



ECONOMIC DEVELOPMENT AUTHORITY MEETING

MUNICIPAL CENTER COUNCIL CHAMBERS
1616 HUMBOLDT AVENUE, WEST ST. PAUL, MN 55118
MONDAY, JULY 27, 2020

IMMEDIATELY FOLLOWING THE REGULAR CITY COUNCIL MEETING

ECONOMIC DEVELOPMENT AUTHORITY MEETINGS

Economic Development Authority meetings are held in person in the Council Chambers and are open to the public with social distancing restrictions. Meetings will continue to be broadcast and streamed online for viewers to watch from the safety of their homes.

SEATING: A limited number of attendees will be allowed in the Council Chambers to view live meetings. Seats are first-come first-serve. Due to the limited seating, overflow space will be available in the City Hall lobby and the Lobby Conference Room with screens playing the meeting live.

PARTICIPATION: Due to the limited seating in the Council Chambers, those wishing to speak in person during public input items must sign up prior to the start of the meeting and will be called up to the podium one at a time. People wishing to speak in person may email the City Clerk at sbuecksler@wspmn.gov by 4:30 p.m. the day of the meeting (please include name, address and subject in email). In addition, sign-up sheets for each public input item will be available near the entrance of the Council Chambers at 4:30 p.m. the day of each meeting and collected by the City Clerk 5 minutes prior to the start of the meeting. Names will be called to approach the podium to address the Council. Those watching from overflow areas can enter the Chambers to speak when their name is called and then proceed back to the overflow area to continue viewing.

Viewers may also choose to call in via telephone to speak during public input items. A number will appear on screen during live broadcasts and streams when lines open for call-in speakers.

1. Call To Order
2. Roll Call
3. Adopt Agenda
4. Commissioner Comments
5. EDA Consent Agenda Items
 - 5.A. Minutes Of May 11, 2020 Regular EDA Meeting
Documents:
[05-11-20 REGULAR EDA MINUTES.PDF](#)
6. Public Hearing

6.A. Oppidan I And TF WSP

Documents:

EDA MEMO - KTJ 339 LLC- OPPIDAN - 7-27-20 II.PDF
RESOLUTION - TERMINATING AND CANCELLING THE CONTRACT FOR
PRIVATE DEV WITH KTJ 339, LLC AND RESCINDING, TERMINATING AND
RELEASING RES NO 20-05.PDF
RESOLUTION - APPROVING SALE OF PROPERTY TO TF WSP, LLC FOR
DEVELOPMENT PURPOSES.PDF
DEVELOPMENT AGREEMENT WITH TF WSP LLC, EDA.PDF

7. New Business

7.A. BLVD Bar And Grille Business Subsidy Request

Documents:

EDA REPORT - BLVD BAR AND GRILLE REQUEST FOR BUSINESS
SUBSIDY.PDF
EDA - BLVD GRILL GRANT LETTER.PDF
EDA BLVD GRILL BUS SUBSIDY APP - 7-27-20.PDF
EDA BUS SUB AGMT BLVD TAVERN 7-27-20.PDF
EDA BLVD BARGREEN PATIO CONTRACT.PDF
EDA BLVD GRILL BARGREEN ELLINSON QUOTE.PDF
EDA BLVD GRILL TURN KEY BID.PDF
EDA BLDV GRILL TURN KEY CONTRACT.PDF

8. Old Business

9. Adjourn

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

**City of West St. Paul
Economic Development Authority Minutes
May 11, 2020**

1. Call to Order

President Napier called the meeting to order at 7:12 p.m.

2. Roll Call

Present: President Dave Napier
Commissioners Wendy Berry, Lisa Eng-Sarne,
Anthony Fernandez, John Justen, Bob Pace and Dick Vitelli

Absent: None

Also Present: City Manager Ryan Schroeder
City Attorney Kori Land
Police Chief Brian Sturgeon
Community Development Director/Executive Director Jim Hartshorn
Marketing & Communications Manager Dan Nowicki
City Clerk/Secretary Shirley Buecksler

3. Adopt the Agenda

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

Vote: 6 ayes / 0 nays. Motion carried.

4. Commissioner Comments

Commissioner Eng-Sarne suggested that everyone continue ordering and shopping from our local establishments. She thanked our local businesses for everything they are doing during this pandemic.

Commissioner Berry echoed and said to be sure takeout orders are from local businesses.

Commissioner Justen also said to keep supporting our local businesses.

President Napier said he is amazed at the support for restaurants that are hurting right now. They are so grateful for your support. The newest restaurant is FoodSmith, and they did a great remodeling job. Keep supporting our local businesses.

5. EDA Consent Agenda Items

There were no Consent Agenda items for approval.

6. Public Hearings

A. Sale of Former Thompson Oaks Golf Course Property

Executive Director Hartshorn presented and answered questions from the Commission.

President Napier opened the Public Hearing and the call-in line at 7:17 p.m.

Hearing from no one wishing to speak, President Napier closed the Public Hearing at 7:18 p.m.

Motion was made by Commissioner Vitelli and seconded by Commissioner Berry to adopt:

- EDA Resolution No. 20-04 Approving Sale of Property to KTJ 339, LLC for Redevelopment Purposes
- EDA Resolution No. 20-05 Approving Sale of Property to KTJ 339, LLC for Redevelopment Purposes.

Vote: 7 ayes / 0 nays. Motion carried.

7. New Business

A. Commercial Exterior Grant Request – Food Smith Restaurant

Executive Director Hartshorn presented the Commercial Exterior Grant Request for FoodSmith Bistro-Pub.

Motion was made by Commissioner Fernandez and seconded by Commissioner Eng-Sarne to approve the Commercial Exterior Grant Application in the amount of \$10,000 for FoodSmith Bistro-Pub.

Vote: 7 ayes / 0 nays. Motion carried.

8. Old Business

There was no old business to discuss.

9. Adjourn

Motion was made by Commissioner Berry and seconded by Commissioner Vitelli to adjourn the meeting at 7:22 p.m.

All members present voted aye. Motion carried.

David J. Napier
President
City of West St. Paul

To: **EDA President and Board**
 From: **Executive Director Jim Hartshorn**
 Date: **July 27, 2020**

KTJ 339, LLC (aka Oppidan)

BACKGROUND INFORMATION:

The EDA entered into a Development Agreement with Oppidan (KTJ 339, LLC) for the redevelopment of a portion of the golf course property for multifamily market rate residential housing. Oppidan intends to assign its interest in the project to Trilogy (TF WSP, LLC). In order to effectuate this assignment, the EDA needs to terminate the resolution that authorized the development agreement and sale to Oppidan, hold a new public hearing to approve the sale to Trilogy and approve the new Development Agreement with Trilogy. If approved, we will close on the property by Sept. 1, 2020.

Trilogy Real Estate Group is based out of Chicago and has 26 properties in nine states with asset value over \$1.7 Billion. They have had a presence in Minnesota since 2011 with projects in Woodlands of Minnetonka @ 252 units, Valley Creek of Woodbury @ 402 units. They also have a project in Eden Prairie. They are currently going development entitlements in uptown area and Hopkins and in the process of opening a Twin Cities office. See attached articles.

FISCAL IMPACT:

		Amount
Fund:	EDA	N/A
Department:	EDA	
Account:		

STAFF RECOMMENDATION:

1. Adopt attached Resolution Terminating Sale of a portion of the former Thompson Oaks golf Course.
2. Hold Public Hearing and adopt Resolution approving sale of a portion of Thompson Oaks property.
3. Approve attached Development Agreement.

ATTACHMENTS:

1. Resolution terminating sale of a portion of former Thompson Oaks property
2. Resolution approving sale of a portion of former Thompson Oaks property
3. Development Agreement
4. Articles regarding Trilogy projects in Hopkins and Eden Prairie

**CITY OF WEST ST. PAUL
DAKOTA COUNTY, MINNESOTA**

**ECONOMIC DEVELOPMENT AUTHORITY
RESOLUTION NO. 20-**

**A RESOLUTION TERMINATING AND CANCELLING THE CONTRACT FOR
PRIVATE REDEVELOPMENT WITH KTJ 339, LLC AND RESCINDING,
TERMINATING AND RELEASING RESOLUTION NO. 20-05**

WHEREAS, West St. Paul Economic Development Authority (“EDA”) adopted Resolution No. 20-05 approving the sale of property to KTJ 339, LLC (“Developer”) for redevelopment purposes; and

WHEREAS, the EDA entered into a Contract for Private Redevelopment (“Development Agreement”) with Developer on July 19, 2019; and

WHEREAS, Developer desires to assign the Development Agreement; and

WHEREAS, such assignment will create a title defect; and

WHEREAS, the Developer and EDA mutually desire to terminate, rescind, release and cancel the following:

- Resolution No. 20-05; and
- Development Agreement

NOW THEREFORE, BE IT RESOLVED by the West St. Paul Economic Development Authority as follows:

1. Resolution No. a20-05 is hereby rescinded, terminated and released; and
2. The Development Agreement is hereby terminated and canceled.

Passed and duly adopted by the Economic Development Authority of the City of West St. Paul, Minnesota, this 27th date of July 2020.

**ECONOMIC DEVELOPMENT AUTHORITY
CITY OF WEST ST. PAUL**

David J. Napier, President

ATTEST:

Shirley R Buecksler, Secretary/City Clerk

**CITY OF WEST ST. PAUL
DAKOTA COUNTY, MINNESOTA**

**ECONOMIC DEVELOPMENT AUTHORITY
RESOLUTION NO. 20-**

**RESOLUTION APPROVING SALE OF PROPERTY
TO TF WSP, LLC FOR REDEVELOPMENT PURPOSES**

WHEREAS, the West St. Paul Economic Development Authority “EDA” desires to sell a portion of the former Thompson Oaks Golf Course property to TF WSP, LLC for redevelopment purposes. The portion to be sold is located in Dakota County, Minnesota, legally described as follows:

Legal Description for land to be platted as Lot 1, Block 1, WEST SAINT PAUL APARTMENTS

Those parts of the North Half of the Southwest Quarter of the Northeast Quarter of Section 20 and the North Half of the Southeast Quarter of the Northwest Quarter of Section 20, all in Township 28, Range 22, according to the Government Survey thereof, Dakota County, Minnesota, described as follows:

Beginning at the southeast corner of said North Half of the Southeast Quarter of the Northwest Quarter of Section 20; thence North 89 degrees 54 minutes 06 seconds West, assumed bearing along the south line of said North Half of the Southeast Quarter of the Northwest Quarter of Section 20, a distance of 199.30 feet; thence North 00 degrees 17 minutes 47 seconds West 170.00 feet; thence South 89 degrees 54 minutes 06 seconds East 199.30 feet to the east line of said North Half of the Southeast Quarter of the Northwest Quarter of Section 20; thence North 00 degrees 17 minutes 47 seconds West, along said east line, 285.92 feet to a point 198.41 feet south of, as measured perpendicular to, the north line of said North Half of the Southwest Quarter of the Northeast Quarter of Section 20; thence South 89 degrees 50 minutes 43 seconds East, parallel with said north line, 170.25 feet; thence North 89 degrees 45 minutes 22 seconds East 130.00 feet; thence North 00 degrees 14 minutes 38 seconds West 130.00 feet to a point 50.00 feet south of, as measured perpendicular to, the centerline of Thompson Avenue as shown on the recorded plats of Arhesta 1st Addition and Kassan’s Schletty Addition, Dakota County, Minnesota; thence North 89 degrees 45 minutes 23 seconds East, parallel with said centerline of Thompson Avenue, 131.88 feet; thence South 00 degrees 01 minutes 50 seconds East 487.65 feet; thence North 89 degrees 51 minutes 22 seconds West 129.99 feet; thence South 00 degrees 17 minutes 47 seconds East 100.00 feet to the south line of said North Half of the Southwest Quarter of the Northeast Quarter of Section 20; thence North 89 degrees 51 minutes 22 seconds West, along said south line, a distance of 300.01 feet to the point of beginning.

PID: 42-02000-39-012

PID: 42-02000-09-010

Portion of PID: 42-02000-08-014

(“Property”); and

WHEREAS, TF WSP, LLC desires to purchase the Property for the purpose of development of a residential apartment building; and

WHEREAS, on July 27, 2020, the EDA held a public hearing on the sale of the Property and the EDA considered all of the information presented at the public hearing.

NOW THEREFORE, BE IT RESOLVED by the West St. Paul Economic Development Authority as follows:

The sale of the Property to TF WSP, LLC is in the public interest of the City and its people, furthers its general plan of economic development and furthers the aims and purposes of Minn. Stat. Sections 469.090 to 469.108; and the appropriate officials are authorized to take such action so as to effectuate such sale.

Passed and duly adopted by the Economic Development Authority of the City of West St. Paul, Minnesota, this 27th date of July 2020.

**ECONOMIC DEVELOPMENT AUTHORITY
CITY OF WEST ST. PAUL**

David J. Napier, President

ATTEST:

Shirley R Buecksler, Secretary/City Clerk

CONTRACT FOR PRIVATE REDEVELOPMENT

THIS AGREEMENT is made on or as of the 27th day of July, 2020, by and between the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic (“EDA”), the City of West St. Paul, a Minnesota municipal corporation (“City”) and TF WSP, LLC, a Delaware limited liability company (“Developer”).

WITNESSETH:

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

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

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

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

WHEREAS, the EDA and City entered into a Development Agreement with KTJ 339, LLC, for development of the Development Property (“Original Development Agreement”); and

WHEREAS, KTJ 339, LLC has assigned all of its interest in the Original Development Agreement to Developer, including the Earnest Money; and

WHEREAS, Developer has accepted all of the contingencies that have been met and contingency periods that have expired in the Original Development Agreement prior to

Developer's receipt of the assignment and no additional contingencies or contingency periods are pending; and

WHEREAS, EDA and City have agreed to terminate the Original Development Agreement with KTJ 339, LLC; and

WHEREAS, the EDA and City have sufficiently reviewed Developer's ability to fulfill the obligations and requirements of the Original Development Agreement and are satisfied that Developer can construct the Minimum Improvements and comply with all conditions of the Development Agreement; and

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

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

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

ARTICLE I **Definitions**

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

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

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

“City” means the City of West St. Paul, Minnesota.

“Closing” or “Closing Date” means on or before September 1, 2020, unless otherwise agreed to by the parties.

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

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

“Contingency Date” means the Effective Date, unless otherwise agreed to by the parties.

“County” means Dakota County.

“Developer” means TF WSP, LLC, a Delaware limited liability company, or its successors and assigns.

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

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

“Earnest Money” means the earnest money deposit of Twenty Thousand Dollars and 00/100s (\$20,000.00) on deposit with the EDA.

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

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

“Effective Date” means July 27, 2020.

“Estimated Project Costs” are the project costs as indicated by the Developer’s Pro forma, which is \$27,202,946.

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

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

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

“Minimum Improvements” means the acquisition of land and construction of a 152-unit market rate residential apartment building, construction of a stormwater pond and related improvements. The Minimum Improvements are more fully depicted in Exhibit B, which is attached hereto and incorporated herein.

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

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

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

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

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

“Purchase Price” means Nine Hundred Thousand Dollars and 00/100s (\$900,000.00), unless adjusted pursuant to Section 3.1.

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

“State” means the state of Minnesota.

“Title Company” means DCA Title Company with offices at 1313 147th Street West, Suite 161 in Apple Valley, Minnesota, unless otherwise agreed to by the parties.

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

Section 1.2. Rules of Interpretation.

- (a) This Agreement shall be interpreted in accordance with and governed by the laws of Minnesota.
- (b) The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof.
- (c) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.
- (d) Any titles of the several parts, articles and sections of this Agreement are inserted

for convenience and reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE II
Representations and Warranties

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

- (a) The EDA is a public body corporate and politic under the laws of Minnesota. Under the provisions of the EDA Act, the EDA has the power to enter into this Agreement and carry out its obligations hereunder. The persons executing this Agreement and related agreements and documents on behalf of the EDA have the authority to do so and to bind the EDA by their actions.
- (b) The execution, delivery and performance by EDA of this Agreement will not violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to EDA, or result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which EDA is a party or by which it or any of its properties may be bound.
- (c) To EDA's knowledge, there are no actions, suits or proceedings pending or threatened against or affecting EDA or any of its properties, before any court or arbitrator, or any governmental department, board, agency or other instrumentality which in any of the foregoing challenges the legality, validity or enforceability of this Agreement, or if determined adversely to EDA, would have a material adverse effect on the ability of EDA to perform its obligations under this Agreement.
- (d) EDA has not received written notice, and has no knowledge, of (i) any pending or contemplated annexation or condemnation proceedings, or purchase in lieu of the same, affecting or which may affect all or any part of the Property, (ii) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property, (iii) any proposed changes in any road patterns or grades which would adversely and materially affect access to the roads providing a means of ingress or egress to or from all or any part of the Property, or (iv) any uncured violation of any legal requirement, restriction, condition, covenant or agreement affecting all or any part of the Property or the use, operation, maintenance or management of all or any part of the Property.
- (e) To EDA's knowledge, there are no wells or sewage treatment systems located on any portion of the Property. To EDA's knowledge, there has been no methamphetamine production on or about any portion of the Property. To EDA's knowledge, the sewage generated by the Property, if any, goes to a facility

permitted by the Minnesota Pollution Control Agency and there is no “individual sewage treatment system” (as defined in Minnesota Statutes § 115.55, subd. 1(g)) located on the Property.

- (f) The EDA is not a “foreign person,” “foreign corporation,” “foreign trust,” “foreign estate” or “disregarded entity” as those terms are defined in Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder.
- (g) The EDA has received no notice or communication from any local, State or federal official that the activities of the Developer or the EDA in the Development Property may be or will be in violation of any environmental law or regulation. The EDA is aware of no facts the existence of which would cause it to be in violation of any local, State or federal environmental law, regulation or review procedure.
- (h) There are no leases or tenancies with respect to the Property. There are no unrecorded agreements or other contracts of any nature or type relating to, affecting or serving the Property.
- (i) There will be no indebtedness attributable to the Property which will remain unpaid after the Closing Date.
- (j) The activities of the EDA are undertaken for the purpose of removing, preventing, or reducing blight, blighting factors, or the causes of blight, and for the purposes of increasing the tax base and housing opportunities within the City.
- (k) EDA will warrant the Development Property has or will have street access to infrastructure sufficient to ensure the property is buildable for the Minimum Improvements.
- (l) The EDA and the City have approved this Agreement.

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

Developer acknowledges and agrees that, except as expressly specified in this Article II of this Agreement, EDA has not made, and EDA hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or arising by operation of law, with respect to the Property, including but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition, utilities, valuation, governmental approvals, the compliance of the Property with governmental laws, the truth, accuracy or completeness of any information

provided by or on behalf of EDA to Developer, or any other matter or item regarding the Property. Developer agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by EDA on an “AS IS,” “WHERE IS,” and “WITH ALL FAULTS” basis. Developer is an experienced purchaser of property such as the Property and Developer has made or will make its own independent investigation of the Property. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the Development Property Deed.

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

- (a) The Developer is a Minnesota limited liability company, duly organized and in good standing under the laws of Minnesota and is not in violation of any provisions of its company documents or its operating agreement. The Developer has the power to enter into this Agreement and carry out its obligations hereunder. The persons executing this Agreement and related agreements and documents on behalf of the Developer have the authority to do so and to bind the Developer by their actions.
- (b) The execution, delivery and performance by Developer of this Agreement will not (i) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Developer, (ii) violate or contravene any provision of the articles of incorporation or bylaws of Developer, or (iii) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Developer is a party or by which it or any of its properties may be bound.
- (c) Developer has deposited the Earnest Money with the EDA.
- (d) The Developer has received no notice or communication from any local, state or federal official that the activities of the Developer or the EDA on the Development Property may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts, the existence of which would cause it to be in violation of any local, state, or federal environmental law, regulation or review procedure or which give any person a valid claim under any of the foregoing.
- (e) Upon its acquisition of the Development Property at Closing, the Developer will complete the Minimum Improvements in accordance with all local, state, federal laws or regulations.
- (f) The Developer will use reasonable efforts to obtain, in a timely manner, all required permits, licenses, insurance, and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed or acquired.

- (g) Upon its acquisition of the Development Property at Closing, the Developer will be prepared to immediately commence construction of the Minimum Improvements and will have the financial capacity to meet the obligations specified in this Agreement.
- (h) The Developer will have satisfied the terms and conditions contained in this Agreement prior to the Maturity Date or posted surety bonds for future fulfillment of all requirements contained in the Agreement.
- (i) The Developer shall cooperate with the EDA with respect to any litigation, other than litigation in which the EDA and the Developer are adverse parties, commenced with respect to the Project or Minimum Improvements.
- (j) In the event that this Agreement is terminated by the EDA as a result of an Event of Default, the Developer agrees that they will, within ten (10) days of written demand by the EDA, reimburse the EDA for all of its costs and expenses, including reasonable fees for attorneys and consultants, incurred in connection with the negotiation, preparation and implementation of this Agreement.
- (k) Whenever any Event of Default occurs and the EDA employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, the Developer agrees that it shall, within ten (10) days of written demand by the EDA, pay to the EDA the reasonable fees for attorneys and other expenses so incurred by the EDA.

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

Section 2.3. Environmental Conditions

- (a) As Is. As of the Closing Date, Developer shall take the Property in an “as is” condition and shall assume the risk of any and all adverse environmental conditions. The EDA represents and warrants that during its ownership, to its knowledge, it has taken no actions that would negatively impact the environmental condition of the Development Property.
- (b) Copies of Information. Upon the execution of this Agreement, the EDA shall provide Developer with true and correct copies of all studies, correspondence and other data in the EDA’s possession with respect to the environmental condition of the Development Property.

ARTICLE III
Conveyance of Property

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

- (a) If the actual project costs are less than the Estimated Project Costs then the EDA shall receive an additional amount added to the Purchase Price as follows:
 - 1. One-half of the first \$1,000,000 in Developer savings from the Estimated Project Costs shall be added to the Purchase Price; and
 - 2. 20% of any Developer savings from the Estimated Project Costs over such \$1,000,000 threshold, shall be added to the Purchase Price.

- (b) Any grant money received by Developer for the Development Project will result in an increase in the Purchase Price or a decrease in the City's contribution, up to the amount of the grant. For purposes of interpreting this Section 3.1(B), Developer, the EDA and the City agree that the Purchase Price for the Development Project will only increase by the amount of any grant money that is actually received by the Developer to pay the "Eligible Costs" covered by the Tax Abatement Agreement. If Developer receives grant money to pay any other costs of the Development Project, other than Eligible Costs covered by the Tax Abatement, then the Purchase Price shall not be increased pursuant to this Section 3.1(B).

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

Section 3.3. Developer's Investigations. For a period up to and including the Contingency Date, EDA shall allow Developer and Developer's agents access to the Property without charge and at all times for the purpose of Developer's investigation and testing of the Property, including surveying and testing of soil and groundwater ("Developer's Investigations"); provided, however, Developer shall not perform any invasive testing unless (a) EDA gives its prior approval of Developer's consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) Developer gives EDA reasonable prior notice of such testing. EDA shall have the right to accompany Developer during any of Developer's Investigations of the Property. Developer shall provide to EDA copies of all third-party, non-confidential written test results and reports conducted as part of Developer's Investigations. Developer agrees to pay all of the costs and expenses associated with Developer's Investigations, to cause to be released any lien on the Property arising as a result of Developer's

Investigations and to repair and restore, at Developer's expense, any damage to the Property caused by Developer's Investigations. Developer shall indemnify and hold EDA harmless from all costs and liabilities, including, but not limited to, reasonable attorneys' fees, arising from Developer's Investigations. The indemnification obligations provided herein shall survive the termination or cancellation of this Agreement.

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

- (a) Inspection. On or before the Contingency Date, Developer shall have determined, in its sole discretion, that it is satisfied with the results of and matters disclosed by Developer's Investigations, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property and all other inspections and due diligence regarding the Property, including any Due Diligence Materials.
- (b) Intended Use. On or before the Contingency Date, Developer shall have determined the acceptability of the Property for its intended use and incidental uses thereto (collectively, the "Proposed Use"). All costs and expenses related to applying for and obtaining any governmental permits and approvals for the Property for the Proposed Use shall be the responsibility of the Developer.
- (c) Governmental Approvals. On or before the Contingency Date, Developer shall have obtained all appropriate approvals and permits necessary for the Proposed Use on the Property, which approvals may include, without limitation, platting or replatting, zoning approvals and/or rezoning of the Property, conditional use permits, access permits, signage permits, building permits, required licenses, site plan approvals and architectural approvals. All costs and expenses related to the preparation of any documentation necessary to create any plans, specifications or the like shall be the responsibility of the Developer.
- (d) Access. On or before the Contingency Date, Developer shall have satisfied itself, in Developer's sole discretion, that access to and from roads and the Property is adequate for Developer's Proposed Use of the property.
- (e) Utilities. On or before the Contingency Date, Developer shall have satisfied itself, in Developer's sole discretion, that water and gas mains, electric power lines, sanitary and storm sewers, and other utilities are available to the Property.
- (f) Title Insurance. On or before the Closing Date, Developer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to Developer in Developer's sole discretion, not disclosing any encumbrance not acceptable to Developer in Developer's sole discretion.
- (g) Financing. On or before the Closing Date, Developer shall secure grants, funding

and financing that is satisfactory to Developer in Developer's sole discretion for the purpose of acquiring and constructing the Minimum Improvements, which may include, but is not limited to entering into a Tax Abatement Agreement with the EDA.

- (h) River to River Trail Section. On or before the Closing Date, Developer shall have satisfied itself that Dakota County (or other responsible party developing the Dakota County River to River Trail) will complete construction of the River to River Trail Section by December 31, 2021, in a location that is approved by the City and Developer. For purposes hereof, the "River to River Trail Section" is a section of the Dakota County River to River Trail to be located adjacent to the Development Property.

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

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

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

- (a) Developer Performance. Developer shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by or prior to the Closing Date.
- (b) Developer's Representations. All representations and warranties of Developer contained in this Agreement shall be accurate as of the Closing Date.
- (c) No Default. There shall be no uncured default by Developer of any of its obligations under this Agreement as of the Closing Date, unless waived by EDA.

If any contingency contained in this Section 3.5 has not been satisfied on or before the date

described therein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from EDA to Developer and neither party shall have any further rights or obligations with respect to this Agreement or the Property. If termination occurs, EDA shall return the Earnest Money to Developer. All the contingencies in this Section 3.6 are for the benefit of EDA, and EDA shall have the right to waive any contingency in this Section 3.6 by written notice to Developer.

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

- (a) EDA’s Closing Documents and Deliveries. On the Closing Date, EDA shall execute and/or deliver, as applicable, to Developer the following:
1. Quit Claim Deed. A quit claim deed conveying title to the Development Property to Developer, free and clear of all encumbrances, except the Permitted Encumbrances. Such Development Property Deed shall include as a covenant running with the land the conditions of Minnesota Statutes, Sections 469.090 to 469.1082 relating to the use of the land. If the covenant is violated the authority may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the deed.
 2. Title Policy. A Proforma Title Policy or a suitably marked up Commitment for Title Insurance initialed by Title Company, in the form required by this Agreement, including usual and customary endorsements required by Developer.
 3. FIRPTA Affidavit. A non-foreign affidavit as required by applicable law.
 4. EDA’s Affidavit. A standard owner’s affidavit (ALTA form) from EDA which may be reasonably required by Title to issue an owner’s policy of title insurance with respect to the Property with the so called “standard exceptions” deleted.
 5. Settlement Statement. A settlement statement with respect to this transaction.
 6. General Deliveries. All other documents reasonably determined by Title Company to be necessary to evidence that Developer has duly authorized the transactions contemplated hereby and evidence the authority of Developer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant to this Agreement or may be required of Developer under applicable law.

- (b) Developer Closing Documents and Deliveries. On the Closing Date, Developer shall execute and/or deliver, as applicable, to EDA the following:
1. Payment of Purchase Price. The Purchase Price, less Earnest Money, shall be payable on the Closing Date, subject to those adjustments, pro-rations and credits described in this Agreement, in certified funds or by wire transfer pursuant to instructions from EDA.
 2. Settlement Statement. A settlement statement with respect to this transaction.
 3. Developer's Affidavit. A standard owner's affidavit (ALTA form) from Developer which may be reasonable required by Title to issue an owner's policy of title insurance with respect to the Property with the so-called "standard exceptions" deleted.
 4. Bring Down Certificate. A certificate dated as of the Closing Date, signed by an authorized officer of Developer, certifying that the representations and warranties of Developer contained in this Agreement are true as of the Closing Date.
 5. General Deliveries. All other documents reasonably determined by Title to be necessary to evidence that Developer has duly authorized the transactions contemplated hereby and evidence the authority of Developer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant to this Agreement, or may be required of Developer under applicable law, including any Developer's affidavits or revenue or tax certificates or statements.
- (c) Costs and Prorations. EDA and Developer agree to the following prorations and allocation of costs regarding this Agreement:
1. General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between Developer and EDA on a daily basis as of 12:00 a.m. CT on the Closing Date based upon a calendar fiscal year, with EDA paying those allocable to the period prior to the Closing Date and Developer being responsible for those allocable to the Closing Date and subsequent thereto. EDA shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending, postponed or deferred with respect to any of the Property as of the Closing Date. Developer shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date, including, without limitation, those related to Developer's development of the Property.

2. The Developer will obtain and pay for an ALTA Survey.
3. The EDA shall pay all title charges for the issuance of the Title Commitment.
4. Developer shall pay all premiums for any title insurance policy it desires with respect to the Development Property.
5. Developer shall pay all costs of recording the Development Property Deed and this Agreement.
6. The EDA shall pay for the cost of recording any other documents necessary to convey the Development Property as required by this Agreement.
7. EDA shall pay all state deed tax regarding the Development Property Deed.
8. Developer and EDA shall each pay one half (1/2) of any reasonable closing fee or charge imposed by Title Company.
9. There are no brokerage or real estate fees or commissions due and payable by the EDA as part of this transaction.
10. EDA and Developer shall each pay their own attorneys' fees incurred in connection with this transaction.
11. The obligations set forth in this Section 3.7(c) survive the Closing.

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

- (a) **Developer Objections.** Within ten (10) days after Developer's receipt of the last of the Title Evidence, Developer may make written objections ("Objections") to the form or content of the Title Evidence. The Objections may include without limitation, any easements, restrictions or other matters which may interfere with the proposed use of the Property or matters which may be revealed by any survey. Any matters reflected on the Title Evidence which are not objected to by Developer within such time period or waived by Developer in accordance with Section 3.7(b)(2) shall be deemed to be permitted encumbrances ("Permitted Encumbrances"). Notwithstanding the foregoing, the following items shall be deemed Permitted Encumbrances:

1. Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record, if any;
2. Reservation of minerals or mineral rights by the State of Minnesota, if any;
3. Utility and drainage easements which do not interfere with the Proposed

Use; and

4. Applicable laws, ordinances, and regulations.

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

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

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

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

ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Developer and Minimum Improvements. By April 1, 2020, unless otherwise agreed to by the parties in writing, the Developer shall submit Construction Plans to the City. The Construction Plans shall provide for the construction of Minimum Improvements and shall be in substantial conformity with the Preliminary Plans depicted on Exhibit B, attached hereto. All Minimum Improvements constructed on the Development Property shall be constructed, operated and maintained in accordance with the terms of the Construction Plans, this Agreement, the Comprehensive Plan, and all local, Minnesota and federal laws and regulations (including, but not limited to, Environmental Controls and Land Use Regulations). Developer will use commercially reasonable efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, in a timely manner, the requirements of applicable Environmental Controls and Land Use Regulations which must be met before Developer's Minimum Improvements may be lawfully constructed.

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

Section 4.3. Grading/Drainage Plan and Easements. The Developer shall construct drainage facilities adequate to serve the Project in accordance with the Development Plans. The

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

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

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

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

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

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

restoration as required, if these requirements are not complied with after Formal Notice by the City. The Developer shall be financially responsible for payment for this extra work.

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

Section 4.9. Trail. Subject to and within sixty days (weather permitting) after completion of construction of the River to River Trail Section, the Developer shall construct a bituminous trail that will connect to the River to River Trail Section as shown in the Development Plans.

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

Section 4.11. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer shall commence construction of the Minimum Improvements no later than October 1, 2020. Subject to Unavoidable Delays, the Developer shall have substantially completed the construction of the Minimum Improvements no later than December 31, 2021 (except for the connection to the River to River Trail Section, which will be completed as provided in Section 4.9, above). All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans and Developer will not modify the size or exterior appearance of the Minimum Improvements without the consent of the EDA and the City, which consent shall not be unreasonably withheld. The Developer shall make such reports to the EDA regarding construction of the Minimum Improvements as the EDA deems necessary or helpful in order to monitor progress on construction of the Minimum Improvements.

Section 4.12. Certificate of Completion.

- (a) After substantial completion of the Minimum Improvements in accordance with the Construction Plans and all terms of this Agreement, the EDA will furnish the Developer with a Certificate of Completion in the form of Exhibit C hereto. Such certification by the EDA shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Development Property Deed with respect to the obligations of the Developer to construct the Minimum Improvements and the dates for the beginning and completion thereof. The Certificate of Completion shall only be issued after issuance of a certificate of occupancy by the City.
- (b) The Certificate of Completion provided for in this Section 4.7 shall be in such form as will enable it to be recorded in the proper County office for the recordation of deeds and other instruments pertaining to the Development Property. If the EDA shall refuse or fail to provide such certification in accordance with the provisions of this Section 4.7, the EDA shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default of a material term of this Agreement, and what measures or acts will be necessary, in the opinion of the EDA, for the Developer to take or perform in order to obtain such certification.

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

ARTICLE V

Other Obligations of Developer

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

Section 5.2. Administrative Costs. The EDA has incurred and will continue to incur administrative costs in reviewing, analyzing, negotiating and studying the Minimum Improvements and this Development Agreement. In consideration of the time, effort and expenses to be incurred in pursuing the undertakings set forth herein, on or before execution of this Agreement, Developer agrees to pay a \$5,000 deposit for the costs of certain consulting fees, including planning, financial, attorneys, engineering, testing and any special meetings. If the

obligations of Developer under this Agreement result in a reduction of the \$5,000 cash deposit to a level of \$1,000 or less, then at such point, Developer shall make an additional cash deposit with the EDA to raise the total cash on deposit with the EDA to \$5,000. This process of redeposit shall be continued until all of the monetary obligations of Developer pursuant to this Section are paid in full. The obligations set forth in this shall remain in full force and effect and shall survive any termination until all monetary obligations of Developer are paid in full. If, after completion of the tasks contemplated by this Agreement and if, after appropriate payment to the EDA, there remains on deposit any sum, then such sum shall be paid over to Developer by the EDA within 30 days after such completion and payment. If Developer terminates this Agreement because of the EDA's default, Developer shall be entitled to payment of any remaining balance. If the EDA terminates this Agreement because of Developer's default, the deposit shall be retained by the EDA. Notwithstanding anything to the contrary contained herein, Developer's total obligation for all costs contemplated by this Section 5.3 shall be capped at \$50,000.

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

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

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

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

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

Section 5.7. Miscellaneous Requirements. Any additional requirements as specified by the EDA are incorporated herein.

ARTICLE VI

Insurance and Condemnation

Section 6.1. Insurance.

- (a) The Developer shall provide and maintain insurance in the following types and amounts at all times during the process of construction the Minimum Improvements, and shall provide to the EDA upon its request proof of payment of the requisite premiums and proof of current insured status:
1. Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis" in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy. The interest of the EDA shall be protected in accordance with a clause in form and content satisfactory to the EDA;
 2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$1,000,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and
 3. Workers' compensation insurance, with statutory coverage.

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

- (b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer shall maintain or cause to be maintained, at their sole cost and expense, and from time to time at the request of the EDA shall furnish proof of the payment of premiums on, insurance as follows:
1. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, boiler explosion, water damage, demolition cost, debris removal and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements.
 2. Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), and automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property in the minimum amount for each occurrence and for each year of One Million Five Hundred Thousand

Dollars (\$1,500,000.00), which shall be endorsed to show the EDA as additional insured.

3. Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of his liability for worker's compensation.
- (c) All insurance required in Article VI of this Agreement shall be taken out and maintained with responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. The Developer shall deposit annually with the EDA policies evidencing all such insurance coverages, or a certificate or certificates or binders of the respective insurers stating that such insurance is in full force and effect. Unless otherwise provided in Article VI of this Agreement, each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to the Developer and the EDA at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer shall furnish the EDA evidence satisfactory to the EDA that the policy has been renewed or replaced by another policy conforming to the terms of this Agreement. In lieu of separate policies, the Developer shall deposit with the EDA a certificate or certificates of the respective insurers as to the amount of coverage in force.
- (d) The Developer agrees to notify the EDA immediately in the case of damage exceeding five thousand dollars (\$5,000.00) in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event that any such efforts to repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or the extent necessary to accomplish such repair, reconstruction and restoration, the Developer shall apply the Net Proceeds of any insurance settlement or payment relating to such damage received by the Developer to the payment or reimbursement of the costs. Net Proceeds of any insurance settlement or payment relating to such damage up to five thousand dollars (\$5,000.00) shall be paid directly to the Developer.

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

relating to such damage or destruction received by the Developer from the EDA to the payment or reimbursement of the costs thereof. Any Net Proceeds remaining after completion of construction shall be disbursed to the Developer.

- (e) If the Developer is in compliance with the terms and conditions of this Agreement, then any Net Proceeds of insurance relating to such damage or destruction received by the EDA shall be released on a schedule as determined by the EDA to the Developer upon the receipt of:
1. A certificate of an authorized representative of the Developer specifying the expenditures made or to be made or the indebtedness incurred in connection with such repair, reconstruction and restoration and stating that such Net Proceeds, together with any other monies legally available for such purposes, will be sufficient to complete such repair, construction and restoration; and
 2. If Net Proceeds equal or exceed five thousand dollars (\$5,000.00) in amount, the written approval of such certificate by an independent architect or engineer.

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

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

ARTICLE VII

Prohibitions Against Assignment and Transfer; Indemnification

Section 7.1. Representation as to Redevelopment. The Developer represents and agrees that its purchase of the Development Property, and other undertakings pursuant to this Agreement, are, and will be used, for the purpose of redevelopment of the Development Property and not for speculation. The Developer further recognizes that, in view of (a) the importance of the redevelopment of the Development Property to the general welfare of the community; and (b) the substantial financing and other public aids that have been made available by the EDA for the purpose of making such redevelopment possible, the identity of the Developer is of particular

concern to the community and the EDA. The Developer further recognizes that it is because of Developer's qualifications and identity that the EDA is entering into this Agreement with the Developer, and in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby to be performed.

Section 7.2. Prohibition Against Transfer of Property and Assignment of Agreement.

For the foregoing reasons the Developer represents and agrees that until the Maturity Date:

- (a) The Developer has not made or created, and that it will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development 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 EDA.
- (b) The EDA shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:
 1. Any proposed transferee shall have the qualifications and financial responsibilities, as determined by the EDA, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer (or in the event the transfer is of or relates to part of the Development Property, such obligations to the extent that they relate to such part);
 2. Any proposed transferee, by instrument in writing satisfactory to the EDA and in form recordable with the land records, shall, for itself, and assigns, and expressly for the benefit of the EDA, expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to part of the Development Property, such obligations, conditions and restrictions to the extent that they relate to such part) unless the Developer agrees to continue to fulfill those obligations, in which case the preceding provisions of this Section 7.2(b)(2) shall not apply: Provided, that the fact that any transferee of, or any other successor in interest whatsoever to the Development Property or any part thereof, shall, whatever the reason, not 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 EDA) deprive or limit the EDA of or with respect to any rights or remedies or controls with respect to being the intent that no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the EDA of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Development Property

and the construction and acquisition of the Minimum Improvements that the EDA would have had, had there been no such transfer or change; and

3. There shall be submitted to the EDA for review all instruments and other legal documents involved in effecting transfer; and if approved by the EDA, its approval shall be indicated to the Developer in writing.

Section 7.3. Release and Indemnification Covenants.

- (a) The Developer covenants and agrees that the EDA, the City and the City Council, and its officers, agents, servants and employees are not liable for and agrees to release, indemnify and, hold harmless the EDA, the City and the City Council, officers, agents, servants and employees against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements, except for loss or damage resulting in willful misconduct or willful negligence of the EDA, the City or the City Council, officers, agents, servants or employees.
- (b) Except for any willful misrepresentations or any willful or wanton misconduct or negligence of the following named parties, the Developer agrees to protect and defend the EDA, the City and the City Council, and its officers, agents, servants and employees, now and forever, and further agrees to hold the EDA harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.
- (c) Except as otherwise specifically provided in this Agreement, the EDA, the City and the City Council, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of Developer, their officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person other than the EDA, the City or the City Council members, officers, agents, servants or employees.
- (d) All covenants, stipulations, promises, agreements and obligations of the EDA contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the EDA and not of any City Council member, officer, agent, servant or employee of the City or the EDA in his or her individual capacity.
- (e) Developer shall indemnify, release, and hold harmless the EDA, its officers, agents, servants and employees, as well as the City, the City Council, and its officers, agents, servants and employees, against all costs, damages or expenses the EDA may incur in enforcing any obligation, agreement or covenant that runs with the Development Property, including attorneys' fees.

Section 7.4. Agreements Regarding Holders and Mortgage Deeds. Notwithstanding anything to the contrary contained in the Agreements or the Development Property Deed, the Developer, EDA and the City agree as follows:

- (a) Developer may grant a first priority Mortgage Deed against the Development Property in order to secure a loan from a Holder (“Holder”) the proceeds of which will be used to construct, finance or refinance the Development Property (a “Project Loan”), in each case without the prior consent of the City or the EDA;
- (b) Developer may collaterally assign all of its rights and obligations under the Agreement to any Holder as additional security for the repayment of any Project Loan without the prior consent of the City or the EDA;
- (c) The foreclosure of a Mortgage Deed (or the transfer of the Development Property by the Developer to a Holder in lieu of foreclosure of a Mortgage Deed) shall not require the consent of the City or the EDA, but the Development Property shall remain subject to the terms and conditions of the Agreement notwithstanding such foreclosure (or transfer in lieu of foreclosure);
- (d) With respect to any Mortgage Deed granted to a Holder:
 - 1. City and the EDA hereby subordinate to such Mortgage Deed (and the rights of the Holder thereunder) any right the City or the EDA may have to declare a forfeiture and rescind the Development Property Deed, including (without limitation) those rights referenced in: (A) Section 3.6(a)(i), Section 8.2(b) and Section 8.2(e) of the Agreement; and (B) Section 2 of the Development Property Deed;
 - 2. City and the EDA hereby subordinate to such Mortgage Deed (and the rights of the Holder thereunder) any rights the City or the EDA may have with respect to the proceeds of Developer’s insurance policies referenced in Section 6.1(d) of the Agreement;
 - 3. City and the EDA hereby subordinate to such Mortgage Deed (and the rights of the Holder thereunder) any rights the City or the EDA may have with respect to any condemnation proceeds referenced in Section 6.2 of the Agreement;
 - 4. City and the EDA agree to provide copies of all notices sent to the Developer under the Project Agreements to any Holder (provided that written notice of the Holder’s address is provided by Developer to the City and the EDA); and

5. City and the EDA agree: (i) that each Holder will have such additional time (in excess of that given to Developer under the Project Agreements) as may be reasonably necessary in order to allow Holder to obtain control of the Development Project in order to cure any Event of Default (as defined in each of the Project Agreements); and (ii) to accept a cure by any Holder of any such Event of Default under the Project Agreements.

In connection with the granting of any Mortgage Deed to a Holder, if requested by Developer, the City and the EDA will agree to deliver a commercially reasonable and recordable agreement in favor of any Holder further evidencing the terms and provisions of this Section 7.4.

ARTICLE VIII **Events of Default**

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

- (a) Failure by the Developer to pay when due any payments required to be paid under this Agreement.
- (b) Failure by the EDA or the Developer to proceed to Closing on the Development Property after compliance with or the occurrence of all conditions precedent to Closing.
- (c) Failure by the Developer to commence and complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Article IV of this Agreement, including the timing thereof, unless such failure is caused by an Unavoidable Delay.
- (d) Failure by the Developer to pay real estate taxes or special assessments on the Development Property and Minimum Improvements as they become due.
- (e) Failure by Developer to comply with the terms and conditions of the Tax Abatement Agreement.
- (f) Failure by the Developer to observe or perform any other covenant, condition, obligation or agreement on his part to be observed or performed hereunder.
- (g) If the Developer:
 1. Files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or state law;
or

2. Makes an assignment for the benefit of its creditors; or
3. Admits in writing its inability to pay its debts generally as they become due; or
4. Is in default under any mortgage and fails to cure such default within thirty (30) days of a written demand from the EDA to do so; or
5. Is adjudicated bankrupt or insolvent, or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer and shall not be discharged without ninety (90) days after such appointed, or if the Developer shall consent to or acquiesce in such appointment.

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

- (a) The EDA may suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the EDA, that the Developer will cure their default and continue their performance under the Agreement.
- (b) The EDA may cancel and rescind or terminate this Agreement.
- (c) The EDA may withhold the Certificate of Completion.
- (d) The EDA may withhold the Net Proceeds from the insurance policies provided to the EDA pursuant to Section 6.1 of this Agreement and in accordance with the terms of the policies.
- (e) The EDA may require the Developer to re-convey all remaining undeveloped properties and properties with incomplete projects within the Development Property to the EDA, free and clear of all liens and encumbrances.
- (f) The EDA may take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the EDA to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement. Developer shall indemnify the EDA, EDA's officers, employees and agents against

all costs, damages or expenses the EDA may incur in enforcing any obligation, agreement or covenant, including attorneys' fees.

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

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

ARTICLE IX **FINANCIAL OBLIGATIONS**

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

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

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

The City shall use the LOC proceeds to reimburse the City for its costs and to cause the Minimum Improvements to be constructed to the extent practicable; if the City Engineer determines that such Minimum Improvements have been constructed and after retaining 10% of the proceeds for later distribution pursuant to Section 9.2, the remaining proceeds shall be distributed to the Developer.

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

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

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

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

ARTICLE X **Additional Provisions**

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

Section 10.2. Conflict of Interests; EDA Representatives Not Individually Liable. No member, official, or employee of the EDA shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects personal interests or the interests of any corporation, partnership or association in which the person is directly or indirectly interested. No member, official, or employee of the EDA shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the EDA or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

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

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

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

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

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

(a) Developer: TF WSP, LLC
Attn: Shay Baldwin
c/o Trilogy Real Estate Group
520 West Erie, Suite 100
Chicago, Illinois 60654

With a copy to: Levenfeld Pearlstein, LLC
Attn: Thomas Jaros
2 North LaSalle, Suite 1300
Chicago, Illinois 60602
E-mail: tjaros@lplegal.com

(b) EDA: West St. Paul Economic Development Authority
Attn: Jim Hartshorn, EDA Executive Director
1616 Humboldt Ave.
West St. Paul, Minnesota 55118

(c) City: City of West St. Paul
Attn: City Manager
1616 Humboldt Ave.
West St. Paul, MN 55118

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

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

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

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

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

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

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

**CITY:
CITY OF WEST ST. PAUL**

By: _____
David J. Napier
Its: Mayor

By: _____
Ryan Schroeder
Its: City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

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

Notary Public

**DEVELOPER:
TF WSP, LLC**

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared _____, who being by me duly sworn, did say that s/he is the _____ of TF WSP, LLC, a Delaware limited liability company named in the foregoing instrument, and that it was signed on behalf of said limited liability company and acknowledged said instrument to be the free act and deed of the limited liability company.

Notary Public

This document was drafted by:

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

EXHIBIT A
DEVELOPMENT PROPERTY

Legal Description

Lot 1, Block 1, WEST SAINT PAUL APARTMENTS

EXHIBIT B

DEPICTION OF MINIMUM IMPROVEMENT

SITE PLAN



1" = 250'
DATE: 7-2-2018
DRAWN BY: SA
SCALE: 1" = 250'

THOMPSON OAKS CONCEPT
1555 OAKDALE AVENUE, WEST ST. PAUL, MN

EXHIBIT C
FORM OF
CERTIFICATE OF COMPLETION

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

(to be completed prior to execution)

and

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

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

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

Dated: _____, ____.

WEST ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY

By _____
David J. Napier
Its President

By _____
James Hartshorn
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

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

Notary Public

EXHIBIT D
FORM OF
DEVELOPMENT PROPERTY DEED

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

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

Lot 1, Block 1, WEST SAINT PAUL APARTMENTS

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

Provided:

SECTION 1

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

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

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

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

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

SECTION 2

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

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

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

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

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

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

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

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

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

SECTION 3

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

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

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

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

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

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

SECTION 4

This Deed is also given subject to:

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

[Remainder of page intentionally blank]

EXHIBIT E
SITE IMPROVEMENTS

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

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

EXHIBIT F
DEVELOPER'S LETTER OF CREDIT REQUIREMENTS FOR

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

SITE GRADING & EROSION CONTROL ITEMS

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

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

CASH ESCROW
ENGINEERING

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

CASH
AREA CHARGES

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

*to be completed following submission and review by Met Council

CASH
BUILDING ESCROW

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

To: **EDA President and Board**
 From: **Executive Director Jim Hartshorn**
 Date: **July 27, 2020**

BLVD Bar & Grille Request for Business Subsidy

BACKGROUND INFORMATION:

Tom Williams, owner of Blvd Bar & Grill located at 433 Mendota Road, is requesting approval of Redevelopment Grant (Forgivable Loan) to help with the costs associated with interior expansion and exterior improvements. The project includes adding an additional 2,000 square feet to restaurant area, along with storefront updates and signage. Mr. Williams has been operating in that location for 14 years and believes the improvements will allow him to remain competitive into the future. The expansion will allow him to accommodate more customers with proper social distancing. He also plans to hire an additional 25 employees.

Total cost of the project is \$440,000. The goals for the Business Subsidy are to secure timely development and maintain the property as a commercial building for at least five years.

The project meets the criteria of the program in the following ways:

- Promotes the economic and commercial redevelopment of the City.
- Attract, retain, rehabilitate and preserve commercial facilities
- Affords maximum opportunities, consistent with the needs of the City as a whole, for the redevelopment of the area by private enterprise.

No formal zoning approvals are required, as the improvements are mostly interior. However, building permits are still required.

FISCAL IMPACT:

		Amount
Fund:	Business Subsidy	\$25,000
Department:	EDA	
Account:	209-41121-40495	

STAFF RECOMMENDATION:

Staff recommends approval of a \$25,000 Redevelopment Grant (forgivable loan).

ATTACHMENTS:

- Annual Report
- Anticipated Projects for 2020
- EDA Budget
- Resolution Electing New Officers
- Bylaws

July 15, 2020

City of West Saint Paul
1616 Humboldt Avenue
West Saint Paul, MN 55118

To whom it may concern,

I am requesting to submit the following details along with the application for funding assistance with remodeling and expansion expenses for BLVD Bar & Grille (soon to be BLVD Tavern).

I am requesting consideration for \$25,000 for interior remodel and expansion as well as updates to the storefront and signage.

I have made the decision to move forward with remodeling our existing space as well as adding more mixed-use space including store front updates and signage. I've been operating in West St. Paul for over 14 years and my belief is that with these updates we can stay competitive for another 15 years to come.

These competitive updates will allow us to strengthen our work force by 50% going from 50 employees to 75. They will bring a contemporary new look to the building with updated storefront design including signage. With the current restrictions on operating capacity it will also allow us to accommodate more customers with proper social distancing. Consideration for the \$25,000 would make these updates a reality.

These are a few of the factors I believe will keep us operating and maintaining strong employment for the foreseeable future.

Thank you for considering this request.

Sincerely,

Tom Williams
Owner/BLVD Bar & Grille
433 E. Mendota Road
West Saint Paul, MN 55118
651 208-1059

CITY OF WEST ST. PAUL

BUSINESS SUBSIDY APPLICATION

Name of Applicant (individual or corporation): TSW ENTERPRISES Inc.

Business Address: 433 E. AUGUSTA RD City: WEST ST. PAUL Rent or Own? RENT

Phone: Business (651) 450-7736 Home: (651) 208-1059 Fax: ()

Owner of Project Site (if different): CLEAR CHOICE PROPERTIES LLC.

Business Organization: Sole Proprietor Partnership Corp. X LLC

Names of Partners or Shareholders:
THOMAS S. WILLIAMS

Product or Service:
RESTAURANT & BAR

No. of Employees (incl. Owners) 50 No. of Employees Projected 70

Wage rates \$10 - \$25/HR Projected Wage Rate for new employees MIN WAGE - \$39/HR

Description of Proposed Project
ADD NEW MIXED USE DINING & BAR FOR PRIVATE
EVENTS AND DAILY NORMAL VOLUME USE. RE-MODEL
EXISTING SPACE WITH UPDATE TO STOREFRONT
AND SIGNAGE

Participating Lender: VERMILION STATE BANK Loan Officer: MATT POEPL Phone: 651 437-4433

Uses of Funds:

Types of Expenditure	Cost
<u>FURNITURE & EQUIPMENT</u>	<u>\$ 175,000</u>
<u>CONSTRUCTION</u>	<u>225,000</u>
<u>STORE FRONT & SIGNAGE</u>	<u>40,000</u>
Total Uses <u>3</u>	<u>\$ 440,000</u>

City of West St. Paul
 Business Subsidy Application
 Page Two

Scheduled Project Start Date: 6/10/20 Project Completion Date: 8/15/20

Sources of Funds:

	Source Amt.	Pct. Rate	Term	Collateral	Payment
Personal Equity	\$		N/A	N/A	N/A
Business Equity					
Bank:					
Bank:	5440,000	6.9%	10yr		
Other:					
West St. Paul EDA					
Total Sources	\$	100%			

All loans (if applicable) made under this program require collateral at least equal to the amount of the Loan. Please provide details on collateral which will be offered, its market value, and the source of the valuation.

FF + E

Please include the following with your application:

- A map showing the location of the project.
- A statement indicating why the funds are necessary to undertake this project, how proposal meets business subsidy criteria, and if the project will proceed without assistance.

Additional information may be requested as needed. The City of West St. Paul reserves the right to approve or deny applications for the Business Subsidies Program.

I certify that the above information, and any additional information enclosed herein, is true and correct to the best of my knowledge.

Signature of Applicant: _____



Date: 7-6-20

Submit to: Jim Hartshorn, Community Development Director
City of West St. Paul
1616 Humboldt Avenue
West St. Paul, MN 55118

For further information or clarification, call (651) 552-4140.

BUSINESS SUBSIDY AGREEMENT

THIS AGREEMENT (“Agreement”) made this ____ day of _____, 2020, by and between the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic, 1616 Humboldt Ave., West St. Paul, Minnesota 55118 (“EDA”) and TSW Industries, Inc., a Minnesota corporation, 433 E. Mendota Road, West St. Paul, Minnesota 55118 (“BLVD Tavern”).

RECITALS

WHEREAS, the City of West St. Paul (“City”) has long desired to improve the function and appearance of its community through economic development, and has invested substantial resources toward that goal; and

WHEREAS, the West St. Paul City Council established the EDA in July 1999 in order to advance these objectives; and

WHEREAS, the EDA adopted criteria for awarding business subsidies, pursuant to the Business Subsidies Act, Minn. Stat., Sections 116J.993 to 116J.995 (“Business Subsidy Act”); and

WHEREAS, BLVD Tavern rents a portion of the property located in West St. Paul legally described as:

Lafayette Square, Lot 3, Block 2, with property identification number 42-44250-02-030 (“the Property”); and

WHEREAS, BLVD Tavern has proposed exterior and interior upgrades to the restaurant, as more further described in the Business Subsidy Application (the “Project”), for a use that is consistent with the terms and conditions of this Agreement and is seeking a business subsidy (“Business Subsidy”) from the EDA in the amount of twenty five thousand dollars (\$25,000); and

WHEREAS, the EDA believes the proposed Project would be desirable for the City; and

WHEREAS, the Project meets all criteria for awarding a Business Subsidy established by the EDA Policy on Business Subsidies and due to the estimated cost of the Project, it is not financially feasible without public assistance.

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, and in consideration of the covenants and agreements made herein, BLVD Tavern and the EDA hereby agree as follows:

AGREEMENT

1. The Business Subsidy comprises of a forgivable loan in an amount up to twenty five thousand dollars (\$25,000). The forgivable loan shall be due and payable to BLVD Tavern in a lump sum following receipt by the EDA of invoices for work performed following completion of the Project.
2. The public purposes of the Business Subsidy are as follows:
 - a. Promote the economic and commercial redevelopment of the City;
 - b. Preserve the local tax base and improve the general economy and vitality of the City;
 - c. Promote the health, safety and welfare of the residents of the City;
 - d. Remove, prevent or reduce blight, blighting factors or the cause of blight in the City;
 - e. Attract, retain, rehabilitate and preserve commercial facilities;
 - f. Eliminate or improve structurally substandard buildings;
 - g. Promote private investment in a blighted or economically depressed area, which can be expected to stimulate additional investment;
 - h. Afford maximum opportunities, consistent with the needs of the City as a whole, for the redevelopment of the area by private enterprise.
3. The goals for the Business Subsidy are to secure timely development and maintain the Property as a commercial building for at least five (5) years.
4. BLVD Tavern will construct the Project pursuant to all approvals or licenses required by the City, with a completion date of September 30, 2020 (“Completion Date”).
5. Upon completion of the Project BLVD Tavern, its tenants, permitted successors or assigns, will continuously occupy the Property for at least five (5) years, except in the event of unforeseeable casualty, in which event, BLVD Tavern shall rebuild and reopen as soon as commercially reasonable.
6. If BLVD Tavern complies with the terms and conditions of this Agreement, the Business Subsidy will be forgiven five (5) years after the Completion Date. If BLVD Tavern does not comply with the terms and conditions of this Agreement, BLVD Tavern shall pay back a portion of the Business Subsidy on a prorated basis, with interest, based on the portion of the five-year operation period elapsed as of the date of default.

7. BLVD Tavern must submit to the EDA a written report regarding Business Subsidy goals and results by no later than March 1st of each year, commencing March 1, 2021 and continuing until the later of the date that the goals are met; or thirty (30) days after expiration of the five-year period; or if the goals are not met, then the date the Business Subsidy is repaid. The report must comply with Section 116J.994 subd. 7 of the Business Subsidy Act. The EDA will provide information to BLVD Tavern regarding the required forms. If BLVD Tavern fails to timely file any report required under this section, the EDA will send BLVD Tavern a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, BLVD Tavern fails to provide a report, BLVD Tavern must pay the EDA a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this section is \$1,000.

8. The parties agree that this Agreement shall be construed pursuant to Minnesota law and any disputes shall be venued in Dakota County, Minnesota.

9. Notices to the parties shall be sent as follows:

If to EDA:	West St. Paul EDA Attn: Executive Director 1616 Humboldt Ave. West St. Paul, MN 55118
If to BLVD Tavern:	TSW Enterprises, Inc. Attn: Thomas S. Williams 433 E. Mendota Road West St. Paul, MN 55118

10. This Agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

11. This Agreement shall only be amended by written agreement approved by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their authorized representatives as of the date first written above.

[THE REMAINDER OF THIS PAGE INTENTIONALLY BLANK]

BLVD Bar & Grille_Extra Furniture Contract



TO BLVD Bar & Grille Tom Williams 433 E Mendota Rd West St. Paul, MN 55118	PROJECT BLVD Bar & Grille_Extra Furniture 433 E. Mendota Rd. West St. Paul, MN 55118	FROM Bargreen Ellingson Stephen Enyeart PO Box 50891 Mendota, MN 55150 (907)570-8140	Date: 07/08/2020 Job Reference #: 9408
-----------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------	---------------------------------------------------------

Thank you for the opportunity to work with you on your project.

All pricing is good for a period of 30 days from date of quotation and based on entering into contract within that time frame.

All pricing includes storage, delivery, uncrate and set in place at your facility, with final gas, electrical, hvac and plumbing connections by others.

All permits by owner unless specifically included.

We appreciate the opportunity to be of service to you.

Item	Qty	Description	Sell	Sell Total
1	1 ea	Soft Seating <i>A. Rivera & Associates, Inc. Model No. SOFT SEATING</i> Fully Upholstered, Hard Rubber Base, Pull Over Top, (1) Horse shoe Booth 4' X 8' X 4' X 42" H (1) Banquette 8'6" L X 42"H Upholstery to be: Phoenix Caviar TPH-003	\$3,498.00	\$3,498.00
			ITEM TOTAL:	\$3,498.00
2	40 ea	Chair <i>G & A Commercial Seating Model No. 8216</i> Sol Side Chair, indoor/outdoor use, stacking, synthetic teak ladder back & seat, fully welded, aluminum frame, nylon floor glides	\$98.00	\$3,920.00
	40 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
	40 ea	Frame finish/synthetic teak color to be specified		
			ITEM TOTAL:	\$3,920.00
3	48 ea	Bar Stool <i>G & A Commercial Seating Model No. 8816</i> Sol Barstool, indoor/outdoor use, without arms, synthetic teak ladder back & seat, footrest, fully welded, aluminum frame, nylon floor glides	\$127.00	\$6,096.00
	48 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
	48 ea	Frame finish/synthetic teak color to be specified		
			ITEM TOTAL:	\$6,096.00
4		Dining Height Dining Height		
4A	6 ea	Table Top <i>G & A Commercial Seating Model No. ST3636</i> Table Top, 36" x 36", square, 1-1/4" thick, indoor/outdoor use, synthetic teak slats, aluminum frame	\$282.00	\$1,692.00



Item	Qty	Description	Sell	Sell Total
	6 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
	6 ea	Synthetic teak color to be specified		
	6 ea	Umbrella hole		
	6 ea	CA3232 CA Series Table Base, 32" x 32" spread, dining height, indoor/outdoor use, 1-1/2" dia. umbrella hole, all weather aluminum, black powder coat finish		
	6 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
			ITEM TOTAL:	\$1,692.00
4B	4 ea	Table Top <i>G & A Commercial Seating Model No. ST3048</i> Table Top, 30" x 48", rectangular, 1-1/4" thick, indoor/outdoor use, synthetic teak slats, aluminum frame	\$297.00	\$1,188.00
	4 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
	4 ea	Synthetic teak color to be specified		
	4 ea	CA2436 CA Series Table Base, 24" x 36" spread, dining height, indoor/outdoor use, all weather aluminum, black powder coat finish		
	4 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
			ITEM TOTAL:	\$1,188.00
5		Bar Height Bar Height		
5A	6 ea	Table Top <i>G & A Commercial Seating Model No. ST36</i> Table Top, 36" dia., round, 1-1/4" thick, indoor/outdoor use, synthetic teak slats, aluminum frame	\$316.00	\$1,896.00
	6 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
	6 ea	Synthetic teak color to be specified		
	6 ea	Umbrella hole		
	6 ea	CHA3232 Table Base, 32" x 32" spread, bar height, indoor/outdoor use, 1-1/2" dia. umbrella hole, cast aluminum, black powder coat finish		
	6 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
			ITEM TOTAL:	\$1,896.00
5B	1 ea	Table Top <i>G & A Commercial Seating Model No. ST3048</i> Table Top, 30" x 48", rectangular, 1-1/4" thick, indoor/outdoor use, synthetic teak slats, aluminum frame	\$319.00	\$319.00
				

Item	Qty	Description	Sell	Sell Total
	1 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
	1 ea	Synthetic teak color to be specified		
	1 ea	CHA2436 Table Base, 24" x 36" spread, bar height, indoor/outdoor use, cast aluminum, black powder coat finish		
	1 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
			ITEM TOTAL:	\$319.00
5C	6 ea	Table Top <i>G & A Commercial Seating Model No. ST3636</i> Table Top, 36" x 36", square, 1-1/4" thick, indoor/outdoor use, synthetic teak slats, aluminum frame	\$316.00	\$1,896.00
	6 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
	6 ea	Synthetic teak color to be specified		
	6 ea	Umbrella hole		
	6 ea	CHA3232 Table Base, 32" x 32" spread, bar height, indoor/outdoor use, 1-1/2" dia. umbrella hole, cast aluminum, black powder coat finish		
	6 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
			ITEM TOTAL:	\$1,896.00
16A	1 ea	Drain Pan <i>Infinity Metal Fabricators Model No. DRAIN PAN</i> Drain Pan Mounted on Die Wall, 300 / 20 ga. Stainless Steel, 6' x 27" x 2" Deep, Pitched Pan to Mini Drain, False Bottom and 3 Piece Perforated Top with Hemmed Edges, NSF.	\$1,145.00	\$1,145.00
			ITEM TOTAL:	\$1,145.00
17C	1 ea	Hand Sink <i>Perlick Corporation Model No. TS12HS</i> TS Series Underbar Hand Sink Unit, free standing, 12"W x 18-9/16"D, stainless steel construction, 10" wide x 14" front-to-back x 9-1/4" deep sink, 6" backsplash, 4" OC splash mount faucet holes, sound-deadened underside, (1) 8-1/2" standpipe, 3/8" copper supply tubes, 1-1/2" NPS male drain, stainless steel legs with 1" adjustable thermoplastic feet, NSF	\$829.00	\$829.00
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	934GN-LF Front Loading Faucet, wall/splash mount, lead free, gooseneck spout, faucet valves includes: built-in check valves to prevent back flow or across flow, (2) 3/8" O.D. x 3/8" O.D. x 18", braided stainless steel supply lines included		
	1 ea	7054R End Splash, right, 6", for TS, TSF, or TSD series		
	1 ea	7054L End Splash, left, 6", for TS, TSF, or TSD series		
			ITEM TOTAL:	\$829.00
17D	1 ea	Ice Bin <i>Perlick Corporation Model No. TS24IC10</i> TS Series Underbar Ice Bin/Cocktail Unit, modular with cold plate, 24"W x 18-9/16"D, approximately 50-lb. ice capacity, 10-circuit aluminum cold plate concealed under bin liner, 6"H backsplash with 1" return at top, ABS plastic top ledge, 10-3/4" deep stainless steel ice bin, stainless steel front & sides, galvanized steel back & bottom, 1/2" NPS male drain, 1-5/8" tubular stainless steel legs with 1" adjustable thermoplastic feet, NSF	\$1,446.00	\$1,446.00
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	ICC24 Ice Chest Covers, 2-piece sliding assembly, 24"W, front & back, stainless steel (for TS, TSD, & TSS ice chests)		
	2 ea	7055-265A Backsplash cutout for soda lines - 1 EA. ON LEFT SIDE AND RIGHT SIDE PER UNIT		
			ITEM TOTAL:	\$1,446.00

Merchandise	\$23,925.00
Freight	\$848.00
Subtotal	\$24,773.00
Tax 7.125%	\$1,765.08
Total	\$26,538.08

TERMS

Thank you for your consideration of Bargreen Ellingson for your food service equipment needs! Prices shown in this quotation are for the specified items, quantities, lead-time and named project. Please note that the above listed prices are firm for 30 days. All applicable taxes are subject to the current rate at time of final invoicing. Should the project scope change, prices may be subject to revision.

Payment terms are as follows:

- 50% deposit due at time of equipment order
- 40% due prior to the first delivery
- The remaining 10% due within 14 days of project completion

Installation includes delivery and set in place only; electrical & plumbing connections are by others. Bargreen Ellingson is not a licensed electrical or mechanical contractor, nor can we replace the need for an architect or a general contractor who are able to ensure that all elements of the foodservice portion of a project are in sync with other building operations.

Other exclusion include core drilling, X-ray service, structure penetration or crane services (hoisting) unless specifically noted. The general contractor is responsible for any work common to building structure modification, or special lifting requirements. The owner is to allow clear access and free use of elevators, where required, for the Bargreen Ellingson Installers and Sub-Contractors. Any and all work is to be done during regular work hours, Monday through Friday, unless specifically noted in advance. All walls, floors, and ceilings must be in a finished state prior to installation to prevent equipment from being mishandled by other trades. Bargreen Ellingson cannot be held responsible for delays caused by unforeseen events beyond the reasonable control of our personnel or Sub-Contractors.

Quoted Equipment carries only the individual Manufacturer's Standard Warranty unless specifically stated otherwise. In the event of equipment damage that is determined to be the responsibility of Bargreen Ellingson or our sub-contractors, our obligation is limited to required repair or replacement, and Bargreen Ellingson shall not be liable for any consequential, incidental, or contingent damage, labor charges or loss of business.

Equipment items being supplied conform to applicable codes as they are known. If special codes or circumstances are invoked by governing authorities, it shall be the responsibility of the project owner and the undersigned client agent to pay for any and all additional costs and fees incurred by Bargreen Ellingson. Permits, if required, are not included, unless specifically stated for in the line item costs.

Buy-out equipment may not be returned without written consent from Bargreen Ellingson. When returns are authorized, they are subject to restocking and freight charges to and from the project. Manufacturer-imposed restock fees can range from 25-40%. Credit will not be issued until such time as the merchandise has been inspected and accepted by the manufacturer.

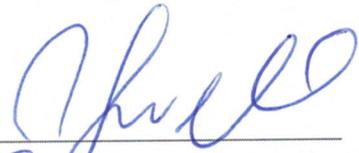
It shall be understood by all parties involved that this document shall become a legal and binding purchase contract upon signing below and receipt of cash funds (checks clear bank) for the down payment as specified above. Signature below by the purchaser acknowledges the acceptance of all terms and conditions as set forth in this contract.

The person signing this contract specifically represents that he/she has the authority to execute this document and its contents on behalf of the purchaser.

CUSTOMER COMMITMENT: In foodservice, things don't always go as planned. When those things happen, Bargreen Ellingson is committed to make it right. Our staff is given the power to resolve your issue. If they cannot, or if you are not

completely satisfied, we encourage you to call our President, David Ellingson, at (253) 234-1400. Thank you for the opportunity to serve you!

Thank you for your business!

Acceptance: 

Date: 7-8-20

Printed Name: Tom Williams

Project Grand Total: \$26,538.08

BLVD Bar & Grill Contract

BARGREEN ELLINGSON

FOODSERVICE SUPPLY & DESIGN

TO
BLVD Bar & Grille
 Tom Williams
 433 E Mendota Rd
 West St. Paul, MN 55118

PROJECT
BLVD Bar & Grill
 433 E. Mendota Rd.
 West St. Paul, MN 55118

FROM
Bargreen Ellingson
 Stephen Enyeart
 PO Box 50891
 Mendota, MN 55150
 (907)570-8140

Date: 04/07/2020
Job Reference #: 9408

Thank you for the opportunity to work with you on your project.

All pricing is good for a period of 30 days from date of quotation and based on entering into contract within that time frame.

All pricing includes storage, delivery, uncrate and set in place at your facility, with final gas, electrical, hvac and plumbing connections by others.

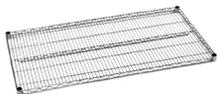
All permits by owner unless specifically included.

We appreciate the opportunity to be of service to you.

Item	Qty	Description	Sell	Sell Total
1	1 ea	Walk In Cooler, Modular, Self-Contained Norlake Model No. BEER COOLER Walk-In Cooler, per Plans and Specifications	\$11,790.00	\$11,790.00
			ITEM TOTAL:	\$11,790.00
2	1 lt	Beer Cooler Shelving New Age Model No. BEER COOLER SHELIVING Packed It Keg Storage and Shelving, per Plans and Specifications		
	1 ea	51174 Keg Rack, 93"W x 34"D, double deep, (20) keg capacity or (54) 1/6 barrel keg capacity, (2) heavy duty keg shelves and (1) lite T-Bar shelf, (6) 84" high posts, aluminum, Made in USA	\$1,362.00	\$1,362.00
	1 lt	Lifetime warranty against rust & corrosion, 5 year workmanship and material defects warranty, standard		
	3 ea	Centaur C2472K Centaur®K Series Shelving, wire, 72"W x 24"D, green epoxy, NSF	\$42.00	\$126.00
	3 lt	Centaur Limited 7 year warranty against corrosion on all green epoxy shelves, posts & accessories		
	4 ea	Centaur C63K Centaur® Stationary Post, 62-9/16"H, with leveling bolt & cap, green epoxy	\$8.00	\$32.00
			ITEM TOTAL:	\$1,520.00
3	1 ea	Ice Maker, Cube-Style Scotsman Model No. C0522SA-1 Existing, Clean and Reuse		<Existing>
				
3A	1 ea	Ice Bin for Ice Machines	\$836.00	\$836.00

Item	Qty	Description	Sell	Sell Total
		Scotsman Model No. B322S Ice Bin, top-hinged front-opening door, 370 lb application capacity, for top-mounted ice maker, polyethylene liner, metallic finish exterior, includes 6" legs, NSF		
	1 ea	NOTE: Sale of this product must comply with Scotsman's MSRP Policy; contact your Scotsman representative for details		
	1 ea	3 year parts & labor warranties		
	1 ea	KHOLDER Ice Scoop Holder, fits all modular ice storage bins, stainless steel	\$43.00	\$43.00
			ITEM TOTAL:	\$879.00
	4	Water Filtration System, for Ice Machines <i>Everpure Model No. EV932461</i> Insurice® PF Single-4SI System, with prefilter, 15,000 gallon capacity, 2.0 gpm flow rate, 0.5-micron precoat filtration, (1) 4SI Cartridge which meets ASHRAE Standard 188P (designed to prevent bacteria from entering and/reproducing in a hospital water system), helps reduce slime growth in ice machines & ice bins, uses Fibredyne™ media, 10 - 125 PSI pressure requirements, 35° - 100°F, NSF/ANSI Standard 53 certified	\$293.00	\$293.00
			ITEM TOTAL:	\$293.00
5	1 ea	Soft Drink Soda System, Remote <i>Custom Model No. SODA SYSTEM</i> Remote Soda System, by Owner		<By Vendor>
6	1 lt	Liquor storage Shelving <i>Centaur Model No. LIQUOR SHELIVING Packed It</i> Liquor Room Storage Shelving, per Plans and Specifications, 4 Tier		
	20 ea	C2448C Centaur® Shelving C Series Shelving, wire, 48"W x 24"D, chrome plated finish, NSF	\$27.00	\$540.00
	20 ea	C74C Centaur® Stationary Post, 74-5/8"H, with leveling bolt & cap, chrome	\$7.00	\$140.00
			ITEM TOTAL:	\$680.00
7	1 lt	Dry Storage Shelving <i>Centaur Model No. DRY STORAGE SHELIVING Packed It</i> Dry Storage Shelving, per Plans and Specifications, 5 Tier		
	5 ea	C2472C Centaur® Shelving C Series Shelving, wire, 72"W x 24"D, chrome plated finish, NSF	\$38.00	\$190.00
	5 ea	C2460C Centaur® Shelving C Series Shelving, wire, 60"W x 24"D, chrome plated finish, NSF	\$32.00	\$160.00
	8 ea	C86UC Centaur® Mobile Post, 85-7/8"H, casters sold separately (5" caster adds approx 6" to overall height) chrome	\$8.00	\$64.00
	4 ea	C5 Centaur® Caster, 5" x 1-1/4", stem/swivel, 200 lb. capacity, resilient wheel tread	\$12.00	\$48.00
	4 ea	C5B Centaur® Caster, 5" x 1-1/4", stem/brake, 200 lb. capacity, resilient wheel tread	\$14.00	\$56.00
	8 ea	C86C Centaur® Stationary Post, 86-5/8"H, with leveling bolt & cap, chrome	\$8.00	\$64.00
			ITEM TOTAL:	\$582.00
8	1 ea	Prep Table, Stainless Steel Top <i>Infinity Metal Fabricators Model No. WORK TABLE</i> Prep Table, 16 ga / 304 Stainless Steel Top, 8' long x 30" deep, 6" x 2" x 45 degree Backsplash, 18 ga / 300 Stainless Steel, 4'-6" Undershelf at Left end,	\$1,662.00	\$1,662.00

Item	Qty	Description	Sell	Sell Total
		(1ea) 18" x 18" x 12" deep Sink Bowls, Lever Waste Bracket, Stainless Steel Legs and Crossmembers, Fully Welded, Adjustable Feet, NSF		
	1 ea	T&S Brass B-1126 Faucet, 8" swing nozzle, splash mounted	\$121.00	\$121.00
	1 kt	T&S Brass B-1100-K Installation Kit, for workboard wall mount faucets, (2) short EL's	\$16.00	\$16.00
	1 ea	T&S Brass B-3940 Waste Valve, twist handle, 3" sink opening, 2" drain outlet with 1-1/2" adapter (replaces B-3910, B-3914)	\$63.00	\$63.00
		ITEM TOTAL:		\$1,862.00
9	1 ea	Wall Shelf <i>Infinity Metal Fabricators Model No. WALL SHELF</i> Wall Shelf, 18 ga./300 Series Stainless Steel, 8'-0" x 12" Wide, Wall Mount Brackets, Turnup at Rear, NSF	\$174.00	\$174.00
		ITEM TOTAL:		\$174.00
10	1 ea	Hand Sink <i>John Boos Model No. PBHS-W-1410-P-SSLR-X</i> Pro-Bowl Hand Sink, wall mount, 14"W x 10" front-to-back x 5" deep bowl, splash mount faucet holes with 4" centers, 1-7/8" drain opening with basket drain, with left & right side splashes, includes mounting bracket, all stainless steel construction, NSF, CSA-Sanitation (splash mount faucet included) (Available in Effingham and Nevada)	\$182.00	\$182.00
		ITEM TOTAL:		\$182.00
11		Spare No.		
12	1 ea	Mop Sink <i>John Boos Model No. EMS-2016-6-X</i> Mop Sink, floor mounted, 24-5/8"W x 19-1/8"D x 10"H overall size, 20"W x 16"D x 6" deep compartment, 3-1/2" diameter drain, marine edge on front & sides, tile edge on rear, 16/300 stainless steel construction	\$228.00	\$228.00
	1 ea	T&S Brass B-0665-BSTP Service Sink Faucet, 8" centers, 2-3/8" clearance from wall to center of faucet, 8-7/8" from wall to center of outlet, polished chrome-plated finish, vacuum breaker nozzle with 3/4" garden hose thread & pail hook, built in screwdriver stops	\$150.00	\$150.00
		ITEM TOTAL:		\$378.00
13	4 ea	Wire Shelving <i>Centaur Model No. C2436C Packed 4 ea</i> Centaur® Shelving C Series Shelving, wire, 36"W x 24"D, chrome plated finish, NSF	\$21.00	\$84.00
	4 ea	C74C Centaur® Stationary Post, 74-5/8"H, with leveling bolt & cap, chrome	\$7.00	\$28.00
		ITEM TOTAL:		\$112.00
14	1 ea	Reach-In Freezer <i>Traulsen Model No. G12010</i> Dealer's Choice Freezer, Reach-in, one-section, self-contained refrigeration, microprocessor control with LED display, stainless steel front, full-height solid door (hinged right), anodized aluminum sides & interior, (3) epoxy coated shelves (factory installed), LED interior lights, 6" high casters, eco-friendly, non-flammable R-448A refrigerant, unit can be programmed to operate at -10°F, 1/2 hp, cETLus, NSF	\$3,875.00	\$3,875.00



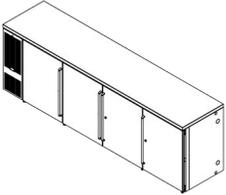
Item	Qty	Description	Sell	Sell Total
	1 ea	3 year parts & labor and 5 year compressor warranty, standard		
	1 ea	115v/60/1-ph, 9.7 amps, NEMA 5-15P, standard		
			ITEM TOTAL:	\$3,875.00
15	1 ea	Cabinet, Cook / Hold / Oven	\$8,700.00	\$8,700.00
		<i>FWE / Food Warming Equipment Co., Inc. Model No. LCH-6-6-G2</i>		
		Low Temp Cook & Hold Cabinet, mobile, (8) pairs of tray slides, (8) 18" x 26" or (16) 12" x 20" pan capacity, 4-1/2" OC, adjustable to 1-1/2" increments, heating system with low air circulation, dual-cycle, automatic controls, temperature probe, cooking temperature up to 350°F, holding temperature up to 190°F, LED display, insulated, (2) flush mounted doors, removable drip tray, stainless steel interior & exterior, 5" casters (2) rigid & (2) swivel with brakes, UL, cUL, UL EPH Classified, ANSI/NSF 4, CE, IPX4		
	1 ea	Two year limited parts & one year labor warranty, standard		
	1 ea	208v/60/1-ph, 22.0 amps, 4620 watts, NEMA 6-30P (US)		
			ITEM TOTAL:	\$8,700.00
16	1 ea	Millwork	\$18,666.00	\$18,666.00
		<i>LL & H Woodworks Model No. BAR</i>		
		Main Bar		
		24'lg x 10'6 rectangular		
		Shop ply diewall		
		Black FRP backside		
		Solid oak stiles and rails		
		Oak veneer removable panels		
		Oak veneer top w/ solid dropped edge		
		2-		
		Black P-lam subtop		
		Stainless Steel drink rail		
		Black powder-coated footrest		
	1 ea	IMF DRAIN PAN 16A – Drain Pan Mounted on Die Wall, 300 / 20 ga. Stainless Steel, 6' x 27" x 2" Deep, Pitched Pan to Mini Drain, False Bottom and 3 Piece Perforated Top with Hemmed Edges, NSF.	\$1,145.00	\$1,145.00
			ITEM TOTAL:	\$19,811.00
17	1 ea	Service Station		
		<i>Infinity Metal Fabricators Model No. SERVER STATION</i>		
		Server Station, consisting of one(1) trash cabinet, one (1) condiment cabinet		
	1 ea	CABINET 17A-Cabinet, 16 ga / 300 Stainless Steel, 34" x 26" x 34" high, 2" flat Backsplash, Right side Top to be Flush with side, (1ea) Fixed Intermediate Shelf, Open Front, 6" S/S Adjustable Legs, NSF	\$872.00	\$872.00
	1 ea	CABINET 17B-Cabinet, 16 ga / 300 Stainless Steel, 29" x 26" x 34" high, 2" flat Backsplash, Left side Top to be Flush with side, Open Base to Accommodate (2ea) Slim Jim's, Stainless Steel Doors, (2ea) 6" Dia. Trash Holes, 6" S/S Adjustable Legs, NSF	\$927.00	\$927.00
			ITEM TOTAL:	\$1,799.00
17C	1 ea	Hand Sink	\$513.00	\$513.00
		<i>Perlick Corporation Model No. TS12HS</i>		
		TS Series Underbar Hand Sink Unit, free standing, 12"W x 18-9/16"D, stainless steel construction, 10" wide x 14" front-to-back x 9-1/4" deep sink, 6" backsplash, 4" OC splash mount faucet holes, sound-deadened underside, (1) 8-1/2" standpipe, 3/8" copper supply tubes, 1-1/2" NPS male drain, stainless steel legs with 1" adjustable thermoplastic feet, NSF		



Item	Qty	Description	Sell	Sell Total
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	934GN-LF Front Loading Faucet, wall/splash mount, lead free, gooseneck spout, faucet valves includes: built-in check valves to prevent back flow or across flow, (2) 3/8" O.D. x 3/8" O.D. x 18", braided stainless steel supply lines included	\$180.00	\$180.00
	1 ea	7054R End Splash, right, 6", for TS, TSF, or TSD series	\$68.00	\$68.00
	1 ea	7054L End Splash, left, 6", for TS, TSF, or TSD series	\$68.00	\$68.00
			ITEM TOTAL:	\$829.00
17D	1 ea	Ice Bin <i>Perlick Corporation Model No. TS24IC10</i> TS Series Underbar Ice Bin/Cocktail Unit, modular with cold plate, 24"W x 18-9/16"D, approximately 50-lb. ice capacity, 10-circuit aluminum cold plate concealed under bin liner, 6"H backsplash with 1" return at top, ABS plastic top ledge, 10-3/4" deep stainless steel ice bin, stainless steel front & sides, galvanized steel back & bottom, 1/2" NPS male drain, 1-5/8" tubular stainless steel legs with 1" adjustable thermoplastic feet, NSF	\$1,223.00	\$1,223.00
				
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	ICC24 Ice Chest Covers, 2-piece sliding assembly, 24"W, front & back, stainless steel (for TS, TSD, & TSS ice chests)	\$65.00	\$65.00
	2 ea	7055-265A Backsplash cutout for soda lines - 1 EA. ON LEFT SIDE AND RIGHT SIDE PER UNIT	\$79.00	\$158.00
			ITEM TOTAL:	\$1,446.00
18		Spare No.		
19	1 ea	Glasswasher, Rotary <i>Ecolab Model No. GLASSWASHER</i> Glasswasher, Rotary Style		
20	1 lt	Underbar Equipment <i>Perlick Corporation Model No. UNDERBAR EQUIPMENT Packed It</i> Underbar Equipment, per Plans and Specifications		
20A	1 ea	Hand Sink <i>Perlick Corporation Model No. TS12HSN</i> TS Series Underbar Hand Sink Unit, free standing, 12"W x 22-1/4"D, 6" backsplash, 10" wide x 14" front-to-back x 9-1/4" deep sink, 4" OC splash mount faucet holes, 16 oz. pump soap dispenser, C-fold paper towel dispenser on front apron, sound-deadened underside, (1) 8-1/2" standpipe, 1-1/2" NPS male drain, stainless steel construction, stainless steel legs with adjustable thermoplastic feet, NSF	\$664.00	\$664.00
				
	1 ea	934GN-LF Front Loading Faucet, wall/splash mount, lead free, gooseneck spout, faucet valves includes: built-in check valves to prevent back flow or across flow, (2) 3/8" O.D. x 3/8" O.D. x 18", braided stainless steel supply lines included	\$180.00	\$180.00
	1 ea	7054R End Splash, right, 6", for TS, TSF, or TSD series	\$68.00	\$68.00
	1 ea	7054L End Splash, left, 6", for TS, TSF, or TSD series	\$68.00	\$68.00
			ITEM TOTAL:	\$980.00
20B	1 ea	Drainboard	\$875.00	\$875.00

Item	Qty	Description	Sell	Sell Total
		<i>Perlick Corporation Model No. SC36</i> Underbar Storage Cabinet, drainboard top, 36"W x 24"D, open front, 6"H backsplash with 1" return at top, embossed drainboard with 1-1/2" NPS male drain, adjustable intermediate shelf, stainless steel construction, stainless steel legs & adjustable feet, NSF		
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	SC-DR36 Door Set, for 36" storage cabinet	\$286.00	\$286.00
			ITEM TOTAL:	\$1,161.00
20C	1 ea	Hand Sink <i>Perlick Corporation Model No. TSD12HS</i> TSD Series Underbar Hand Sink Unit, free standing, 12"W x 24"D, stainless steel construction, 10" wide x 14" front-to-back x 9-1/4" deep sink, 6" backsplash, 4" OC deck mount faucet holes, 5-1/2" rear deck, sound-deadened underside, (1) 8-1/2" standpipe, 1/2" IPS water connections, 1-1/2" NPS male drain, stainless steel legs with 1" adjustable thermoplastic feet, NSF	\$563.00	\$563.00
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	926GN-LF Lead Free Faucet, deck-mounted, nominal 4" centers, gooseneck nozzle, for TSD/TSS series 1 compartment sinks	\$146.00	\$146.00
	1 ea	7055-48 Perforated Wet Waste Pan, 7 quart capacity, stainless steel, for 18"W blender stations (10-3/8" x 12-3/4" x 4" deep)	\$57.00	\$57.00
	1 ea	7054R End Splash, right, 6", for TS, TSF, or TSD series	\$68.00	\$68.00
			ITEM TOTAL:	\$834.00
20D	1 ea	Drainboard <i>Perlick Corporation Model No. TSD24</i> TSD Series Underbar Drainboard, 24"W x 24"D, embossed top, 6"H backsplash, 6" rear deck, stainless steel legs with adjustable thermoplastic feet, stainless steel construction, NSF	\$436.00	\$436.00
	1 ea	4" Backsplash in lieu of standard 6" splash		
			ITEM TOTAL:	\$436.00
20E	1 ea	Drainboard <i>Perlick Corporation Model No. TSD30</i> TSD Series Underbar Drainboard, 30"W x 24"D, embossed top, 6"H backsplash, 6" rear deck, stainless steel legs with adjustable thermoplastic feet, stainless steel construction, NSF	\$475.00	\$475.00
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	7054L End Splash, left, 6", for TS, TSF, or TSD series	\$68.00	\$68.00
	1 ea	7055-67A Access Cutout, 6"W with chimney, for TSD series backsplash	\$99.00	\$99.00
	1 ea	Left side of backsplash		
			ITEM TOTAL:	\$642.00
20F	3 ea	Drainboard	\$475.00	\$1,425.00

Item	Qty	Description	Sell	Sell Total
		<i>Perlick Corporation Model No. TSD30</i> TSD Series Underbar Drainboard, 30"W x 24"D, embossed top, 6"H backsplash, 6" rear deck, stainless steel legs with adjustable thermoplastic feet, stainless steel construction, NSF		
	3 ea	4" Backsplash in lieu of standard 6" splash		
	3 ea	7054R End Splash, right, 6", for TS, TSF, or TSD series	\$68.00	\$204.00
	1 ea	7055-67A Access Cutout, 6"W with chimney, for TSD series backsplash	\$99.00	\$99.00
	1 ea	Left side of backsplash		
			ITEM TOTAL:	\$1,728.00
20G	1 ea	Ice Bin	\$1,390.00	\$1,390.00
		<i>Perlick Corporation Model No. TS42IC10</i> TS Series Underbar Ice Bin/Cocktail Unit, modular with cold plate, 42"W x 18-9/16"D, approximately 100-lb. ice capacity, 10-circuit aluminum cold plate concealed under bin liner, 6"H backsplash with 1" return at top, ABS plastic top ledge, 10-3/4" deep stainless steel ice bin, stainless steel front & sides, galvanized steel back & bottom, 1/2" NPS male drain, 1-5/8" tubular stainless steel legs with 1" adjustable thermoplastic feet, NSF		
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	BW9-42 Underbar Bottle Well with Ice Chest Cover Assembly, 9-bottle capacity, 2-piece stainless steel sliding cover assembly, (3) bottle wells on left, (6) bottle wells on right, black polypropylene (for TS42, TSD42, & TSS42 ice chests)	\$167.00	\$167.00
	1 ea	SR-D42A Speed Rail, double, 42" W, stainless steel construction, factory installed	\$201.00	\$201.00
			ITEM TOTAL:	\$1,758.00
20H	1 ea	Glass Froster	\$2,251.00	\$2,251.00
		<i>Perlick Corporation Model No. FR36</i> Glass Froster, underbar, 36"W, self-contained refrigeration, -10°F to 10°F temperature range, (7.83) cu.ft. interior volume, (2) dent-resistant stainless steel sliding doors on top with die-cast handles, door frame heater, manual defrost, self-evaporating condensing pan, includes floor racks, stainless steel top & interior, R134a, 1/3 HP, 115v/60/1-ph, 6.8 amps, 6' cord & NEMA 5-15P, NSF, cULus		
	1 ea	WARNING: The materials used in this product may contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov		
	1 ea	5 yr. compressor warranty, 1 yr. parts & labor warranty		
	1 ea	Black cabinet finish		
	1 ea	Flat Shelving (2 Layers)	\$72.00	\$72.00
	1 ea	Additional nesting shelves	\$36.00	\$36.00
	1 st	67061 Casters, 2-7/8", set of (4)	\$65.00	\$65.00
			ITEM TOTAL:	\$2,424.00
20I	1 ea	Ice Bin	\$1,334.00	\$1,334.00

Item	Qty	Description	Sell	Sell Total
		<i>Perlick Corporation Model No. TS36IC10</i> TS Series Underbar Ice Bin/Cocktail Unit, modular with cold plate, 36"W x 18-9/16"D, approximately 85-lb. ice capacity, 10-circuit aluminum cold plate concealed under bin liner, 6"H backsplash with 1" return at top, ABS plastic top ledge, 10-3/4" deep stainless steel ice bin, stainless steel front & sides, galvanized steel back & bottom, 1/2" NPS male drain, 1-5/8" tubular stainless steel legs with 1" adjustable thermoplastic feet, NSF		
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	BW9-36 Underbar Bottle Well with Ice Chest Cover Assembly, 9-bottle capacity, 2-piece stainless steel sliding cover assembly, (3) bottle wells on left, (6) bottle wells on right, black polypropylene (for TS36, TSD36, & TSS36 ice chests)	\$156.00	\$156.00
	1 ea	SR-D36A Speed Rail, double, 36" W, stainless steel construction, factory installed	\$179.00	\$179.00
			ITEM TOTAL:	\$1,669.00
20J	1 ea	Blender Station <i>Perlick Corporation Model No. TS12BLW</i> TS Series Underbar Blender Station, with dump sink, 12"W, 6" backsplash, 9-5/8" wide x 10-5/8" front-to-back x 6" deep, 4" OC splash mount faucet holes, recessed blender shelf with access hole & duplex outlet (not installed), stainless steel construction, stainless steel legs with adjustable thermoplastic feet, NSF	\$506.00	\$506.00
				
	1 ea	4" Backsplash in lieu of standard 6" splash		
	1 ea	934GN-LF Front Loading Faucet, wall/splash mount, lead free, gooseneck spout, faucet valves includes: built-in check valves to prevent back flow or across flow, (2) 3/8" O.D. x 3/8" O.D. x 18", braided stainless steel supply lines included	\$180.00	\$180.00
	1 ea	7055-48 Perforated Wet Waste Pan, 7 quart capacity, stainless steel, for 18"W blender stations (10-3/8" x 12-3/4" x 4" deep)	\$57.00	\$57.00
			ITEM TOTAL:	\$743.00
21	1 ea	Back Bar Cabinet, Refrigerated <i>Perlick Corporation Model No. BBS108</i> Refrigerated Back Bar Cabinet, four-section, 108"W, self-contained refrigeration, 33.5 cu.ft. internal volume, digital thermostat, LED interior lighting, front vented, automatic defrost & condensate evaporator, includes floor drain, stainless steel interior, side mount compressor, 1/4 HP, R290 Hydrocarbon refrigerant, NSF, cULus	\$4,450.00	\$4,450.00
				
	1 ea	WARNING: The materials used in this product may contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov		
	1 ea	120v/60/1-ph, 4.2 amps, NEMA 5-15P		
	1 ea	5 yr. compressor warranty, 1 yr. parts & labor warranty		
	1 ea	Standard refrigerator		
	1 ea	Stainless steel top - no tapping holes		
	1 ea	Condensing unit location: Left		
	1 ea	Condensing unit cover finish: Black vinyl coated		
	1 ea	End finish: Stainless steel, unfinished, both sides, standard		
	1 ea	Door type, first: solid, black vinyl clad		
	1 ea	Door hinge location, first: Left		

Item	Qty	Description	Sell	Sell Total
	1 ea	Door handle, first: full length stainless steel handle, 24"		
	1 ea	Shelving style, first: (3) flat shelves		
	1 ea	Door type, second: glass with black vinyl clad door frame	\$122.00	\$122.00
	1 ea	Door hinge location, second: Left		
	1 ea	Door handle, second: full length stainless steel handle, 24"		
	1 ea	Shelving style, second: (3) flat shelves		
	1 ea	Door hinge location, second: Left		
	1 ea	Door handle, second: full length stainless steel handle, 24"		
	1 ea	Shelving style, second: (3) flat shelves		
	1 ea	Door type, third: glass with black vinyl clad door frame	\$122.00	\$122.00
	1 ea	Door hinge location, third: Left		
	1 ea	Door handle, third: full length stainless steel handle, 24"		
	1 ea	Shelving style, third: (3) flat shelves		
	1 ea	Door type, fourth: glass with black vinyl clad door frame	\$122.00	\$122.00
	1 ea	Door hinge location, fourth: Left		
	1 ea	Door handle, fourth: full length stainless steel handle, 24"		
	1 ea	Shelving style, fourth: (3) flat shelves		
	1 ea	Crisp White™ LED		
	1 st	67062 Casters, 2-7/8", set of (6)	\$90.00	\$90.00
			ITEM TOTAL:	\$4,906.00
22	1 ea	Liquor Display <i>Infinity Metal Fabricators Model No. LIQUOR STEP</i> Liquor Display, 42" wide (modified #7055A3), flat top, no backsplash, 34" working height, bottle guard, and LED light	\$1,172.00	\$1,172.00
			ITEM TOTAL:	\$1,172.00
23		Spare No.		
24	1 lt	Trash Receptacle, Indoor <i>Custom Model No. SLIM JIM Packed It</i> Trash Receptacle, by Owner		
25	1 lt	POS System <i>Custom Model No. POS SYSTEM Packed It</i> POS System, to include Printers and Screen's		
26		Spare No.		
27	1 ea	Millwork <i>LL & H Woodworks Model No. BUFFET</i> Buffet 16'long x 2'6deep P lam bases/p lam interior Wood slab fronts Hanstone Bavaria BT351 Top and Backsplash St steel legs	\$7,498.00	\$7,498.00
			ITEM TOTAL:	\$7,498.00
28	1 ea	Draft Beer System, Remote <i>Banner Equipment Model No. BEER SYSTEM</i> Draft Beer System, Remote, 16-Product Inverted "T" Tower, Complete System, Installed by Local Beer Distributors	\$13,460.00	\$13,460.00
			ITEM TOTAL:	\$13,460.00

Item	Qty	Description	Sell	Sell Total
29		Spare No.		
30		Spare No.		
31		Spare No.		
32	1 ea	Millwork <i>LL & H Woodworks Model No. DRINK RAIL</i> Wood drink rail 12"w x 12'6" Oak veneer/solids Backsplash 2" solid lip sides, front Stained, finished	\$908.00	\$908.00
	4 ea	Oak Street BDB-4 BAR Table Base, bolt down, 4" dia. column, 40-3/4" bar height, steel, powder coated, black Sandtex finish	\$62.00	\$248.00
	2 ea	Oak Street WARNING: This product can expose you to chemicals including Bisphenol A (BPA), which is known to the State of California to cause birth defects and/or other reproductive harm. For more information go to www.P65Warnings.ca.gov .		
	2 ea	Oak Street 1 yr. warranty against defects in material and workmanship, std.		
			ITEM TOTAL:	\$1,156.00
33	2 ea	Millwork <i>LL & H Woodworks Model No. DRINK RAIL</i> Wood drink rail 18"w x 8' Oak veneer/solids Backsplash	\$777.00	\$1,554.00
	4 ea	Oak Street BDB-4 BAR Table Base, bolt down, 4" dia. column, 40-3/4" bar height, steel, powder coated, black Sandtex finish	\$62.00	\$248.00
	2 ea	Oak Street WARNING: This product can expose you to chemicals including Bisphenol A (BPA), which is known to the State of California to cause birth defects and/or other reproductive harm. For more information go to www.P65Warnings.ca.gov .		
	2 ea	Oak Street 1 yr. warranty against defects in material and workmanship, std.		
			ITEM TOTAL:	\$1,802.00
34	1 lt	Furniture <i>G & A Commercial Seating Model No. DINING HEIGHT TABLES Packed It</i> Dining Height Tables		
	3 ea	ZT3048 Table Top, rectangular, 30" x 48", 1-3/4" thick, mix of beechwood/maple wood/ash wood, eased solid wood edge	\$151.00	\$453.00
	1 ea	Slate walnut		
	3 ea	ZT3072 Table Top, rectangular, 30" x 72", 1-3/4" thick, mix of beechwood/maple wood/ash wood, eased solid wood edge	\$230.00	\$690.00
	1 ea	Slate walnut		
	1 ea	ZT3636 Table Top, square, 36" x 36", 1-3/4" thick, mix of beechwood/maple wood/ash wood, eased solid wood edge	\$139.00	\$139.00
	1 ea	Slate walnut		
	12 ea	B0522 B Series Table Base, 5" x 22" spread, two prong end base, 3" dia. column, dining height, includes spider & adjustable floor glides, cast iron with black powder coat finish (Quick Ship)	\$26.00	\$312.00

Item	Qty	Description	Sell	Sell Total
	1 ea	B3030 B Series Table Base, 30" x 30" spread, four prong base, 3" dia. column, dining height, includes spider & adjustable floor glides, cast iron with black powder coat finish (Quick Ship)	\$33.00	\$33.00
			ITEM TOTAL:	\$1,627.00
34A	1 ea	Furniture <i>Wood Goods Model No. 2800</i> Tabletop, 48" Diameter, WG46 Dark Birch on Birch Stain	\$488.00	\$488.00
	1 ea	9104-28 Dining Height 28.25", 28" dia. Spread, 4" dia. Column, 24" Spider, Black Texture Finish	\$173.00	\$173.00
			ITEM TOTAL:	\$661.00
35	42 ea	Chair <i>G & A Commercial Seating Model No. 4625</i> Vertical Side Chair, slat back, upholstered padded seat, mortise and tenon construction with metal brackets, European beechwood frame, non-marring plastic floor glides	\$80.00	\$3,360.00
	42 ea	Symphony vinyl for seat		
	42 ea	Vintage		
	42 ea	Color to be specified		
	42 ea	Black frame finish		
			ITEM TOTAL:	\$3,360.00
36	1 lt	Furniture <i>G & A Commercial Seating Model No. BAR HEIGHT TABLES Packed lt</i> Bar Height Tables		
	4 ea	ZT3072 Table Top, rectangular, 30" x 72", 1-3/4" thick, mix of beechwood/maple wood/ash wood, eased solid wood edge	\$230.00	\$920.00
	1 ea	Slate walnut		
	8 ea	BH0522 B Series Table Base, 5" x 22" spread, two prong end base, 3" dia. column, bar height, includes spider & adjustable floor glides, cast iron with black finish (Quick Ship)	\$30.00	\$240.00
			ITEM TOTAL:	\$1,160.00
36A	1 ea	Furniture <i>Wood Goods Model No. 2800.</i> Tabletop, 72" Diameter, WG46 Dark Birch on Birch Stain	\$1,305.00	\$1,305.00
	3 ea	9004-522 5" x 22" Bar Height table base	\$58.00	\$174.00
			ITEM TOTAL:	\$1,479.00
37	34 ea	Bar Stool <i>G & A Commercial Seating Model No. 9625SS</i> Vertical Barstool, slat back, solid wood saddle seat, footrest, mortise and tenon construction with metal brackets, European beechwood frame, non-marring plastic floor glides	\$103.00	\$3,502.00
	34 ea	Black frame finish		
	34 ea	Black seat finish		
	34 ea	Black finish		
			ITEM TOTAL:	\$3,502.00
38	30 ea	Bar Stool	\$91.00	\$2,730.00

Item	Qty	Description	Sell	Sell Total
		<i>G & A Commercial Seating Model No. 117</i> Demi Barstool, 30" H, backless, round upholstered padded seat, brass footring, mortise and tenon construction with metal brackets, European beechwood frame, non-marring plastic floor glides		
	30 ea	Symphony vinyl for seat		
	30 ea	Vintage		
	30 ea	Color to be specified		
	30 ea	Walnut frame finish		
			ITEM TOTAL:	\$2,730.00
39		Spare No.		
40		Spare No.		
41	1 ea	Patio Furniture <i>Custom Model No. PATIO FURNITURE</i> Patio Furniture, to be Determined		
200	1 ea	Installation <i>Midwest Kitchen Services Model No. INSTALLATION</i> Installation to include: Walk-In Cooler, Install S/S Wall Panels and Trim, Set in Place and Silicone of all Kitchen and Bar Equipment, as Required to Meet or Exceed Local Health Department Requirements	\$6,976.00	\$6,976.00
			ITEM TOTAL:	\$6,976.00
200A	1 ea	Refrigeration Install <i>Quality Refrigeration Model No. INSTALLATION</i> • Start and check for proper operation	\$595.00	\$595.00
			ITEM TOTAL:	\$595.00
200B	1 ea	Installation <i>LL & H Woodworks Model No. INSTALLATION</i> Labor and Material to Install Millwork Bar and Buffet	\$4,949.00	\$4,949.00
			ITEM TOTAL:	\$4,949.00
200C	1 ea	Furniture <i>A. Rivera & Associates, Inc. Model No. INSTALLATION</i> Labor and Material to Install Banquette and Assemble Tables & Bases	\$1,320.00	\$1,320.00
			ITEM TOTAL:	\$1,320.00
200D	1 ea	Services: Design <i>Bargreen Ellingson Design Model No. DESIGN</i> Professional Design Services	\$10,000.00	\$10,000.00
			ITEM TOTAL:	\$10,000.00
			Merchandise	\$135,640.00
			Freight	\$2,953.00
			Subtotal	\$138,593.00
			Tax 7.125%	\$8,176.15
			Total	\$146,769.15

TERMS

Thank you for your consideration of Bargreen Ellingson for your food service equipment needs!

Prices shown in this quotation are for the specified items, quantities, lead-time and named project. Please note that the above listed prices are firm for 30 days. All applicable taxes are subject to the current rate at time of final invoicing. Should the project scope change, prices may be subject to revision.

Payment terms are as follows:

- 50% deposit due at time of equipment order
- 40% due prior to the first delivery
- The remaining 10% due within 14 days of project completion

Installation includes delivery and set in place only; electrical & plumbing connections are by others. Bargreen Ellingson is not a licensed electrical or mechanical contractor, nor can we replace the need for an architect or a general contractor who are able to ensure that all elements of the foodservice portion of a project are in sync with other building operations.

Other exclusion include core drilling, X-ray service, structure penetration or crane services (hoisting) unless specifically noted. The general contractor is responsible for any work common to building structure modification, or special lifting requirements. The owner is to allow clear access and free use of elevators, where required, for the Bargreen Ellingson Installers and Sub-Contractors. Any and all work is to be done during regular work hours, Monday through Friday, unless specifically noted in advance. All walls, floors, and ceilings must be in a finished state prior to installation to prevent equipment from being mishandled by other trades. Bargreen Ellingson cannot be held responsible for delays caused by unforeseen events beyond the reasonable control of our personnel or Sub-Contractors.

Quoted Equipment carries only the individual Manufacturer's Standard Warranty unless specifically stated otherwise. In the event of equipment damage that is determined to be the responsibility of Bargreen Ellingson or our sub-contractors, our obligation is limited to required repair or replacement, and Bargreen Ellingson shall not be liable for any consequential, incidental, or contingent damage, labor charges or loss of business.

Equipment items being supplied conform to applicable codes as they are known. If special codes or circumstances are invoked by governing authorities, it shall be the responsibility of the project owner and the undersigned client agent to pay for any and all additional costs and fees incurred by Bargreen Ellingson. Permits, if required, are not included, unless specifically stated for in the line item costs.

Buy-out equipment may not be returned without written consent from Bargreen Ellingson. When returns are authorized, they are subject to restocking and freight charges to and from the project. Manufacturer-imposed restock fees can range from 25-40%. Credit will not be issued until such time as the merchandise has been inspected and accepted by the manufacturer.

It shall be understood by all parties involved that this document shall become a legal and binding purchase contract upon signing below and receipt of cash funds (checks clear bank) for the down payment as specified above. Signature below by the purchaser acknowledges the acceptance of all terms and conditions as set forth in this contract.

The person signing this contract specifically represents that he/she has the authority to execute this document and its contents on behalf of the purchaser.

CUSTOMER COMMITMENT: In foodservice, things don't always go as planned. When those things happen, Bargreen Ellingson is committed to make it right. Our staff is given the power to resolve your issue. If they cannot, or if you are not completely satisfied, we encourage you to call our President, David Ellingson, at (253) 234-1400. Thank you for the opportunity to serve you!

Thank you for your business!

Acceptance: _____

Date: _____

Printed Name: _____

Project Grand Total: \$146,769.15

June 3rd, 2020

Revised Proposal

Tom Williams
Boulevard Grill
433 Mendota Road E.
Bloomington, MN 55118

RE: Boulevard Grill Expansion

Dear Tom,

We would like to enter our proposal for the scopes listed below. Our numbers include all permits, materials, labor and protection for the scopes listed below.

Demolition

- Furnish labor and material to:
 - Demo approx. 12lf of demising wall. Leave header as ceilings will not match and for possible folding door to separate spaces.
 - Demo misc. walls at back of expansion space to make way for new floor plan.
 - Demo display walls and desks in expansion space
 - Demo existing flooring in expansion space.
 - Saw cut floor for plumbing work.
 - Includes dumpster.

Concrete/ Masonry

- Furnish labor and material to:
 - Lay approximately 95sf of brick and block to close up opening at 10' overhead door.
 - Infill floor where exterior wall was removed.

Ornamental Iron

- Furnish labor and material to:
 - Install approximately 80' lf of 4' tall Ameristar Montage Majestic three rail black fence for patio.

Doors / Frames & Hardware

- Furnish labor and material to:
 - Install hollow metal door frames and pre finished oak wood doors.
 - Includes hardware and privacy lock for single use bathrooms.
 - 3_HM frames DWS-3-0 x 7-0 x 5-3/4
 - 3-Wood doors 3-0 x 7-0 x 1-3/4 x Flush x Plain Sliced Red Oak x finished
 - 15-Hinge BB 26D
 - 2-Privacy AL40S SAT 626 or Indicator privacy
 - 2-Push Plate 200H 6 x 16 32D
 - 2-Pulls 536B 32D
 - 3-Closer 8501 Alum
 - 3-Wall stop
- Sliding door
 - Furnish and install (3) 4' wide by 8' tall knotty alder doors with "U" channel at top and bottom of doors.
- Alternate for existing rear exit doors.
 - **Alternate Add:** Doors 106 & 108B at the back of the new space are walled over and do not have the correct hardware required by the city.
 - Remove old doors/frames and install new doors/frames and correct hardware.
 - Door-106 Alt. #1 Add 1-HM Door, HM Frame, hardware group 6= **Add \$2,884.00 Inc. Tax**
 -
 - Door-108B ALT. #2 Add 1-HM door, HM Frame, hardware group 7 = **Add \$2,661.00 0Inc. Tax**
 - Note-group-7 we have a mortise lock with deadbolt for security.

Metal Framing & Drywall

- Furnish labor and material to:
 - Frame and build new walls for bathrooms (12' tall), hallway liquor room.
 - Includes taping, patching, mud work, sanding.
 - Furnish and install structural members as called out on structural plan by Mattson, McDonald & Young.

Tile Work

- Furnish labor and material to:
 - Install specified wainscot wall tile up 4' tall in bathrooms 105 & 107.

Solid Surface

- Furnish labor and material to:
 - Fabricate granite tops for men's and women's restrooms with backsplashes.

Acoustical Ceiling

- Furnish labor and material to:
 - Install new black 2' X 4' ceiling tiles in existing grid that has been painted black.
 - Modify existing ceiling system for new walls at back of expansion space and for liquor room storage.
 - Install complete new acoustical ceiling grid system in bathrooms 105 & 107.
 - Install vinyl rock ceiling as required by code above new bar and in the food prep room.
 - Remove grid system over new bar to make way for structural members and install new grid when finished.

Painting

- Furnish labor and material to:
 - Prep and paint all new and existing walls in expansion space and areas affected by construction.

Toilet Accessories

- Furnish labor and material to:
 - Install four sets of ADA compliant grab bars in bathrooms 105 & 107.
 - Install two toilet paper holders.
 - Install two sanitary napkin disposals.
 - Install two 24" W by 36" H stainless steel framed mirrors.
 - Install two new baby changing stations.

Fire Protection

- Furnish labor and material to:
 - Add and relocate fire sprinkler heads to accommodate new wall layout and overhead doors moving above bar ceiling.

Plumbing

- Furnish labor and material to:
 - Expansion space
 - 2 – A.D.A. Restrooms each to have
 - 1 – Floor set tank type water closet
 - 1 – Wall hung lav & sensor faucet
 - 1 – Floor drain
 - Restaurant Storage space
 - 1 – Floor drain
 - 1 – H2O Supply
 - Ice machine connection
 - Install water filter

-
-
- Janitor Room
 - Mop sink faucet
 - Relocated water heater
 - Add circulation system

 - Gas to fire feature
 - Fire feature not included at this time
 - Plumber assumes unit to be code approved with a single connection point
 - Miscellaneous
 - Permits
 - Plumbing plans – State review
 - Floor cut & patch included

HVAC

- Furnish labor and material to:
 - Install new bath exhaust fans in four restrooms and duct work through roof. An allowance of \$600.00 has been included for the roof work.
 - Relocate diffusers and supply registers to accommodate new wall layout.

Electrical

- Furnish labor and material to:
 - Dining room area
 - Provide and wire 18" recessed cans on S1
 - Provide wire 3 general purpose receptacles
 - Provide and wire 3 dedicated receptacles for stage and 2 dart boards
 - Single bathroom men's and women's
 - Wire owner provided vanity light and bath fan on S1
 - Private dining room area
 - Provide wire 7- 6" recessed cans on S1
 - Provide and wire 2 general purpose receptacles
 - Restaurant storage area and utility janitor area
 - Provide wire 3 dedicated receptacles
 - Provide and wire 3-8' LED strip fixtures on S1
 - Liquor storage
 - Provide and wire 4' LED strip fixture on S1
 - Beer cooler
 - Provide and wire dedicated receptacle
 - Existing bathrooms in restaurant

Wire 2 owner provided vanity lights and bath fan on S1
Provide and wire 2-8' strip fixtures on existing switching
4 hours demo 2 men
Permit

Total Proposed Amount: \$201,848.00

Sincerely,

Tom Duffy

Exclusions and Clarifications
• Afterhours work, unforeseen items, and hazardous materials if found are not included.
• Normal business hours are 8 am to 5 pm Monday through Friday, excluding holidays.
• No fire feature included at this tile.
• No raised floor or handrail included.
• No concrete included at this time.
• All quotations are subject to acceptance within 30 days of proposal.
• Invoice terms are net 15.
• Interest will accrue after 30 days from billing date at the rate of 1% per month.

CONSTRUCTION CONTRACT AGREEMENT BETWEEN TSW ENTERPRISES, INC.

D/B/A BLVD BAR & GRILLE AND TURN-KEY ASSOCIATES, LLC

This Construction Contract Agreement (“Contract”) is made on 4-23-2020 by and between TSW Enterprises, Inc. d/b/a BLVD Bar & Grille, 433 E. Mendota Road, West St. Paul, MN 55118 (“Owner”) and Turn-Key Associates, LLC, 1652 East Cliff Road, Burnsville, MN 55337 (“Contractor”).

Contractor wishes to enter into the following Contract with Owner to furnish labor and materials for the construction project located at the BLVD Bar & Grille, 433 E. Mendota Road, West St. Paul, MN 55118 (the “Project”). The Project shall be completed pursuant to Contractor’s Proposal dated April 23, 2020, together with all changes and addendums (“Contract Documents”) prepared thereafter. This Contract includes, by reference, all terms and conditions, and all other documents listed in this Contract, including Exhibits A-B, and any written modifications issued after execution of this Contract.

Owner has made available to Contractor all of the Contract Documents and Contractor has agreed to be responsible for obtaining copies pertinent to its work (the “Work”). The Contract Documents have been examined by Contractor, its agents and representatives. Owner agrees that the Contract Documents are complete and accurate as to all work to be performed by Contractor. Owner assumes all responsibility for any part of the Contract Documents that are incomplete or inaccurate. Contractor shall not be liable for Owner’s design errors, if any, and does not warrant any design provided by Owner or a third-party.

1. **Contract Documents** - This Contract is comprised of the following documents:

Turn-Key Associates, LLC Proposal dated April 23, 2020 concerning “Boulevard Grill Expansion” attached hereto and incorporated herein as Exhibit A; and,

Change Order Form – Attached hereto and incorporated herein as Exhibit B.

2. **Scope of Work** – Contractor shall furnish all necessary labor, materials, tools, equipment and supervision as described in the April 23, 2020 Proposal attached hereto and incorporated herein as Exhibit A, with the exception of pendant and vanity lights, which shall be supplied and provided by Owner.

3. **Contract Price** – Owner shall pay Contractor the Contract Price for Contractor’s performance of the Contract. The Contract Price shall be Two Hundred Thirty-Three Thousand, Eight Hundred Thirty-One Dollars and Zero Cents (\$233,831.00), subject to additions and deductions as provided in the Contract.

4. **Payment Schedule and Terms** - The Contract Price shall be paid by Owner in the manner set forth in Exhibit A attached hereto and incorporated herein.

5. **Commencement Date** - The date of commencement of Contractor's Work shall be:

- The date of this Contract
- A date set forth in a notice to proceed issued by Owner
- Other/Established as follows: RECEIPT OF BUILDING PERMIT

If the date of commencement of Contractor's Work is not selected, then the date of commencement shall be the date of this Contract. Contractor shall not commence Work on the Project until a fully-executed Contract is received from Owner.

Owner shall ensure that the Project is available by the Commencement Date so that Contractor's Work may be performed in a single, continuous operation requiring only one mobilization. If more than one mobilization is required due to Owner's action or inaction, then Contractor shall be entitled to receive additional compensation as determined by the parties and confirmed in a Change Order. If Contractor's equipment is idled due to Owner's action or inaction, then Contractor shall be entitled to receive its daily equipment rental rates for such idle equipment as determined by the parties and confirmed in a Change Order.

6. **Substantial Completion Date** - Subject to any adjustments of time as provided in the Contract Documents, the work shall be deemed substantially complete:

- No later than 67 calendar days from the date of commencement of Contractor's Work.
- By the following date: _____.
- When a Certificate of Occupancy is issued for the Project, or, if no Certificate of Occupancy will be issued, the date that the government building inspector completes a final inspection of the Work
- When Owner and Contractor agree upon a Certificate of Substantial Completion. The Certificate of Substantial Completion shall specify whether Contractor will maintain any responsibility for the job site items such as security, maintenance, utilities, insurance and damage to the Work, include a list of items which are part of the Work that are not complete as of the Substantial Completion Date ("Punch List Items"), and state a time for completion of all Punch List Items.

To the extent adverse weather conditions or other unforeseen conditions, including but not limited to vandalism, theft, fire or other casualty, labor shortages, material shortages, delays caused by Owner and other matters outside the reasonable control of Contractor, prevent completion of the Work or make it more costly, Contractor shall be entitled to an extension of time and an adjustment for escalating costs to be determined by the parties and confirmed in a Change Order.

7. **Final Completion Date** - The Final Completion Date is the date when all of the Work and all Punch List items have been completed.
8. **Time is of the Essence** – Time is of the essence for both parties and each agrees to perform their respective obligations so that the Project may be completed in accordance with this Contract.
9. **Quality of Work** - Contractor shall perform and complete the Work in a good and workmanlike manner. The Work shall be free from material defects not intrinsic in the design or materials specified in the Contract. All materials, fixtures and equipment shall be new unless otherwise specified, of good quality, and free from defects. All Work shall conform to applicable building codes and laws. Upon completion of the Work, all improvements will comply with applicable laws, ordinances and regulations and with all disclosed covenants, easements and restrictions affecting the Property. The uses for which the Work is intended will be conforming uses. Contractor shall promptly correct any Work not completed according to this Contract and shall repair or replace any defective materials, fixtures or equipment if requested by Owner in writing.
10. **Construction Obligations** - Contractor shall supervise and be solely responsible for all construction means, methods, techniques and procedures for the Work. Unless otherwise noted, Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, transportation and other facilities and services necessary for execution and completion of the Work. All excess or unused materials for this Project shall be returned to the supplying vendor by Contractor and credited to Contractor's account.
11. **Contractor Compliance** - Contractor shall comply with applicable laws, statutes, ordinances, codes, rules, regulations and lawful orders of public authorities bearing on performance of the Work. Contractor shall also comply with federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of the Work.
12. **Warranty** – Contractor warrants to Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

The Statutory Warranties of Minn. Stat. Chapter 327A are incorporated into this Contract and adopted herein if applicable. In the event Minn. Stat. Chapter 327A does not apply to the Project, Contractor warrants that its work shall be free from defects caused by faulty workmanship and defective materials for a period of one year from the date of Final Completion.

Contractor assigns to Owner all available manufacturer's warranties applicable to new materials, fixtures or equipment installed by Contractor or by any subcontractor as part of the Work; however, Contractor specifically excludes and makes no warranties for Owner-supplied components or materials to be installed by Contractor or by any subcontractor as

part of the Work, regardless of source. Contractor specifically excludes and makes no warranties for any work performed by or subcontracted directly by Owner. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

13. **Contractor Controls Construction** - Owner agrees that direction and supervision of the work forces, including but not limited to subcontractors, rests exclusively with Contractor. Owner agrees not to interfere with or issue any instructions to work forces, nor to contract for additional work with work forces except with Contractor's prior written consent, and then only in such manner as will not interfere with Contractor's completion of the Project.
14. **Permits, Fees, Inspections** - Contractor shall obtain and pay for all required permits, fees and licenses. Contractor shall schedule all governmental inspections necessary for proper execution and completion of the Work.
15. **Safety** – Contractor is responsible for initiating, maintaining and supervising all safety precautions and measures in connection with performance of this Contract and agrees to take all safety precautions with respect to its work and shall comply with all applicable laws, ordinances, rules and regulations and lawful orders of any public or governmental authority for the safety of persons or property.
16. **Access to Worksite** – Owner shall allow free access to work areas for workers and vehicles and shall allow areas for the storage of materials and debris. Work access hours shall begin at 7:00 A.M. and conclude at 7:00 P.M. Monday through Saturday until the Project is completed. Driveways and roadways will be kept clear for the movement of vehicles during work hours. Contractor will make reasonable efforts to protect driveways, lawns, shrubs, and other vegetation. Contractor also agrees to keep the worksite clean and orderly and to remove all debris as needed during the hours of work in order to maintain work conditions which do not cause health or safety hazards.
17. **Utilities** – Owner shall provide and maintain water and electrical service as necessary for Contractor to carry out and complete the Work.
18. **Temporary Facilities** - Contractor shall provide a portable, self-contained toilet on the job site as part of the Contract Price. Contractor shall make the temporary facilities available to subcontractors at no cost.
19. **Condition of Property** - Contractor shall keep the Project and surrounding area free from trash, garbage and miscellaneous waste materials caused by the Work, but shall not be held responsible for conditions caused by other contractors or subcontractors. Upon completion of all Work, Contractor shall remove all waste materials and trash occasioned by its Work, as well as, all of its tools, equipment, machinery and surplus materials.
20. **Concealed Conditions** – This Contract is based solely upon the observations Contractor was able to make concerning the Project in its condition at the time this Contract was bid. If additional concealed conditions are discovered once Work has commenced which were not visible at the time the Project was bid, Contractor may stop work and identify any

unforeseen concealed conditions to Owner so that Owner and Contractor may prepare and execute a Change Order for any additional Work.

21. **Existing Conditions** – Owner is responsible for existing conditions at the property and shall provide Contractor with all requested data concerning the property in its possession or under its control. If conditions are different than as represented by Owner and the changes adversely affects Contractor, then Contractor may stop work and identify any unforeseen conditions to Owner so that Owner and Contractor may prepare and execute a Change Order for any additional work.
22. **Inspection** – Owner shall have the right to inspect all Work performed under this Contract. All defects and incomplete items shall be reported to Contractor immediately. All Work that needs to be inspected or certified by any government department or agency shall be done at each necessary stage of construction and before further construction may continue. Owner acknowledges that by inspecting the Work, Owner assumes all risks and agrees to hold Contractor harmless from any claims arising out of or relating to injuries occurring at the Project, unless the same are the result of the negligent or intentional acts of Contractor, its employees or subcontractors.
23. **Owner Financing** – Contract is not contingent upon Owner securing financing or a loan commitment; however, in the event Owner requires financing for the Project by a third-party, Owner agrees that all disbursements from the third-party shall be made directly to Contractor as the sole payee. In the event the third-party disburses funds which include Owner as a co-payee, Owner agrees that Contractor may deposit such funds without Owner's endorsement and Owner shall hold Contractor harmless for same.
- (Optional) Owner and Contractor appoint _____ as Disbursing Agent for payments from Owner's funds. Owner shall either: (select one)
 - deposit the balance of the Contract Price (less any initial payment to Contractor) with Disbursing Agent before the Commencement Date, or
 - make periodic deposits to Disbursing Agent sufficient to fund contract payments.
- ___ ___ (Initials)

If no Disbursing Agent is appointed, payments from Owner's funds shall be made directly by Owner to Contractor.

24. **Contractor's Right to Stop Construction** – Contractor shall have the right to stop or discontinue Work in the event payments are not made to Contractor as due under the terms of this Contract, unless such non-payment results from Contractor's failure to timely perform its obligations as required by the terms of this Contract. Contractor may idle the Project until such time as payments which are due to the Contractor are made and the time for completion shall be extended by the time for such delay.
25. **Interest** - If payment is not received in full on or before the payment due date, Owner shall pay to Contractor a late payment charge for each month during which such payment delinquency exists, equal to one percent (1%) of such amount past due.

26. **Change Order** - All Change Orders shall be in writing, numbered serially and approved by both parties which shall substantially be in the form attached hereto as an Exhibit to this Contract and made a part hereof. The Change Order shall specifically describe the nature of the change and shall state the amount of the extra charge or credit resulting from the change. The signature and approval of one Owner shall be sufficient to bind all Owners to the new Contract Price. Owner shall compensate Contractor \$125.00 for each and every Change Order approved and accepted throughout the course of the Project with the exception of those Change Orders prepared for the sole purpose of extending the Substantial or Final Completion Date. No oral Change Orders shall be permitted and are void.

(*Optional*) In the event Owner and Contractor cannot reach an agreement as to the value of the additional work, Owner may direct Contractor to perform such work and shall pay Contractor for all of its direct labor, material and equipment costs, plus 15% for overhead and profit, as full compensation for the additional work. ____ ____ (*Initials*)

27. **Mechanic Lien Pre-Lien Notice** -

(A) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.

(B) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.

28. **Mechanic Lien Waivers** - Contractor shall timely pay all subcontractors, laborers, and material suppliers for their respective contributions to the Project so as to prevent mechanics' or material suppliers' liens against the Project. Contractor shall furnish conditional and unconditional lien waivers and any other documents that may be reasonably requested by Owner or its lender at the time of each pay application or disbursement to Contractor.

29. **Insurance** - Contractor has, and shall continue to maintain, insurance coverage sufficient to protect Contractor and Owner from the claims of workers under the Workers' Compensation Act and other employee benefit acts for damages because of bodily injury, including death. Contractor has, and shall continue to maintain, insurance coverage sufficient to protect Contractor and Owner from claims for damages to property, other than to the Work itself, which may arise out of or result from Contractor's work under this Contract, whether the Work is conducted by Contractor or by any Subcontractor or anyone directly or indirectly employed by Contractor or any Subcontractor. Contractor has, and shall continue to maintain, liability insurance sufficient to protect Contractor and

Owner against claims that arise from any liability and operations under this Contract, which insurance shall name Owner as an additional insured. Prior to the Commencement Date, Contractor shall provide to Owner certificates evidencing insurance coverage. In the event Contractor's insurance coverage is not sufficient or satisfactory to Owner, Owner shall provide written notice to Contractor of its required insurance coverage and Contractor shall obtain and maintain such coverage and provide proof of same to Owner prior to commencement of the Work. No insurance coverage shall be cancelled, amended, revoked or non-renewed without thirty days (30) notice to Owner.

(*Optional*) Contractor shall obtain and maintain insurance in accordance with the requirements set forth and attached hereto as an Exhibit to this Contract and made a part hereof. ____ ____ (*Initials*)

30. **Indemnification** - To the fullest extent permitted by law, Contractor shall indemnify, defend and hold Owner harmless from and against all claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees for bodily injury, sickness, disease or death or from injury to or destruction of tangible property (other than the Work itself) including the resulting loss of use from any negligent act or omission of Contractor, any of its subcontractor, anyone directly or indirectly employed by Contractor or its subcontractor or anyone for whose acts any of them may be liable, except to the extent that the claim, loss or expense is caused in part by Owner.
31. **Notice** - Any notice or communication required or permitted under this Contract shall be provided in writing and shall be deemed to have been sufficiently given if delivered in person, by courier or by certified mail, return receipt requested, to the designated representative of the party to whom the notice is addressed to as set forth below.

OWNER'S REPRESENTATIVE		CONTRACTOR'S REPRESENTATIVE	
Name:	Thomas Williams	Name:	Tom Duffy
Address:	433 E. Mendota Road West St. Paul, MN 55118	Address:	1652 East Cliff Road Burnsville, MN 55337
Mobile No.:	651-450-7736	Mobile No.:	651-600-8313

Neither Owner's nor Contractor's representative shall be changed without ten days (10) notice to the other party.

32. **Claims** - Claims by Contractor for an adjustment in the Contract Price or Completion Dates shall be initiated by written Notice to Owner within 14 days after occurrence of the event giving rise to such claim.
33. **Delay** - If Contractor is delayed in the progress of the Work by weather conditions not reasonably anticipated or any other cause not reasonably foreseeable and beyond Contractor's reasonable control, then the Substantial Completion Date shall be extended for a reasonable period of time as determined by the parties and confirmed in a Change

Order. There shall be no fee for any Change Order prepared for the sole purpose of extending the Substantial Completion Date.

34. **Default** - The following default provisions shall survive termination of this Contract:

By Owner: If Owner breaches a material term of this Contract and fails to cure the breach within five (5) business days after written notice by Contractor, Owner shall be deemed to be in default.

By Contractor: If Contractor breaches a material term of this Contract and fails to cure the breach within five (5) business days after written notice by Owner, Contractor shall be deemed to be in default.

35. **Termination and Remedies** – In addition to any and all other rights a party may have available according to the laws of the State of Minnesota, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including, without limitation, the failure to make monetary payments when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving said notice shall have ten (10) days from the date of receiving said notice to cure the default or begin substantial completion if completion cannot be made in thirty (30) days. Unless waived by a party providing notice, the failure to cure or begin curing the default within such time period shall result in the automatic termination of this Contract.

36. **Waiver of Consequential Damages** – Owner and Contractor waive claims for consequential damages against one another.

37. **Dispute Resolution and Attorney Fees** – Owner and Contractor agree that all disputes relating to or arising out of this Contract shall first be subject to Mediation before a single Mediator jointly selected by the parties. Mediation attendees shall have full authority to settle the dispute and the parties shall jointly pay for the expense of Mediation. If the parties are unable to reach a settlement through Mediation, then either party may commence an action in District Court.

If an action or other legal proceeding is commenced in District Court concerning a dispute relating to or arising out of this Contract, including but not limited to mechanic lien claims, the prevailing party, as determined by the Court, shall be entitled to receive from the other party the prevailing party's costs and expenses, including reasonable attorney's and expert witness fees incurred in connection therewith, in preparation therefor and on appeal therefrom, which amounts shall be included in any judgment therein.

38. **Amendment** – This Contract may not be amended, altered or modified in any respect, except by in writing and duly executed by both parties. Any alleged oral agreement prior to or subsequent hereto shall be strictly void if not so subscribed in writing and signed by Owner and Contractor.

39. **Restriction on Assignment** – Neither party may assign this Contract without the express written consent of the other party. However, this restriction does not preclude Contractor’s hiring of subcontractors for performance of parts of the Work.
40. **Subcontractor** - A subcontractor is a person or entity who has a direct contract and authority from Contractor to perform any part of the Work. Contractor will have sole discretion as to whom it hires for subcontracted work and shall be solely responsible for the conduct and performance of the subcontractor. Upon written request from Owner, Contractor shall provide Owner the names and addresses of each subcontractor engaged to perform labor and material supplier retained to supply materials for the Work.
41. **Waiver** – The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party’s right to subsequently enforce and compel strict compliance with said provision or with any other provision of this Contract.
42. **Governing Law** – This Contract shall be governed and enforced by the laws of the State of Minnesota and any legal action commenced with respect to this Contract shall be venued in the District Court for the County in which the Project is located.
43. **Entire Agreement** - This Contract contains the entire agreement between the parties regarding the matters set forth herein, and supersedes all previous negotiations, discussions and understandings regarding such matters. Each of the parties acknowledge and represent that the party has not relied upon any promise, inducement, representation or other statement made in connection with this Contract that is not expressly contained herein. The terms of this Contract are contractual in nature and not a mere recital.
44. **Severability** – If a Court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable for any reason, then the remaining provisions shall continue to be valid and enforceable. If a Court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
45. **No Presumption Against the Drafter** - Should any of the provisions or terms of this Contract require interpretation by a court, it is agreed by the parties that the court shall not apply a presumption that the terms of the Contract will be more strictly construed against one party because of that party’s role in drafting the Contract. It is agreed that all parties have participated in the preparation and review of this Contract.
46. **Conflicts in Documents** - The terms of this Contract shall control in the event of any conflict between the terms of this Contract and any other agreement or document concerning the Project.
47. **Other** – Allowances, Liquidated Damages, Unit Pricing or Schedule of Values, if any, shall be in writing, separately prepared and attached hereto as an Exhibit to this Contract and made a part hereof.

* * *

THIS CONTRACT IS BINDING UPON THE PARTIES HERETO, THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS. THE PARTIES REPRESENT THAT THEY HAVE THE CAPACITY AND THE AUTHORITY TO ENTER INTO THIS CONTRACT

TSW Enterprises, Inc.
d/b/a BLVD Bar & Grille

Turn-Key Associates, LLC

By: _____
(Date)

By: _____
(Date)

Its: _____

Its: _____

* * *

PERSONAL GUARANTEE

(*Optional*) I hereby personally guaranty all obligations of the Owner under this Contract, including monetary payments, and adopt and agree to all terms and conditions set forth in the Contract.

Date: _____

Name: _____

Address: _____

EXHIBIT A

Turn-Key Associates, LLC Proposal

Dated April 23, 2020 – Boulevard Grill Expansion

EXHIBIT B

Change Order Form

CHANGE ORDER NUMBER _____

*Attach to Construction Contract Agreement between Turn-Key Associates, LLC and
TSW Enterprises, Inc. d/b/a BLVD Bar & Grille dated _____*

Nature of Change:

Attachments: *(Identify and attach any amended plans, drawings, specifications, etc.)*

Changes to Contract Price and Contract time resulting from this Change Order

Contract Price *before* this Change Order: \$ _____

Net increase (decrease) from this Change Order: \$ _____

Change Order Fee \$ 125.00

Resulting (New) Contract Price: \$ _____

Estimated Substantial Completion Date *before* this Change Order: _____

Net increase (decrease) in contract time: _____

Resulting (New) Substantial Completion Date: _____

This Change Order is accepted and approved this ____ day of _____, 2020.

Turn-Key Associates, LLC

TSW Enterprises, Inc. d/b/a/ BLVD Bar & Grille

By: _____

By: _____

Its: _____

Its: _____