

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“Agreement”) is made and entered into as of the date of signature of the last party to sign this Agreement (“Effective Date”), by and between HY-VEE, INC., an Iowa corporation (“Seller”), and the West St. Paul Economic Development Authority, a public body corporate and politic organized under the laws of Minnesota, or its assigns (“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 (the “Property”), attached hereto and incorporated herein by reference.
- 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, 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, 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 Five Million, One Two Hundred Thousand Dollars and No/100 (\$5,200,000.00) (the “Purchase Price”), payable on the Closing Date (as defined in Section 6) subject to those adjustments, prorations, and credits described in this Agreement, by wire transfer pursuant to instructions from Seller or Title. The Closing will occur at DCA Title Inc., 7373 147th Street West, Apple Valley, MN 55124 (“Title”), unless otherwise agreed to by the parties. As Earnest Money, EDA shall pay all taxes and maintenance expenses (including without limitation managing the removal of vagrants from the Property) on the Property from the Effective Date through the Closing Date, unless this Agreement is terminated prior to the Closing Date by EDA, in which event EDA must pay to Seller real estate taxes for the Property prorated for the number of days starting from the Effective Date through the date of termination, within fifteen days following receipt of an invoice therefor. This section shall survive any termination of this Agreement.

2. **Available Surveys, Tests, and Reports.** Within five (5) 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 (if any), (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.** For a period from the Effective Date to Closing Date, Seller shall allow EDA and EDA’s agents access to the Property without charge and at all times for the purpose of EDA’s investigation and testing of the Property, including surveying and testing of soil and groundwater (“EDA’s Investigations”); provided, however, EDA shall not perform any invasive testing unless (a) Seller gives its prior 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 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 9.1.8) on the Property or otherwise arising out of Seller’s noncompliance with any Environmental Law (as such term is defined in Section 9.1.8) 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. If this Agreement is terminated based upon any environmental condition as herein provided, and Seller requests, EDA shall give Seller copies of any and all environmental reports obtained by EDA, if any.
4. **Insurance; Risk of Loss.** Seller assumes all risk of destruction, loss, or damage to the Property prior to the Closing Date, except to the extent the same is caused by EDA, its employees, agents, or contractors. 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, or the Property is rendered untenable, 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 within thirty (30) days after Seller’s written 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 condemnation awards and/or any causes of action with respect to such condemnation or taking of 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 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 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 within such thirty (30) day period, such right shall be deemed to have been waived. Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without EDA's prior written consent, which consent shall not be unreasonably withheld.

5. **Contingencies.**

5.1. **EDA's Contingencies.**

5.1.1. Unless waived by EDA in writing, 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:

5.1.1.1. On or before the Closing Date, EDA shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by EDA's Investigations, physical inspection, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property, and all other inspections and due diligence regarding the Property, including any association rules or regulations applicable to any of the Property or any Due Diligence Materials. If EDA has not terminated this Agreement on or before the Closing Date, the contingency set forth in this paragraph shall be deemed waived.

5.1.1.2. On or before the Closing Date, EDA or its assigned buyer shall have determined the acceptability and zoning of the Property for its proposed use ("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 EDA.

5.1.1.3. On or before the Closing Date, EDA shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance reasonably satisfactory to EDA in EDA's sole, reasonable 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 Closing Date, the contingency set forth in this paragraph shall be deemed waived.

5.1.1.4. 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.

- 5.1.1.5. Intentionally deleted.
- 5.1.1.6. On or before the Closing Date, EDA or its assign shall have secured financing that is satisfactory to EDA or its assign in its' sole discretion for the purpose of acquiring and constructing the Proposed Use.
- 5.1.1.7. On or before the Closing Date, EDA may obtain a Survey for the Property certified to EDA and Title.
- 5.1.1.8. Intentionally deleted.
- 5.1.1.9. Intentionally deleted.
- 5.1.1.10. On or before the Closing Date, the termination or elimination of any and all option to purchase rights, Rights of First Refusal, or Rights of First Offer related to the Property to the satisfaction of EDA.
- 5.1.1.11. On the Closing Date, the EDA shall have an acceptable buyer for the Property and Seller agrees to the assignment of the Agreement to the buyer, pursuant to Section 15.
- 5.1.1.12. On or before the Closing Date, EDA shall have approved the forms of all closing documents.
- 5.1.1.13. Seller shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by Seller prior to the Closing Date.
- 5.1.1.14. All representations and warranties of Seller contained in this Agreement shall be accurate as of the Closing Date.

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 or assumption of any obligation or liability by EDA. 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 delivered to Seller on or before the applicable date. If EDA terminates this Agreement as a result of a failure of an EDA contingency prior to the applicable date, neither Seller nor 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.

5.1.2. 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, including, without limitation, any indemnity or representations with respect to environmental matters. Further, EDA shall not be deemed to have waived any of the foregoing contingencies on account of its execution of this Agreement.

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:

5.2.1. 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.

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

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

5.2.4. If EDA requests an assignment of the Agreement pursuant to Section 15, Seller agrees to the assignment of the Agreement to the buyer.

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 Seller to EDA. If termination occurs all documents deposited by EDA shall be immediately returned to EDA, and all documents deposited by Seller shall be immediately returned to Seller 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 Seller, and Seller shall have the right to waive any contingency in this Section 5.2 by written notice to EDA.

6. **Closing.** The Closing of the purchase and sale contemplated by this Agreement ("Closing") shall occur on or before December 15, 2022 ("Closing Date"). Seller agrees to deliver legal and actual possession of the Property to EDA on the Closing Date.

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

- 6.1.1. **Limited Warranty Deed.** A limited warranty deed, with state deed tax paid, conveying title to the Property to EDA, free and clear of all encumbrances, except the Permitted Encumbrances (the “Deed”).
- 6.1.2. **Intentionally Deleted.**
- 6.1.3. **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.
- 6.1.4. **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.
- 6.1.5. **Intentionally Deleted.**
- 6.1.6. **Settlement Statement.** A settlement statement with respect to this transaction.
- 6.1.7. **Intentionally Deleted.**
- 6.1.8. **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 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 liens or encumbrances, (c) has obtained all consents from third parties necessary to effect 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, 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:
 - 6.2.1. **Payment of Purchase Price.** The Purchase Price, in accordance with the terms of Section 1.2.
 - 6.2.2. **FIRPTA Affidavit.** An affidavit of EDA certifying that EDA is not a “foreign person”, “foreign partnership”, foreign trust”, “foreign estate” nor a “disregarded entity” as those terms are defined in Section 1445 of the

Internal Revenue Code of 1986, as amended.

- 6.2.3. **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.
- 6.2.4. **Intentionally Deleted.**
- 6.2.5. **Settlement Statement.** A settlement statement with respect to this transaction.
- 6.2.6. **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. **Title Evidence and Closing Fee.** Seller will pay all costs of the Title Commitment with respect to the Property. EDA will pay all costs of the Survey, if any, and all premiums for any title insurance policy it desires with respect to the Property. Seller and EDA 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 and conservation fee 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 including, but not limited to, costs of recording any documents necessary to cure any Objections, as hereinafter defined. 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 shall be paid by EDA as of the Effective Date. 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, pending, postponed or deferred 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.
- 7.7 **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.** Within a reasonable time following the Effective Date, not to exceed thirty (30) days, EDA shall obtain the following: (i) a 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 (Commitment); and, if it desires, (ii) an ALTA-certified survey bearing the legal description of the Property, and showing the area, dimensions and location of the Property ("Survey") (the Survey together with the Commitment shall be known as the "Title Evidence").
- 8.1. **EDA's Objections.** Within twenty (20) calendar days after EDA's receipt of the last of the Title Evidence, or twenty (20) days after the Effective Date, whichever occurs later, EDA 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 EDA's intended use of the Property or matters which may be revealed by the Survey. Any matters reflected on the Commitment which are not objected to by EDA within such time period shall be deemed to be permitted encumbrances ("Permitted Encumbrances"). EDA shall have the renewed right to object to the Commitment as the same may be revised or endorsed from time to time.
- 8.2. **Seller's Cure.** Seller shall be allowed twenty (20) calendar 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, EDA shall have the option to do any of the following:
- 8.2.1. Terminate this Agreement with respect to all of the Property.
- 8.2.2. Waive one (1) or more of its Objections and proceed to Closing.

If EDA so terminates this Agreement, neither Seller nor EDA 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 Seller.** Seller 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:

9.1.1. Seller is a corporation, duly organized and in good standing under the laws of the state of Iowa and is not in violation of any provisions of its company documents or its operating agreement.

9.1.2. 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 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 Seller and such execution, delivery and performance does and will not conflict with or result in a violation of any judgment or order.

9.1.3. 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.

9.1.4. 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.

9.1.5. 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.

9.1.6. 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.

- 9.1.7. 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.
- 9.1.8. To Seller's knowledge, except as may be disclosed as part of the Due Diligence Materials, (i) no condition exists on the Property caused by Seller 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 by Seller, 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.
- 9.1.9. To Seller's knowledge, there are no leases, tenancies, unrecorded agreements or other contracts of any nature or type relating to, affecting or serving the Property that will not be terminated as of the Closing Date.
- 9.1.10. 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 arising by operation of law, with respect to the Property, including but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition, utilities, valuation, governmental approvals, the compliance of the Property with governmental laws, the truth, accuracy or completeness of any information provided by or on behalf of 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:

9.2.1. 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.

9.2.1. 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. **Intentionally Deleted.**

10.2. **Condition of Property at Closing.** On the Closing Date, Seller shall deliver to EDA exclusive vacant possession of the Property, except for any vagrants that may, from time to time, be present on the Property without Seller's consent. Seller agrees that following the Closing, EDA may dispose of any trash or personal property remaining on the Property, in EDA's sole discretion, and that any such items shall, after Closing, be considered abandoned.

10.3. **Intentionally Deleted.**

10.4. **Non-Assumption of Contracts or Other Obligations.** The parties understand and agree that EDA is only acquiring certain of Seller'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 EDA of any agreements, indebtedness, obligations or liabilities of Seller which are owing with respect to the operation of the Property prior to the Closing Date.

10.5. **Mortgages.** On or before the Closing Date, Seller shall satisfy all mortgage 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. Notwithstanding the foregoing, Seller shall not be obligated to satisfy any liens that result from EDA's Investigations.

10.5 **Marketing.** At all times prior to the Closing Date, Seller shall not market the availability of the Property for sale or lease to the general public.

11. **Broker.** It is acknowledged that there is not a broker for Seller or EDA.

12. **Notice.** Any notice to be given by one party hereto shall be personally delivered (including messenger delivery) or be sent by registered or certified mail, or by a nationally recognized overnight courier which issues a receipt, in each case postage prepaid, to the other party at the addresses in this Section (or to such other address as may be designated by notice given pursuant to this Section), and shall be deemed given upon delivery, or refusal to accept

delivery.

If to EDA:

West St. Paul Economic Development Authority
Attn: Nate Burkett
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 Seller:

Hy-Vee, Inc.
5820 Westown Parkway
West Des Moines, Iowa 50266-8223
Attn: Legal Dept.

13. **Default; Remedies.** If either Seller or EDA fails to perform any of their respective 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 (provided that no notice or cure period shall be required for obligations to be performed at Closing), then the other party shall have the right to terminate this Agreement by giving the failing party written notice of such election. In the case of any default by EDA, Seller's sole and exclusive remedies shall be (i) specifically enforce this Agreement, or (ii) terminate this Agreement. In the case of any default by Seller, EDA's sole and exclusive remedies shall be (i) specifically enforce this Agreement, or (ii) terminate this Agreement. In no event shall EDA be entitled to record a Notice of Lis Pendens against the Property, unless EDA 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.** No right or remedy conferred or reserved to Seller or EDA 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.** EDA may not assign this Agreement without the prior written consent of the Seller; provided, however, any such permitted assignment must be effective only at Closing, and in the event of a permitted assignment, EDA shall remain primarily liable for the performance of any such assignee.
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 a writing executed by the parties.

17. **Binding Effect; Assignment; 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. Any legal action related to this Agreement shall be venued in Dakota County District Court.
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.
22. **Represented by Counsel.** Each party confirms that it has had the opportunity to be represented and advised by counsel in this transaction.
23. **Time of the Essence.** Time is of the essence of this Agreement.

[remainder of page intentionally left blank]

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

SELLER:
HY-VEE, INC.

By _____
Randall B. Edeker, Chief Executive Officer

By _____
Nathan Allen, Assistant Secretary

Signature Date: _____

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

By _____
David J. Napier
Its President

By _____
Nathan Burkett
Its Executive Director

Signature Date: _____

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

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

Lot 1, Block 1 and Outlot A, ANDLER AND OLSONS 2ND Addition

and

That part of Lot 2, Block 1, ANDLER AND OLSON'S ADDITION, according to the recorded plat thereof, Dakota County, Minnesota lying northerly of the following described line:

Commencing at the southwesterly corner of said Lot 1, thence North 00 degrees 22 minutes 08 seconds West on an assumed bearing along the west line of said Lot 1, a distance of 64.00 feet to the point of beginning of the line to be described; thence South 89 degrees 54 minutes 05 seconds East, a distance of 114.46 feet; thence South 89 degrees 54 minutes 10 seconds East, a distance of 67.89 feet; thence easterly 17.68 feet along a tangential curve, concave to the south, having a central angle of 03 degrees 07 minutes 04 seconds, a radius of 325.00 feet to the east line of said Lot 1 and there terminating.

Abstract Property

PIDs: 42-11561-01-010, 42-11561-00-010, 42-11560-01-021

[Title Commitment legal description to govern]