



ECONOMIC DEVELOPMENT AUTHORITY MEETING

MUNICIPAL CENTER COUNCIL CHAMBERS

1616 HUMBOLDT AVENUE, WEST ST. PAUL, MN 55118

IMMEDIATELY FOLLOWING THE JULY 11, 2022 CITY COUNCIL MEETING

Commissioner Vitelli will be participating remotely from the Grand Rapids, Minnesota Public Library at 140 NE 2nd St., Grand Rapids, MN 55744. This space is open to the public.

1. Call To Order
2. Roll Call
3. Adopt Agenda
4. Commissioner Comments
5. EDA Consent Agenda Items
6. Public Hearing
 - 6.A. Thompson Oaks Redevelopment Phase II - Purchase Agreement For The Sale Of Real Property And Conveyance Of Property
 - Documents:
 - [ACTION ITEM - M AND I PURCHASE AGREEMENT.PDF](#)
 - [EDA RESOLUTION APPROVING SALE TO MI.PDF](#)
 - [EDA RESOLUTION APPROVING CONVEYANCE TO CITY.PDF](#)
 - [MI HOMES-W ST PAUL EDA PURCHASE AGREEMENT.PDF](#)
7. New Business
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

Subject: Resolutions Approving the Purchase Agreement for the sale of Real Property and Conveyance of Real Property to the City of West St. Paul

Meeting Date: Monday, July 11th, 2022	
Submitted/Presented by/Department: Ben Boike - Community Development	
Action Type	
<input type="checkbox"/> Consent Item	<input type="checkbox"/> Discussion/Direction
<input checked="" type="checkbox"/> Public Hearing	<input type="checkbox"/> Informational Only
<input checked="" type="checkbox"/> Action/Motion	<input type="checkbox"/> Report
<input checked="" type="checkbox"/> Resolution	<input type="checkbox"/> Other: Closed Session
Action	
<p>City Staff requests that the EDA hold a public hearing and approve the attached resolutions approving the Purchase Agreement for the sale of land to M/I Homes at the former Thompson Oaks golf course property and conveyance of a portion of that land, Outlot A, to the City of West St. Paul.</p> <p>The City has been working with Oppidan and M/I Homes over the past 6 months to finalize development plans. The three parties, Oppidan, M/I Homes, and the City agreed that the Purchase Agreement for the sale of the land and the Development Agreement should be between the City and M/I Homes rather than through Oppidan. As a result, the existing Development Agreement with Oppidan was terminated by both the City Council and EDA last meeting.</p> <p>Similar to the previous Purchase/Development Agreement, the proposed sale price for the land is \$1.16M (\$20,000 per lot/58 lots) with the Developer being responsible for financing and managing the soil remediation project. Under the previous terms, should the soil remediation work come in between \$1.16M and \$1.8M, the City would be responsible for paying the difference to the Developer through cash or tax abatement. Conversely, should the soil remediation work come in lower than the sale price of \$1.16M, the City would receive the difference in cash from the Developer. If the soil work comes in at \$1.16M, the property would be sold for \$1.</p> <p>The Developer received bids for the soil work two weeks ago with the low bid coming in at \$1.27M. The bid includes demo of the existing golf course club house, removal of the parking lot, clearing of the site, erosion control, and the soil remediation. The soil remediation portion of the quote came in at \$950,000, however, it's important to note, that should the City have opted to finance and complete the soil remediation work, the additional cost to demo the clubhouse, remove the parking lot, clear the site, etc. would have been required. So, the total cost to complete the soil remediation is higher than \$950,000.</p>	

Subject: Resolutions Approving the Purchase Agreement for the sale of Real Property and Conveyance of Real Property to the City of West St. Paul

In addition, as discussed with the zoning application review, Dakota County is requiring improvements to Oakdale Avenue based on the requested access for the proposed development. Said improvements include the installation of turn lanes on Oakdale Avenue (requiring the road to be widened) and sidewalk improvements within the Oakdale right-of-way. The Developer’s portion of this cost is \$190,000 (County is paying 50%). Finally, the Developer is also incurring \$150,000 in soft costs for the soil remediation work.

As a result of these additional costs, negotiations between the Developer and the City centered around accounting for these additional project costs: the demo of the existing club house and parking lot, clearing of the site, Oakdale improvements required by the County, and soft costs related to the soil remediation work. The proposed Purchase Agreement is based on the City essentially paying \$1.16M for the soil remediation work, which includes cost sharing the additional site work, Oakdale improvements, and soft costs. The end result is that no additional cash or tax abatement needed from the City. Essentially, the EDA will be selling the property for \$1 and closing costs.

In addition to requesting approval of the Purchase Agreement, staff is also requesting to convey Outlot A from the EDA to the City, which is the portion of the EDA owned property being utilized for the Dakota County/City reclamation project.

Should the City Council approve the zoning applications and the Development Agreement, and the EDA approve the Purchase Agreement, M/I Homes is looking to close on the property within the next month, start the soil work with the intent of building model homes this fall.

Attachments

Resolution
Purchase Agreement

Previous Relevant Actions

N/A

Alternatives

N/A

Financial

Budgeted: Yes

No Financial Impact

Fund:

Department:

Account:

Amount:

**WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 22-____

**RESOLUTION APPROVING SALE OF CERTAIN PROPERTY
TO M/I HOMES OF MINNEAPOLIS/ST. PAUL, LLC FOR REDEVELOPMENT
PURPOSES AND RELATED PURCHASE AGREEMENT**

WHEREAS, the West St. Paul Economic Development Authority (“EDA”) desires to sell a portion of the former Thompson Oaks Golf Course property to M/I Homes of Minneapolis/St. Paul (“Developer”) for redevelopment purposes. The portion of the parcels proposed to be sold are identified as PINS: 42-83740-00-010 and 42-02000-11-010, and to be platted as Lots 1 – 59, Block 1, and Outlot B, Thompson Square (the “Property”); and

WHEREAS, the Developer desires to purchase the Property pursuant to a Purchase Agreement by and between the EDA and Developer (“Purchase Agreement”); and

WHEREAS, the Purchase Agreement describes and articulates the sale of the Property and the Developer agrees to accept these terms of the sale; and

WHEREAS, on July 11, 2022, the EDA held a public hearing on the sale of the Property to the Developer 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:

1. The sale of the Property to the Developer 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.
2. The EDA approves the Purchase Agreement, subject to minor modification as approved by the City Attorney, and the appropriate officials are authorized to take such action as to effectuate its execution and implementation.

Passed and duly adopted by the Economic Development Authority of the City of West St. Paul, Minnesota, this 11th day of July, 2022.

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

David J. Napier, President

ATTEST:

Nicole Tillander, Secretary/City Clerk

**WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 22-_____

**RESOLUTION APPROVING
CONVEYANCE OF CERTAIN PROPERTY TO THE
CITY OF WEST ST. PAUL FOR PONDING PURPOSES**

WHEREAS, the West St. Paul Economic Development Authority (“EDA”) desires to convey a portion of the former Thompson Oaks Golf Course property to the City of West St. Paul (“City”) for ponding purposes. The portion of the parcels proposed to be conveyed are identified as PINS: 42-83740-00-010 and 42-02000-11-010, and to be platted as Outlot A, Thompson Square (“Property”); and

WHEREAS, on July 11, 2022, the EDA held a public hearing on the conveyance of the Property to the City 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 that the conveyance of the Property to the City 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 conveyance.

Passed and duly adopted by the Economic Development Authority of the City of West St. Paul, Minnesota, this 11th day of July, 2022.

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

David J. Napier, President

ATTEST:

Nicole Tillander, Secretary/City Clerk

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “Agreement”) is entered into as of this _____ day of _____, 2022 (the “Effective Date”), by and between the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic (“EDA”), and M/I Homes of Minneapolis/St. Paul, LLC, a Delaware limited liability company (“Buyer”).

RECITALS

Recital No. 1. 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”).

Recital No. 2. The EDA is the owner of certain vacant real property located in West St. Paul, Dakota County, Minnesota, legally described on Exhibit A (the “Property”), attached hereto and incorporated herein by reference.

Recital No. 3. Buyer desires to purchase the Property from the EDA.

Recital No. 4. The EDA will sell the Property to Buyer on the terms and conditions of this Agreement.

Recital No. 5. The EDA believes that the sale of the Property pursuant to and in general fulfillment of this Agreement is in the vital and best interests of the City, will promote the health, safety, morals, and welfare of its residents, and will be in accord with the public purposes and provisions of the applicable State and local laws and requirements.

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

1. **Sale.**

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

1.2. **Purchase Price.** The purchase price to be paid by Buyer to EDA for the Property shall be One Dollar and no/100 (\$1.00) (the “Purchase Price”), payable on the Closing Date (as defined in Section 6), subject to those adjustments, prorations, and credits described in this Agreement, in cash or certified funds or by wire transfer pursuant to instructions from DCA Title, 7373 - 147th Street West, Suite 161, Apple Valley, MN 55124 (“Title”).

2. **Available Surveys, Tests, and Reports.** Within ten (10) days following the Effective Date, EDA shall cause to be delivered to Buyer (a) copies of any surveys, soil tests, environmental reports, and any other studies and/or site analyses previously conducted on the Property and in the possession of EDA, and (b) copies of existing title work for the Property and

in the possession of EDA (the “Due Diligence Materials”). EDA makes no representations or warranties regarding the accuracy of the Due Diligence Materials. If Buyer so requests, the EDA shall request the preparers of any such surveys, soil tests, environmental reports, and any other studies and/or site analyses to re-issue or re-certify the same for the direct benefit of Buyer, at Buyer’s expense except as otherwise provided in this Agreement, so that Buyer may rely on such site analyses or surveys as if prepared for Buyer in the first instance, but the EDA makes no representation as to whether any such reissuance or recertification will be available.

3. **Buyer’s Investigations.** For a period up to the Closing Date, EDA shall allow Buyer and Buyer’s agents access to the Property without charge and at all times for the purpose of Buyer’s investigation and testing of the Property, including surveying and testing of soil and groundwater (“Buyer’s Investigations”); provided, however, Buyer shall not perform any invasive testing unless (a) EDA gives its prior written approval of Buyer’s consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) Buyer gives EDA reasonable prior notice of such testing. EDA shall have the right to accompany Buyer during any of Buyer’s Investigations of the Property. Buyer shall provide to EDA copies of all third-party, non-confidential written test results and reports conducted as part of Buyer’s Investigations. Except as otherwise provided herein, Buyer agrees to pay all of the costs and expenses associated with Buyer’s Investigations, to cause to be released any lien on the Property arising as a result of Buyer’s Investigations and to repair and restore, at Buyer’s expense, any damage to the Property caused by Buyer’s Investigations. Buyer shall indemnify and hold EDA and the Property harmless from all costs and liabilities, including, but not limited to, reasonable attorneys’ fees, arising from Buyer’s Investigations. The indemnification obligations provided herein shall survive the termination or cancellation of this Agreement. If this Agreement is terminated based upon any environmental condition as herein provided, and EDA requests, Buyer shall give EDA copies of any and all environmental reports obtained by Buyer, if any.

4. **Insurance; Risk of Loss.** EDA 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, EDA shall immediately give Buyer written notice of such condemnation, taking or damage. After receipt of written notice of such condemnation, taking or damage (from EDA or otherwise), Buyer shall have the option (to be exercised in writing within sixty (60) days of receipt of such written notice from EDA) either (a) to require EDA to (i) convey the Property at Closing (as defined in Section 6) to Buyer 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 Buyer at Closing all of EDA’s right, title and interest in and to any claims EDA 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 Buyer 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 written notice of such termination to EDA, whereupon this Agreement shall be terminated and thereafter neither party shall have any further obligations or liabilities to the other, except for such obligations as survive termination of this Agreement. If the right to terminate this Agreement is not exercised in writing within such sixty (60) day period, such right shall be deemed to have been waived. EDA shall not designate counsel, appear in, or otherwise act with respect to the condemnation

proceedings without Buyer' prior written consent, which consent shall not be unreasonably withheld.

5. **Contingencies.**

5.1. **Buyer's Contingencies.**

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

B. On or before the Closing Date, Buyer shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by Buyer's Investigations, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property and (b) all other inspections and due diligence regarding the Property, including any Due Diligence Materials. If Buyer has not terminated this Agreement on or before the Closing Date, the contingency set forth in this paragraph shall be deemed waived. Notwithstanding the forgoing, Buyer acknowledges that it is aware of the Soil Remediation Project that it must complete on the Property and Buyer agrees to purchase the Property with that understanding, acknowledgment and acceptance.

C. On or before the Closing Date, Buyer shall have determined the acceptability and zoning of the Property for its proposed use of residential for-sale townhomes and other uses related 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 Buyer. If Buyer has not terminated this Agreement on or before the Closing Date, the contingency set forth in this paragraph shall be deemed waived.

D. On or before the Closing Date, Buyer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to Buyer in Buyer's sole discretion, not disclosing any encumbrance not acceptable to Buyer in Buyer's sole discretion. If Buyer has not terminated this Agreement on or before the Closing Date, the contingency set forth in this paragraph shall be deemed waived.

E. On or before the Closing Date, EDA shall have obtained releases of the Property from any and all mortgages or other monetary liens affecting any of the Property.

F. On or before the Closing Date, Buyer shall have determined that it is satisfied with the books and records in EDA's possession, if any, including site plans, surveys, engineering or environmental reports associated with the Property.

G. On or before the Closing Date, Buyer shall have secured financing, if any is required by Buyer, that is satisfactory to Buyer in Buyer's sole discretion for the purpose of acquiring and constructing the Proposed Use, which may include entering into a Tax Abatement Agreement with the City of West St. Paul.

H. On or before the Closing Date, Buyer may obtain a Survey for the Property certified to Buyer and Title.

I. On or before the Closing Date, Buyer and City shall have entered into a Development Agreement for the public improvements required for the Proposed Use.

J. On or before the Closing Date, Buyer shall have obtained any necessary company approval of the transaction.

K. On or before the Closing Date, Buyer shall have approved the forms of all closing documents.

L. EDA shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by EDA prior to the Closing Date.

M. All representations and warranties of EDA contained in this Agreement shall be accurate as of the Closing Date.

The foregoing contingencies are for Buyer's sole and exclusive benefit and one (1) or more may be waived in writing by Buyer in its sole discretion. EDA shall reasonably cooperate with Buyer's efforts to satisfy such contingencies, at no out of pocket cost to EDA or assumption of any obligation or liability by Buyer except as otherwise provided herein. Buyer shall bear all cost and expense of satisfying Buyer'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 Buyer's option, by written notice from Buyer 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 as survive termination of this Agreement.

If Buyer 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.

5.2. **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. **Soil Remediation Project.** Within 30 days of the Effective Date, Buyer and EDA shall begin the Soil Remediation Project. For purposes of this Agreement, "Soil Remediation Project" means the environmental remediation and soil corrections on the Property, pursuant to plans approved and on file with the City.

B. **No Default.** There shall be no uncured default by Buyer of any of its obligations under this Agreement as of the Closing Date, unless waived by EDA.

C. On or before the Closing Date, Buyer and City shall have entered into a Development Agreement for the public improvements required for the Proposed Use.

D. Buyer shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by Buyer prior to the Closing Date.

E. All representations and warranties of Buyer contained in this Agreement shall be accurate as of the Closing Date.

F. There shall be no uncured default by Buyer of any of its obligations under this Agreement as of the Closing Date, not otherwise waived by EDA.

If any contingency contained in this Section 5.2 has not been satisfied on or before the date described herein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from the EDA to Buyer. If termination occurs all documents deposited by Buyer shall be immediately returned to Buyer, and all documents deposited by the EDA shall be immediately returned to the EDA and neither party will have any further rights or obligations with respect to this Agreement or the Property, except for such obligations that survive termination of this Agreement. All the contingencies in this Section 5.2 are specifically for the benefit of the EDA, and the EDA shall have the right to waive any contingency in this Section 5.2 by written notice to Buyer.

6. **Closing.** The Closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur the earlier of (a) 30 days after an approved and recordable final plat or (b) September 30, 2022 (the "Closing Date"). EDA agrees to deliver legal and actual possession of the Property to Buyer on the Closing Date, as the same may be extended. The Closing will occur at Title, unless otherwise agreed to by the parties.

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

A. **Warranty Deed.** A development property deed conveying title to the Property to Buyer, free and clear of all encumbrances, except the Permitted Encumbrances (the “Deed”). The 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 EDA may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the Deed.

B. **Bring Down Certificate.** EDA shall provide Buyer with a certificate dated as of the Closing Date, signed by an authorized officer of EDA, recertifying that the representations and warranties of the EDA contained in this Agreement are true and correct as of the Closing Date.

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

D. **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.

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

F. **Copies of Resolutions.** EDA shall provide Buyer with copies of the resolutions for the various EDA and/or City public meetings showing the EDA and/or various City commissions and/or councils have approved this transaction, Buyer’ CUP, Buyer’ site plan, zoning, and such other governmental approvals as may be required for Buyer’ Proposed Use.

G. **General Deliveries.** All other documents reasonably determined by Title to be necessary to transfer the Property to Buyer and to evidence that EDA (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 EDA’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 Buyer with respect to the Property with the so-called “standard exceptions” deleted, and (e) has duly authorized the transactions contemplated hereby.

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

A. **Payment of Purchase Price.** The Purchase Price, in accordance with the terms of Section 1.2.

B. **Buyer's Affidavit.** A standard owner's affidavit (ALTA form) from Buyer, if required by Title.

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

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

E. **Evidence of Authority.** Buyer shall provide EDA with copies of the resolutions showing Buyer has met with necessary requirements to acquire the Property in accordance with this Agreement together with such proceedings, instruments and documents as may be reasonably required by Title as a condition precedent to issuing the Title Policy in Buyer's name.

F. **Development Agreement.** A Development Agreement for the public improvements required for the Proposed Use.

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

7. **Prorations.** For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income therefrom and responsible for the expenses thereof, for the entire day upon which the Closing occurs. Except as specifically provided otherwise herein, items of income and expense for the period prior to the Closing Date will be for the account of the EDA and items of income and expense for the period on and after the Closing Date will be for the account of Buyer, all as determined by the accrual method of accounting. EDA and Buyer agree to the following prorations and allocation of costs regarding this Agreement:

7.1. **Title Evidence, Survey and Closing Fee.** EDA shall pay all costs of the Commitment with respect to the Property. Buyer will pay all costs of the Survey, if any, and all premiums for any title insurance policy it desires with respect to the Property. Buyer and EDA shall each pay one half (1/2) of any reasonable closing fee or charge imposed by Title.

7.2. **Transfer Taxes.** EDA shall pay all state deed tax regarding the Deed.

7.3. **Recording Costs.** EDA shall pay the cost of recording all documents necessary to place record title to the Property in the EDA including, but not limited to, costs of recording any documents necessary to cure any Objections, as hereinafter defined. Buyer shall pay all recording costs with respect to the recording of the Deed, Development Agreement and for the recording of any mortgage required by Buyer, if any, and any mortgage registration tax, if any.

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 EDA and Buyer 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 Buyer 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) certified, levied, pending, postponed or deferred, or constituting a lien against the Property with respect to any of the Property as of the Closing Date. Buyer 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 Buyer's development of the Property.

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 EDA and Buyer on a daily basis as of the Closing Date, with EDA paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable to the Closing Date and subsequent thereto.

7.6. **Attorneys' Fees.** EDA and Buyer shall each pay its own attorneys' fees incurred in connection with this transaction, except as otherwise specifically set forth in this Agreement.

7.7. **Survival.** The obligations set forth in this Section 7 survive the Closing.

8. **Title Examination.** (i) Within a reasonable period following the Effective Date, EDA shall, at EDA's expense, order a current and updated title commitment for an owner's title insurance policy (ALTA Form 2006) issued by Title for the Property, and copies of all encumbrances described in the commitment (the "Commitment"); and, if desired, (ii) by the Closing Date, Buyer may at its sole option obtain, at Buyer's expense, an ALTA-certified survey bearing the legal description of the Property, and showing the area, dimensions and location of the Property and the matters shown in the Commitment (the "Survey" and, together with the Commitment, the "Title Evidence").

8.1. **Buyer's Objections.** Within thirty (30) days after Buyer's receipt of the last of the Title Evidence, Buyer may make written objections ("Objections") to the form or content of the Title Evidence. The Objections may include, without limitation, any easements, restrictions or other matters which may interfere with the Proposed Use of the Property or matters which may be revealed by the Survey. Any matters reflected on the

Title Evidence which are not objected to by Buyer within such time period or waived by Buyer in accordance with Section 8.2(B) 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 which do not interfere with the Proposed Use, if any; (b) Reservation of minerals or mineral rights by the State of Minnesota, if any; (c) Utility and drainage easements created in the Plat of Thompson Square; and (d) Applicable laws, ordinances, and regulations. Buyer shall have the renewed right to object to the Title Evidence as the same may be revised or endorsed from time to time.

8.2. **EDA’s Cure.** EDA shall be allowed twenty (20) days after the receipt of Buyer’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, Buyer shall have the option to do any of the following:

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

If Buyer so terminates this Agreement, neither EDA nor Buyer shall be liable to the other for any further obligations under this Agreement (except for such obligations as survive termination of this Agreement).

9. **Warranties and Representations.**

9.1. **By EDA.** EDA warrants and represents the following to Buyer, and acknowledges that Buyer 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 EDA enforceable in accordance with its terms. EDA 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 EDA pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by EDA pursuant hereto have each been duly authorized by all necessary action on the part of EDA and such execution, delivery and performance does and will not conflict with or result in a violation of EDA’s organizational agreement or any judgment or order.

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,

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 EDA is a party or by which it or any of its properties may be bound.

C. To EDA'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 EDA 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 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 (a) challenges the legality, validity or enforceability of this Agreement, or (b) if determined adversely to EDA, would have a material adverse effect on the ability of EDA to perform its obligations under this Agreement.

E. EDA has not received written notice, and has no knowledge, of (a) any pending or contemplated annexation or condemnation proceedings, or purchase in lieu of the same, affecting or which may affect all or any part of the Property, (b) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property, (c) any proposed changes in any road patterns or grades which would adversely and materially affect access to the roads providing a means of ingress or egress to or from all or any part of the Property, or (d) any uncured violation of any legal requirement, restriction, condition, covenant or agreement affecting all or any part of the Property or the use, operation, maintenance or management of all or any part of the Property.

F. To EDA's knowledge, there are no wells, underground or above ground storage tanks of any size or type, 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.

G. 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.

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

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

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

As used in this Agreement, the term "to EDA's knowledge" shall mean and refer to only the current actual knowledge of the designated representative of EDA and shall not be construed to refer to the knowledge of any other officer, manager, director, agent, authorized person, employee or representative of EDA, or any affiliate of EDA, or to impose upon such designated representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such designated representative any individual personal liability. As used herein, the term "designated representative" shall refer to Nate Burkett, Executive Director. EDA represents and warrants that the foregoing individual is the representative of EDA most knowledgeable regarding the Property.

The representations, warranties and other provisions of this Section 9.1 shall survive Closing; provided, however, EDA shall have no liability with respect to any breach of a particular representation or warranty if Buyer 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 Buyer has actual knowledge of EDA's breach thereof prior to Closing and Buyer consummates the acquisition of the Property as provided herein.

Buyer acknowledges and agrees that, except as expressly specified in this Agreement and/or in any documents executed and delivered by the EDA at Closing, 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, or any other matter or item regarding the physical condition of the Property. Buyer agrees that except as expressly specified in this Agreement and/or in any documents executed and delivered by the EDA at Closing, Buyer shall 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. Buyer is an experienced purchaser of property such as the Property and Buyer 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 deed.

9.2. **By Buyer.** Buyer warrants and represents the following to EDA, and acknowledges that EDA has relied on such representations and warranties in agreeing to enter into this Agreement:

A. Buyer is a limited liability company, duly organized and in good standing under the laws of the state of Delaware and is not in violation of any provisions of its company documents or its operating agreement.

B. Buyer has all requisite authority to enter into this Agreement and to perform all of its obligations under this Agreement.

C. The execution, delivery and performance by Buyer of this Agreement will not (a) to Buyer's actual knowledge, 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 Buyer, (b) violate or contravene any provision of the articles of incorporation or bylaws of Buyer, or (c) to Buyer's actual knowledge, 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 Buyer 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, Buyer shall have no liability with respect to any breach of a particular representation or warranty if EDA shall fail to notify Buyer in writing of such breach within two (2) years after the Closing Date.

10. **Additional Obligations of EDA.**

10.1. **Licenses and Permits.** EDA shall transfer to Buyer all transferable rights, if any, in any permits or licenses held by EDA with respect to the Property.

10.2. **Condition of the Property at Closing.** On the Closing Date, the EDA shall deliver to Buyer exclusive vacant possession of the Property.

10.3. **Further Assurances.** From and after the Closing Date, EDA agrees to execute, acknowledge and deliver to Buyer such other documents or instruments of transfer or conveyance as may be reasonably required to carry out its obligations pursuant to this Agreement.

10.4. **Non-Assumption of Contracts or Other Obligations.** The parties understand and agree that Buyer is only acquiring certain of EDA's real property assets and that this Agreement and any related agreements shall not be construed to be in any manner whatsoever an assumption by Buyer of any agreements, indebtedness, obligations or liabilities of EDA which are owing with respect to the operation of the Property prior to the Closing Date.

10.5. **Mortgages.** Notwithstanding any other provision herein, on or before the Closing Date, EDA shall satisfy all mortgage, judgments and/or lien indebtedness with respect to all or any portion of the Property and shall obtain recordable releases of the Property from any and all such mortgages or other liens affecting all or any portion of the Property.

10.6. **Approvals.** Buyer may elect to seek certain approvals in order for Buyer to develop the Property for the Proposed Use, including rezoning the Property or receipt of a conditional use permit (the "Approvals"). EDA, at no out-of-pocket cost to EDA, or the assumption of any obligations or liabilities by EDA, will reasonably cooperate with Buyer's efforts to obtain the Approvals at or prior to Closing. EDA hereby grants Buyer the right to file and prosecute applications and petitions for the Approvals and any special use permits and variances desired by Buyer; provided, however, any special use permits or variances shall be contingent on the occurrence of the Closing and shall not be binding upon EDA or the Property unless and until the Closing occurs. EDA, at no out-of-pocket cost to EDA, or the assumption of any obligations or liabilities by EDA, agrees to cooperate with Buyer in the filing and prosecution of such applications and petitions, including the filing of the same in EDA's name, if required. Seller's obligations under this Section shall survive the Closing.

11. **Commissions.** It is acknowledged that there is not a broker for either party.

12. **Notice.** Any notice to be given by one party hereto shall be personally delivered (including messenger delivery), by email at the address set forth below, or be sent by registered or certified mail, or by a nationally recognized overnight courier which issues a receipt, in each case

postage prepaid, to the other party at the addresses in this Section (or to such other address as may be designated by notice given pursuant to this Section), and shall be deemed given upon personal delivery, three (3) days after the date postmarked, one (1) business day after delivery to such overnight courier, or immediately upon personal delivery or delivery by email. Attorneys for each party shall be authorized to give and receive notices for each such party.

If to EDA: West St. Paul Economic Development Authority
Attn: EDA Executive Director
1616 Humboldt Ave.
West St. Paul, MN 55118

with a copy to: Korine L. Land
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121

If to Buyer: M/I Homes of Minneapolis/St. Paul, LLC
Minneapolis Division
5354 Parkdale Drive, Suite 100
St. Louis Park, MN 55416

13. **Default; Remedies.** In addition to the rights granted to the parties pursuant to Minn. Stat. Sec. 559.21, if either EDA or Buyer fails to perform any of its obligations under this Agreement in accordance with its terms, and such failing party does not cure such failure within thirty (30) days after written notice thereof from the other party, then the other party shall have the right to terminate this Agreement. In the case of any default by Buyer, EDA's sole and exclusive remedies shall be termination of this Agreement as provided above. In the case of any default by EDA, Buyer's sole and exclusive remedies shall be (i) specifically enforce this Agreement, or (ii) terminate this Agreement. In no event shall Buyer be entitled to record a notice of Lis Pendens against the Property, unless Buyer is pursuing specific performance of this Agreement. In any action or proceeding to enforce this Agreement or any term hereof, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

14. **Cumulative Rights.** Except as limited in Section 13, no right or remedy conferred or reserved to EDA or Buyer is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative in and in addition to every other right or remedy existing at law, in equity or by statute, now or hereafter.

15. **Assignment.** Buyer may freely assign its rights and obligations under this Agreement to a single-purpose entity created by Buyer for the purpose of owning and developing the Property, without the consent of the EDA, provided and on the condition that Buyer shall provide the EDA written notice of the assignment and the identity of the assignee prior to the Closing Date and such assignee shall have assumed Buyer's obligations hereunder by a written instrument of assumption.

16. **Entire Agreement; Modification.** This written Agreement constitutes the

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

17. **Binding Effect; Survival.** This Agreement binds and benefits the parties and their respective successors and assigns. All representations and warranties, and indemnification obligations of the parties hereto shall survive the Closing.

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

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

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

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

22. **Represented by Counsel.** Each party has been represented and advised by counsel in the transaction contemplated hereby.

23. **Time of the Essence.** Time is of the essence of this Agreement.

[remainder of page intentionally blank]

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

**WEST ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY**

By _____
David J. Napier
Its President

By _____
Nathan Burkett
Its Executive Director

BUYER:
M/I HOMES OF MINNEAPOLIS/ST. PAUL, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

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

Lots 1-59, Block 1, Thompson Square
Outlot B, Thompson Square

Abstract Property

[Commitment legal description to govern]