement, development and redevelopment whenever possible.

7. Create a desirable and unique character within the Development District through quality land use alternatives and design quality in new and remodeled buildings.

8. Encourage and provide maximum opportunity for private development or redevelopment of existing areas and structures which are compatible with the Program.

9. Create viable environments which will facilitate and enable the construction, upgrading and maintaining of housing stock, maintaining housing health and safety quality standards, and maintaining and strengthening individual neighborhoods.

10. Stimulate private activity and investment to stabilize, enhance and balance the City's housing supply.

11. Eliminate code violations, remediate environmental contamination and eliminate nuisance and other negative conditions that adversely affect neighborhoods or are obstacles to the objectives of the Program.

12. Revitalize property to create a safe, attractive, comfortable, convenient and efficient area for residential use.

13. Create and reinforce a sense of residential place and security which creates neighborhood cohesiveness through City investment in neighborhood infrastructure and public improvements, including landscaping, park improvements, local street modifications to reduce traffic impacts, street construction or repaving, curb and gutter construction or replacement and streetlight installation or updating.

14. Encourage infill development and redevelopment that is compatible in use and scale with surrounding neighborhoods.

15. Rehabilitate existing housing stock and preserve existing residential neighborhoods wherever possible.

16. Demolish and reconstruct, where necessary, aging residential buildings to preserve neighborhoods.

17. Remove substandard structures.

18. Further many of the goals enumerated in Minnesota Statutes Section 469.124, including providing employment opportunities, improving the tax base, improving the general economy of the State, and providing open space relief within the New Brighton Exchange.

WHEREAS, the City Council has approved a framework plan and design standards for all future land uses within the New Brighton Exchange to ensure high-quality, complementary development, construction of a variety of high-quality housing products, creation of new green space, trails, stormwater ponds and recreational uses as extensions of the natural amenities of Long Lake and Long Lake Regional Park, and encouragement of pedestrian traffic between land uses;

WHEREAS, in order to achieve many of the objectives of the Council in creating the Development District, the City is prepared to convey certain real property located in the Development District and more particularly described in Exhibit B to the Owner for the Redeveloper to redevelop in accordance with this Agreement;

WHEREAS, the City proposes to provide certain revenues to effectuate such objectives;

WHEREAS, the City believes that the development and redevelopment of the Development District pursuant to this Agreement, and fulfillment generally of the terms of this Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws under which the Development District and Program is being undertaken and assisted;

NOW, THEREFORE, in consideration of the premises 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:

“Act” means the Municipal Development Districts Act, Minnesota Statutes Sections 469.124 to 469.134, inclusive, as amended.

“Agreement” means this Agreement, as the same may be from time to time modified, amended, or supplemented.

“Assessment Agreement” means an agreement substantially in the form of Exhibit between the City, Owner and Ramsey County establishing a minimum value for the Minimum Improvements for purposes of real estate taxes.

“Business Subsidy” shall have the same definition as set forth in Minn. Stat. §116J.993 and the City’s Business Subsidy Plan.

“Certificate of Completion” means a certification provided to the Owner and Redeveloper pursuant to Section 5.8 in the form of the certificate contained in Exhibit D.

“City” means the City of New Brighton, Minnesota, its successors or assigns.

“Closing” or “Date(s) of Closing” means the Closing Date on the Redevelopment Property is conveyed by the City to the Owner as set forth in Section 4.2.

“Closing Date” shall mean, the earlier of, on or before: (i) June 15, 2014 or (ii) 30 days after the preliminary plat of the Redevelopment Property is approved by the City, but in no event shall the Closing be later than August 31, 2014.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Redeveloper on the Redevelopment Property which shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building official of the City, and shall include at least the following for each building: (1) site plan; (2) foundation plan; (3) floor plan for each floor; (4) elevations (all sides); (5) façade and landscape plan; and (6) such other plans or supplements to the foregoing plans as the City may reasonably request.

“Council” means the Council of the City.

“County” means the County of Ramsey, Minnesota.

“Declaration of Restrictive Covenants and Prohibition Against Tax Exemption” means those restrictive covenants substantially in the form of Exhibit H.

“Development District” means Development District No. 1 created by the City pursuant to the Act through the adoption of the Program.

“Environmental Reports” means the reports and other documents listed in Exhibit I.

“Escrow Account” means the account established pursuant to the Escrow Agreement into which the Escrow Funds are deposited.

“Escrow Agreement” means the agreement substantially in the form of Exhibit J to be entered into by the parties prior to the first deposit of Escrow Funds to provide for the reimbursement of the Owner or Redeveloper, as the case may be, for remediation/soil work costs and other eligible costs as set forth in Section 5.1 and 5.2.

“Escrow Funds” means the funds deposited by the City in accordance with Section 5.2 and disbursed according to the terms of the Escrow Agreement.

“Event of Default” means an event of default as defined in Section 7.1.

“Indemnified Parties” means City, Barr Engineering and their respective elected officials, officers, employees and agents.

“Minimum Improvements” means a two story building of approximately 125,000 square feet, of which at least 75% of the space shall be used for office purposes (including office or office with lab space) on the Property, subject to changes that may result from the City approvals that Owner intends to obtain (the “Minimum Improvements”) and to commence the construction of such buildings promptly following the closing of the purchase of the Redevelopment Property. Subject to the terms of this Agreement, the construction costs of the Minimum Improvements shall be not less than \$18.184 million (including land, building shell, tenant improvements and soft costs); Redeveloper has furnished a proposed concept site plan which is attached as Exhibit E.

“Expansion Project” means an expansion of the Minimum Improvements of at least 75,000 square feet, of which at least 75% of the space shall be used for office purposes (including office or office with lab space) on the Redevelopment Property, subject to changes that may result from the City approvals that Owner intends to obtain and to commence the construction of such building as described in Section 4.4. The Expansion Project is shown on Exhibit E.

“MPCA” means the Minnesota Pollution Control Agency.

“New Brighton Exchange” means the area of the City has planned for redevelopment pursuant to the Program, which generally lies at the northwest corner of the intersection of I-694 and I-35W, bound by Long Lake Regional Park on the west and north; 14th Street NW on the north and the aforementioned interstate highways on the east and south; is approximately 100 acres in size and which includes the Redevelopment Property.

“Option Agreement” means an agreement substantially in the form of Exhibit N between the City and Owner that includes the terms and conditions for the sale of the Option Property to be developed in conjunction with the Expansion Project.

“Option Property” means the area shown on Exhibit M and described in Section 4.4 and generally referred to as Block E not to exceed 2 acres in size.

“Owner” means Cardiovascular Systems, Inc., a Delaware corporation.

“Plan” means, collectively, the Tax Increment Plans adopted by the City in connection with the creation of the Tax Increment District and the Subdistrict and the Program adopted by the City in connection with the creation of the Development District.

“Preliminary Plans” means floor plans and sketches of the typical exterior and interior of the proposed Minimum Improvements which illustrate the size and character of the proposed improvements.

“Program” means the Restated Development Program adopted by the City in connection with the creation of the Development District.

“Project” shall refer collectively to the Redevelopment Property, the Minimum Improvements and the Expansion Project.

“Public Improvements” means the public improvements described on Exhibit F to be constructed by the Redeveloper.

“Purchase Price” means a total purchase price of \$500,000 which shall be payable at Closing.

“Redeveloper” means Ryan Companies U.S., Inc., a Minnesota corporation, or its successor or assigns.

“Redevelopment Property” shall mean the real property of approximately 10.0 acres (+/-) identified on Exhibit A and legally described in Exhibit B.

“Redevelopment Property Deed” means the limited warranty deed, substantially in the form attached as Exhibit C, to be used by the City to convey the Redevelopment Property to the Owner at Closing.

“Site Improvements” means the improvements described on Exhibit G as qualified improvements to be made on the Redevelopment Property by the Redeveloper.

“Subdivision Agreement” means the agreement substantially in the form of Exhibit O, which describes the details for the design and construction of certain Site and Public Improvements on and adjacent to the Redevelopment Property.

“Site Plan” means the plan attached hereto as Exhibit E showing the proposed nature and location of the Minimum Improvements and the Expansion Project.

“State” means the State of Minnesota.

“Tax Increment” means the real estate taxes paid on property in the Tax Increment District which is remitted to the City as tax increment pursuant to the Tax Increment Act.

“Tax Increment Act” means Minnesota Statutes Sections 469.174 *et seq.*, Laws of Minnesota 1998, Chapter 389, Article 11, Section 24 and any other special law.

“Tax Increment District” means a tax increment financing district that includes the Redevelopment Property and which has been approved and adopted by the Council within the Development District pursuant to the Tax Increment Act.

“Tax Increment Plan” means the tax increment financing plan adopted by the City in connection with the creation of the Tax Increment District.

“Tax Official” means any City Assessor, County Assessor, County Auditor, City, County or State board of equalization, the Commissioner of Revenue of the State, any State or District Court, the tax court of the State, the State Court of Appeals or the State Supreme Court.

“Termination Date” means the termination date of this Agreement, which shall be the earliest of: (i) the date of termination of the Tax Increment District or (ii) the date on which this Agreement is earlier terminated pursuant to this Agreement.

“Title Company” shall mean Old Republic National Title Insurance Company, 400 Second Avenue South, Minneapolis, MN 55401.

“Unavoidable Delays” means delays which are the direct result of strikes or other labor troubles, unforeseeable and unavoidable casualties to the Redevelopment Property or the Project, governmental actions, judicial action commenced by third parties, the implementation of an environmental agency-approved work plan for remediation, severe weather, acts of God, fire or other casualty, site conditions materially different from those revealed in any report or test provided to or obtained by the Developer or any other causes which the Developer could not reasonably control or circumvent.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.1. Representations and Covenants by the City. The City represents and warrants to Redeveloper and to Owner that:

(a) The City is a municipal corporation duly organized and existing under the laws of the State. Under the provisions of the Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City has created, adopted and approved the Development District in accordance with the terms of the Act.

(c) The City has approved the Tax Increment District pursuant to the Tax Increment Act.

(d) To the best of the City's knowledge, information and belief, the City's execution of this Agreement and consummation of the transaction contemplated hereby does not and will not (i) result in a breach of or default under any indenture, agreement, instrument or obligation to which the City is a party and which affects all or any portion of the Redevelopment Property, or (ii) violate any applicable law.

(e) The City is the holder of marketable fee simple and record title to the Redevelopment Property, free and clear of all liens, claims, encumbrances and restrictions except those which are recorded against the Redevelopment Property.

(f) The City, subject to Unavoidable Delays, will convey the Redevelopment Property to the Owner pursuant to Article IV for the Owner's use in accordance with the Plan and this Agreement.

(g) The City will reasonably cooperate with Owner and the Redeveloper with respect to any litigation commenced by third parties in connection with this Agreement.

(h) The City will endeavor to maximize tax increment financing so as to offset its costs of redevelopment.

(i) The City has delivered copies of the Environmental Reports to Owner and the Redeveloper.

(j) There is not pending, nor to the best of the City's knowledge after due inquiry is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforceability of this Agreement.

(k) There are no parties other than the City in possession of any portion of the Redevelopment Property, nor are there any leases (oral or written) applicable to or affecting the Redevelopment Property.

(l) No third party has an option to purchase, right of first refusal, right of first offer or other similar right with respect to all or a portion of the Redevelopment Property and the City has not entered into any other contracts for the sale of all or any portion of the Redevelopment Property with any third party.

(m) The City is not aware of any methamphetamine production occurring on the Redevelopment Property. This representation is intended to satisfy the requirements of Minn. Stat. § 152.0275, Subd. 2(m).

(n) To the best of the City's knowledge, information and belief:

i. There are "Wells," as defined in Minn. Stat. § 103I.005, Subd. 21, on the Redevelopment Property as shown on attached Exhibit L-1. This representation is intended to satisfy the requirements of Minn. Stat. § 115.55, Subd. 6.

ii. There are no individual sewage treatment systems ("systems"), as defined in Minn. Stat. § 115.55, Subd. 1, on the Redevelopment Property. This representation is intended to satisfy the requirements of Minn. Stat. § 115.55, Subd. 6.

Section 2.2. Representations and Warranties by the Redeveloper. The Redeveloper represents and warrants to the City and to Owner that:

(a) The Redeveloper is a corporation organized and in good standing under the laws of the State of Minnesota.

(b) The Redeveloper has duly authorized the execution of this Agreement and the performance of its obligations hereunder, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, is prevented, limited by or conflicts with or results in a breach of, any indebtedness, agreement or instrument of whatever nature to which the Redeveloper is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(c) Subject to the conditions contained in Article IV below, the Redeveloper will construct the Minimum Improvements in accordance with the terms of this Agreement and all applicable local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(d) The Redeveloper will obtain all required permits, licenses 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.

(e) The Redeveloper will reasonably cooperate with the City and Owner with respect to any litigation commenced by third parties in connection with this Agreement and any litigation commenced by the City or Owner against third parties in connection with this Agreement.

(g) The Redeveloper will not assign or convey any interest in the Redevelopment Property, Option Property, Minimum Improvements, Expansion Project or any portion thereof, or this Agreement or any portion thereof, to any tax-exempt entity or take any other action which would result in the Redevelopment Property, Option Property, Minimum Improvements or Expansion Project becoming exempt from the levy of *ad valorem* property taxes, or any statutorily authorized alternative, until after the dissolution or other termination of the Tax Increment District, without the prior written approval of the City, whose approval shall be conditioned upon the Redeveloper executing a payment in lieu of tax agreement reasonably satisfactory to the City. The Redeveloper will execute and record a Declaration of Restrictive Covenants and Prohibition Against Tax Exemption in substantially the form attached hereto as Exhibit H in connection with the conveyance of the Redevelopment Property to the Redeveloper.

(h) There are no pending or threatened legal proceedings of which the Redeveloper has knowledge which seek to restrain or enjoin the transactions contemplated by the Agreement or which question the authority of the Redeveloper to execute and deliver this Agreement or the validity of this Agreement.

Section 2.3. Representations and Warranties by the Owner. The Owner represents and warrants to Redeveloper and to the City that:

(a) The Owner is a corporation organized and in good standing under the laws of the State of Delaware.

(b) The Owner has duly authorized the execution of this Agreement and the performance of its obligations hereunder, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, is prevented, limited by or conflicts with or results in a breach of, any indebtedness, agreement or instrument of whatever nature to which the Owner is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(c) Subject to the conditions contained in Article IV below, Owner will acquire the Redevelopment Property from the City, and will contract with Redeveloper to perform site development services and construct the Minimum Improvements, all in accordance with this Agreement.

(d) The Owner will obtain all required permits, licenses 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 operated for their intended use.

(e) The Owner will reasonably cooperate with the City and Redeveloper with respect to any litigation commenced by third parties in connection with this Agreement and any litigation commenced by the City or Redeveloper against third parties in connection with this Agreement.

(f) Concurrently with its execution of this Agreement, Owner has deposited with Escrow Agent an amount sufficient to complete all of the development services to be performed by Redeveloper on behalf of Owner, and perform the construction of the Minimum Improvements in compliance with the requirements of this Agreement.

(g) The Owner will not assign or convey any interest in the Redevelopment Property, Option Property, Minimum Improvements, Expansion Project or any portion thereof, or this Agreement or any portion thereof, to any tax-exempt entity or take any other action which would result in the Redevelopment Property, Option Property, Minimum Improvements or Expansion Project becoming exempt from the levy of *ad valorem* property taxes, or any statutorily authorized alternative, until after the dissolution or other termination of the Tax Increment District, without the prior written approval of the City, whose approval shall be conditioned upon the Owner executing a payment in lieu of tax agreement reasonably satisfactory to the City. The Owner will execute and record a Declaration of Restrictive Covenants and Prohibition Against Tax Exemption in substantially the form attached hereto as Exhibit H in connection with the conveyance of the Redevelopment Property to the Owner.

(h) There are no pending or threatened legal proceedings of which the Owner has knowledge which seek to restrain or enjoin the transactions contemplated by the Agreement or which question the authority of the Owner to execute and deliver this Agreement or the validity of this Agreement.

ARTICLE III

LAND USE AND DEVELOPMENT CONTROLS

Section 3.1. Project Goals. To the extent feasible, the Owner and the Redeveloper will cooperate with the City and other developers within the New Brighton Exchange to:

(a) Further the City's objectives set forth in the Program, the Highway 8 Corridor Study, in relevant City Zoning Code provisions and the New Brighton Exchange/NW Quadrant Design Guidelines, as the same may be amended from time to time;

(b) Adhere to the framework plan and design standards for all uses in the New Brighton to ensure high quality, complementary development as an integrated whole and which reflects the importance of the site's location near a major freeway interchange and its proximity to Long Lake and Long Lake Regional Park as natural amenities;

(c) Provide pedestrian linkages to Long Lake Regional Park and encourage pedestrian traffic within and between land uses; and

(d) Integrate stormwater ponding for the Redevelopment Property into the stormwater system constructed and/or designed for the New Brighton Exchange.

Section 3.2. Zoning and Land Use Approvals. City approval for the Project will be processed as part of a Planned Unit Development (PUD) as defined under Chapter 7, Article 2 of the City Zoning Ordinance. The Redeveloper, on behalf of Owner, shall submit the appropriate application materials as required under such Chapter. The staff of the City shall reasonably cooperate with and assist the Redeveloper in applying for and processing such applications, including without limitation seeking all necessary approvals from the Metropolitan Council and the MPCA. The Redeveloper, on behalf of Owner, shall be responsible for applying for and obtaining all land use and zoning approvals necessary for the Project. All zoning and land use approvals shall be by the City Planning Commission or City Council in accordance with the ordinances of the City.

Section 3.3. Platting. The City has prepared a concept drawing which is shown on Exhibit A. The concept drawing depicts the Redevelopment Property. The Redeveloper shall pay for all platting and filing fees necessary to record the new plat for the Redevelopment Property, prior to the start of construction of the Minimum Improvements.

Section 3.4. Control of Use. The Owner may utilize deed restrictions, covenants, easements, agreements, architectural controls, owners' associations and other means to control the use and to ensure the maintenance of the land within the Project. The Owner shall submit any such instruments to the City for its review and approval. The Owner shall pay all costs of preparation and recording of such instruments and any other documentation necessary for the acquisition and construction of the Minimum Improvements.

Section 3.5. Building and Construction Permits; Fees. The Redeveloper shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits prior to construction. The Redeveloper shall pay the normal and customary permit, plan review, park dedication and utility access fees and shall be responsible for obtaining all building permits prior to construction. The Owner shall pay the normal and customary park dedication fees.

Section 3.6. Areas to be Maintained by Redeveloper. Owner agrees to maintain those areas adjacent to its property as shown in Exhibit K. Owner's maintenance responsibilities shall be defined in a separate Subdivision Agreement, which is attached as Exhibit P.

Section 3.7. Reimbursement for RAP Preparation. The Redeveloper agrees to reimburse the City, at Closing or upon termination of this Agreement (whichever occurs first), for a contribution not to exceed \$5,000 for preparation of Response Action Plan (RAP).

ARTICLE IV

CONVEYANCE OF THE REDEVELOPMENT PROPERTY

Section 4.1. Conveyance of the Redevelopment Property.

(a) Title. The City shall convey marketable title to and possession of the Redevelopment Property on the Closing Date. The City shall execute and deliver a limited warranty deed of the Redevelopment Property in the form of the Redevelopment Property Deed attached as Exhibit C at Closing. The conveyance of title to the Redevelopment Property pursuant to the Redevelopment Property Deed shall be subject to all of the conditions, covenants, restrictions and limitations imposed by this Agreement and the Redevelopment Property Deed. At its expense the Owner may obtain any title insurance and endorsements it deems necessary.

At its expense, the City agrees to obtain and shall deliver to the Owner a commitment for an ALTA Form owner's title insurance policy issued by the Title Company, naming Owner as the proposed owner-insured of the Redevelopment Property in the amount of the Purchase Price (the "Commitment"). The Commitment shall have a current date as its effective date and shall commit to insure marketable title in the Owner, free and clear of all mechanics' lien claims, questions of survey, unrecorded interests, rights of parties in possession or other exceptions.

The Owner will be allowed twenty (20) days after receipt of the Commitment and the survey referred to in subparagraph (c) below (the "Survey") to make an examination thereof and to make any objections to the marketability of the title, objections to be made by written notice or to be deemed waived.

If the title, as evidenced by the Commitment and the Survey, together with any appropriate endorsements, is not marketable of record in the City and is not made so by the applicable Date of Closing, the Owner may either:

(i) Terminate this Agreement by giving written notice to the City, in which event all earnest money paid by the Owner shall be returned to the Owner and this Agreement shall become null and void and neither party shall have any further rights or obligations hereunder; or

(ii) Elect to accept the title in its unmarketable condition and proceed to closing.

(b) Redevelopment Property Sold "As-Is".

(1) The City hereby specifically disclaims any warranty (oral or written) concerning: (i) the nature and condition of the Redevelopment Property and the suitability thereof for any and all activities and uses that Redeveloper elects to conduct thereon; (ii) the manner, construction, condition and state of repair or lack of repair of any Minimum Improvements or the Expansion Project; (iii) the compliance of the Redevelopment Property or Expansion Project or its

operation with any laws, rules, ordinances or regulations of any government or other body; and (iv) any other matter whatsoever except as expressly set forth in this Agreement. Except as is otherwise expressly provided in this Agreement, the sale of the Redevelopment Property as provided for herein is made on a strictly "as is" "where is" basis as of the Closing Date, and City makes no warranty or representation, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of quantity, quality, condition, habitability, merchantability, suitability or fitness for a particular purpose of the Redevelopment Property, any improvements located thereon or any soil conditions related thereto.

- (2) Owner specifically acknowledges that Owner is not relying on (and the City hereby disclaims and renounces) any representations or warranties made by or on behalf of the City of any kind or nature whatsoever, except for those particular representations and warranties expressly provided in this Agreement. Except as is otherwise expressly provided in this Agreement, Owner, for City and Owner's successors and assigns, hereby releases City from, and waives, any and all claims and liabilities against the City for, related to, or in connection with any environmental or physical condition at the Redevelopment Property (or the presence of any matter or substance relating to the environmental condition of the Redevelopment Property), including, but not limited to, claims and/or liabilities relating to, in any manner whatsoever, any hazardous, toxic or dangerous materials or substances located in, at, about or under the Redevelopment Property, or for any claims or causes of action (actual or threatened) based upon, in connection with, or arising out of CERCLA, as amended by SARA, and as may be further amended from time to time, RCRA, or any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to or affecting the Redevelopment Property and any other physical condition at the Redevelopment Property. Owner represents to City that Owner has conducted, or will conduct prior to Closing, such investigations of the physical conditions of the Redevelopment Property, as Owner deems necessary to satisfy itself as to the condition of the Redevelopment Property, and will rely solely upon same. Except as is otherwise expressly provided in this Agreement, upon closing, Owner shall assume the risk that adverse matters, including but not limited to, construction defects and adverse physical conditions, may not have been revealed by investigations, and Owner, upon closing, shall be deemed to have waived, relinquished and released the City from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which the Owner might have asserted or alleged against City, at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws and any and

all other acts, omissions, events, circumstances or matters regarding the Redevelopment Property.

- (c) Owner acknowledges and agrees that the waivers, releases and other provisions contained in this section were a material factor in City's acceptance of the Purchase Price and that City is unwilling to sell the Redevelopment Property to Owner unless City is released as expressly set forth above. Owner, with Owner's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance and effect thereof. The terms and conditions of this section will expressly survive the Closing Date, will not merge with the provisions of any closing documents, and will be incorporated into the deed.

(b) Purchase Price and Closing. Subject to the terms of this Agreement, the City agrees to sell and the Owner agrees to purchase the Redevelopment Property for the Purchase Price. The City shall execute and deliver to the Owner a Redevelopment Property Deed in recordable form at Closing. Earnest money of Fifty Thousand and No/100 Dollars (\$50,000.00) shall be payable in cash or by wire transfer on the date of execution of this Agreement, the balance of the Purchase Price shall be paid by cash or wire transfer on the Date of Closing. The conveyance of title to the Redevelopment Property pursuant to the Redevelopment Property Deed shall be subject to all of the conditions, covenants, restrictions and limitations imposed by this Agreement and the Redevelopment Property Deed. The Owner shall promptly record the Redevelopment Property Deed.

(c) Survey Review. City has delivered to Owner and Redeveloper the most recent survey of the Redevelopment Property in City's possession. Owner or Redeveloper may, at its or their expense, obtain an updated or new survey of the Property.

(d) Inspection. At the Owner's expense, the Owner and its agents (including, without limitation, Redeveloper) are hereby granted the right for a period of ninety (90) days following execution of this Agreement to inspect and test the Redevelopment Property subject to the below conditions, review title pursuant to subsection (a) above, review survey pursuant to subsection (c) above, review and examine the Redevelopment Property to determine the feasibility of the Redevelopment Property for Owner's intended use; and obtain any and all governmental approvals the Owner or the Redeveloper deems necessary for the development of the Redevelopment Property including without limitation preliminary plat approval, comprehensive plan amendment approval and PUD approval for Owner's intended development of the Redevelopment Property. If the Owner determines not to proceed to Closing based on this Section, it must deliver written notice to the City within such time period or this condition will be deemed to have been waived. If such notice is timely provided this Redevelopment Agreement shall be terminated and all earnest money paid herein shall be returned to the Owner. If no such notice is timely provided then the earnest money paid herein shall be non-refundable except for default by the City.

Owner and Redeveloper shall have the right to enter the Redevelopment Property at reasonable times for the purpose of inspection. Owner and Redeveloper hereby covenants and agrees that it shall cause all studies, investigations and inspections performed at the Redevelopment Property

to be performed in a manner that does not disturb the Redevelopment Property and that the Redevelopment Property shall be returned to its original condition after Owner or Redeveloper's entry, as the case may be, provided that neither Owner or Redeveloper shall be responsible for any existing conditions on the Redevelopment Property or for any environmental remediation or response actions required as a result of such investigations and inspections. Except for soil borings and test pits, neither Owner or Redeveloper shall conduct or cause to be conducted any physically intrusive investigation, examination or study of the Redevelopment Property (any such investigation, examination or study hereinafter an "Intrusive Investigation") as part of its inspection or otherwise without obtaining the prior written consent of City, which consent shall not be unreasonably withheld. "Intrusive Investigation" shall mean any investigation, examination or study that disturbs or disrupts the Redevelopment Property, including, but not limited to, grading, but not including soil borings or test pits. Owner, Redeveloper and their respective Representatives shall, in performing its inspection, comply with any and all applicable laws, ordinances, rules, and regulations. Except to the extent required by any applicable statute, law, regulation or governmental authority, neither Owner, Redeveloper or their respective Representatives shall report the results of the inspection or any Intrusive Investigation to any governmental or quasi-governmental authority without first obtaining City's written consent, which consent may be withheld in City's sole discretion, except Owner shall enroll into the MPCA Voluntary Investigation Program ("VIC") and the MPCA Petroleum Brownfield Program. Owner or Redeveloper, on Owner's behalf, shall conduct additional Phase II investigations and prepare a Response Action Plan addendum ("RAP Addendum") for the planned development, including, but not limited to, the planned public and site improvements outlined herein. Upon City's request, Owner shall provide City with copies of any and all final, third party reports prepared on behalf of Owner as part of the inspection without any representation or warranty regarding the accuracy thereof.

Owner, Redeveloper and their respective Representatives who enter the site, shall: (a) maintain comprehensive general liability (occurrence) insurance in an amount of not less than \$2,000,000 covering any accident arising in connection with the presence of Owner, Redeveloper and their respective Representatives at the Redevelopment Property and the performance of any investigations, examinations or studies thereon, and shall deliver a certificate of insurance (in form and substance reasonably satisfactory to City), naming City as an additional insured thereunder, verifying the existence of such coverage to City prior to entry upon the Redevelopment Property; and (b) promptly pay when due any third party costs associated with its inspection.

Owner or Redeveloper shall, at each party's sole cost, restore the Redevelopment Property to the same condition as before such party's entry for inspection or any Intrusive Investigation; provided that neither Redeveloper or Owner shall not be responsible for any existing conditions or environmental remediation or response actions required as a result of existing conditions or such entry, inspection or Intrusive Investigation.

Owner and Redeveloper, as the case may be, shall indemnify, protect, defend and hold the Indemnified Parties harmless from and against any and all losses, damages, claims, causes of action, judgments, damages, costs and expenses (including reasonable attorneys' fees and court costs) (collectively "Losses") that City or any Indemnified Parties suffer or incur as a result of, or

connected or related in any manner to the Redevelopment Agreement or Owner's or Redeveloper's inspection, any Intrusive Investigation; provided, however, that such indemnification obligations shall not extend to any existing conditions or environmental remediation or response actions required as a result of such entry, inspection or Intrusive Investigation.

(e) Wells. Any wells that are known to the City, whether abandoned or operating, are identified on attached Exhibit L-1. Any operating wells that are not required or necessary for on-going monitoring activities shall be abandoned in accordance with Minnesota Statutes. The parties, prior to Closing, shall negotiate in good faith the terms and conditions (including the need for any easements) of maintaining any environmental monitoring wells on the Redevelopment Property by the City.

(f) Time of Conveyance. The Closing shall take place at the offices of the Title Company unless the parties mutually agree in writing that the Closing shall take place at another location. The Closing shall occur on the Closing Date. The Owner shall take possession of the Redevelopment Property on the Closing Date.

(g) Taxes; Special Assessments; Other Pro Rations. Real estate taxes due and payable prior to the applicable year of Closing shall be paid by the City. Real estate taxes due and payable in the applicable year of Closing shall be allocated between the parties based on their respective period of ownership in the year of Closing. Real estate taxes due and payable in the years subsequent to the Closing shall be paid by the Owner. The City shall pay all special assessments deferred, pending or levied as of the Closing Date. The Owner shall pay all special assessments levied after against the applicable portion of the Redevelopment Property after the Closing Date. The Owner shall bear all costs of recording the Redevelopment Property Deed except as set forth below. The City shall pay the State deed tax due in connection with conveyance of the Redevelopment Property and shall pay the cost of recording any document necessary to place title in the condition described in this Agreement. The Owner shall pay all other recording costs incurred in connection with this Agreement. The parties shall equally share other closing costs. Each party shall pay all sums in cleared funds on the Closing Date.

(h) Plat; Covenants; Easements; Zoning and Land Use Approvals. The Redevelopment Property may be conveyed using a non-platted legal description. The Redeveloper shall pay all costs for plats, replats, lot splits, preparation of restrictive covenants, easements and any other documentation necessary for the construction of the Minimum Improvements and all costs of recording any such documents. Redeveloper, on behalf of Owner, will adhere to normal and customary site and building plan review requirements including the payment of normal and customary fees including park dedication fees as required by City Code. Redeveloper shall obtain and pay for any necessary variances, rezoning, subdivision, platting, plat amendment and any other documentation for the construction of the Minimum Improvements.

Section 4.2. Conditions Precedent to Conveyance.

(a) The obligations of the City to convey the relevant portion of the Redevelopment Property at Closing shall be subject to the following conditions:

(1) The Owner shall be in material compliance with all of the terms and provisions of this Agreement;

(2) The Owner shall have paid the Purchase Price; and

(3) Each of the Owner's representations and warranties set forth in Section 2.3 shall be true as of the Closing Date.

(b) The obligation of the Owner to purchase the Redevelopment Property at Closing shall be subject to the following conditions precedent as applicable:

(1) The City shall be in material compliance with all of the terms and provisions of this Agreement; and

(2) Each of the City's representations and warranties set forth in Section 2.1 shall be true as of the Closing Date.

(c) In the event the conditions precedent for either party cannot be satisfied by the Date of Closing, then this Agreement shall terminate and all earnest money paid by Owner shall be returned to Owner.

Section 4.3. Documents at Closing on Redevelopment Property.

(a) At Closing, the City shall deliver to the Owner:

(1) An executed Redevelopment Property Deed,

(2) All certificates, instruments and other documents necessary to permit the recording of the applicable Redevelopment Property Deed,

(3) A standard Seller's Affidavit with respect to judgments, bankruptcies, tax liens, mechanics liens, parties in possession, unrecorded interests, encroachment or boundary line questions and related matters,

(4) If applicable, the owner's duplicate certificate of title (the City need not provide an abstract of title if the property is classified as abstract property), and

(5) An affidavit that the City is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code.

(b) At Closing the Owner shall deliver to the City:

(1) The balance of the Purchase Price, plus or minus pro rata costs between the City and Owner as set forth herein.

(2) Park dedication fees for the Redevelopment Property.

(3) An executed Declaration of Restrictive Covenants and Prohibition Against Tax Exemption.

(4) A signed subdivision agreement required by the City with regard to the governmental approvals obtained by Redeveloper, along with a form of security, acceptable to the City for the cost of public improvements, which include those items listed on attached Exhibit F.

Section 4.4. Option Property.

(a) The City hereby grants an option to Owner to purchase the Option Property as shown in Exhibit M, subject to the terms and conditions of this Section.

(b) The purchase price of the Option Property shall be \$4.75 per square foot ("Option Property Purchase Price"), which square footage of the Option Property shall be determined by certification from the Owner's surveyor prior to the Option Property Closing (defined below), subject to the review and approval of the City.

(c) Prior to the Option Property Closing, Owner shall submit plans for the construction of the Expansion Project, subject to the review and approval of the City.

(d) The Option Property shall be conveyed for the restricted purpose of support parking for the Expansion Project.

(e) The term of the option multiple periods are as follows.

(1) "Option Period 1" shall commence from the Effective Date through and up to March 31, 2017. During Option Period 1 the option shall be exclusive to Owner. Option Period 1 shall only be effective and Owner shall only have a right to exercise the option if there is no default under this Agreement, the Redevelopment Property has been conveyed to the Owner and the Minimum Improvements have been completed to the satisfaction of the City.

(2) "Option Period 2" shall commence from the April 1, 2017 through and up to March 31, 2019. During Option Period 2 the option shall be non-exclusive with the right of the City to convey the Option Property to third-parties, unless the Owner pays to City an option fee of \$20,000.00 per acre ("Option Period 2 Fee"). If and when said Option Period 2 Fee is paid the option shall be exclusive and City agrees not to convey or otherwise encumber the Option Property during the Option Period 2 and upon the exercise of the option through the Option Property Closing. Option Period 2 shall only be

effective and Owner shall only have a right to exercise the option if there is no default under this Agreement, the Redevelopment Property has been conveyed to the Owner and the Minimum Improvements have been completed to the satisfaction of the City. Option Period 2 Fee shall be non-refundable, but upon the occurrence of the Option Property Closing shall be applied as a credit towards the Option Property Purchase Price.

- (3) "Option Period 3" shall commence from April 1, 2019 through and up to March 31, 2021. During Option Period 3 the option shall be non-exclusive with the right of the City to convey the Option Property to third-parties, unless the Owner pays to City an option fee of \$20,000.00 per acre ("Option Period 3 Fee"). If and when said Option Period 3 Fee is paid the option shall be exclusive and City agrees not to convey or otherwise encumber the Option Property during the Option Period 3 and upon the exercise of the option through the Option Property Closing. Option Period 3 shall only be effective and Owner shall only have a right to exercise the option if there is no default under this Agreement, the Redevelopment Property has been conveyed to the Owner and the Minimum Improvements have been completed to the satisfaction of the City. Option Period 3 Fee shall be non-refundable, but upon the occurrence of the Option Property Closing shall be applied as a credit towards the Option Property Purchase Price.
- (4) In event there is a default under this Agreement by Owner as set forth in Article VII of this Agreement, the option granted herein shall terminate.
- (5) The option shall be exercised by Owner providing the City notice during the above mentioned option periods (the "Option Notice"). The option shall not be exercised if the Owner has not completed the Minimum Improvements on the Redevelopment Property or is otherwise in default under this Agreement.
- (6) After receipt of the Option Notice and subject to the terms of this Agreement, the City agrees to sell and the Owner agrees to purchase the Option Property for the Purchase Price. The City shall, subject to the conditions herein, convey title to and possession of the Option Property on the Option Property Closing Date. The City shall execute and deliver the Redevelopment Property Deed attached as Exhibit _____ at the Option Property Closing for the Option Property. The conveyance of title to the Option Property pursuant to the Redevelopment Property Deed shall be subject to all of the conditions, covenants, restrictions and limitations imposed by this Agreement and the Redevelopment Property Deed. At its expense, the Owner may obtain any title insurance and endorsements it deems necessary. All sums shall be paid by wire transfer of funds on the Option Property Closing Date. The Owner shall promptly record the Redevelopment Property Deed.

(f) Within a reasonable time after receive of the Option Notice and at its expense, the City agrees to obtain and shall deliver to the Owner a commitment for an ALTA Form owner's title insurance policy issued by the Title Company, naming Redeveloper or the Tenant as the proposed owner-insured of the Option Property in the amount of the Purchase Price (the "Option Commitment"). The Option Commitment shall have a current date as its effective date and shall commit to insure marketable title in the Owner, free and clear of all mechanics' lien claims, questions of survey, unrecorded interests, rights of parties in possession or other exceptions. The Option Commitment shall set forth all levied real estate and special assessments. The Option Commitment shall include such title policy endorsements as may be reasonably requested by the Owner. The Option Commitment shall have attached copies of all instruments of record which create any easements or restrictions which are referred to in Schedule B of the Option Commitment.

The Owner will be allowed twenty (20) days after receipt of the Option Commitment and the Survey, defined in subparagraph _____ below, to make an examination thereof and to make any objections to the marketability of the title, objections to be made by written notice or to be deemed waived.

If the title, as evidenced by the Option Commitment and the Survey, together with any appropriate endorsements, is not marketable of record in the City and is not made so by the applicable Date of Closing, the Owner may either:

- (i) Terminate this Agreement by giving written notice to the City, in which event any option fees described herein shall be forfeited to the City and this Agreement shall become null and void and neither party shall have any further rights or obligations hereunder; or
- (ii) Elect to accept the title in its unmarketable condition and proceed to closing.

Option Property Sold "As-Is".

- (i) The City hereby specifically disclaims any warranty (oral or written) concerning: (i) the nature and condition of the Option Property and the suitability thereof for any and all activities and uses that Redeveloper elects to conduct thereon; (ii) the manner, construction, condition and state of repair or lack of repair of any Improvements; (iii) the compliance of the Option Property or its operation with any laws, rules, ordinances or regulations of any government or other body; and (iv) any other matter whatsoever except as expressly set forth in this Agreement. Except as is otherwise expressly provided in this Agreement, the sale of the Option Property as provided for herein is made on a strictly "as is" "where is" basis as of the Closing Date, and City makes no warranty or representation, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of quantity, quality, condition, habitability, merchantability, suitability or fitness for a

particular purpose of the Option Property, any improvements located thereon or any soil conditions related thereto.

- (ii) Owner specifically acknowledges that Owner is not relying on (and the City hereby disclaims and renounces) any representations or warranties made by or on behalf of the City of any kind or nature whatsoever, except for those particular representations and warranties expressly provided in this Agreement. Except as is otherwise expressly provided in this Agreement, Owner, for City and Owner's successors and assigns, hereby releases City from, and waives, any and all claims and liabilities against the City for, related to, or in connection with any environmental or physical condition at the Option Property (or the presence of any matter or substance relating to the environmental condition of the Option Property), including, but not limited to, claims and/or liabilities relating to, in any manner whatsoever, any hazardous, toxic or dangerous materials or substances located in, at, about or under the Option Property, or for any claims or causes of action (actual or threatened) based upon, in connection with, or arising out of CERCLA, as amended by SARA, and as may be further amended from time to time, RCRA, or any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to or affecting the Option Property and any other physical condition at the Option Property. Owner represents to City that Owner has conducted, or will conduct prior to Closing, such investigations of the physical conditions of the Option Property, as Owner deems necessary to satisfy itself as to the condition of the Option Property, and will rely solely upon same. Except as is otherwise expressly provided in this Agreement, upon closing, Owner shall assume the risk that adverse matters, including but not limited to, construction defects and adverse physical conditions, may not have been revealed by investigations, and Owner, upon closing, shall be deemed to have waived, relinquished and released the City from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which the Owner might have asserted or alleged against City, at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws and any and all other acts, omissions, events, circumstances or matters regarding the Option Property.
- (iii) Owner acknowledges and agrees that the waivers, releases and other provisions contained in this section were a material factor in City's acceptance of the Purchase Price and that City is unwilling to sell the Option Property to Owner unless City is released as expressly set forth above. Owner, with Owner's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance

and effect thereof. The terms and conditions of this section will expressly survive the Closing Date, will not merge with the provisions of any closing documents, and will be incorporated into the deed.

(g) Subject to the terms of this Agreement and receipt of the Option Notice, the City agrees to sell and the Owner agrees to purchase the Option Property for the Purchase Price. The City shall execute and deliver to the Owner a Redevelopment Property Deed in recordable form at the Option Property Closing. All sums shall be paid by wire transfer of funds on the Option Property Closing Date. The conveyance of title to the Option Property pursuant to the Redevelopment Property Deed shall be subject to all of the conditions, covenants, restrictions and limitations imposed by this Agreement and the Redevelopment Property Deed. The Owner shall promptly record the Redevelopment Property Deed.

(h) City will deliver to Owner and Redeveloper the most recent survey of the Redevelopment Property in City's possession within 30 days after receipt of the Option Notice (the "Survey").

(i) At the Owner's expense, the Redeveloper, the Owner, and their respective agents are hereby granted the right for a period of Sixty (60) days following delivery of the Option Notice to inspect and test the Option Property subject to the below conditions, review title pursuant to subsection (a) above, review survey pursuant to subsection (c) above, review and examine the Option Property to determine the feasibility of the Option Property for Owner's intended use; and obtain any and all governmental approvals the Owner and the Redeveloper deem necessary for the development of the Option Property. If the Owner determines not to proceed to Option Property Closing based on this Section, it must deliver written notice to the City within such time period or this condition will be deemed to have been waived. If such notice is timely provided this Redevelopment Agreement shall be terminated and any option fee paid shall be forfeited to the City.

Redeveloper and Owner shall have the right to enter the Option Property at reasonable times for the purpose of inspection. Redeveloper and Owner each hereby covenant and agree that they shall cause all studies, investigations and inspections performed at the Option Property to be performed in a manner that does not disturb the Option Property and that the Option Property shall be returned to its original condition after such party's entry, provided that neither party shall be responsible for any existing conditions on the Option Property or for any environmental remediation or response actions required as a result of such investigations and inspections. Except for soil borings and test pits, neither the Owner or the Redeveloper shall conduct or cause to be conducted any physically intrusive investigation, examination or study of the Option Property (any such investigation, examination or study hereinafter an "Intrusive Investigation") as part of its inspection or otherwise without obtaining the prior written consent of City. "Intrusive Investigation" shall mean any investigation, examination or study that disturbs or disrupts the Option Property, including, but not limited to, grading, soil borings and test pits. Owner, Redeveloper and their respective Representatives shall, in performing its inspection, comply with any and all applicable laws, ordinances, rules, and regulations. Except to the extent required by any applicable statute, law, regulation or governmental authority, neither Owner, Redeveloper or their respective Representatives shall report the results of the inspection

or any Intrusive Investigation to any governmental or quasi-governmental authority without first obtaining City's written consent, which consent may be withheld in City's sole discretion. Upon City's request, Owner shall provide City with copies of any and all final, third party reports prepared on behalf of Owner as part of the inspection without any representation or warranty regarding the accuracy thereof.

Owner, Redeveloper and their respective Representatives who enter the site, shall: (a) maintain comprehensive general liability (occurrence) insurance in an amount of not less than \$2,000,000 covering any accident arising in connection with the presence of Owner, Redeveloper or their respective Representatives at the Option Property and the performance of any investigations, examinations or studies thereon, and shall deliver a certificate of insurance (in form and substance reasonably satisfactory to City), naming City as an additional insured thereunder, verifying the existence of such coverage to City prior to entry upon the Option Property; and (b) promptly pay when due any third party costs associated with its inspection.

Owner or Redeveloper shall, at such party's sole cost, restore the Option Property to the same condition as before such party's entry for inspection or any Intrusive Investigation; provided that such party shall not be responsible for any existing conditions or environmental remediation or response actions required as a result of existing conditions or such entry, inspection or Intrusive Investigation.

Owner or Redeveloper shall, as the case may be, indemnify, protect, defend and hold the Indemnified Parties harmless from and against any and all losses, damages, claims, causes of action, judgments, damages, costs and expenses (including reasonable attorneys' fees and court costs) (collectively "Losses") that City or any Indemnified Parties suffer or incur as a result of, or connected or related in any manner to the Redevelopment Agreement or Owner's or Redeveloper's inspection, any Intrusive Investigation; provided, however, that Owner's and Redeveloper's indemnification obligations shall not extend to any existing conditions or environmental remediation or response actions required as a result of such entry, inspection or Intrusive Investigation.

(j) The "Option Property Closing" shall take place at the offices of the Title Company unless the parties mutually agree in writing that the Option Property Closing shall take place at another location. The Closing shall occur within 60 days of the City being provided the Option Notice ("Option Property Closing Date"). The Owner shall take possession of the Option Property on the Option Property Closing Date.

(k) Real estate taxes due and payable prior to the applicable year of Option Property Closing shall be paid by the City. Real estate taxes due and payable in the applicable year of Option Property Closing shall be allocated between the parties based on their respective period of ownership in the year of Option Property Closing. Real estate taxes due and payable in the years subsequent to the Option Property Closing shall be paid by the Owner. The City shall pay all special assessments deferred, pending or levied as of the Option Property Closing Date. The Owner shall pay all special assessments levied after against the applicable portion of the Option Property after the Option Property Closing Date. The Owner shall bear all costs of recording the Redevelopment Property Deed except as set forth below. The City shall pay the State deed tax

due in connection with conveyance of the Option Property and shall pay the cost of recording any document necessary to place title in the condition described in this Agreement. The Owner shall pay all other recording costs incurred in connection with this Agreement. The parties shall equally share other closing costs. Each party shall pay all sums in cleared funds on the Option Property Closing Date.

(l) The Owner shall pay all costs for plats, replats, lot splits, preparation of restrictive covenants, easements and any other documentation necessary for the construction of the Minimum Improvements, Expansion Project and all costs of recording any such documents. Owner will adhere to normal and customary site and building plan review requirements including the payment of normal and customary fees including park dedication fees as required by City Code. Owner shall obtain and pay for any necessary variances, rezoning, subdivision, platting, plat amendment and any other documentation for the construction and sale of the Minimum Improvements and Expansion Project.

(m) The obligations of the City to convey the Option Property at Closing shall be subject to the following conditions:

- (1) Owner timely providing the Option Notice pursuant to Section _____ of this Agreement.
- (2) The Owner shall not be in default with any of the terms and provisions of this Agreement;
- (3) The Owner shall have paid the Option Property Purchase Price; and
- (4) Each of the Owner's representations and warranties set forth in Section _____ shall be true as of the Option Property Closing Date.

(n) The obligation of the Owner to purchase the Option Property at Option Property Closing shall be subject to the following conditions precedent as applicable:

- (1) Owner timely providing the Option Notice pursuant to Section _____ of this Agreement.
- (2) The City shall be in default with any of the terms and provisions of this Agreement; and
- (3) Each of the City's representations and warranties set forth in Section _____ shall be true as of the Option Property Closing Date.

(o) In the event the conditions precedent for either party cannot be satisfied by the Option Property Closing Date, then this Agreement shall terminate.

(p) At Closing, the City shall deliver to the Owner:

- (1) An executed Redevelopment Property Deed,
 - (2) All certificates, instruments and other documents necessary to permit the recording of the applicable Redevelopment Property Deed,
 - (3) A standard Seller's Affidavit with respect to judgments, bankruptcies, tax liens, mechanics liens, parties in possession, unrecorded interests, encroachment or boundary line questions and related matters,
 - (4) If applicable, the owner's duplicate certificate of title (the City need not provide an abstract of title if the property is classified as abstract property), and
 - (5) An affidavit that the City is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code.
- (q) At Closing the Owner shall deliver to the City:
- (1) The balance of the Option Property Purchase Price, plus or minus pro rata costs between the City and Redeveloper as set forth herein.
 - (2) xxxxxx
 - (3) xxxxxx
 - (4) xxxxxx
- (r) The Expansion Project shall be completed within twelve (12) months of the City's conveyance of the Option Property to the Owner.

ARTICLE V

REMEDICATION AND CONSTRUCTION OF PUBLIC, SITE AND MINIMUM IMPROVEMENTS

Section 5.1. Completion of Remediation related to Minimum Improvements.

- (a) (1) The Redeveloper and the Owner acknowledge that the environmental history of the Redevelopment Property as evidenced by the reports in Exhibit I. At least 30 days prior to Closing, the Redeveloper shall provide the City, subject to the review and approval of the City, with a cost estimate for remedial work and site development work related thereto required pursuant to an MPCA-approved Voluntary Response Action Plan ("VRAP") which the parties have agreed that Redeveloper will perform as part of construction. The VRAP (and any amendment thereto and any

other submission by the Redeveloper to the MPCA with respect to the Redevelopment Property, before submission) is subject to the review and approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The parties shall negotiate in good faith on the scope of and the estimated budget for such work (and shall do the same with respect to any unexpected contamination encountered during such work). If the City does not respond with respect to a proposed submission to the MPCA or to the cost estimate referenced above (or subsequently revised cost estimate) within five (5) business days after the Redeveloper provides it to the City, then the City will be deemed to have approved such proposed submission or such estimate and associated scope of work. "Business days" shall mean days in which New Brighton City Hall is open for business. If the amendment to the VRAP, which has been submitted to the MPCA, has not yet been approved within the time frames contemplated by this subparagraph, the parties shall negotiate in good faith on the budget based on the work contemplated by such amendment as submitted.

- (2) Such costs include, but not be limited to, costs of: (i) a passive vapor venting system including initial testing of such system required by the MPCA during the first year of operation and, if necessary, upgrading of such system to an active vapor venting system, and related vapor monitoring; (ii) environmental laboratory analytical work, MPCA staff fees and the fees of the Redeveloper's environmental consultants; (iii) actions beyond the Redeveloper's normal construction practices at uncontaminated sites to manage impacted soils, water, fugitive dust, vapor, storm water and waste materials; (iv) environmental testing of soils to be imported to the Redevelopment Property. In connection with the development and construction of the Redevelopment Property, Redeveloper will make all reasonable measures to manage environmental impacts in place. The Redeveloper shall be reimbursed for the costs of such remediation pursuant to Section 5.3.
- (3) Such costs shall not include the costs of: (i) post-development ongoing maintenance and replacement of venting systems, covers over soil, vapor barriers and vapor control systems; (ii) preparation and implementation of health and safety plans in connection with post-development disturbance or removal of soil; (iii) attorneys' fees; and (iv) Redeveloper's mark-up or premium added to any of the foregoing costs. In addition, such costs shall not include any work related to Expansion Project or Option Property.

(b) The City agrees to reasonably cooperate with the Owner and the Redeveloper, should either party seek closure, no action or no association letters or other levels of relief or approval from MPCA or other agencies. The receipt of such letters, approvals, etc. by the Redeveloper shall not be a condition to Closing.

Section 5.2. Construction of Public Improvements. The City, prior to commencement of construction, will provide final engineering for the Public Improvements described on Exhibit F, including alignment and profile for utility, storm water pond and public streets. The Redeveloper shall construct the Public Improvements in accordance with City specifications. The Redeveloper shall be reimbursed for all costs associated with the construction of the Public Improvements pursuant to Section 5.3. The parties shall negotiate in good faith on an estimated budget for the Public Improvements prior to construction.

Section 5.3. Escrow for Remediation and Public Improvement Costs.

(a) Deposits into Escrow Account. The City will make the following deposits into the Escrow Account to pay for remediation and Public Improvements as follows:

- (1) Remediation. At Closing, the City shall deposit the amount of the cost estimate for remediation work related thereto to the Minimum Improvements which was developed by the parties pursuant to Section 5.1. If additional work is required by the MPCA to develop the Redevelopment Property, the parties shall negotiate in good faith on an estimated budget and the City shall make an additional deposit to the Escrow Account to pay for such additional work up to a maximum of the Purchase Price. If the cost of such additional work is estimated to exceed such amount, the City and Redeveloper shall negotiate in good faith to determine a solution. If no solution is reached, the Redeveloper or Owner may agree to pay the additional costs over and above such amount and proceed with the Project or, if the Redeveloper or Owner chooses not to fund the excess, the City shall either pay such excess by making a deposit to the Escrow Account and require the Redeveloper to proceed, or the City, within fifteen (15) days after receiving written notice from the Redeveloper or Owner that it has chosen not to fund the excess, shall agree to repurchase the Redevelopment Property from the Redeveloper for the Purchase Price and shall close such purchase within thirty (30) days after receiving written notice from the Redeveloper or Owner that it has chosen not to fund the excess..

- (2) Public Improvements. At Closing, the City shall escrow \$ _____ from the Purchase Price as the estimated cost of the Public Improvements. Such reimbursement shall be paid in monthly draws based on work completed in the prior month. Any excess escrowed funds will be refunded to the City. If the cost of the Public Improvements exceeds the escrowed amount, the City will make an additional deposit to the Escrow Account to pay for such costs.

(b) Administration of Escrow Funds. The Escrow Account shall be administered by the Title Company. The Escrow Funds shall be disbursed to the Redeveloper according to the Escrow Agreement attached as Exhibit J. The Redeveloper shall identify whether costs relate to

remediation or to Public Improvements when making draw requests pursuant to subparagraph (d) below.

(c) Conditions to City's Obligation to Deposit Escrow Funds. The City shall have no obligation to deposit the Escrow Funds if the City, at the time the Escrow Funds are to be deposited, is entitled under Section 7.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured. If the City has not exercised its remedies under Section 7.2 and if the Escrow Funds are withheld due to an Event of Default which is later cured, the Escrow Funds shall be deposited within a reasonable amount of time after such Event of Default has been cured.

(d) Draws on Escrow Account. The Escrow Agreement shall provide that to be eligible to draw a portion of the Escrow Funds on a monthly basis, the Redeveloper shall:

- (1) Be in material compliance with the terms of this Agreement;
- (2) Pay contractors, subcontractors and construction managers with whom the Redeveloper has entered into contracts for remediation and construction of the Public Improvements in accordance with the terms of such contracts, which contracts shall have been previously delivered to the City;
- (3) Present invoices from such contractors, subcontractors and construction managers;
- (4) Present a sworn statement in a form reasonably acceptable to the City signed by the Redeveloper's project architect or construction manager and indicating that the remediation or Public Improvement costs for which payment was made by the Redeveloper have been incurred in connection with construction plans previously reviewed and approved by the City;
- (5) Present lien waivers from such contractors, subcontractors and construction managers for at least the amounts which have been paid to such persons from the previous draw; and
- (6) Present a statement signed by an authorized representative of the City which states that the draw request has been approved, which approval shall not be unreasonably withheld. The City shall act upon a draw request within ten (10) days of its submission by the Redeveloper to the City.

Section 5.4. Construction of Site Improvements. The Redeveloper, on Owner's behalf, shall construct and pay for all Site Improvements described on Exhibit G on the Redevelopment Property in accordance with grading, drainage and other plans approved by the City and any other required governmental authority. Before performing such work, the Owner shall furnish to the City any security required by City ordinance, which are in the form of a cash deposit, letter of credit or bond (all subject to the review and approval by the City as to amount, form and provider) and evidence that the Redeveloper has obtained all required governmental approvals.

Section 5.5. Construction of Storm Water Ponding. The City has designed and built a storm water management system to serve most of the needs of the Redevelopment Property. Additional storm water ponding required for the Minimum Improvements shall be constructed by Redeveloper, on behalf of Owner, in accordance with a storm water management plan. The plan may require temporary storage of water to accommodate the initial Minimum Improvements. Redeveloper, on behalf of Owner, shall coordinate the design of the storm water pond with City.

Section 5.6. Construction of Minimum Improvements. The Redeveloper shall construct the Minimum Improvements in accordance with the Construction Plans approved by the City. Subject to Unavoidable Delays, Redeveloper shall complete construction on or before December 31, 2015.

Section 5.7. Preliminary Plans and Construction Plans.

(a) **Preliminary Plans.** The Redeveloper shall submit Preliminary Plans to the City consisting of typical floor plans and sketches of the typical exterior and interior of the proposed Minimum Improvements which illustrate the size and character of the proposed buildings. The Preliminary Plans shall not be inconsistent with the Site Plan, this Agreement or any applicable state and local laws and regulations, insofar as said consistency may be determined at said preliminary stage. If approval of the Preliminary Plans is requested in writing by the Redeveloper at the time of submission thereof to the City, the City shall approve or reject (in whole or in part) such Preliminary Plans in writing within twenty (20) days after the date of receipt thereof. If no written rejection is made within said twenty (20) days, the Preliminary Plans shall be deemed approved by the City. Any rejection shall set forth in detail the reasons therefor. If the City rejects the Preliminary Plans, in whole or in part, the Redeveloper shall submit new or revised Preliminary Plans within a reasonable time after receipt by the Redeveloper of the notice of rejection. The provisions of this Section relating to approval, rejection and resubmission of new or revised Preliminary Plans shall continue to apply until the Preliminary Plans have been approved by the City. The City's approval of the Preliminary Plans shall not be unreasonably withheld, conditioned or delayed.

(b) **Construction Plans.** Prior to the Redeveloper's commencement of construction of the Minimum Improvements, the Redeveloper shall submit Construction Plans to the City. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in conformity in all material respects with this Agreement, the Preliminary Plans, and all applicable state and local laws and regulations. The City shall approve the Construction Plans in writing if: (i) the Construction Plans conform in all material respects to the terms and conditions of the Preliminary Plans and this Agreement; (ii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations; (iii) the Construction Plans are adequate to provide for the construction of the Minimum Improvements; and (iv) no Event of Default has occurred and is continuing.

No approval by the City shall be deemed to relieve the Redeveloper of the obligation to comply with the terms of this Agreement and applicable federal, State and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the City shall constitute a waiver of any Event of Default.

Upon the Redeveloper's submittal of the Construction Plans to the City, such Construction Plans shall be deemed approved unless rejected in writing by the City, in whole or in part, as governed by Minn. Stat. §15.99. The City's approval shall not be unreasonably withheld. If the City rejects any Construction Plans in whole or in part, the Redeveloper shall submit new or corrected Construction Plans within a reasonable time after written notification to the Redeveloper of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the City. Approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements, if constructed in accordance with said plans) comply with the provisions of this Agreement relating thereto. The Construction Plans shall not be rejected due to any objection which could have been raised upon review of the Preliminary Plans and corrected more economically at that time.

(c) **Changes.** If the Owner desires to make any material change in the Preliminary Plans or Construction Plans after their approval by the City, then the Redeveloper shall submit the proposed change to the City for its approval. If the Preliminary Plans or Construction Plans, as modified by the proposed change, substantially conform to the requirements of this Section with respect to such previously approved Plans, the City shall approve the proposed change and notify the Redeveloper in writing of its approval. Such change in the Preliminary Plans or Construction Plans shall, in any event, be deemed approved by the City unless rejected in writing by the City, in whole or in part, within twenty (20) days after receipt thereof.

Section 5.8. Certificate of Completion.

(a) Promptly after completion of the Minimum Improvements for the building in accordance with this Agreement (including the date for the substantial completion thereof, subject to Unavoidable Delays), the City will furnish the Owner and the Redeveloper with a Certificate of Completion for such building in recordable form substantially in the form of Exhibit D. Such Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the Owner's and the Redeveloper's obligations to construct the Minimum Improvements for such building.

(b) If the City shall refuse or fail to provide any Certificate of Completion in accordance with the provisions of this Section, the City shall, within ten (10) days after written request by the Redeveloper or the Owner, as the case may be, provide the Redeveloper or the Owner with a written statement, indicating in adequate detail in what respects the Redeveloper or the Owner has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts will be necessary, in the reasonable opinion of the City, for the Redeveloper or the Owner, as the case may be, to perform in order to obtain a Certificate of Completion for the building.

ARTICLE VI

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER; INDEMNIFICATION

Section 6.1. Representation as to Redevelopment and Use. The Owner represents and agrees that its purchase of the Redevelopment Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of redevelopment of the Redevelopment Property and not for speculation in land holding. The Owner further recognizes that, in view of the importance of the redevelopment of the Redevelopment Property to the general welfare of the City, and the substantial financing and other public aids that have been made available by the City for the purpose of making such redevelopment possible, the qualifications and identity of the Redeveloper and the Owner are of particular concern to the City. The Owner further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Owner and the Redeveloper, and, in so doing, is further willing to accept and rely on the obligations of the Owner and the Redeveloper for the faithful performance of all undertakings and covenants hereby by them to be performed.

Section 6.2. Prohibition Against Transfer of Property and Assignment of Agreement.

(a) For the foregoing reasons, Owner represents and agrees that prior to the Termination Date, Owner has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other form of or with respect to this Agreement or the Redevelopment Property or any part thereof or any interest therein, or any contract or agreement to do any of the same without the prior written approval of the City.

(b) Subparagraph (a) shall not apply to the following transfers:

(1) Transfer of all or a platted portion (or to be platted portion) of the Redevelopment Property by the Owner to any corporation, partnership, or limited liability company controlling, controlled by, or under common control with the Owner;

(2) Grant or conveyance of a mortgage interest in the Redevelopment Property for the purpose of obtaining financing necessary to enable the Owner to perform its obligations with respect to construction of the Minimum Improvements hereunder;

(3) Conveyance of any easements necessary for the Project;

(c) In the event the Owner, upon transfer or assignment of the Redevelopment Property or any portion thereof, seeks to be released from its obligations under this Agreement, the City shall be entitled to require as conditions to any such release that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary to fulfill the Owner's obligations hereunder.

(2) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have assumed all of the obligations of the Owner under this Agreement and agreed to be subject to all of the conditions and restrictions to which the Owner is subject; *provided*, however, that the fact that any transferee of, or any other successor in interest to, the Redevelopment Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies with respect to the Redevelopment Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Redevelopment Property or any part thereof, or any interest therein, whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City with respect to any rights, remedies or controls provided in this Agreement as to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Owner, the Redeveloper, or any other party bound by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(3) Any and all instruments and other legal documents involved in effecting the transfer of this Agreement or the Redevelopment Property shall be in a form reasonably satisfactory to the City.

(4) All contracts for development services and construction of the Minimum Improvements between the Owner and the Redeveloper will likewise be assigned; provided, however, that there is no default by the Redeveloper or Owner hereunder.

If the foregoing conditions are satisfied, then the Owner shall be released from its obligations under this Agreement as to the portion of the Redevelopment Property that is transferred, assigned or otherwise conveyed.

Section 6.3. Release and Indemnification Covenants.

(a) The Redeveloper and the Owner each covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify and hold harmless the Indemnified Parties 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 in which the claim thereof is based upon the acts of the Redeveloper, the Owner, or of others acting on behalf of or under the direction or control of the Redeveloper or the Owner. This subparagraph (a) shall not apply to any loss resulting from negligent, willful or wanton misconduct of any of the Indemnified Parties.

(b) Except for any negligent or willful misrepresentation or any negligent, willful or wanton misconduct of any of the Indemnified Parties, the Redeveloper and the Owner each

agrees to protect and defend the Indemnified Parties, and further agrees to hold the aforesaid harmless, from any claim, demand, suit, action or other proceeding based upon the acts of the Redeveloper, the Owner, or of others acting on behalf of or under the direction or control of the Redeveloper or the Owner with respect to the construction of the Public Improvements and Site Improvements and the construction, installation, ownership, and operation of the Minimum Improvements.

(c) The Redeveloper and the Owner each agrees to protect and defend the Indemnified Parties, and further agrees to hold the aforesaid harmless, from any claim, demand, suit, action or other proceeding by reason of any lien or claim of lien for labor, services or materials (including allowances for interest or profit) of any general contractor, subcontractor or sub-subcontractor, materialmen or any persons whatsoever, or by reason of any equitable or statutory lien against the Redevelopment Property, arising by reason of or in the course of any construction, improvement or work of any nature, whether heretofore completed, now in progress or hereafter to be done.

(d) None of the Indemnified Parties shall be liable for any damage or injury to the person or property of the Redeveloper, the Owner, or their respective officers, agents, servants or employees or any other person who may be on or about the Redevelopment Property or Minimum Improvements due to any act or negligence of any person, other than the negligence or misconduct of an Indemnified Party.

(e) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

(f) Notwithstanding the indemnification obligations of the Redeveloper and the Owner as set forth above, the City shall indemnify and hold harmless the Redeveloper and the Owner from all acts of the City (including, without limitation, the Indemnified Parties), upon the Redevelopment Property from and after the date of closing, except for those activities related to City inspections conducted pursuant to City Code and by this Agreement. This Section does not waive any municipal liability limitations contained in Minnesota Statutes, particularly Chapter 466.

ARTICLE VII

EVENTS OF DEFAULT

Section 7.1. Events of Default Defined. Subject to Unavoidable Delays, the following shall be “Events of Default” under this Agreement:

(a) Failure by the Owner to timely pay all real property taxes assessed with respect to the Redevelopment Property after the Closing.

(b) Failure by the Redeveloper to complete construction of the Site Improvements and Minimum Improvements pursuant to the terms, conditions and limitations of Article V, and subject to Unavoidable Delays.

(c) Failure by the Owner or the Redeveloper to substantially observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement within reasonable notice and cure periods.

(d) Either the Owner or the Redeveloper shall:

(1) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Code or under any similar federal or state law; or

(2) make an assignment for the benefit of its creditors; or

(3) admit in writing its inability to pay its debts generally as they become due;
or

(4) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Owner or the Redeveloper, as the case may be, as 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 Owner or the Redeveloper, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Owner or the Redeveloper, and shall not be discharged within ninety (90) days after such appointment, or if the Owner or the Redeveloper shall consent to or acquiesce in such appointment.

(e) The City fails to perform any of its express obligations hereunder.

Section 7.2. Remedies on Default by Redeveloper or Owner. Whenever any Event of Default referred to in Section 7.1(a)-(d) occurs, the City shall provide written notice to the Owner and to the Redeveloper thereof, specifying the nature of the default and the actions necessary to cure the default. If the Event of Default is not cured within thirty (30) days after the Owner or the Redeveloper's receipt of such notice (except with respect to an Event of Default referred to in Section 7.1(d), in which case the City may act immediately), the City may take any one or more of the actions set forth below:

(a) The City may suspend its performance under this Agreement until it receives assurances from the Redeveloper or the Owner, as the case may be, reasonably deemed adequate by the City, that the Redeveloper or the Owner, as the case may be, will cure its default and continue its performance under this Agreement.

(b) The City may withhold the applicable Certificate of Completion. Upon cure of such Event of Default, and provided that Redeveloper and the Owner is in compliance with this Agreement, the City shall release such Certificate of Completion.

(c) Take whatever action, including legal, equitable or administrative action, which may appear reasonably necessary or desirable to the City, including any actions to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant to the Redeveloper under this Agreement.

The City may elect to take no such action, notwithstanding an Event of Default not having been cured within said thirty (30) days, if the Redeveloper or the Owner, as the case may be, provides the City with written assurances satisfactory to the City that the Event of Default will be cured as soon as reasonably possible.

Notwithstanding anything to the contrary in this Agreement, however, in the event that any Event of Default by Owner occurs prior to Closing, the City's sole remedy shall be to terminate this Agreement in the manner provided by Minn. Stat. Sec. 559.21 and receive the earnest money deposit from the Title Company, as liquidated damages, in which event this Agreement shall be deemed null and void and the parties shall be released from all further obligations and liabilities under this Agreement. Such termination of this Agreement and receipt of the earnest money deposit will be the only remedies available to the City for an Event of Default by the Owner occurring prior to Closing, and the City will not be liable for damages or specific performance. In the event of termination in accordance with this paragraph, the Redeveloper shall be fully and automatically released from all obligations hereunder.

Section 7.3. Remedies on Default by the City. In the event the City fails to perform its obligations hereunder and such failure continues for thirty (30) days after notice and demand for cure is delivered to the City by Redeveloper or Owner, either Redeveloper, Owner, or both parties may institute an action against the City for specific performance of its obligations hereunder, or may perform such obligation of the City, at the City's expense, and institute an action to recover the cost of such cure from the City.

Section 7.4. No Implied Waiver. In the event any agreement contained herein should be breached by any 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.

Section 7.5. Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the non-breaching party or parties employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance of any obligation or agreement on the part of the breaching party herein contained, the breaching party agrees that it shall, on demand thereof, pay to the non-breaching party or parties the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.6. Revesting Title in City Upon Happening of Event Subsequent to Conveyance to Owner. In the event that subsequent to conveyance of the Redevelopment Property to the Owner and prior to either the receipt by the Redeveloper and the Owner of the final Certificate of Completion or the Termination Date:

(a) Subject to Unavoidable Delays, the Redeveloper fails to carry out its obligations with respect to the construction of the Site Improvements and Minimum Improvements (including the nature and the date for the completion thereof), or abandons or substantially suspends construction work, and any such failure, abandonment, or suspension shall not be cured, ended, remedied or assurances reasonably satisfactory to the City made within sixty (60) days after written demand from the City to the Redeveloper to do so; or

(b) The Owner fails to pay real estate taxes or assessments on the Redevelopment Parcel or any part thereof when due from the Owner or creates, suffers, assumes, or agrees to any encumbrance or lien on the Redevelopment Property which is unauthorized by this Agreement and has priority over the City's rights under this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' liens, or any other unauthorized encumbrance or lien to attach to the Redevelopment Property, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provisions reasonably satisfactory to the City made for such payment, removal, or discharge within sixty (60) days after written demand by the City to do so; provided, that if the Owner shall first notify the City of its intention to do so, it may in good faith contest any real estate taxes or any mechanics' or other lien and, in such event, the City shall permit such taxes or mechanics' or other lien to remain undischarged and unsatisfied during the period of such contest and any appeal, but only if the Owner provides the City with a bank letter of credit or other security in the amount of the taxes or the lien, in a form reasonably satisfactory to the City pursuant to which the bank or other obligor will pay to the City the amount of such taxes or lien in the event that the taxes or the lien is finally determined to be valid. During the course of such contest the Owner shall keep the City informed respecting the status of such defense; or

(c) There is, in violation of this Agreement, any transfer of the Redevelopment Property or the Option Property, assignment of this Agreement in whole or in part, or change in control of the Owner, and such violation has not been cured within sixty (60) days after written demand by the City to the Owner;

Then the City shall have the right to re-enter and re-take possession of that portion of the Redevelopment Property in which the default has occurred (either the Redevelopment Parcel or the Option Property) and to terminate (and revest in the City) the estate conveyed by the Redevelopment Property Deed to the Owner, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the Redevelopment Parcel and the Option Property to the Owner shall be made upon, and that the Redevelopment Property Deed shall contain, a condition subsequent to the effect that in the event of any default on the part of the Owner and failure on the part of the Owner to remedy, end, or abrogate such default within the period and in the manner stated in such provisions, the City at its option may declare a termination in favor of the City of the title and all the rights and interest in and to the Redevelopment Parcel or Option Property conveyed to the Owner, and that such title and all rights and interests of the Owner, and any assigns or successors in interest to and in the respective portion of the Redevelopment Property, shall revert to the City, but only if the events stated in subparagraphs 7.6 (a), (b) or (c) above have not been cured within the time periods provided above. Except for that portion of the Redevelopment Parcel or Option Property that has

received a Certificate of Completion, the Redeveloper shall have no right to place, file or record a mechanic's lien on the Redevelopment Parcel or Option Property.

Notwithstanding anything to the contrary contained in this Section, the City shall have no right to re-enter or retake title and possession of the respective portion of the Redevelopment Property for which a Certificate of Completion has been issued or following the Termination Date.

Section 7.7. Resale of Reacquired Property; Disposition of Proceeds. Upon revesting in the City of title to any parcel of the Redevelopment Property or any part thereof as provided in Section 7.6, the City shall have no further responsibility to the Owner hereunder with respect to that or any subsequent parcel and may sell or otherwise devote said parcels to such other uses as the City in its sole discretion determines. Upon resale of the Redevelopment Property, the City shall be entitled to retain from the proceeds all costs and expenses, as well as any losses incurred by the City and/or the present value of the estimated loss of tax increment to the City resulting from the occurrence of any of the events described in subparagraphs (a), (b) or (c) of Section 7.6. Any remaining portion of such resale proceeds shall be paid to the Owner.

ARTICLE VIII

ADDITIONAL PROVISIONS

Section 8.1. Conflict of Interest. No member, official, or employee of the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to the Owner, the Redeveloper, or any successor in interest to either of them, in the event of any default or breach by the City for any amount which may become due to the Owner or the Redeveloper on any obligations under the terms of this Agreement, except in the case of willful misconduct.

Section 8.2. Restrictions on Use. The Owner shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Redevelopment Property or any improvements erected or to be erected thereon, or any part thereof.

Section 8.3. Provisions Not Merged With Assignment. Notwithstanding any provision of law or court decision to the contrary, none of the provisions of this Agreement are intended to or shall be merged by reason of any assignment or conveyance transferring any interest in the Redevelopment Property and any such assignment or conveyance shall not be deemed to affect or impair the provisions and covenants of this Agreement. The provisions of this Agreement shall not merge with the Redevelopment Property Deed and the said provisions shall survive any closing on the Redevelopment Property and the Option Property.

Section 8.4. Broker's Commission. The parties acknowledge that they each have a separate contractual relationship with Welsh Companies, LLC d/b/a as Colliers International/Minneapolis-St. Paul ("Welsh/Colliers") [TaTonka to be added]. The parties further acknowledge that they are each responsible for any fees or commissions under their respective agreements with Welsh/Colliers. Each party agrees to indemnify and hold the other harmless from and against all liability, claims, demands, damages, or costs of any kind arising from or connected with any broker's commission or finder's fee or other charge claimed to be due any person arising from the indemnifying party's conduct with respect to this transaction.

Section 8.5. 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 8.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the 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, transmitted by electronic mail, delivered by a recognized overnight carrier, or delivered personally to the following addresses:

If to the Redeveloper:

with a copy to:

Ryan Companies US, Inc.
50 South Tenth Street, Suite 300
Minneapolis, MN 55403
Attn: Casey Hankinson
Casey.hankinson@ryancompanies.com

Ryan Companies US, Inc.
50 South Tenth Street, Suite 300
Minneapolis, MN 55403
Attn: Audra Williams
Audra.williams@ryancompanies.com

If to the City:

with a copy to:

City of New Brighton
803 Old Highway 8 NW
New Brighton, MN 55112
Fax: (651) 638-2060
Attn: City Manager

Hoff, Barry & Kozar, P.A.
160 Flagship Corporate Center
775 Prairie Center Drive
Eden Prairie MN 55344
Fax: (952) 941-7968
Attn: Scott B. Landsman

If to Owner:

Section 8.7. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 8.8. No Third-Party Beneficiaries. It is the intention of the parties to this Agreement that no person who is not a party signatory to this Agreement shall, under a third party beneficiary theory or otherwise, have any rights or interests hereunder as against the City, and no such other party shall have standing to complain of the City's exercise of, or alleged failure to exercise, its rights and obligations, or of the City's performance or alleged lack thereof, under this Agreement.

Section 8.9. Business Subsidy Reporting. The parties agree that the conveyance of the Redevelopment Property and the Option Property may be a Business Subsidy. In the event the City determines that said conveyances are a Business Subsidy, the Owner agrees to execute a Business Subsidy agreement at the respective closing in the form attached hereto as Exhibit _____.

Section 8.10. Cooperation on Structured Parking for Expansion Project As an alternative to selling the Option Property as contemplated in this Agreement, the Owner and City agree to reasonably cooperate on the potential design and construction of structured parking on the Option Property in support of the Expansion Project.

Section 8.11. Minimum Assessment Agreement. The Owner agrees at Closing to execute the Minimum Assessment Agreement attached hereto as Exhibit P, which shall be recorded against the Redevelopment Property.

Section 8.12. State Assistance. Owner has been working with the Minnesota Department of Employment and Economic Development (DEED) on state assistance for the Project. The City agrees to work in good faith with the Owner and Redeveloper on securing the state assistance.

Section 8.13. Site Access. Subsequent to the conveyance of the Redevelopment Property or the Option Property, as the case may be, the City shall have the right to access and enter the Redevelopment Property and Option Property, at reasonable times, to conduct inspections of environmental controls and other inspections related to the development of said property and to ensure compliance with this Agreement. In addition, Owner and/or Redeveloper agree to work with the City on the recording of the any environmental covenants required by the Minnesota Pollution Control Agency. Said covenants shall run with the title to the land to the extent required by the Minnesota Pollution Control Agency.

ARTICLE IX

TERMINATION OF AGREEMENT

Section 9.1. Termination. In the event Owner defaults under this Agreement or any other agreement between Redeveloper and Owner prior to the Closing Date, Redeveloper and/or City may terminate this Agreement upon notice to the other parties. After the Closing Date, any

party may terminate this Agreement as provided herein, and otherwise this Agreement shall terminate upon its Termination Date and the discharge of all of the parties' other respective obligations hereunder, but no such termination shall terminate any indemnification or other rights or remedies arising hereunder due to any Event of Default which occurred and was continuing prior to such termination.

Section 9.2. Effect of Termination. Upon termination of this Agreement pursuant to this Article IX, this Agreement shall be null and void and neither party shall have any further obligations or liabilities hereunder. Upon such termination the Owner, the Redeveloper, and City shall deliver to each other such documents as may be reasonably necessary to evidence the termination of this Agreement.

Section 9.3. Sections to Survive Termination. Section _____ [OPEN] shall survive the termination of this Agreement. In addition, the terms and conditions of the Declaration of Restrictive Covenants and Prohibition Against Tax Exemption shall remain in effect until the dissolution or other termination of the Tax Increment District.

IN WITNESS WHEREOF, the City, the Owner, and the Redeveloper have caused this Agreement to be duly executed on or as of the date first above written.

(Signatures begin on next page.)

Dated: _____, 2014

CITY OF NEW BRIGHTON, MINNESOTA

By _____
Mayor

By _____
City Manager

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

On this _____ day of _____, 2014 before me, a notary public, personally appeared _____ and _____, to me personally known and who by me duly sworn did say that they are the Mayor and City Manager, respectively, of the City of New Brighton, Minnesota, and acknowledged the foregoing instrument on behalf of said City.

Notary Public

Dated: _____, 2014

RYAN COMPANIES US, Inc.

By _____
Its: _____

STATE OF MINNESOTA)
)ss
COUNTY OF _____)

On this _____ day of _____, 2014 before me, a notary public within and for _____ County, personally appeared _____ to me personally known who by me duly sworn, did say that he/she is the _____ of Ryan Companies US, Inc. a Minnesota corporation, and acknowledged the foregoing instrument on behalf of said corporation.

Notary Public

Dated: _____, 2014

Cardiovascular Systems, Inc.

By _____
Its: _____

STATE OF MINNESOTA)
)ss
COUNTY OF _____)

On this _____ day of _____, 2014 before me, a notary public within and for _____ County, personally appeared _____ to me personally known who by me duly sworn, did say that he/she is the _____ of Cardiovascular Systems, Inc. a Delaware corporation, and acknowledged the foregoing instrument on behalf of said corporation.

Notary Public

Redeveloper Signature Page - Contract for Private Redevelopment

EXHIBIT A

DEPICTION OF REDEVELOPMENT PROPERTY

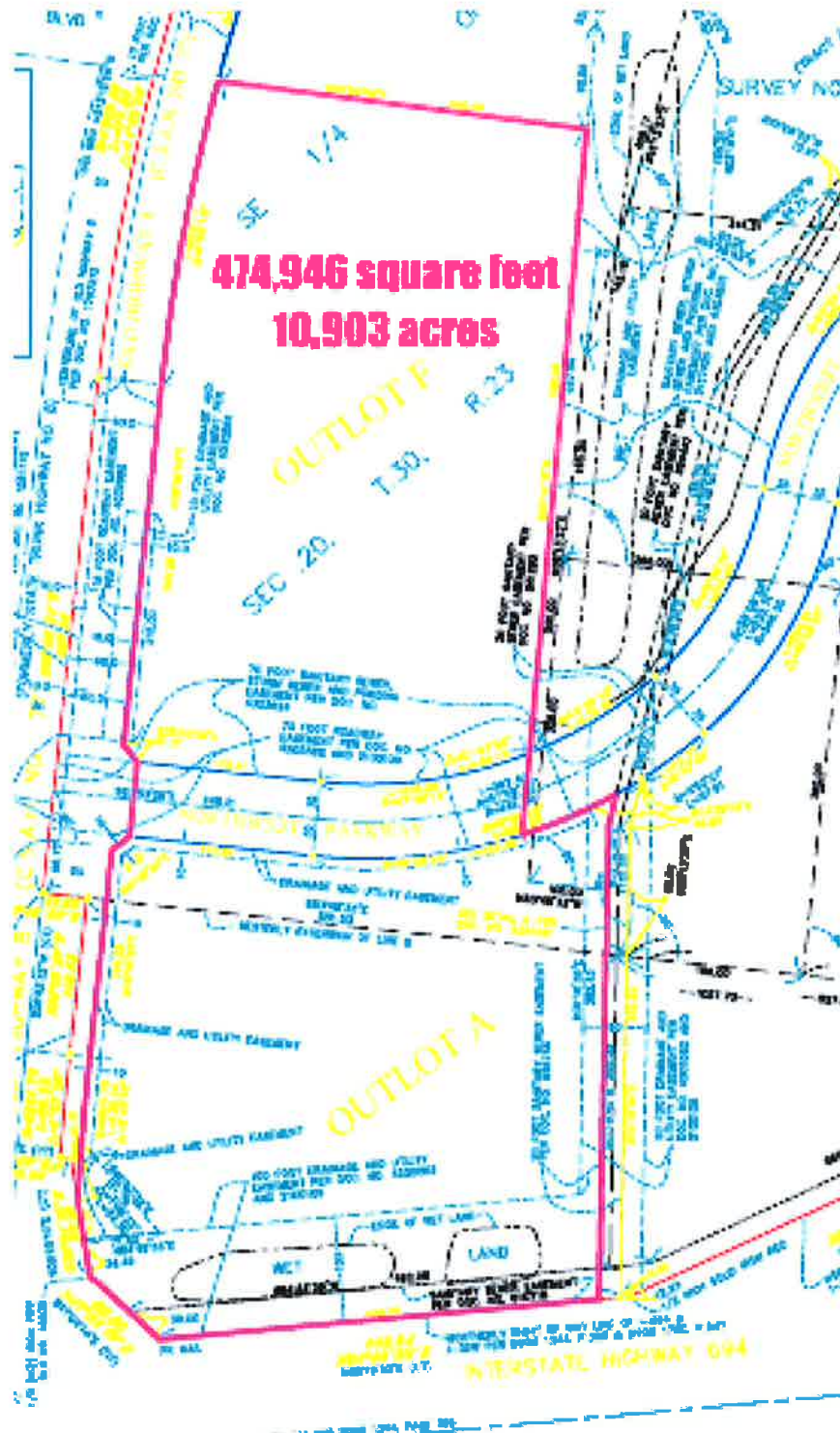


EXHIBIT B

LEGAL DESCRIPTION OF REDEVELOPMENT PROPERTY

(TO BE INSERTED)

EXHIBIT C

REDEVELOPMENT PROPERTY DEED

STATE DEED TAX DUE: \$ _____

Date: _____, 2014

THIS INDENTURE, made this _____ day of _____, 2014, between the City of New Brighton, Minnesota, a municipal corporation (the "Grantor"), and Cardiovascular Systems, Inc., a Delaware corporation (the "Grantee").

WITNESSETH, that Grantor, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration the receipt whereof is hereby acknowledged, does hereby convey and warranty to the Grantee, its successors and assigns forever, all the tract or parcel of land lying and being in the County of Ramsey and State of Minnesota described as follows:

See Attachment 1 attached

together with all hereditaments and appurtenances belonging thereto.

This Deed conveys after-acquired title. Grantor warrants that Grantor has not done or suffered anything to encumber the property, EXCEPT:

Grantor covenants and represents that:

Grantee has committed to construct certain improvements in accordance with Sections 5.2, 5.4, 5.5 and 5.6 of that certain Contract for Private Redevelopment by and among Grantor, Grantee, and Ryan Companies US, Inc. The completion of the improvements shall be evidenced by the recording of the Certificate of Completion attached as Attachment 2 to this deed.

Check box if applicable:

- ☐ Grantor certifies that Grantor does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document.
- ☐ Grantor is familiar with the property described in this instrument and certifies that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed in its behalf by its Mayor and the City Clerk the first date above written.

CITY OF NEW BRIGHTON, MINNESOTA

By _____
Mayor

By _____
City Manager

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

On this _____ day of _____, 20____ before me, a Notary Public, personally appeared _____ and _____, to me personally known and who by me duly sworn did say that they are the Mayor and the City Manager, respectively, of the City of New Brighton, Minnesota, and acknowledged the foregoing instrument on behalf of said City.

Notary Public

This instrument was drafted by:

Hoff, Barry & Kozar, P.A. (SBL)
160 Flagship Corporate Center
775 Prairie Center Drive
Eden Prairie MN 55344

Tax statements for the real property described
in this instrument should be sent to:

Attachment 1

Attachment 2

EXHIBIT D

CERTIFICATE OF COMPLETION

WHEREAS, the City of New Brighton, Minnesota, a municipal corporation (the "Grantor"), by a Deed recorded in the Office of the County Recorder or the Registrar of Titles in and for the County of Ramsey and State of Minnesota, as Deed Document Number _____ (the "Deed") has conveyed to Cardiovascular Systems, Inc. a Delaware corporation organized under the laws of the State of Minnesota (the "Grantee"), the following described land in County of Ramsey and State of Minnesota, to-wit: See Exhibit A attached hereto.

WHEREAS, said Deed contained certain covenants and restrictions, the breach of which by Grantee, its successors and assigns, or Ryan Companies US, Inc., as redeveloper ("Ryan") would result in a forfeiture by Grantor, its successors and assigns, said covenants and restrictions being set forth in said Deed; and

WHEREAS, said Grantee and Ryan have each performed said covenants and conditions insofar as it is able 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 building construction and other physical improvements specified to be done and made by the Grantee and Ryan have been completed and the above covenants and conditions in said Deed have been performed by the Grantee and Ryan therein and are hereby released absolutely and forever insofar as it applies to the land described herein, and the County of Ramsey and State of Minnesota are hereby authorized to accept for recording and to record this instrument, and the filing of this instrument shall be a conclusive determination of the satisfactory termination of the covenants and conditions of the contract referred to in said Deed.

Dated: _____, 20____

CITY OF NEW BRIGHTON, MINNESOTA

By _____
Mayor

By _____
City Manager

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

On this _____ day of _____, 20____ before me, a Notary Public,
personally appeared _____ and _____, to me personally known and
who by me duly sworn did say that they are the Mayor and the City Manager, respectively, of the
City of New Brighton, Minnesota, and acknowledged the foregoing instrument on behalf of said
City.

Notary Public

This instrument was drafted by:

EXHIBIT E

SITE PLAN

(TO BE INSERTED)

EXHIBIT F
PUBLIC IMPROVEMENTS
(TO BE INSERTED)

EXHIBIT G

SITE IMPROVEMENTS

- Private utilities, including sewer, water, electricity, natural gas, telephone and cable television
- Site grading and import or export of soil (except for additional costs associated with environmental remediation as described in Section 5.1) and erosion control.
- Site landscaping.

EXHIBIT H

DECLARATION OF RESTRICTIVE COVENANTS AND PROHIBITION AGAINST TAX EXEMPTION

This Declaration is made and executed as of the _____ day of _____, 2014 by Cardiovascular Systems, Inc., a Delaware corporation ("Declarant").

RECITALS

A. Declarant is fee owner of the premises located in the County of Ramsey, State of Minnesota described on Attachment 1 attached hereto (the "Property").

B. The City of New Brighton, a municipal corporation (the "City") has entered into an Contract for Private Redevelopment dated as of _____, 2014 (the "Redevelopment Agreement") with the Declarant and with Ryan Companies US, Inc.. The Redevelopment Agreement provides for certain assistance, financial and otherwise, to be provided by the City in connection with the construction of office buildings by the Declarant on the Property.

NOW, THEREFORE, in consideration of the foregoing, Declarant, for itself and its successors and assigns, does hereby declare that the Property shall be owned, used, occupied, sold and conveyed subject to the following covenants and restrictions:

1. No part of the Property shall become tax exempt from the levy of *ad valorem* property taxes, or any statutorily authorized alternative, until December 31, 20____.

2. The covenants and restrictions herein contained shall run with the title to the Property and shall be binding upon all present and future owners and occupants of the Property; provided, however, that the covenants and restrictions herein contained shall inure only to the benefit of the City and may be released or waived in whole or in part at any time, and from time to time, by the sole act of the City, and variances may be granted to the covenants and restrictions herein contained by the sole act of the City. These covenants and restrictions shall be enforceable only by the City, and only the City shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of the covenants and restrictions herein contained, or to enforce the performance or observance thereof.

3. The covenants and restrictions herein contained shall remain in effect until December 31, 20____ and thereafter shall be null and void.

4. If any one or more of the covenants or restrictions contained in this Declaration are held to be invalid or unenforceable, the same shall in no way affect any of the other provisions of this Declaration, which shall remain in full force and effect.

CARDIOVASCULAR SYSTEMS, INC.

By _____

Its: _____

STATE OF MINNESOTA)
)ss

COUNTY OF _____)

On this _____ day of _____, 20__ before me, a notary public, personally appeared _____ to me personally known who by me duly sworn, did say that he/she is the _____ of Cardiovascular Systems, Inc., a Delaware corporation and acknowledged the foregoing instrument on behalf of said corporation.

Notary Public

Attachment 1

EXHIBIT I

ENVIRONMENTAL REPORTS

Numerous reports and correspondence associated with historic site use are available for the Site and surrounding properties. The following condensed list of reports and relevant documents are readily available on the main page of the New Brighton Exchange project site. Additional references associated with adjacent properties are also available on the project site.

Barr Engineering Co. Reports Published in Support of areas associated with the planned CSI development on the New Brighton Exchange Project:

Phase I Environmental Property Assessment Summary, Northwest Quadrant Property - Interstate I-35W and I-694, New Brighton, Minnesota. May 1998.

Supplemental Phase I Environmental Assessments and Phase II Investigation Work Plans, Northwest Quadrant I-694 and I-35W, New Brighton, Minnesota. February 2003.
Addendum 1 to the Supplemental Phase I Environmental Assessments and Phase II Investigation Work Plans, Northwest Quadrant I-694 and I-34W, New Brighton, Minnesota. March 2003.

Letter Report, Limited Phase II Investigation, Dahlke Trailer Sales, Inc., 1155 Old Highway 8, New Brighton, MN. April 9, 2003.

Phase II Investigation Report, Grace Haines Property, 1275 Old Highway 8, New Brighton, Minnesota. July 2003.

Phase II Summary Report, Planned Commercial Redevelopment Area, Eastern portion of the Northwest Quadrant, New Brighton, Minnesota. February 2004.

Soil Gas Investigation Report, Northwest Quadrant Redevelopment Area, New Brighton, Minnesota. August 2005.

Response Action Plan, Planned Mixed Use Redevelopment, Eastern Portion of the Northwest Quadrant, New Brighton, Minnesota. November 2005.

Environmental Investigation Results and updated Conceptual Response Action Plan, Planned Mixed Redevelopment, Eastern Portion of the Northwest Quadrant, New Brighton, Minnesota. December 2006.

Demolition Field Screening Report, Eastern Portion of the Northwest Quadrant, New Brighton, Minnesota. December 2006.

Development Response Action Plan, Old Highway 8 Reconstruction, New Brighton, Minnesota. February 2007.

Appendix E (South Pond Geoprobe Investigation Report) of Response Action Implementation Report, Former Mengelkoch Property – NW Quadrant Redevelopment Area, New Brighton, MN. October 2007.

Development Response Action Plan Implementation Report, Old Highway 8 Reconstruction, New Brighton, Minnesota. December 2007.

Response Action Plan, Eastern Portion of the Northwest Quadrant, New Brighton, Minnesota. February 2008.

Response to MPCA's Comments on the February 2008 Response Action Plan, Eastern Portion of the NW Quadrant. June 2011.

Contingency Action Plan for Landfill Gas Control, Old Miller Dump Closure, Eastern Portion of the Northwest Quadrant Redevelopment Area, New Brighton, Minnesota. March 2009.

Response Action Plan Implementation, Eastern Portion of the Northwest Quadrant, New Brighton, Minnesota. April 2010.

2010/2011 Groundwater Monitoring Results, Eastern Portion of Northwest Quadrant Redevelopment Area, New Brighton, Minnesota, VIC Project: VP18560. July 2011.

Summary of 2010-2011 Landfill Gas Monitoring, Eastern Portion of the New Brighton Exchange, New Brighton, MN, VP #18560. February 2012.

Summary of 2012 Landfill Gas Monitoring, Eastern Portion of the New Brighton Exchange, New Brighton, Minnesota. July 2013.

Work Plan for Installation of Vertical Landfill Gas Vents, Eastern Portion of the New Brighton Exchange, New Brighton, MN, VP #18560. July 2013.

Updated Plan for Vertical Landfill Gas Vents, Eastern Portion of the New Brighton Exchange, New Brighton, MN, VP #18560. October 2013.

Supporting MPCA Correspondence:

Approval Letter for Response Action Plan (with modifications) from Patrice Jensen of MPCA – Voluntary Investigation and Cleanup (VIC) Program. December 2005.

Approval Letter for Response Action Plan for Petroleum Contamination (Leak ID# 14213) from Mark Koplitz of MPCA – Petroleum Brownfields Program (PBP). December 2005.

Approval Letter for Development Response Actions for Petroleum Contamination from Mark Koplitz of MPCA – PBP. April 2007.

Response Action Implementation Report Comment Letter – Mengelkoch from Patrice Jensen of MPCA – VIC. September 2007.

Consultation from John Betcher of MPCA regarding potential hotel development setback near Old Miller Dump. February 2008.

Approval Letter for Development Response Action Plan Implementation Report for Petroleum Contamination from Mark Koplitiz and Bassou Oulgout of MPCA – PBP. February 2008.

Approval Letter (with modifications) for February 2008 RAP from Michael Kanner of MPCA – PBP and VIC. May 2008.

Revised Approval Letter (with modifications) for February 2008 RAP from Michael Kanner of MPCA – PBP and VIC. May 2008.

Approval Letter for Development Response Action Plan Implementation Report for Old Highway 8 Reconstruction from Patrice Jensen of MPCA – VIC. February 2009.

Approval Letter for Contingency Action Plan for Landfill Gas Control, Old Miller Dump Closure from Patrice Jensen of MPCA – VIC. February 2009.

Landfill Gas Monitoring Report Approval Letter and Request for Additional Work from Patrice Jensen of MPCA – VIC. May 2012.

Approval Letter for 2010/2011 Groundwater Monitoring Report – NW Quadrant – Commercial Redevelopment, Old Highway 8, New Brighton, MN. May 2012.

Request for Landfill Gas Control and Environmental Covenants from Doug Beckwith of MPCA – VIC. May 2013.

Approval Letter (with modifications) for July 2013 Work Plan for Installation of Vertical Landfill Gas Vents from Patrice Jensen of MPCA. August 2013.

Reports associated with the Property and prepared by others (not all available):

Report of Preliminary Site Exploration, Proposed Industrial Building, New Brighton, MN. 1978. Prepared by Soil Exploration Company.

Background Review of the Basic Industries Property, New Brighton, Minnesota. December, 1992. Prepared by ICF Kaiser Engineers.

Remedial Investigation Report United States Postal Service. April 21, 1993. [Partial Report, no Appendices]. Prepared by DPRA Incorporated.

Phase I Environmental Assessment 1155 Old Highway 8 New Brighton, Minnesota 55112. July 1, 1993. Prepared by Peer Environmental.

Phase I ESA Update, Dahlke Trailer Sales, Inc., 1155 Old Highway 8, New Brighton, MN. July 18, 2000. Prepared by Versar Inc.

Environmental Groundwater Assessment, Basic Industries Incorporated, 1275 Old Highway 8, New Brighton, Minnesota. December, 1994. Prepared by Braun Intertec.

Environmental Assessment – Phase I, Proposed New Brighton Redevelopment, I-35W and 694, New Brighton, Minnesota. January, 1996. Prepared by Delta Environmental Consultants, Inc., Phase II Sampling Plan, Former Basic Industries Facility, 1275 Old Highway 8. New Brighton, Minnesota. May 1996. Prepared by Environmental Services.

Phase I Environmental Site Assessment, Basic Industries Incorporated, 1275 Old Highway 8, New Brighton, Minnesota. February, 1996. Prepared by RE/SPEC Inc.

Soil Impact Assessment, Phase II Sampling, Former Basic Industries Facility, 1275 Old Highway 8. New Brighton, Minnesota. June 1996. Prepared by Environmental Services.

Environmental Assessment Overview, Former Basic Industries Facility, 1275 Old Highway 8. New Brighton, Minnesota. October 1996. Prepared by Environmental Services.

Asbestos Survey and Assessment of the New Brighton Post Office. May 22, 1997. Prepared by Montgomery Watson.

Lead Based Paint Survey and Assessment of the New Brighton Post Office. May 27, 1997. Prepared by Montgomery Watson.

Subsurface Assessment Report, Former Miller Dump – MPCA Old Highway 8, New Brighton, MN. January 25, 2000. Prepared by Terracon.

Phase II Environmental Site Assessment and Corrective Action Implementation Report, Dahlke Trailer Sales, Inc., 1155 Old Highway 8 NW, New Brighton, Minnesota. April 2003. Prepared by ProSource Technologies, Inc.

Report of Geotechnical Exploration and Review, Proposed Sheraton Hotel, New Brighton, Minnesota. April 2008. Prepared for the JLT Group, Inc. by American Engineering and Testing, Inc. (AET).

Environmental Screening, Proposed Sheraton Hotel, New Brighton, Minnesota. May 2008. Prepared for the JLT Group, Inc. by AET. (hard copy – library)

EXHIBIT J

ESCROW AGREEMENT

This Escrow Agreement is made this ____ day of _____, 2014, by and between the City of New Brighton (the "City"), of the State of Minnesota, having its principal offices at 803 Old Highway 8 NW, New Brighton, Minnesota, 55112, Ryan Companies US, Inc. a Minnesota corporation and (the "Redeveloper") and _____ (the "Escrow Agent").

WHEREAS, the City and the Redeveloper are parties to that certain Contract for Private Redevelopment dated as of _____, 2014 (the "Contract"), which relates to the redevelopment of certain property located in New Brighton, Minnesota described in Attachment 1 (the "Property");

WHEREAS, the City and the Redeveloper are prepared to escrow certain funds into an escrow account (the "Escrow Account") to reimburse the Redeveloper for the cost of remediation as set forth in the Contract;

WHEREAS, the Escrow Agent has agreed to be designated as responsible for handling the funds in the Escrow Account in accordance with this Escrow Agreement;

NOW, THEREFORE, the parties agree and intend to be bound as follows:

1. Appointment of Escrow Agent. The City and the Redeveloper hereby appoint and designate the Escrow Agent for the purposes set forth herein. The Escrow Agent accepts said appointment.

2. Definitions. Any capitalized terms used in this Escrow Agreement that are not specifically defined herein shall have the meanings given those terms in the Contract.

3. Deposits.

(a) On the date hereof, the City shall deposit \$500,000 with the Escrow Agent for Remediation costs.

(b) The Escrow Agent shall maintain accounting of funds escrowed for Remediation.

4. Conditions to Release of Escrowed Funds. The Escrow Agent shall release escrowed funds to the Redeveloper if the following conditions have been fulfilled:

(a) The Redeveloper has submitted a draw request for Remediation and the Costs, which request shall include invoices for all Costs submitted and lien waivers thereto;

(b) The Redeveloper has submitted a statement by an authorized representative of the City, which statement (i) authorizes the disbursement of the requested amount of funds from the Escrow Account and (ii) states that the Redeveloper is in material compliance with all terms of the Contract at the time the Costs were incurred; and

(c) The Redeveloper has submitted reasonable proof that the funds requested were incurred pursuant to contracts established under Section 5.1 of the Contract.

5. Interest. The Escrow Agent is authorized to deposit the funds set forth in paragraph 3 hereof and such funds shall be placed in investments that are statutorily authorized municipal investments as approved by the City. All interest earned on the Escrow Account and any undisbursed escrowed funds shall be distributed to the City upon termination of the Escrow Account.

6. Closing of Escrow Account; Termination of Escrow.

(a) The Escrow Agent shall close the Escrow Account upon the earliest to occur of the following events:

(i) The Escrow Agent receives a written notice signed by the City and the Redeveloper that all of the Remediation has been completed, or

(ii) The Escrow Agent receives written notice signed by the City and the Redeveloper that the Contract has been terminated.

(b) Upon the closing of the Escrow Account in accordance with the provisions of this Paragraph, this Agreement shall automatically terminate. The Escrow Agent shall then notify the City and the Redeveloper of the closing of the Escrow Account, the termination of this Escrow Agreement, and the disbursements pursuant hereto.

(c) Upon termination of this Escrow Agreement any remaining escrow funds shall be disbursed to the City.

7. Expenses. The City and the Redeveloper shall equally pay upon demand all charges of the Escrow Agent, and such attorneys' fees, expenses, and other costs as may be reasonably incurred in connection with the administration of this Escrow Agreement by the Escrow Agent. The Escrow Agent agrees that its disbursement fees per draw shall be \$_____.

8. Liability of the Escrow Agent. The Escrow Agent, in performing its duties under this Escrow Agreement, shall not be liable to any party for damages, losses, or expenses, except for bad faith, negligence or willful misconduct on its part. The Escrow Agent shall not incur any such liability for (i) any act or failure to act made or omitted in good faith, or (ii) any action taken or omitted in reliance upon any notice, instruction, consent or other instrument that the Escrow Agent shall in good faith believe to be genuine, nor will the Escrow Agent be liable or responsible for forgery, fraud, or determining the scope of any agent's authority. The Escrow

Agent shall not be responsible or liable for the correctness, genuineness, or validity of any instrument delivered to it or for the identity or authority of any person executing or depositing any instrument. The Escrow Agent shall have no duties beyond those which are expressly set forth in this Escrow Agreement and shall not be required to take any action under this Escrow Agreement involving any expense unless the payment of such expense shall be made or provided for in a manner satisfactory to the Escrow Agent.

9. Notices. Any notices required or permitted to be delivered under this Escrow Agreement shall be in writing and shall be delivered by electronic mail, hand delivered or mailed postage prepaid, regular mail, registered mail, or certified mail (return receipt requested) and addressed to the City, the Redeveloper or the Escrow Agent, as the case may be, at the respective addresses and facsimile numbers set forth opposite their names below, or at such other addresses and e-mail addresses as they may have theretofore specified by written notice delivered in accordance herewith:

Redeveloper: Ryan Companies US, Inc.
50 South Tenth Street, Suite 300
Minneapolis, MN 55403
Attn: Casey Hankinson
casey.hankinson@ryancompanies.com

with a copy to: Ryan Companies US, Inc.
50 South Tenth Street, Suite 300
Minneapolis, MN 55403
Attn: Audra Williams
audra.williams@ryancompanies.com

City: City of New Brighton
803 Old Highway 8 NW
New Brighton, MN 55112
Fax: (651) 638-2060
Attn: City Manager

with a copy to: Hoff, Barry & Kozar, P.A.
160 Flagship Corporate Center
775 Prairie Center Drive
Eden Prairie MN 55344
Fax: (952) 941-7968
Attn: Scott B. Landsman

Escrow Agent: _____

Fax: _____
Attn: _____

10. No Third Party Beneficiaries. It is the intention of the parties to this Escrow Agreement that no person who is not a party signatory to this Escrow Agreement shall, under a third party beneficiary theory or otherwise, have the right to look to the Escrow Agent for any disbursement pursuant to this Escrow Agreement. The parties to this Escrow Agreement further agree that the Title Company owes no duty to any such third party to make any disbursement.

11. Governing Law. This Escrow Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota.

12. Headings. The headings used herein are for convenience only and are not to be used in interpreting this Escrow Agreement.

13. Amendments. This Escrow Agreement may be amended only by a written amendment executed by all the parties hereto.

14. Assignment. This Escrow Agreement shall inure to the benefit of and bind the parties hereto and their respective successors and assigns.

15. Counterparts. This Escrow Agreement may be executed in counterparts or with counterpart signature pages.

(Signature page follows)

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in each of their names on or as of the date first above written.

Dated: _____, 2014

CITY OF NEW BRIGHTON, MINNESOTA

By _____
Mayor

By _____
City Manager

Dated: _____, 2014

RYAN COMPANIES US, INC.

By _____
Its: _____

Dated: _____, 2014

TITLE CO. (TBD)

By _____
Its: _____

Attachment 1

EXHIBIT K

AREAS TO BE MAINTAINED BY OWNER

EXHIBIT L

**KNOWN GROUNDWATER AND VAPOR MONITORING WELLS ON REDEVELOPMENT
PROPERTY**

(TO BE INSERTED)

EXHIBIT M

OPTION PROPERTY

(TO BE INSERTED)

EXHIBIT N
OPTION AGREEMENT
(TO BE INSERTED)

EXHIBIT O
SUBDIVISION AGREEMENT
(TO BE INSERTED)

EXHIBIT P

MINIMUM ASSESSMENT AGREEMENT

(TO BE INSERTED)