

**CONTRACT
FOR
PRIVATE DEVELOPMENT
By and Between
HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY
And
HICKORY CREEK RENTALS LLC**

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of the _____ day of _____, 2021 (the “Effective Date”), by and between the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized under the laws of Minnesota (“HEDRA”), and Hickory Creek Rentals LLC, a Wisconsin limited liability company (“Developer”).

RECITALS

Recital No. 1. HEDRA was created pursuant to Minn. Stat. §§469.090 to 469.1082, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Hastings (“City”).

Recital No. 2. HEDRA is the owner of certain vacant real property located in Hastings, Dakota County, Minnesota, legally described on Exhibit A (the “Property”).

Recital No. 3. HEDRA will sell the Property to Developer on the terms and conditions of this Agreement.

Recital No. 4. Developer desires to purchase the Property from HEDRA.

Recital No. 5. HEDRA believes that the sale and development of the Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants and the mutual obligations contained herein, HEDRA, and Developer hereby covenant and agree with each other as follows:

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

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

B. “Certificate of Completion” means the certificate, in the form contained in Exhibit C attached hereto, which will be provided to Developer pursuant to Section 9.7 of this Agreement.

C. “City” means the City of Hastings, Minnesota.

D. “Closing” means the closing of the purchase and sale contemplated by this Agreement.

E. “Closing Date” means on or before April 30, 2021, unless otherwise agreed to by the parties.

F. “Construction Plans” means the final plans for construction of the Minimum Improvements to be submitted by Developer to the City.

G. “County” means Dakota County.

H. “Deed” means the general warranty deed in the form attached hereto as Exhibit D, by which HEDRA will convey the Property to Developer.

I. “Developer” means Hickory Creek Rentals LLC, a Wisconsin limited liability company.

J. “Effective Date” means the date this Agreement was executed by HEDRA and after confirmation by the City Council.

K. “Event of Default” means an action by Developer or HEDRA listed in Section 12 of this Agreement.

L. “HEDRA” means the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized under the laws of Minnesota.

M. “Minimum Improvements” means the construction of buildings with approximately 18,000 square feet of business storage space and 23,400 square feet of mini storage space for a total of approximately 41,400 square feet of storage space, generally depicted on Exhibit B, which may be modified, if approved by the City.

N. “Permitted Encumbrance” means any matters reflected on the Title Evidence which are not objected to by Developer within such time period or waived by Developer in accordance with Section 5.1 (other than such consensual liens).

O. “Property” means the real property upon which the Minimum Improvements will be constructed, which property is legally described on Exhibit A attached hereto.

P. “Purchase Price” means One Hundred Seventy-Three Thousand, Seventy-Two and 59/100s Dollars (\$173,072.59), payable with cash in the amount of \$52,022.59 due at closing and the balance paid pursuant to a Deferred Assessment Agreement with the City.

Q. “Sale” means any sale, conveyance, lease, exchange, forfeiture other transfer of the Developer’s interest in the Minimum Improvements or the Property, whether voluntary or involuntary.

R. "Title Company" means Land Title, 2200 West County Road C, Suite 2205, Roseville, Minnesota.

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

2. **Sale**. Subject to the compliance with the terms and provisions of this Agreement, HEDRA shall sell the Property to Developer for the Purchase Price, and Developer shall purchase the same from HEDRA.

3. **Available Surveys, Tests, and Reports**. Developer acknowledges that they have (a) copies of any surveys, easement documents, property tax information (including any appeals), soil tests, environmental or engineering reports, wetland delineations, and any other studies and/or site analyses previously conducted on the Property and in the possession of HEDRA and (b) copies of existing title work for the Property and in the possession of HEDRA (the "Due Diligence Materials"). HEDRA makes no representations or warranties regarding the accuracy of the Due Diligence Materials. If Developer so request, HEDRA shall request the preparers of any such surveys, soil tests, environmental reports, and any other studies and/or site analyses to re-issue or re-certify the same for the direct benefit of Developer, at Developer's expense, so that Developer may rely on such site analyses or surveys as if prepared for Developer in the first instance, but HEDRA makes no representation as to whether any such reissuance or recertification will be available.

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

or otherwise act with respect to the condemnation proceedings without Developer's prior written consent, which consent shall not be unreasonably withheld.

5. **Contingencies.**

5.1. **Developer's Contingencies.**

A. Unless waived by Developer in writing, Developer's obligation to proceed to Closing shall be subject to (a) performance by HEDRA of its obligations hereunder, (b) the continued accuracy of HEDRA's representations and warranties provided in Section 13.1, and (c) Developer's satisfaction, in Developer's sole discretion, as to the contingencies described in this Section 5.1 within the time periods set forth below:

(1) On or before the Closing Date, Developer shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by Developer's Investigations, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property and all other inspections and due diligence regarding the Property, including any Due Diligence Materials.

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

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

(4) On or before the Closing Date, and without limitation of the terms of Section 5.1(A)(3), Developer shall be satisfied that they may develop the Property in accordance with a site plan, architectural plan, building plan, grading and drainage plan and other plans and specifications satisfactory to Developer in their sole discretion.

(5) On or before the Closing Date, Developer shall have satisfied themselves, in Developer's sole discretion, that access to and from

roads and the Property is adequate for the Proposed Use, including without limitation, access to the Property from the adjacent road, median cuts and curb cuts.

(6) On or before the Closing Date, Developer shall have satisfied themselves, in Developer's sole discretion, that water and gas mains, electric power lines, sanitary and storm sewers and other utilities are available to the Property and are adequate for the Proposed Use, such that only service lines must be extended to service the Property for water, gas, electric, sanitary and storm sewer and other utilities.

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

(8) On or before the Closing Date, Developer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in the form of the Approved Commitment, subject only to such changes in title as are Permitted Encumbrances or as are acceptable to Developer in Developer's sole discretion.

(9) On or before the Closing Date, HEDRA shall have obtained releases of the Property from any and all mortgages or other monetary liens affecting any of the Property.

(10) On or before the Closing Date, Developer shall review and approve the books and records in HEDRA's possession, if any, including site plans, surveys, engineering or environmental reports associated with the Property.

(11) On or before the Closing Date, Developer shall secure financing that is satisfactory to Developer in Developer's sole discretion for the purpose of acquiring and constructing the Project for Developer's intended use.

(12) On or before the Closing Date, Developer shall approve the forms of all closing documents.

The foregoing contingencies are for Developer's sole and exclusive benefit and one (1) or more may be waived in writing by Developer in their sole discretion. HEDRA shall reasonably cooperate with Developer's efforts to satisfy such contingencies, at no out of pocket cost to HEDRA or assumption of any obligation or liability by Developer. Developer shall bear all cost and expense of satisfying Developer's contingencies. If any of the foregoing contingencies have not been satisfied on or before the applicable date, then

this Agreement may be terminated, at Developer's option, by written notice from Developer to HEDRA. Such written notice must be given on or before the applicable date, or Developer's right to terminate this Agreement pursuant to this Section shall be waived. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations as survive termination of this Agreement.

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

5.2. HEDRA's Contingencies. HEDRA's obligation to proceed to Closing shall be subject to the satisfaction, on or before to the Closing Date, of each of the following conditions:

A. Approval of Sale. HEDRA approving the sale of the Property for the Purchase Price at a public hearing.

B. Approval of Agreement by the City Council. The City Council confirmation of the Development Agreement.

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

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

E. No Default. There shall be no uncured default by Developer of any of Developer's obligations under this Agreement as of the Closing Date.

F. Developer's execution of a Deferred Assessment Agreement with the City.

If any contingency contained in this Section has not been satisfied on or before the date described therein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from HEDRA to Developer and no party shall have any further rights or obligations with respect to this Agreement or the Property, except for such obligations as survive termination of this Agreement. All contingencies in this Section are for the benefit of HEDRA, and HEDRA may in its sole discretion waive any of the conditions precedent set out in this Section by written notice to Developer.

6. Closing. The Closing shall occur on the Closing Date, unless otherwise agreed to by the parties. All documents and instruments required for the Closing shall be delivered to the Title Company prior to or on the Closing Date.

6.1. HEDRA's Closing Documents and Deliveries. HEDRA shall execute and/or deliver, as applicable, to Developer the following:

A. General Warranty Deed. A general warranty deed conveying title to the Property to Developer, free and clear of all encumbrances, except the Permitted Encumbrances. The Deed shall include as a covenant running with the land the condition of Minn. Stat., Sections 469.090 to 469.1082 relating to the use of the Property. If the covenant is violated the authority may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the Deed.

B. Bring Down Certificate. HEDRA shall provide Developer with a certificate certifying that the representations and warranties of HEDRA contained in this Agreement are true as of the Closing Date.

C. FIRPTA Affidavit. An affidavit of HEDRA certifying that HEDRA is not a "foreign person", "foreign partnership", foreign trust", "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

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

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

F. Copies of Resolutions. HEDRA shall provide Developer with copies of the resolutions for the various HEDRA and/or City public meetings showing HEDRA and/or various City commissions and/or councils have approved this transaction, the Approvals, if required by Title Company.

G. General Deliveries. All other documents reasonably determined by Title Company to be necessary to transfer the Property to Developer and to evidence that HEDRA (a) has satisfied all monetary indebtedness with respect thereto, (b) has obtained such termination statements or releases from such secured creditors as may be necessary to ensure that the Property is subject to no monetary liens, (c) has obtained all consents from third parties necessary to effect HEDRA's performance of the terms of this Agreement, including, without limitation, the consents of all parties holding an interest in the Property, (d) has provided such other documents as are reasonably determined by Title Company to be necessary to issue policies of title insurance to Developer with respect to the Property with the so-called "standard exceptions" deleted, and (e) has duly authorized the transactions contemplated hereby.

6.2. Developer Closing Documents and Deliveries. Developer shall execute and/or deliver, as applicable, to HEDRA the following:

A. Payment of Purchase Price. Developer shall pay cash in the amount of \$52,022.59 on the Closing Date, subject to those adjustments, pro-rations and credits described in this Agreement, in certified funds or by wire transfer pursuant to instructions from HEDRA.

B. Deferred Assessment Agreement. Developer shall execute a Deferred Assessment Agreement with the City in the amount of \$121,050.00.

C. Bring Down Certificate. Developer shall provide HEDRA with a certificate, signed by an authorized officer of Developer, certifying that the representations and warranties of the Developer contained in this Agreement are true as of the Closing Date.

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

E. FIRPTA Affidavit. An affidavit of Developer certifying that Developer is not a “foreign person,” “foreign partnership,” “foreign trust,” “foreign estate” or “disregarded entity” as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

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

G. Evidence of Authority. Developer shall provide HEDRA with copies of the resolutions showing Developer has met with necessary requirements to acquire the Property in accordance with this Agreement together with such proceedings, instruments and documents as may be reasonably required Title Company as a condition precedent to issuing the Title Policy in Developer’s name.

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

7. Prorations. HEDRA and Developer agree to the following prorations and allocation of costs regarding this Agreement:

7.1. General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between Developer and HEDRA on a daily basis as of 12:00 a.m. CT on the Closing Date based upon a calendar fiscal year, with HEDRA paying those allocable to the period prior to the Closing Date and Developer being responsible for those allocable to the Closing Date and subsequent thereto. HEDRA shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending, postponed or deferred with respect to any of the Property as of the Closing Date. Developer shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date, including, without limitation, those related to Developer's development of the Property.

7.2. The Developer may obtain and pay for an ALTA Survey ("ALTA Survey").

7.3. HEDRA shall pay all title charges for the issuance of the Title Commitment.

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

7.5. Developer shall pay all costs of recording the Deed, this Agreement and the Deferred Assessment Agreement.

7.6. HEDRA shall pay for the cost of recording any other documents necessary to convey the Property as required by this Agreement.

7.7. HEDRA shall pay all state deed tax regarding the Deed.

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

7.9. There are no brokerage or real estate fees or commissions due and payable by HEDRA as part of this transaction.

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

7.11. The obligations set forth in this Section 7 survive the Closing.

8. **Title Examination.** HEDRA shall, at HEDRA's expense, provide to Developer a commitment for an owner's title insurance policy (ALTA Form 2006) issued by Title Company for the Property, and copies of all encumbrances described in the commitment (the "Commitment"); and if desired, (ii) Developer shall obtain, at Developer's expense, an ALTA-certified survey bearing the legal description of the Property, and showing the area, dimensions and location of the Property and the matters shown in the Commitment (the "Survey," together with the Commitment, shall mean the "Title Evidence").

8.1. Developer's Objections. Within ten (10) days after Developer's receipt of the last of the Title Evidence, Developer may make written objections ("Objections") to the form or content of the Title Evidence. The Objections may include without limitation, any easements, restrictions or other matters which may interfere with the Proposed Use of the Property or matters which may be revealed by the Survey. Any matters reflected on the Title Evidence which are not objected to by Developer within such time period or waived by Developer in accordance with Section 8.2(B) shall be deemed to be Permitted Encumbrances. Notwithstanding the foregoing, the following items shall be deemed Permitted Encumbrances: (a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record which do not interfere with the Proposed Use, if any; (b) Reservation of minerals or mineral rights by the State of Minnesota, if any; (c) Utility and drainage easements which do not interfere with the Proposed Use; and (d) Applicable laws, ordinances, and regulations. Developer shall have the renewed right to object to the Title Evidence as the same may be revised or endorsed from time to time.

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

- A. Terminate this Agreement with respect to all of the Property.
- B. Waive one or more of its objections and proceed to Closing.

If Developer so terminates this Agreement, neither HEDRA nor Developer shall be liable to the other for any further obligations under this Agreement (except for such obligations as survive termination of this Agreement). If Developer raises Objections, then the Closing Date shall be extended to a date agreed to by the parties in writing.

9. Construction of Minimum Improvements.

9.1. Construction of Minimum Improvements. No later than 30 days after Closing, Developer shall submit Construction Plans to the City. The Construction Plans shall provide for the construction of Minimum Improvements. All Minimum Improvements constructed on the Property shall be constructed, operated and maintained in accordance with the terms of the Construction Plans, this Agreement, the Comprehensive Plan, and all local, Minnesota and federal laws and regulations (including, but not limited to, Environmental Controls and Land Use Regulations). Developer will use commercially reasonable efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, in a timely manner, the requirements of applicable Environmental Controls and Land Use Regulations which must be met before Developer's Minimum Improvements may be lawfully constructed.

9.2. Grading/Drainage Plan and Easements. Developer shall construct drainage facilities adequate to serve the Minimum Improvements in accordance with the

Construction Plans. Developer agrees to grant to the City all easements reasonably necessary for the preservation of the drainage system, for drainage basins, and for utility service as required by the City. The grading and drainage plan shall include any measures reasonably necessary to conform to the overall City storm sewer plan, including but not limited to such considerations as lot and building elevations, drainage swales, storm sewer, catch basins, erosion control structures and ponding areas. The grading of the site shall be completed in conformance with the Construction Plans. All storm sewer facilities, sanitary sewer and water lines shall be private unless located within the City's right of way, in which case, that portion of the facilities shall be public.

9.3. Street Maintenance, Access, and Repair. Developer shall clear, on a daily basis, any soil, earth or debris from the existing streets within or adjacent to this Minimum Improvements resulting from the grading or building on the land within the Minimum Improvements by Developer or its agents, and shall restore to the City's specifications any gravel base contaminated by mixing construction or excavation debris or earth in it, and repair to the City's specifications any damage to bituminous surfacing resulting from the use of construction equipment.

9.4. Erosion Control. Developer shall provide and follow a plan for erosion control in accord with the Best Management Practices (BMP) as delineated by the Minnesota Pollution Control Agency. Such plan shall be detailed on the Construction Plans and shall be subject to approval of the City. Developer shall install and maintain such erosion control structures as appear necessary under the Construction Plans or become necessary subsequent thereto. Developer shall be responsible for all damage caused as the result of grading and excavation within the Minimum Improvements including, but not limited to, restoration of existing control structures and clean-up of public right-of-way. As a portion of the erosion control plan, Developer shall re-seed or sod any disturbed areas in accordance with the Construction Plans.

9.5. Zoning; Other Approvals. The parties agree that the development of the Minimum Improvements is in the public interest, will provide significant and important benefits to the City and its residents, and is a desirable and appropriate use of the Property. Developer may elect to seek certain Approvals as defined in Section 5.1(A)(3) in order for Developer to develop the Property for the Proposed Use. HEDRA, at no out-of-pocket cost to HEDRA, or the assumption of any obligations or liabilities by HEDRA, will reasonably cooperate with Developer's efforts to obtain the Approvals at or prior to Closing. HEDRA hereby grants Developer the right to file and prosecute applications and petitions for the Approvals and any special use permits and variances desired by Developer; provided, however, any land use applications shall (a) be contingent on the occurrence of the Closing and shall not be binding upon HEDRA or the Property unless and until the Closing occurs, or (b) be approved in writing in advance by HEDRA. HEDRA, at no out-of-pocket cost to HEDRA, or the assumption of any obligations or liabilities by HEDRA, agrees to cooperate with Developer in the filing and prosecution of such applications and petitions, including the filing of the same in HEDRA's name, if required.

9.6. Commencement and Completion of Construction. Subject to Unavoidable

Delays, Developer shall commence construction of the Minimum Improvements no later than May 1, 2021. "Commence Construction" shall mean the start of site grading and installation of utilities. Subject to Unavoidable Delays, Developer shall have substantially completed the construction of the Minimum Improvements no later than October 31, 2022. All work with respect to the Minimum Improvements to be constructed or provided by Developer on the Property shall be in substantial conformity with the Construction Plans and Developer will not modify the size or exterior appearance of the Minimum Improvements without the consent of HEDRA and the City, which consent shall not be unreasonably withheld.

9.7. Certificate of Completion.

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

B. The Certificate of Completion provided for in this Section 9.7 shall be in such form as will enable it to be recorded in the proper county office in Dakota County, Minnesota for the recordation of deeds and other instruments pertaining to the Property. If HEDRA shall refuse or fail to provide such certification in accordance with the provisions of this Section 9.7, HEDRA shall, within thirty (30) days after written request by Developer, provide Developer with a written statement, indicating in adequate detail in what respects Developer have failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default of a material term of this Agreement, and what measures or acts will be necessary, in the reasonable opinion of HEDRA, for Developer to take or perform in order to obtain such certification.

C. Reconstruction of Minimum Improvements. If the Minimum Improvements are damaged or destroyed before completion thereof and issuance of a Certificate of Completion, to the extent payment is actually made to Developer under a valid and collectible insurance policy in connection with such specific claim, issue or matter, Developer agrees, for itself and its successors and assigns, to reconstruct the Minimum Improvements within one (1) year of the date of the damage or destruction. The Minimum Improvements shall be reconstructed in accordance with the approved Construction Plans, or such modifications thereto as may be requested by Developer and approved by HEDRA in accordance with Section 9 of this Agreement, which approval will not be unreasonably withheld. Developer's obligation to reconstruct the Minimum Improvements pursuant to this Section 9.7(C) shall end when the Certificate of Completion is issued.

10. Insurance and Condemnation.

10.1. Required Insurance. Developer agrees to provide and maintain or cause its general contractor to provide and maintain at all times during the process of constructing the Minimum Improvements and, from time to time at the request of HEDRA, furnish HEDRA with proof of payment of premiums on:

A. Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy; and

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

C. Workers' compensation insurance, with statutory coverage. The policies of insurance required pursuant to clauses (A) and (B) above shall be in form and content reasonably satisfactory to HEDRA and shall be placed with financially sound and reputable insurers licensed to transact business in Minnesota. The policy of insurance delivered pursuant to clause (A) above shall contain an agreement of the insurer to give not less than thirty (30) days' advance written notice to HEDRA in the event of cancellation of such policy or change affecting the coverage thereunder.

10.2. Evidence of Insurance. All insurance required in this Section 10.2 shall be taken out and maintained in responsible insurance companies selected by Developer which are authorized under the laws of Minnesota to assume the risks covered thereby. Until the Certificate of Completion is issued, Developer agrees to deposit annually with HEDRA copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Section 10.2, each policy shall contain a provision that the insurer shall not cancel nor materially modify it without giving written notice to Developer and HEDRA at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, Developer shall furnish HEDRA evidence satisfactory to HEDRA that the policy has been renewed or replaced by another policy conforming to the provisions of this Section 10.2, or that there is no necessity therefor under the terms of this Agreement. In lieu of separate policies, Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event Developer shall deposit with HEDRA a certificate

or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

10.3. Condemnation. In the event that title to and possession of the Minimum Improvements or any material part thereof shall be taken in condemnation or by the exercise of eminent domain authority by any governmental body or other person (except HEDRA) after Closing but prior to the Commencement of Construction, as defined in Section 9.6, Developer shall, with reasonable promptness after such taking, notify HEDRA as to the nature and extent of such taking. Upon receipt of any condemnation award and subject to the rights of the first mortgagee, Developer shall use the entire condemnation award to reconstruct the Minimum Improvements (or, in the event only a part of the Minimum Improvements have been taken, then to reconstruct such part) within the Property.

11. Prohibition Against Sale; Encumbrances.

11.1. Prohibition Against Sale of Minimum Improvements. Developer represent and agree that their use of the Property and other undertakings pursuant to the Agreement, are, and will be, for the purpose of development of the Property and not for speculation in land holding. Developer further recognizes that in view of the importance of the construction of the Minimum Improvements on the Property to the general welfare of the City and the substantial assistance that has been made available by HEDRA for the purpose of making such development possible, the fact that any act or transaction involving or resulting in a significant change in the identity of Developer are of particular concern to HEDRA. Developer further recognize that it is because of such qualifications and identity that HEDRA is entering into the Agreement with Developer, and, in so doing, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby by it to be performed. For the foregoing reasons, Developer represent and agree that, prior to the issuance of the Certificate of Completion, there shall be no sale of the Property or the Minimum Improvements by Developer nor shall Developer suffer any such sale to be made, without the prior written approval of HEDRA.

A. As security for the obligations of Developer under this Agreement, Developer represents and agrees that prior to the issuance of the Certificate of Completion, Developer will maintain its existence as a Wisconsin limited liability company and shall not consolidate with or merge into another entity and shall not dissolve or otherwise dispose of all or substantially all of its assets except as permitted by this Agreement. Nothing herein shall prevent Developer from selling or issuing additional membership interests in Developer. Developer and any entity succeeding to all or part of Developer's rights in the Minimum Improvements or any part under this Section ("Successor Developer") may consolidate with or merge into another entity or sell or otherwise transfer to a company or limited liability company, or other legal entity, or an individual, all or any part of its interest in this Agreement and the Minimum Improvements and thereafter be discharged from liability hereunder to the extent of the interest so transferred, if Developer or such

Successor Developer, as applicable, is not in default of any of its material obligations under this Agreement, if the transferee company, limited liability company, entity or individual enters into a written agreement assuming all of the obligations of Developer under this Agreement not retained by Developer, if any, with respect and to the extent of the interest so transferred, in form and substance reasonably acceptable to HEDRA, and the transferee company, limited liability company, entity or individual is financially capable of and has experience in performing the obligations of Developer under this Agreement and is approved by HEDRA. In the event of a consolidation, merger or sale in accordance with this subsection, Developer or other transferor shall not be liable for any actions of the Successor Developer or purchaser or have any liability under this Agreement with respect to matters arising subsequent to such consolidation, merger or sale which relate to the interest so transferred.

B. Developer or any Successor Developer may not sell, transfer, lease or convey the Property and its rights and obligations under this Agreement with respect to such parcel to another entity, whether or not such Successor Developer is under common management and control with Developer, or is related to Developer, except in accordance with the terms of this Agreement. Except as provided in Section 11.1 no such sale, transfer, conveyance or lease shall be effective or recognized for any purpose hereunder, unless:

(1) The Successor Developer will assume all of Developer's obligation under any agreement relative to a credit provider and the Successor Developer is approved by the credit provider and enters into a written assumption agreement reasonably acceptable to the credit provider; and

(2) The Successor Developer will assume all of Developer's financial obligations to HEDRA and the Successor Developer is approved by HEDRA and enters into a written assumption agreement in form and substance reasonably acceptable to HEDRA.

11.2. Limitation Upon Encumbrance of Property. Prior to the issuance of the Certificate of Completion, except for financing approved by HEDRA pursuant to Section 5.1(A)(11), Developer agrees not to engage in any financing creating any mortgage or other encumbrance or lien upon the Property or the Minimum Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property or the Minimum Improvements, other than the liens or encumbrances directly and solely related to construction of the Minimum Improvements and approved by HEDRA, which approval shall not be withheld or delayed unreasonably if HEDRA determines that such lien or encumbrance will not threaten its security in the Property or the Minimum Improvements.

12. Events of Default.

12.1. Events of Default Defined. Each and every one of the following shall be an Event of Default under this Agreement:

- A. Failure by HEDRA or Developer to proceed to Closing on the Property after compliance with or the occurrence of all conditions precedent to Closing;
- B. Failure by Developer to commence and complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Section 9 of this Agreement, including the timing thereof, unless such failure is caused by an Unavoidable Delay;
- C. Failure by Developer to pay real estate taxes or special assessments on the Property and Minimum Improvements as they become due;
- D. Use by Developer or others of the Minimum Improvements for purposes other than those contemplated and permitted by this Agreement;
- E. Transfer or Sale of the Property or the Minimum Improvements or any part thereof by Developer in violation of Section 11.1 of this Agreement and without the prior written permission by HEDRA;
- F. If Developer shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors or shall consent to the appointment of a receiver; or
- G. Failure by any party to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

12.2. Remedies on Default. Whenever any Event of Default referred to in Section 12.1 of this Agreement occurs, the non-defaulting party may take any one or more of the following actions after providing thirty (30) days' written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances to the non-defaulting party reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

- A. Suspend its performance under this Agreement, including refusing to close on the Property, until it receives assurances from the defaulting party, deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement;

B. Terminate or rescind this Agreement;

C. If the default occurs prior to completion of the Minimum Improvements and remains uncured following the cure period, HEDRA may withhold the Certificate of Completion; or

D. Take whatever action, including legal or administrative action, which may appear necessary or desirable to the non-defaulting party to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the defaulting party under this Agreement.

12.3. Revesting Title in HEDRA on Failure to Commence Construction Subsequent to Conveyance to Developer. Pursuant to Minn. Stat. §469.105 subd. 5, if Developer fails to commence construction pursuant to this Agreement within one (1) year from the Closing Date, HEDRA shall have the right to re-enter and take possession of the Property and to terminate the estate conveyed in the Deed to Developer, it being the intent of this provision that the conveyance of the Property to Developer shall be made upon and a deed containing a condition subsequent to the effect that in the event that Developer fails to commence construction pursuant to this Agreement and fails to request and receive additional time for commencement, HEDRA at its option, may declare a termination in favor of HEDRA of the title and of all the rights and interests in and to the Property conveyed to Developer. In such circumstances, all title, rights and interests of Developer and any assigns or successors in interest to and in the Property, shall revert to HEDRA. If Developer does commence construction pursuant to this Agreement within one year from the Closing Date, a Release of Right to Re-enter and Revest shall be filed with Office of the County Recorder in and for the County of Dakota and State of Minnesota memorializing the commencement of Minimum Improvements and releasing Developer from HEDRA's right to re-enter and take possession of the parcel and to terminate the estate conveyed in the Deed to Developer pursuant to Minn. Stat. §469.105, subd. 5, although all additional covenants and provisions of this Agreement and the Deed shall remain in effect.

12.4. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in HEDRA of title to and/or possession of the Property or any part thereof as provided above, HEDRA shall, pursuant to its responsibilities under law, use its best efforts to sell the Property or part thereof as soon and in such manner as HEDRA shall find feasible to a qualified and responsible party, who will assume the obligation of making or completing Minimum Improvements or such other improvements in their stead as shall be satisfactory to HEDRA in accordance with the uses specified for such parcel or part thereof. During any time while HEDRA has title to and/or possession of a parcel obtained by reverter, HEDRA will not disturb the rights of any tenants under any leases encumbering such parcel. Upon resale of the Property or any part thereof, the proceeds thereof shall be applied:

A. First, to reimburse HEDRA for all reasonable costs and expenses

incurred by HEDRA, including but not limited to brokerage fees, all taxes, assessments and water and sewer charges accrued with respect to the Property or part thereof prior to re vesting of title; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of re vesting of title thereto in HEDRA or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, or Successor Developer; any expenditures made or obligations incurred by HEDRA with respect to the making or completion of the Minimum Improvements; and any amounts otherwise owing HEDRA by Developer or its Successor Developer; and

B. Second, to reimburse Developer or Successor Developer, up to the amount equal to (i) the Purchase Price paid by Developer; plus (ii) the amount actually invested by it in making any of the subject improvements on the Property or part thereof, less (iii) any gains or income withdrawn or made by it from the Agreement or the Property.

C. Any balance remaining after such reimbursements shall be retained by HEDRA as its property.

Nothing in this Section 12 shall in any way affect or diminish Developer's right to terminate this Agreement in accordance with Section 5.1.

12.5. No Remedy Exclusive. No right or remedy herein conferred upon or reserved to the parties is intended to be exclusive of any other available right or remedy herein or provided by law, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle HEDRA or Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in Section 12.2 of this Agreement.

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

13. Warranties and Representations.

13.1. By HEDRA. HEDRA warrants and represents the following to Developer, and acknowledges that Developer has relied on such representations and warranties in agreeing to enter into this Agreement:

A. This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of HEDRA enforceable in accordance with its terms. HEDRA has been duly formed under the laws of the State of Minnesota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by HEDRA pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by HEDRA pursuant hereto have each been duly authorized by all necessary action on the part of HEDRA and such execution, delivery and performance does and will not conflict with or result in a violation of HEDRA's organizational agreement or any judgment or order.

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

C. To HEDRA's knowledge, except as contemplated herein, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any other entity, is required on the part of HEDRA to authorize, or is required in connection with, the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, this Agreement, except for Developer obtaining all the Approvals.

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

E. HEDRA has not received written notice, and has no knowledge, of (a) any pending or contemplated annexation or condemnation proceedings, or

purchase in lieu of the same, affecting or which may affect all or any part of the Property, (b) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property, (c) any proposed changes in any road patterns or grades which would adversely and materially affect access to the roads providing a means of ingress or egress to or from all or any part of the Property, or (d) any uncured violation of any legal requirement, restriction, condition, covenant or agreement affecting all or any part of the Property or the use, operation, maintenance or management of all or any part of the Property.

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

G. HEDRA is not a "foreign person," "foreign corporation," "foreign trust," "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code.

H. To HEDRA's knowledge, except as may be disclosed as part of the Due Diligence Materials, (i) no condition exists on the Property that may support a claim or cause of action under any Environmental Law (as defined below) and there are no Hazardous Substances (as defined below) on the Property, (ii) there has been no release, spill, leak or other contamination or otherwise onto the Property, and (iii) there are no restrictions, clean ups or remediation plans regarding the Property. To HEDRA's knowledge, except as may be disclosed as part of the Due Diligence Materials, there is no buried waste or debris on any portion of the Property. "Environmental Law" shall mean (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance, (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401, et seq., (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq., (g) any law or regulation governing aboveground or underground storage tanks, (h) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation, including, without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01, et seq., (i) all rules or regulations promulgated under any of the foregoing, and (j) any amendments of the foregoing. "Hazardous Substances" shall mean polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, and shall include, without limitation, substances defined as "hazardous substances," "toxic substances," "hazardous waste," "pollutants or contaminants" or similar substances under any Environmental Law.

I. To HEDRA's knowledge, there are no leases, tenancies unrecorded agreements or other contracts of any nature or type relating to, affecting or serving the Property that will not be terminated as of the Closing Date.

J. There will be no indebtedness or sums due attributable to the Property which will remain unpaid after the Closing Date.

As used in this Agreement, the term "to HEDRA's knowledge" shall mean and refer to only the current actual knowledge of the designated representative of HEDRA and shall not be construed to refer to the knowledge of any other partner, officer, manager, member, director, agent, authorized person, employee or representative of HEDRA, or any affiliate of HEDRA, or to impose upon such designated representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such designated representative any individual personal liability. As used herein, the term "designated representative" shall refer to HEDRA's Director.

The representations, warranties and other provisions of this Section 13.1 shall survive Closing; provided, however, HEDRA shall have no liability with respect to any breach of a particular representation or warranty if Developer shall fail to notify HEDRA in writing of such breach within two (2) years after the Closing Date, and provided further that HEDRA shall have no liability with respect to a breach of the representations and warranties set forth in this Agreement if Developer has actual knowledge of HEDRA's breach thereof prior to Closing and Developer consummates the acquisition of the Property as provided herein.

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

13.2. By Developer. Developer warrants and represents the following to HEDRA, and acknowledges that HEDRA has relied on such representations and warranties in agreeing to enter into this Agreement:

A. Developer is a limited liability company, duly organized and in good standing under the laws of the state of Wisconsin and is not in violation of any provisions of its company documents or its operating agreement. Developer has all requisite authority to enter into this Agreement and to perform all of its obligations under this Agreement.

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

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

D. Developer will complete the Minimum Improvements in accordance with all local, state, federal laws or regulations.

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

F. Developer shall have satisfied the terms and conditions contained in this Agreement prior to the Closing Date or posted surety bonds for future fulfillment of all requirements contained in this Agreement.

G. Developer shall cooperate with HEDRA with respect to any litigation, other than litigation in which HEDRA and Developer are adverse parties, commenced with respect to the Minimum Improvements.

H. Whenever any Event of Default occurs and HEDRA employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer under this Agreement, Developer agree that Developer shall, within ten (10) days of written demand by HEDRA, pay to HEDRA the reasonable fees for attorneys and consultants and other expenses so incurred by HEDRA, including those costs incurred in the negotiation, preparation

and implementation of this Agreement. The requirements of this provision shall survive any termination of this Agreement.

The representations, warranties and other provisions of this Section 13.2 shall survive Closing.

14. **Other Obligations of Developer.**

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

14.2. **Administrative Costs.** HEDRA has incurred and will continue to incur administrative costs in reviewing, analyzing, negotiating and studying the Minimum Improvements and this Agreement. In consideration of the time, effort and expenses to be incurred in pursuing the undertakings set forth herein, on or before execution of this Agreement, Developer agrees to pay a \$600 deposit for the costs of certain consulting fees, including planning, financial, attorneys, engineering, testing and any special meetings. If the obligations of Developer under this Agreement result in a complete depletion of the \$600 cash deposit, then the balance owed shall be due and payable at Closing. If, after completion of the tasks contemplated by this Agreement and if, after appropriate payment to HEDRA, there remains on deposit any sum, then such sum shall be paid over to Developer by HEDRA within 30 days after such completion and payment. If Developer terminates this Agreement because of HEDRA's default, Developer shall be entitled to payment of any remaining balance. If HEDRA terminates this Agreement because of Developer's default, the deposit shall be retained by HEDRA.

14.3. **Miscellaneous Requirements.** Any additional requirements as specified by HEDRA are incorporated herein.

14.4. **Deferred Assessment Waiver and Business Subsidy.**

A. **Deferred Assessment Waiver.** HEDRA and the Developer agree that the value of the Property in its current improved state is at least \$173,072.59 (\$1.54 per square foot). However, the Developer has stated that it is unable to pay the market value for the purchase of the Property. Upon completion of the Minimum Improvements, Developer estimates that the market value of the Property will be \$1,210,500. Therefore, HEDRA agrees that it will sell the Property to the Developer for the Purchase Price of \$173,072.59, with the amount of \$52,022.59 due at Closing and the balance due pursuant to a Deferred Assessment Agreement between the Developer and the City. The Deferred Assessment Agreement shall be executed on or before Closing and shall have an agreed upon assessment amount of \$121,050 ("Assessment Amount"). Following completion of the Minimum Improvements, the Assessment Amount owed by the Developer to the City pursuant to the Deferred Assessment Waiver shall be reduced by an amount referred to as the "Construction Credit." The Construction Credit shall be equal to the taxed assessed value as determined by the Dakota County Assessor's Office for

the fair market value of the Minimum Improvements, exclusive of the land value, as of January 2nd prior to the Assessment Deferral Date, as defined in the Deferred Assessment Waiver (but no later than Jan. 2, 2026), divided by 10.

B. Business Subsidy. While the Assessment Amount does not constitute a “business subsidy” as defined by Minn. Stat. §116J.993, subd. 3(1), of the Business Subsidy Act, Minn. Stat. §§116J.993 to 116J.995 because it is in an amount less than \$150,000, any reduction in the Assessment Amount that is greater than \$25,000 is subject to reporting requirements contained in Minn. Stat. §116J.994(8)(b). The public purposes of the reduction in the Assessment Amount are assisting development of the Property for the installation of storage units which will better serve the needs of the community and the increase of the tax base of the City and the State. Wage and job goals are not among the public purposes included. The Developer must submit a report to HEDRA containing information that allows HEDRA to submit the reports required by Minn. Stat. §116J.994(8)(b) and (c). If, the Developer fails to provide a report, the Developer must pay HEDRA a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable is \$1,000.

14.5. Developer Fees. On or before issuance by the City of a building permit to Developer, Developer shall pay all development fees, administrative costs and provide a landscaping letter of credit in the amount of 150% of the value of the landscaping improvements. Upon completion of the landscaping improvements and approval by the City, the letter of credit shall be reduced to 50% of the initial value and retained for a one-year warranty period. Upon completion of the one-year warranty period the City will reinspect the landscaping improvements, at which time the letter of credit can be released upon final approval by the City.

15. Additional Provisions.

15.1. Commissions. Each party represents that all negotiations on its behalf relative to this Agreement and the transactions contemplated by this Agreement have been carried on directly between the parties, without the intervention of any party as broker, finder or otherwise, and that there are no claims for brokerage commissions or finders’ fees in connection with the execution of this Agreement.

15.2. Notice. Except as otherwise provided in this Agreement, any notice to be given by one party hereto shall be personally delivered (including messenger delivery) or be sent by registered or certified mail, or by a nationally recognized overnight courier which issues a receipt, in each case postage prepaid, to the other party at the addresses in this Section (or to such other address as may be designated by notice given pursuant to this Section), and shall be deemed given upon personal delivery, three (3) days after the date postmarked or one (1) business day after delivery to such overnight courier.

If to HEDRA:
Hastings Economic Development and
Redevelopment Authority
Attn: John Hinzman
101 4th Street East
Hastings, MN 55033

with a copy to:
Korine L. Land
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075

If to Developer:
Hickory Creek Rentals LLC
Attn: Chad Smurawa, President
1576 Grotto Street North
St. Paul, MN 55117

15.3. HEDRA Representatives Not Individually Liable. No member, official, or employee of HEDRA shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by HEDRA or for any amount which may become due to Developer or successor or on any obligations under the terms of the Agreement.

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

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

15.6. Entire Agreement; Modification. This written Agreement constitutes the complete agreement between the parties with respect to this transaction and supersedes any prior oral or written agreements between the parties regarding this transaction. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in writing executed by the parties.

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

15.8. Disclaimer of Relationships. Developer acknowledge that nothing contained in this Agreement nor any act by HEDRA or Developer shall be deemed or construed by Developer or by any third person to create any relationship of third-party

beneficiary, principal and agent, limited or general partner, or joint venture between HEDRA and Developer.

15.9. Developer's Assignment. Developer may assign this Agreement with the prior written consent of HEDRA. No assignment shall relieve Developer from its obligations under this Agreement.

15.10. Governing Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

15.11. Rules of Interpretation. The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof. References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

15.12. Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, and all of the signatures to this Agreement taken together shall constitute one and the same agreement, and any of the parties hereto may execute such agreement by signing any such counterpart. Facsimile or "PDF" signatures on this Agreement shall be treated as originals until the actual original signatures are obtained.

15.13. Represented by Counsel. Each party confirms that it has had the opportunity to be represented and advised by counsel in this transaction.

15.14. Titles of Sections. Any titles of the sections, or any subsections, of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

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

15.16. Time of the Essence. Time is of the essence of this Agreement.

[remainder of page intentionally blank]

IN AGREEMENT, the parties hereto have hereunto set their hands as of the Effective Date.

**HEDRA:
HASTINGS ECONOMIC
DEVELOPMENT AND
REDEVELOPMENT AUTHORITY**

By _____
Dennis Peine
Its President

By _____
John Hinzman
Its Director

STATE OF MINNESOTA)
)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Dennis Peine and John Hinzman, the President and Director respectively, of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of HEDRA.

Notary Public

DEVELOPER:
HICKORY CREEK RENTALS LLC

By _____
Chad Smurawa
Its: President

STATE OF MINNESOTA)
)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Chad Smurawa, the President of Hickory Creek Rentals LLC, a Wisconsin limited liability company, on behalf of said limited liability company.

Notary Public

**This instrument was drafted by
and after recording return to:**

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

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

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

Lot 3, Block 2, HASTINGS INDUSTRIAL PARK NO. 7, according to the recorded plat thereof,
Dakota County, Minnesota

Abstract Property

PID: 19-32006-02-030

EXHIBIT B
MINIMUM IMPROVEMENTS

EXHIBIT C
FORM OF CERTIFICATE OF COMPLETION

WHEREAS, the Hastings Economic Development and Redevelopment Authority (the "Grantor"), by a deed dated _____, _____, and recorded in the office of the County Recorder in Dakota County, Minnesota, as Document No. _____, has conveyed to Hickory Creek Rentals LLC, a Wisconsin limited liability company (the "Grantee"), the following described land in County of Dakota and State of Minnesota, to-wit:

Lot 3, Block 2, HASTINGS INDUSTRIAL PARK NO. 7, according to the recorded plat thereof, Dakota County, Minnesota

Abstract Property
PID: 19-32006-02-030

(the "Deed"); and

WHEREAS, said Deed was executed pursuant to that certain Development Agreement by and between the Grantor, Grantee and Hickory Creek Rentals LLC, a Wisconsin limited liability company, dated _____, _____ and recorded in the office of the County Recorder in Dakota County, Minnesota, as Document No. _____, which Development Agreement contained certain covenants and restrictions regarding completion of the Minimum Improvements; and

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

NOW, THEREFORE, this is to certify that all construction of the Minimum Improvements specified to be done and made by the Grantee has been completed and the covenants and conditions in the Development Agreement have been performed by the Grantee therein, and the County Recorder in Dakota County, Minnesota, are hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions relating to completion of the Minimum Improvements and the removal of the conditions, restrictions and limitations found in Sections 1 and 2 of the Deed.

Dated: _____, ____.

**HEDRA:
HASTINGS ECONOMIC
DEVELOPMENT AND
REDEVELOPMENT AUTHORITY**

By _____
Dennis Peine
Its President

By _____
John Hinzman
Its Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Dennis Peine and John Hinzman, the President and Director respectively, of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of HEDRA.

Notary Public

**This instrument was drafted by
and after recording return to:**

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

EXHIBIT D
FORM OF DEED

WARRANTY DEED

eCRV number: _____

DEED TAX DUE: \$_____

DATE: _____

THIS INDENTURE, between the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the constitution and laws of Minnesota (the “Grantor”), and Hickory Creek Rentals LLC, a Wisconsin limited liability company (the “Grantee”).

WITNESSETH, that Grantor, in consideration of the sum of \$100.00 and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, warrant and convey to the Grantee, its heirs, successors and assigns forever, all the tract or parcel of land lying and being in the County of Dakota and State of Minnesota described as follows, to-wit (such tract or parcel of land is hereinafter referred to as the “Property”):

Lot 3, Block 2, HASTINGS INDUSTRIAL PARK NO. 7, according to the recorded plat thereof, Dakota County, Minnesota

Abstract Property
PID: 19-32006-02-030

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

Provided:

SECTION 1

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

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

Promptly after completion of the improvements in accordance with the provisions of the Agreement, the Grantor will furnish the Grantee with an appropriate instrument so certifying. Such certification by the Grantor shall be (and it shall be so provided in the certification itself) a conclusive determination of the satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligation of the Grantee, and their heirs and assigns, to construct the improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Grantee to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the purchase of the Property hereby conveyed or the improvements, or any part thereof.

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

SECTION 2

In the event the Grantee herein shall, prior to the recording of the Certificate of Completion:

- a. Fail to begin construction of the improvements provided for in this Deed and the Agreement in conformity with the Agreement and such failure is not due to Unavoidable Delays and is not cured within thirty (30) days after written notice to do so, or such other amount of time as may be commercially reasonable; or
- b. Default in or violate its obligations with respect to the construction of the improvements provided for in this Deed and the Agreement, or shall abandon or substantially suspend construction work, and such default, violation or failure is not due to Unavoidable Delays and any default or violation, abandonment or suspension is not cured, ended or remedied within thirty (30) days after written demand by the Grantor to do so; or
- c. Fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by the Agreement with the Grantor, or shall suffer any levy or attachment to be made, or any mechanic's liens, or any other unauthorized encumbrances or liens to attach, and such taxes or assessments shall not have been paid or the encumbrance or lien removed or discharged, or provisions satisfactory to the Grantor made for such payments, removal or discharge, within 30 days after written demand by the Grantor to do so; provided,

that if the Grantee shall first notify the Grantor of his intention to do so, it may in good faith contest any mechanic's or other lien filed or established and in such event the Grantor shall permit such mechanic's or other lien to remain undischarged and unsatisfied during the period of such contest and any appeal, but only if the Grantee provides the Grantor with a bank letter of credit or other security in the amount of the lien, in a form satisfactory to the Grantor pursuant to which the bank will pay to the Grantor the amount of any lien in the event that the lien is finally determined to be valid and during the course of such contest the Grantee shall keep HEDRA informed respecting the status of such defense; or

- d. Cause, in violation of the Agreement or of this Deed, any transfer of the Property or any part thereof, and such violation shall be not cured within sixty (60) days after written demand by the Grantor to the Grantee; or
- e. Fail to comply with any of its other covenants under the Agreement and fail to cure any such noncompliance within thirty (30) days after written demand to do so; or
- f. Default under the terms of a mortgage loan authorized by the Agreement and the holder of the mortgage exercises any remedy provided by the mortgage documents or exercises any remedy provided by law or equity in the event of a default in any of the terms or conditions of the mortgage;

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

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

SECTION 3

The Grantee agrees for itself and its heirs, successors and assigns to or of the Property or any part thereof, hereinbefore described, that the Grantee and such heirs and assigns shall not discriminate on the basis of race, color, creed, national origin, age or sex in the sale, lease, rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

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

In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the Grantor shall be deemed beneficiary of the agreements and covenants provided herein. Such agreements and covenants shall run in favor of the Grantor without regard to whether the Grantor has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Grantor shall have the right, in the event of any breach of any such agreement or covenant to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled. Grantor shall be entitled to recover the costs for such enforcement, including attorneys' fees.

SECTION 4

This Deed is also given subject to:

- a. Provision of the ordinances, building and zoning laws of the City of Hastings, state and federal laws and regulations in so far as they affect this real estate.
- b. Taxes payable subsequent to the date of this conveyance.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Grantor has caused this Deed to be duly executed in its behalf by its President and Director and has caused its corporate seal to be hereunto affixed this _____ day of _____, 2021.

**HASTINGS ECONOMIC DEVELOPMENT
AND REDEVELOPMENT AUTHORITY**

By: _____

Dennis Peine
Its: President

By: _____

John Hinzman
Its: Director

STATE OF MINNESOTA)
)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Dennis Peine and John Hinzman, the President and Director respectively, of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of HEDRA.

Notary Public

This instrument was drafted by:

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

SEND TAX STATEMENT TO:

Hickory Creek Rentals LLC
1576 Grotto Street North
St. Paul, MN 55