



ECONOMIC DEVELOPMENT AUTHORITY MEETING

MUNICIPAL CENTER COUNCIL CHAMBERS
1616 HUMBOLDT AVENUE, WEST ST. PAUL, MN 55118

MONDAY, OCTOBER 28, 2019
IMMEDIATELY FOLLOWING THE
REGULAR CITY COUNCIL MEETING

1. Call To Order
2. Roll Call
3. Adopt Agenda
4. EDA Consent Agenda Items
 - 4.A. Minutes Of September 23, 2019 - EDA Work Session And Regular EDA
Documents:
[MINUTES - REGULAR EDA 09-23-19.PDF](#)
[MINUTES - EDA WORK SESSION 09-23-19.PDF](#)
 - 4.B. Minutes Of October 14, 2019 - Regular EDA
Documents:
[MINUTES - REGULAR EDA 10-14-19.PDF](#)
 - 4.C. Financial Statement Through September 30, 2019
Documents:
[SEPTEMBER BUDGET TO ACTUAL REPORT.PDF](#)
5. Commissioner Comments
6. Public Hearing
7. New Business
8. Old Business

8.A. Approve Purchase Agreement With Sherman Associates For Wentworth Place Property

Documents:

EDA MEMO - PURCHASE AGREEMENT WITH WENTWORTH PLACE LLC -
CRAWFORD DR.PDF
PURCHASE AGREEMENT -SHERMAN II - CLEAN V3 10-25-19.PDF
MAP OF DEV AREA AND EASEMENT AREA - CRAWFORD DRIVE.PDF

9. Adjourn

*If you need an accommodation to participate in the meeting, please contact the ADA Coordinator at
651-552-4108, TDD 651-322-2323 at least 5 business days prior to the meeting
www.wspmn.gov EOE/AA*

**City of West St. Paul
Economic Development Authority Minutes
September 23, 2019**

1. Call to Order

President Napier called the meeting to order at 8:02 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
Executive Director Jim Hartshorn
Finance Director Char Stark
City Clerk/Secretary Shirley Buecksler

3. Adopt the Agenda

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

Vote: 6 ayes / 0 nays. Motion carried.

4. EDA Consent Agenda Items

Motion was made by Commissioner Justen and seconded by Commissioner Vitelli to approve the Consent Agenda, as presented:

- A. Minutes of the July 8, 2019 Regular EDA Meeting
- B. Minutes of the August 12, 2019 EDA Work Session
- C. Financial Statement Through August 31, 2019

Vote: 6 ayes / 0 nays. Motion carried.

5. Commissioner Comments

President Napier said that Sola Salon's building is going up fast and the owner was here at OCWS tonight. They have everything full, faster than any of their other locations. It's going to be an exciting building just off Robert Street, he said.

6. Public Hearings

A. Beirut Restaurant – Business Subsidy Application

Executive Director Hartshorn presented and introduced John Khoury of Beirut Restaurant, located at 1385 Robert Street. Mayor Napier thanked him for reinvesting in his business.

President Napier opened the Public Hearing at 8:04 p.m.

Seeing no one wishing to speak, President Napier closed the Public Hearing at 8:04 p.m.

Motion was made by Commissioner Vitelli and seconded by Commissioner Fernandez to approve the \$25,000 Redevelopment Grant for Beirut Restaurant, 1385 Robert Street.

Vote: 6 ayes / 0 nays. Motion carried.

7. New Business

There was no new business to discuss.

8. Old Business

There was no old business to discuss.

9. Adjourn

Motion was made by Commissioner Berry and seconded by Commissioner Justen to adjourn the meeting at 8:05 p.m.

All members present voted aye. Motion carried.

David J. Napier
President
City of West St. Paul

**City of West St. Paul
Economic Development Authority Work Session Minutes
September 23, 2019**

1. Open Work Session

President Napier called the meeting to order at 8:10 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
EDA Executive Director Jim Hartshorn
EDA Assistant Treasurer Char Stark
City Clerk/EDA Secretary Shirley Buecksler

3. Agenda Items

Motion was made by Commissioner Vitelli and seconded by Commissioner Justen to add Item 3B, Closed Session Pursuant to Minnesota Statute 13D.05 Subd. 3(b) for Attorney-Client Privileged Communication to Discuss Pending Litigation Regarding Wentworth Homes.

All members present voted aye. Motion carried.

A. Closed Session Pursuant to Minnesota Statute 13D.05 Subd. 3(c) to Discuss the Sale of the Former Blockbuster Site

Motion was made by Commissioner Berry and seconded by Commissioner Justen to close the meeting at 8:11 p.m.

The Commission asked questions and received answers.

Motion was made by Commissioner Vitelli and seconded by Commissioner Pace to reopen the meeting at 8:27 p.m.

B. Closed Session Pursuant to Minnesota Statute 13D.05 Subd. 3(b) for Attorney-Client Privileged Communication to Discuss Pending Litigation Regarding Wentworth Homes

Motion was made by Commissioner Pace and seconded by Commissioner Berry to close the meeting at 8:27 p.m.

The Commission asked questions and received answers.

Motion was made by Commissioner Vitelli and seconded by Commissioner Justen to reopen the meeting at 8:37 p.m.

4. Adjourn

Motion was made by Commissioner Berry and seconded by Commissioner Pace to adjourn the meeting at 8:37 p.m.

All members present voted aye. Motion carried.

David J. Napier
President
City of West St. Paul

**City of West St. Paul
Economic Development Authority Minutes
October 14, 2019**

1. Call to Order

President Napier called the meeting to order at 9:05 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
Executive Director Jim Hartshorn
Finance Director Char Stark
City Clerk/Secretary Shirley Buecksler

3. Adopt the Agenda

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

Vote: 6 ayes / 0 nays. Motion carried.

4. EDA Consent Agenda Items

There were no Consent Agenda items for approval.

5. Commissioner Comments

6. Public Hearings

There were no Public Hearings.

7. New Business

A. Preliminary Development Agreement Between the City of West St. Paul and Oppidan

Motion was made by Commissioner Pace and seconded by Commissioner Berry to approve the Preliminary Development Agreement between the City of West St. Paul and Oppidan, subject to modification by the Executive Director and City Attorney.

Vote: 6 ayes / 0 nays. Motion carried.

B. Closed Session Pursuant to Minnesota Statute 13D.05 Subd. 3(c) to Discuss a Purchase Offer for Land Located South of Crawford Drive

Motion was made by Commissioner Berry and seconded by Commissioner Vitelli to close the meeting at 9:10 p.m.

The Commission asked questions and received answers.

Motion was made by Commissioner Berry and seconded by Commissioner Eng-Sarne to reopen the meeting at 9:18 p.m.

8. Old Business

There was no old business to discuss.

9. Adjourn

Motion was made by Commissioner Justen and seconded by Commissioner Eng-Sarne to adjourn the meeting at 9:18 p.m.

All members present voted aye. Motion carried.

David J. Napier
President
City of West St. Paul

City of West St Paul Economic Development Authority

Income Statement

Through 9/30/2019

Account	Account Description	2019 Budget Amount	MTD Actual Amount	2019 YTD Actual Amount	Budget Less YTD Actual	% of Budget
REVENUE						
	Tax - Ad Valorem-Current	337,043.00	.00	167,769.00	(169,274.00)	50% 1/2 tax settlement
	Investment - Interest	5,000.00	2,303.62	9,182.55	4,182.55	184% 3 quarters reporting
	Other Interest Earnings	50,000.00	.00	.00	(50,000.00)	0%
	Investment - Market Adjus	.00	2,863.91	12,275.47	12,275.47	3 quarters reporting
	Insurance - Policy Dividn	.00	.00	.00	.00	
	Misc Revenue - All Other	10,000.00	.00	.00	(10,000.00)	0%
	Sale of Real Property	.00	.00	.00	.00	
	Transfers In	.00	.00	.00	.00	
		<u>\$402,043.00</u>	<u>\$5,167.53</u>	<u>\$189,227.02</u>	<u>212,815.98</u>	47%
	REVENUE TOTALS	\$402,043.00	\$5,167.53	\$189,227.02	212,815.98	47%
EXPENSE						
	Full Time Reg Wages	128,645.00	9,702.40	101,960.52	26,684.48	79%
	PERA	9,649.00	727.68	7,452.77	2,196.23	77%
	FICA	9,841.00	652.90	7,016.68	2,824.32	71%
	Health Insurance	17,508.00	1,359.00	13,531.00	3,977.00	77%
	Other Grp Insurance	400.00	22.73	204.57	195.43	51%
	Office Supplies	300.00	.00	.00	300.00	0%
	Motor Fuels & lubricants	.00	.00	26.70	(26.70)	
	General Supplies	500.00	.00	.00	500.00	0%
	Auditing Services	2,000.00	.00	1,744.05	255.95	87%
	Civil Legal Fees	9,000.00	(88.00)	10,522.50	(1,522.50)	117%
	Travel,Conference,Schools	4,715.00	68.44	4,558.20	156.80	97%
	Advertising	5,000.00	.00	1,250.00	3,750.00	
	Postage	150.00	.00	25.45	124.55	17%
	Printing & Publishing	1,000.00	.00	.00	1,000.00	0%
	Insurance - Gen Liability	1,800.00	.00	2,245.17	(445.17)	125% Full Year
	Water/Sewer Charges	.00	.00	158.65	(158.65)	
	Contractual Services	45,970.00	250.00	37,355.73	8,614.27	81%
	Subscriptions,Memberships	775.00	.00	1,045.00	(270.00)	135%
	Loss on Sale of Asset	.00	.00	.00	.00	
	Misc Expenses	1,500.00	32.15	361.50	1,138.50	24%
	Business Subsidy	161,785.00	.00	106,296.20	55,488.80	66% Beissel Window & Siding, SRST LLC, More Space, LRG Technologies-Mobile Neighborhood Pub
	Land Held for Resale	.00	.00	.00	.00	
		<u>\$400,538.00</u>	<u>\$12,727.30</u>	<u>\$295,754.69</u>	<u>\$104,783.31</u>	74%
	EXPENSE TOTALS	\$400,538.00	\$12,727.30	\$295,754.69	\$104,783.31	74%
	REVENUE TOTALS	402,043.00	5,167.53	189,227.02	212,815.98	47%
	EXPENSE TOTALS	400,538.00	12,727.30	295,754.69	104,783.31	74%
		<u>\$1,505.00</u>	<u>(\$7,559.77)</u>	<u>(\$106,527.67)</u>	<u>\$108,032.67</u>	

Cash Balance:

12/31/2018	571,139
1/31/2019	535,070
2/28/2019	519,452
3/31/2019	468,009
4/30/2019	524,146
5/31/2019	438,019
6/30/2019	588,522
7/31/2019	590,019
8/31/2019	553,774
9/30/2019	561,839

To: **EDA President and Board**
From: **Executive Director Jim Hartshorn**
Date: **October 28, 2019**

Purchase Agreement Between the City of West St. Paul EDA and Wentworth Place, LLC

BACKGROUND INFORMATION:

At the last EDA Meeting, the Board directed Staff to negotiate a purchase price with Sherman Associates for 1.5 acres of vacant land known as Wentworth Place. Sherman accepted a price for \$375,000, conditioned on closing by the end of the year. The intent is to purchase the entire 1.5 acres and sell 30 feet on the north side to Dakota County for an easement for the River-to-River trail. The EDA would then sell the remaining property to a developer to construct approximately 16 town homes. The EDA will pay \$20,000 in earnest money to Sherman Associates.

FISCAL IMPACT:

		Amount
Fund:	EDA Fund	\$375,000
Department:	EDA	
Account:		

STAFF RECOMMENDATION:

Staff recommends approval of the attached Purchase Agreement.

ATTACHMENTS:

1. Purchase Agreement
2. Map showing developable area along with easement area along Crawford Drive

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“Agreement”) is made as of _____, 2019 (“Effective Date”), by and between Wentworth Place LLC, a Minnesota limited liability company, 233 Park Avenue South, Suite 201, Minneapolis, Minnesota 55415 (“Seller”), and the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic, 1616 Humboldt Avenue, West St. Paul, Minnesota 55118 (“EDA”).

RECITALS

- A. Seller is the fee owner of real property located in the City of West St. Paul, Minnesota, legally described on Exhibit A, attached hereto and incorporated herein by reference (the “Property”).
- B. EDA desires to purchase the Property from Seller, and Seller desires to sell the same to EDA, all on the terms and conditions of this Agreement.

NOW THEREFORE, for mutual consideration, Seller and EDA agree as follows:

1. **Sale.**

1.1. **Sale.** Subject to the terms and provisions of this Agreement, Seller shall sell to EDA, and EDA shall purchase from Seller, the Property.

1.2. **Purchase Price.** The purchase price to be paid by EDA to Seller for the Property shall be **Three Hundred Seventy Five Thousand and 00/100 Dollars (\$375,000.00)** (the “**Purchase Price**”). Twenty Thousand and 00/100 Dollars (\$20,000.00) shall be paid directly to Seller by depositing same in escrow with DCA Title, 7373 147th Street West, Apple Valley, MN 55124 (“Title”) within five (5) business days after the full execution of this Purchase Agreement, as earnest money (“**Earnest Money**”), which Earnest Money shall be credited at Closing against the portion of the Purchase Price payable to Seller and the balance of the Purchase Price shall be paid to Seller on the Closing Date (as defined in Section 7) subject to those adjustments, prorations and credits described in this Agreement, in cash or certified funds or by wire transfer pursuant to instructions from Seller.

2. **Available Surveys, Tests, and Reports.** Within ten (10) days of the Effective Date, Seller shall cause to be delivered to EDA to the extent same are in the possession and control of Seller: (a) copies of any surveys, soil tests and environmental reports previously conducted on the Property; (b) copies of leases associated with the Property, (c) copies of existing title work for the Property (the “Due Diligence Materials”). Seller makes no representations or warranties regarding the accuracy or completeness of the Due Diligence Materials. EDA acknowledges that the sale of the Property is “AS-IS”, “WHERE IS,” and “WITH ALL

FAULTS”, and that it is the obligation of EDA to conduct and complete its due diligence and investigations relating to the Property.

3. **EDA’s Investigations.** At any time following the Effective Date, Seller shall allow EDA and EDA’s agents access to the Property without charge, for the purpose of EDA’s investigation and testing of the Property, including surveying and testing of soil, groundwater, environmental site assessment, environmental investigation, and engineering investigation (“EDA’s Investigations”); provided, however, EDA shall not perform any invasive testing or commence a Phase II environmental review of the Property unless (a) Seller gives its prior written approval of EDA’s consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) EDA gives Seller reasonable prior notice of such testing. EDA shall pay all costs and expenses of the EDA’s Investigations and shall indemnify and hold Seller and the Property harmless from all costs and liabilities, including but not limited to mechanics’ liens, relating to activities on the Property related to EDA’s Investigations; however, EDA shall not be responsible for liens, liability, loss, expense or costs arising out of the discovery or presence of Hazardous Substances (as such term is defined in Section 9.1(G)) on the Property or otherwise arising out of Seller’s noncompliance with any Environmental Law (as such term is defined in Section 9.1(G)) or other law or regulation. Seller shall have the right to accompany EDA during any of EDA’s Investigations of the Property. If requested by Seller, EDA shall provide to Seller copies of all third-party, non-confidential written test results and reports conducted as part of EDA’s Investigations. EDA shall pay all of the costs and expenses associated with EDA’s Investigations, to cause to be released any lien on the Property arising as a result of EDA’s Investigations and to repair and restore, at EDA’s expense, any damage to the Property caused by EDA’s Investigations. The indemnification obligations set forth herein shall survive termination or cancellation of this Agreement.

4. **Insurance; Risk of Loss.** Seller assumes all risk of destruction, loss or damage to the Property prior to the Closing Date. If, prior to the Closing Date, all or any portion of the Property or access thereto is condemned, taken by eminent domain, or damaged by cause of any nature, Seller shall immediately give EDA notice of such condemnation, taking or damage. After receipt of notice of such condemnation, taking or damage (from Seller or otherwise), EDA shall have the option (to be exercised in writing within thirty (30) days of receipt of such notice) either (a) to require Seller to (i) convey the Property at Closing (as defined in Section 6) to EDA in its damaged condition, upon and subject to all of the other terms and conditions of this Agreement, without reduction of the Purchase Price, (ii) assign to EDA at Closing all of Seller’s right, title and interest in and to any claims Seller may have to insurance proceeds, condemnation awards and/or any causes of action with respect to such condemnation or taking of or damage to the Property or access thereto, and (iii) pay to EDA at Closing by certified or official bank check all payments made prior to the Closing Date under such insurance policies or by such condemning authorities, or (b) to terminate this Agreement by giving notice of such termination to Seller, whereupon this Agreement shall be terminated and thereafter neither party shall have any further obligations to the other, except for such obligations and liabilities that specifically survive

termination of this Agreement. If the right to terminate this Agreement is not exercised in writing within such thirty (30) day period, such right shall be deemed to have been waived.

5. **Contingencies.**

5.1. **EDA's Contingencies.**

A. Unless waived by EDA in writing or waived by the passage of time in the manner set forth herein, EDA's obligation to proceed to Closing shall be subject to (a) performance by Seller of its obligations hereunder, (b) the continued accuracy of Seller's representations and warranties provided in Section 9.1, and (c) EDA's satisfaction, in EDA's sole discretion, as to the contingencies described in this Section 5.1 within the time periods set forth below:

- (1) On or before the Contingency Date (as defined in Section 5.1(C)), EDA shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by EDA's Investigations, and (b) all other inspections and due diligence regarding the Property, including any Due Diligence Materials. If EDA has not terminated this Agreement on or before the Contingency Date, the contingency set forth in this paragraph (1) shall be deemed waived.
- (2) On or before the Contingency Date, EDA may obtain an ALTA survey for the Property certified to EDA and Title. If EDA has not terminated this Agreement on or before the Contingency Date, the contingency set forth in this paragraph (2) shall be deemed waived.
- (3) On or before the Contingency Date, EDA shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to EDA in EDA's sole discretion, not disclosing any encumbrance not acceptable to EDA in EDA's sole discretion (the "Approved Commitment"). If EDA has not terminated this Agreement on or before the Contingency Date, the contingency set forth in this paragraph (3) shall be deemed waived.
- (4) On or before the Closing Date, Seller shall have obtained releases of the Property from any and all mortgages or other monetary liens affecting any of the Property.
- (5) On or before the Closing Date, EDA and Seller shall modify, amend or assign the Tax Increment Financing Agreement, entered into on January 31, 2006 by and between the parties, which was amended

by the First Amendment on August 4, 2008 and the Tax Increment Financing Revenue Note issued on August 1, 2016.

- (6) On or before the Closing Date, Seller shall have obtained all valid, necessary and sufficient waivers, assignments, subordinations, non-disturbance, attornments, approvals, authorizations, estoppel certificates and consents of each and every party whose waiver, subordination, non-disturbance, attornment, approval, authorization, estoppel certificate or consent shall be required to transfer the Property and consummate the transactions contemplated by this Agreement.
- (7) On or before the Closing Date, Seller shall execute an assignment and assumption of any surviving contracts, permits and licenses, warranties, and intangible property that EDA wishes to assume, conveying to EDA the surviving contracts, permits and licenses, warranties and intangible property, free and clear of all encumbrances, together with the consent of all parties having the right to consent to such assignment, if necessary.
- (8) On or before the Closing Date, Seller shall execute a Bring-Down Certificate certifying that all of the warranties and representations made by Seller in this Agreement remain true as of the date of closing.

The foregoing contingencies are for EDA's sole and exclusive benefit and one (1) or more may be waived in writing by EDA in its sole discretion, or by the passage of time as set forth hereinabove. Seller shall reasonably cooperate with EDA's efforts to satisfy such contingencies, at no out of pocket cost to Seller. EDA shall bear all cost and expense of satisfying EDA'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 EDA's option, by written notice from EDA to Seller. If EDA terminates this Agreement as a result of a failure of an EDA contingency prior to the applicable date, the Earnest Money shall be returned to the EDA and neither Seller nor the EDA shall be liable to the other for any further obligations under this Agreement (except for such obligations as survive termination of this Agreement). Such written notice must be given on or before the applicable date set forth herein above for such contingency, or EDA's right to terminate this Agreement pursuant to such contingency shall be waived. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations that survive termination of this Agreement.

- B. If EDA elects not to exercise any of the contingencies set out herein, such election may not be construed as limiting any representations or obligations of Seller set out in this Agreement.
- C. As used in this Agreement, the "Contingency Date" shall mean the first (1st) business day occurring forty-five (45) days following the Effective Date.

5.2. **Seller's Contingencies.** Seller'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. EDA 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. On or before the Closing Date, EDA and Seller shall modify, amend or assign the Tax Increment Financing Agreement, entered into on January 31, 2006 by and between the parties, which was amended by the First Amendment on August 4, 2008 and the Tax Increment Financing Revenue Note issued on August 1, 2016.
- C. All representations and warranties of EDA contained in this Agreement shall be accurate as of the Closing Date.

Seller may in its sole discretion waive any of the contingencies set out in this Section. If any of the foregoing contingencies have not been satisfied on or before the dates set forth herein, then this Agreement may be terminated, at Seller's sole option, by written notice from Seller to EDA. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations that survive termination of this Agreement.

6. **Closing.** The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on or before December 31, 2019, unless extended by the parties in writing (the "Closing Date"). Seller agrees to deliver legal and actual possession of the Property to EDA on the Closing Date. Closing shall occur at Title unless otherwise agreed to by the parties.

6.1. **Seller's Closing Documents and Deliveries.** On the Closing Date, Seller shall execute and/or deliver, as applicable, to EDA the following:

- A. **Limited Warranty Deed.** A limited warranty deed conveying title to the Property to EDA, free and clear of all encumbrances, except the Permitted Encumbrances (as defined in Section 8.1) (the "Deed").
- B. **FIRPTA Affidavit.** An affidavit of Seller certifying that Seller is not a "foreign person", "foreign partnership", foreign trust", "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.
- C. **Seller's Affidavit.** A standard owner's affidavit (ALTA form) from Seller 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 (excluding the survey exception).

- D. **Settlement Statement.** A settlement statement with respect to this transaction.
- E. **“Bring-Down” Certificate.** A Bring-Down Certificate certifying that all of the warranties made by Seller in this Purchase Agreement remain true as of the date of closing.
- F. **General Deliveries.** All other documents reasonably determined by Title to be necessary to transfer the Property to EDA and to evidence that Seller (a) has satisfied all monetary indebtedness with respect thereto, (b) has obtained such termination statements or releases from such secured creditors as may be necessary to ensure that the Property is subject to no monetary liens, (c) has obtained all consents from third parties necessary to effect Seller’s performance of the terms of this Agreement, including, without limitation, the consents of all parties holding an interest in the Property, (d) has provided such other documents as are reasonably determined by Title to be necessary to issue policies of title insurance to EDA with respect to the Property with the so-called “standard exceptions” deleted (excluding the survey exception), and (e) has duly authorized the transactions contemplated hereby.

6.2. **EDA Closing Documents and Deliveries.** On the Closing Date, EDA shall execute and/or deliver, as applicable, to Seller the following:

- A. **Payment of Purchase Price.** The Purchase Price, in accordance with the terms of Section 1.2.
- B. **Settlement Statement.** A settlement statement with respect to this transaction.
- C. **General Deliveries.** All other documents reasonably determined by Title to be necessary to evidence that EDA has duly authorized the transactions contemplated hereby and evidence the authority of EDA to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by EDA pursuant to this Agreement, or may be required of EDA under applicable law, including any purchaser’s affidavits or revenue or tax certificates or statements.

7. **Prorations.** Seller and EDA agree to the following prorations and allocation of costs regarding this Agreement:

7.1. **Commitment and Closing Fee.** EDA will pay all costs of the title search and preparation of the Commitment (as defined in Section 8) with respect to the

Property. EDA will pay the cost of all premiums for any title insurance policy it desires with respect to the Property, and the costs of all endorsements. EDA and Seller shall each pay one half (1/2) of any reasonable closing fee or charge imposed by Title.

- 7.2. **Transfer Taxes.** Seller shall pay all state deed tax regarding the Deed.
 - 7.3. **Recording Costs.** Seller will pay the cost of recording all documents necessary to place record title to the Property in Seller. EDA will pay all recording costs with respect to the recording of the Deed.
 - 7.4. **Real Estate Taxes and Special Assessments.** General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between Seller and EDA on a daily basis as of 12:00 a.m. CT on the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and EDA being responsible for those allocable to the Closing Date and subsequent thereto. Except as set forth herein with regard to special assessments associated with EDA's development of the Property, Seller shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied or pending with respect to any of the Property as of the Closing Date. EDA shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date. Notwithstanding anything to the contrary set forth herein, in the event that there are special assessments levied against the Property after the Effective Date, which special assessment relate to EDA's development of the Property, such special assessments shall be assumed by EDA at Closing.
 - 7.5. **Utilities.** All utility expenses, including water, fuel, gas, electricity, sewer and other services furnished to or provided for the Property, if any, shall be prorated between Seller and EDA on a daily basis as of the Closing Date, with Seller paying those allocable to the period prior to the Closing Date and EDA being responsible for those allocable to the Closing Date and subsequent thereto.
 - 7.6. **Environmental Review.** EDA shall pay all costs and expenses related to the Phase I and/or the Phase II Environmental Review of the Property, if any.
 - 7.7. **Attorneys' Fees.** Seller and EDA shall each pay its own attorneys' fees incurred in connection with this transaction.
 - 7.8. **Survival.** The obligations set forth in this Section 7 survive the Closing.
8. **Title Examination.** (i) Within fifteen (15) days following the Effective Date, EDA shall, at EDA's expense, order a commitment for an owner's title insurance policy issued by Title for the Property, and copies of all encumbrances described in the commitment (the "Commitment").

- 8.1. **EDA's Objections.** Within twenty (20) days after EDA's receipt of the Commitment, EDA may make written objections ("**Objections**") to the form or content of the Commitment ("**Title Objection Period**"). The Objections may include without limitation, any easements, restrictions or other matters. In the event the Commitment discloses, or EDA becomes aware of, any lien on the Property created by Seller that can be discharged or satisfied by the payment of money ("**Monetary Title Matters**"), Seller shall discharge or satisfy such Monetary Title Matters on or prior to the Closing Date. If Seller fails to discharge or satisfy any such Monetary Title Matters as aforesaid, EDA, at its sole option, shall have the right to discharge and satisfy (or cause the Escrow Agent to discharge and satisfy) the same from the proceeds of the Purchase Price to be paid to Seller at closing. Any matters reflected on the Commitment which are not objected to by EDA within the Title Objection Period or waived by EDA in accordance with Section 8.2B shall be deemed to be permitted encumbrances ("**Permitted Encumbrances**"). Notwithstanding the foregoing, the following items shall be deemed Permitted Encumbrances: (a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record, if any; (b) Reservation of minerals or mineral rights by the State of Minnesota, if any; (c) Applicable laws, ordinances, and regulations. EDA shall have the renewed right to object to the Commitment as the same may be revised from time to time, as to new items contained in any revised Commitment.
- 8.2. **Seller's Cure.** Seller shall be allowed ten (10) days after the receipt of EDA'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 Seller elects not to cure such Objections, the sole recourse of EDA shall be to do one of the following:
- A. Terminate this Agreement by written notice to Seller, to be issued within ten (10) days after the expiration of Seller's cure period; or
 - B. Waive the Objections within ten (10) days after the expiration of the Seller's cure period and proceed to Closing, in which event the Objections shall be deemed Permitted Encumbrances.

If EDA so terminates this Agreement under Section 8.2(A), the Earnest Money shall be returned to the EDA and neither Seller nor the EDA shall be liable to the other for any further obligations under this Agreement (except for such obligations as specifically survive termination of this Agreement). If EDA fails to terminate this Agreement under this Section 8.2(A) in the time set forth therein, EDA shall be deemed to have elected to proceed under Section 8.2(B) and waive such Objections, in which the Objections shall be considered Permitted Encumbrances.

9. **Warranties and Representations.**

- 9.1. **By Seller.** Seller warrants and represents the following to EDA to be true as of the Effective Date, and acknowledges that EDA has relied on such representations and warranties in agreeing to enter into this Agreement:

- A. This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms. Seller has been duly formed under the laws of the State of Minnesota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto have each been duly authorized by all necessary action on the part of Seller and such execution, delivery and performance does and will not conflict with or result in a violation of Seller's organizational agreement or any judgment or order.
- B. The execution, delivery and performance by Seller of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Seller, or (b) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Seller is a party or by which it or any of its properties may be bound.
- C. To Seller's knowledge, except as contemplated herein, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any other entity, is required on the part of Seller to authorize, or is required in connection with, the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, this Agreement.
- D. To Seller's knowledge, there are no actions, suits or proceedings pending or threatened against or affecting Seller or the Property, before any court or arbitrator, or any governmental department, board, agency or other instrumentality which in any of the foregoing (a) challenges the legality, validity or enforceability of this Agreement, or (b) if determined adversely to Seller, would have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.
- E. To Seller's knowledge, there are no wells or sewage treatment systems located on any portion of the Property. To Seller's knowledge, there has been no methamphetamine production on or about any portion of the Property. To Seller'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. Seller 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.
- G. To Seller’s knowledge, except as may be disclosed as part of the Due Diligence Materials, (i) no condition exists on the Property that may support a claim or cause of action under any Environmental Law (as defined below) and there are no Hazardous Substances (as defined below) on the Property, (ii) there has been no release, spill, leak or other contamination or otherwise onto the Property, and (iii) there are no restrictions, clean ups or remediation plans regarding the Property. To Seller’s knowledge, except as may be disclosed as part of the Due Diligence Materials, there is no buried waste or debris on any portion of the Property. “Environmental Law” shall mean (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance, (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401, et seq., (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq., (g) any law or regulation governing aboveground or underground storage tanks, (h) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation, including, without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01, et seq., (i) all rules or regulations promulgated under any of the foregoing, and (j) any amendments of the foregoing. “Hazardous Substances” shall mean polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, and shall include, without limitation, substances defined as “hazardous substances,” “toxic substances,” “hazardous waste,” “pollutants or contaminants” or similar substances under any Environmental Law.
- H. There are no unrecorded contracts of any nature or type relating to, affecting or serving the Property, to which the Seller is a party.
- I. There will be no indebtedness attributable to the Property which will remain unpaid after the Closing Date.

The representations, warranties and other provisions of this Section 9.1 shall survive Closing for a period of one (1) year from the Closing Date; provided, however that Seller shall have no liability with respect to a breach of the representations and warranties set forth in this Agreement if EDA

has actual knowledge of Seller's breach thereof prior to Closing and EDA consummates the acquisition of the Property as provided herein.

EDA acknowledges and agrees that, except as expressly specified in this Section 9 of this Agreement, Seller has not made, and Seller hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or rising by operation of law, with respect to the Property, including but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition, utilities, valuation, governmental approvals, the compliance of the Property with governmental laws, the truth, accuracy or completeness of any information provided by or on behalf of Seller to EDA, or any other matter or item regarding the Property. EDA agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by Seller on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the deed.

- 9.2. **By EDA.** EDA warrants and represents the following to Seller, and acknowledges that Seller has relied on such representations and warranties in agreeing to enter into this Agreement:
- A. EDA has all requisite authority to enter into this Agreement and to perform all of its obligations under this Agreement.
 - B. The execution, delivery and performance by EDA of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to EDA, (b) violate or contravene any provision of the articles of incorporation or bylaws of EDA, or (c) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which EDA is a party or by which it or any of its properties may be bound.

The representations, warranties and other provisions of this Section 9.2 shall survive Closing; provided, however, EDA shall have no liability with respect to any breach of a particular representation or warranty if Seller shall fail to notify EDA in writing of such breach within one (1) year after the Closing Date.

10. **Additional Obligations of Seller.**

- 10.1. **Condition of Property at Closing.** At Closing, Seller shall deliver to EDA exclusive vacant possession of the Property.
- 10.2. **Further Assurances.** From and after the Closing Date, Seller agrees to execute, acknowledge and deliver to EDA such other documents or instruments of transfer or conveyance as may be reasonably required to carry out its obligations pursuant to this Agreement.

and the same agreement, and any of the parties hereto may execute such agreement by signing any such counterpart. Facsimile or “PDF” signatures on this Agreement shall be treated as originals until the actual original signatures are obtained.

20. **Represented by Counsel.** Each party has been represented and advised by counsel in the transaction contemplated hereby.
21. **Time of the Essence.** Time is of the essence of this Agreement.

[remainder of page intentionally blank]

IN AGREEMENT, the parties hereto have hereunto set their hands as of the date hereinbefore first written.

**EDA:
WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY**

By: _____
David J. Napier
President

By: _____
James Hartshorn
Executive Director

SELLER:
WENTWORTH PLACE LLC

By: _____
George E. Sherman
President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property located in the County of Dakota, State of Minnesota, legally described as follows:

Lot 1, Block 1, WENTWORTH PLACE, according to the recorded plat thereof, Dakota County, Minnesota, except the following described parcel of property:

Beginning at the most easterly southeast corner of said Lot 1; thence North 89 degrees 53 minutes 03 seconds West on an assumed bearing along the southerly line of said Lot 1, a distance of 64.75 feet; thence continuing along said southerly line South 00 degrees 19 minutes 57 seconds East 66.94 feet; thence continuing along said southerly line North 89 degrees 52 minutes 07 seconds West 106.13 feet; thence continuing along said southerly line North 00 degrees 22 minutes 07 seconds West 66.91 feet; thence South 89 degrees 53 minutes 03 seconds East 24.50 feet; thence North 00 degrees 19 minutes 57 seconds West 184.71 feet; thence South 89 degrees 54 minutes 06 seconds East 32.13 feet; thence South 00 degrees 19 minutes 57 seconds East 35.20 feet; thence North 89 degrees 40 minutes 03 seconds East 14.29 feet to the most easterly line of said Lot 1, thence South 00 degrees 19 minutes 57 seconds East along said easterly line 150.42 feet to the point of beginning.

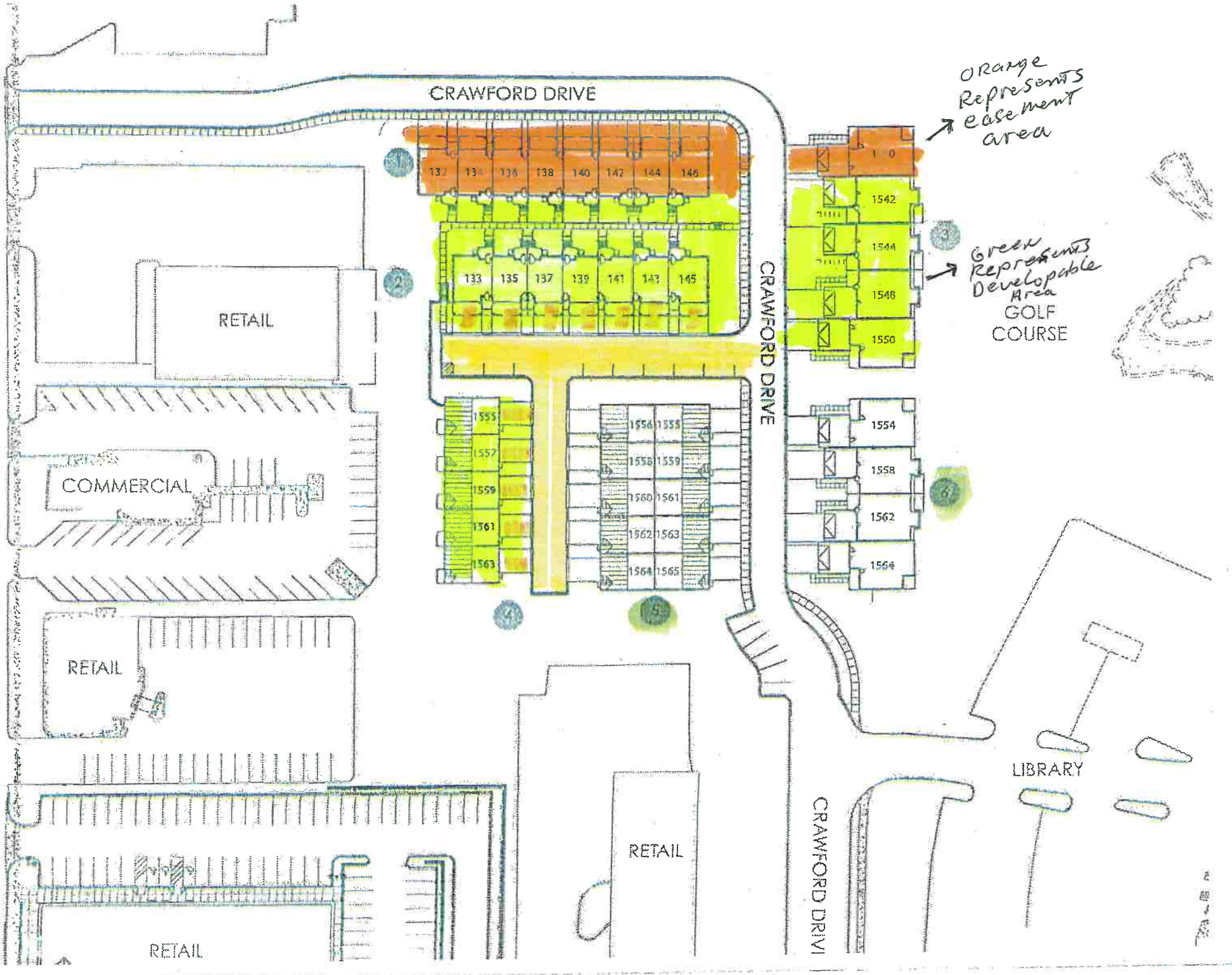
And

Except that part of Lot 1, Block I, WENTWORTH PLACE, according to the recorded plat thereof, Dakota County, Minnesota described as follows:

Commencing at the most easterly southeast corner of said Lot 1; thence North 89 degrees 53 minutes 03 seconds West on an assumed bearing along the southerly line of said Lot 1, a distance of 64.75 feet; thence continuing along said southerly line South 00 degrees 19 minutes 57 seconds East 66.94 feet; thence continuing along said southerly line North 89 degrees 52 minutes 00 seconds West 106.13 feet; thence continuing along said southerly line North 00 degrees 22 minutes 07 seconds West 66.91 feet; to the point of beginning; thence continuing along said southerly line North 89 degrees 53 minutes 03 seconds West 110.66 feet; thence North 00 degrees 19 minutes 57 seconds west 184.67 feet; thence South 89 degrees 54 minutes 06 seconds East 135.16 feet; thence South 00 degrees 19 minutes 57 seconds East 184.71 feet; thence North 89 degrees 53 minutes 03 seconds West 24.50 feet to the point of beginning, Dakota County Minnesota.

PID: 42-83680-01-011
Abstract Property

[Title Commitment legal description to govern]



Orange Represents easement area

Green Represents Developable Area GOLF COURSE

RETAIL

COMMERCIAL

RETAIL

RETAIL

LIBRARY

CRAWFORD DRIVE

CRAWFORD DRIVE

CRAWFORD DRIVE