

PURCHASE AND DEVELOPMENT AGREEMENT
BETWEEN
CHASKA ECONOMIC DEVELOPMENT AUTHORITY,
CITY OF CHASKA, MINNESOTA
AND
J & L PROPERTIES WEST, LLC

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TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	2
Section 1.1. Definitions.....	2
ARTICLE II REPRESENTATIONS AND WARRANTIES.....	5
Section 2.1. Representations and Warranties of the EDA.....	5
Section 2.2. Representations and Warranties of the City.....	5
Section 2.3. Representations and Warranties of the Developer.....	5
ARTICLE III ACQUISITION AND CONVEYANCE OF SALE PROPERTY	7
Section 3.1. Purchase and Sale of Sale Property; Purchase Price; AS IS.....	7
Section 3.2. Payment of Purchase Price.....	7
Section 3.3. Contingencies to Closing on Development Property.....	7
Section 3.4. Closing.....	9
Section 3.5. Closing Costs.....	10
Section 3.6. Title.....	11
Section 3.7. Refuse and Hazardous Materials.....	11
Section 3.8. City’s Right to Inspect.....	12
Section 3.9. Relocation Benefits; Indemnification.....	12
Section 3.10. Developer Representations.....	12
ARTICLE IV UNDERTAKINGS BY DEVELOPER, EDA AND CITY.....	14
Section 4.1. Total Development Costs and Public Costs.....	14
Section 4.2. Reimbursement; Interfund Loan.....	14
Section 4.3. Agreement to Repay Interfund Loan.....	14
Section 4.4. Developer to Pay EDA’s and City Fees and Expenses.....	15
Section 4.5. Compliance with Environmental Requirements.....	15
Section 4.6. Construction Plans.....	16
Section 4.7. Commencement and Completion of Construction.....	16
Section 4.8. Certificate of Completion.....	17
Section 4.9. Additional Responsibilities of the Developer.....	17
Section 4.10. Encumbrance of the Development Property.....	18
Section 4.11. No Business Subsidy.....	18
Section 4.12. Other EDA Financial Assistance.....	18
Section 4.13. City Energy Retrofit Rebate.....	20
Section 4.14. Real Property Taxes.....	20
ARTICLE V EVENTS OF DEFAULT.....	22
Section 5.1. Events of Default Defined.....	22
Section 5.2. Remedies on Default.....	22
Section 5.3. No Remedy Exclusive.....	23
Section 5.4. No Implied Waiver.....	23
Section 5.5. Indemnification of EDA and the City.....	23
Section 5.6. Reimbursement of EDA and City Attorneys’ Fees.....	24

Section 5.7.	Developer Remedies on Default; Reimbursement of Developer Attorney Fees.....	24
ARTICLE VI ADDITIONAL PROVISIONS.....		25
Section 6.1.	Restrictions on Use.....	25
Section 6.2.	Reports.....	25
Section 6.3.	Limitations on Transfer and Assignment.....	25
Section 6.4.	Conflicts of Interest.....	26
Section 6.5.	Titles of Articles and Sections.....	26
Section 6.6.	Notices and Demands.....	26
Section 6.7.	No Additional Waiver Implied by One Waiver.....	27
Section 6.8.	Counterparts.....	27
Section 6.9.	Law Governing.....	27
Section 6.10.	Term; Termination.....	27
Section 6.11.	Provisions Surviving Rescission, Expiration or Termination.....	27
Section 6.12.	Superseding Effect.....	27
Section 6.13.	Relationship of Parties.....	27
Section 6.14.	Venue.....	28
Section 6.15.	Merger.....	28
EXHIBIT A LEGAL DESCRIPTION OF SALE PROPERTY.....		A-1
EXHIBIT B LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY.....		B-1
EXHIBIT C ACCESS AND PARKING EASEMENT		C-1
EXHIBIT D CERTIFICATE OF COMPLETION OF PROJECT.....		D-1
EXHIBIT E CITY ELECTRIC UTILITY REBATE APPLICATIONS.....		E-1
EXHIBIT F DESCRIPTION OF PROJECT.....		F-1
EXHIBIT G OPTION AGREEMENT.....		G-1

PURCHASE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the ___ day of _____, 2018, by and between the Chaska Economic Development Authority (the “EDA”), a body corporate and politic organized and existing under the laws of the State of Minnesota, the City of Chaska, Minnesota (the “City”), a municipal corporation under the Constitution and laws of the State of Minnesota, and J & L Properties West, LLC (the “Developer”), a Minnesota limited liability company (each a “Party” and, collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Developer proposes to acquire from the Seller (as defined herein) an existing _____ square foot building, currently leased by the Developer and operated as a grocery store, located at 710 N. Walnut Street in the City and legally described in **Exhibit B** hereto (the “Development Property”) and renovate the interior and exterior of the existing building, (collectively, the “Project”) and has requested that the City and the EDA provide certain financial assistance to assist the Developer with certain costs thereof in order to fill the gap between the Total Development Costs (as hereinafter defined) and the funds available to pay such costs;

WHEREAS, in addition to the Development Property, the Developer proposes to acquire from the Seller certain real estate that is adjacent to the Development Property consisting of an approximately 38,822 square foot portion of the parking lot adjacent to the Development Property, legally described in **Exhibit A** hereto (the “Sale Property”). Subject to and conditioned upon the Developer’s acquisition of the Development Property and the Sale Property, the City proposes to then acquire the Sale Property from the Developer for use as public parking and other redevelopment purposes in accordance with the terms hereof;

WHEREAS, the City and the Developer propose to construct improvements to the parking lot located on the Development Property and the Sale Property;

WHEREAS, the City believes that the improvements to the Development Property, the acquisition of the Sale Property by the City, the construction of improvements to the parking lot, and fulfillment of this Agreement are vital and are in the best interests of the City, will result in preservation and enhancement of the tax base, provide employment opportunities and are in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project will be undertaken and will be assisted; and

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

ARTICLE I
DEFINITIONS

Section .1. Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Access and Parking Easement means the Access and Parking Easement substantially in the form attached as **Exhibit C** to this Agreement providing an approximately 11,255 square foot access easement over the Development Property to access the Sale Property as well as cross easements for public parking and maintenance on the parking lot located on portions of the Development Property and on portions of the Sale Property;

Administrative Costs shall have the meaning set forth in Section 4.4;

Agreement means this Purchase and Development Agreement, as the same may be from time to time modified, amended or supplemented;

Affiliate means a corporation, partnership, joint venture, association, business trust or similar entity organized under the laws of the United States of America or a state thereof which is directly controlled by or under common control with the Developer or any other Affiliate. For purposes of this definition, control means the power to direct management and policies through the ownership of at least a majority of its voting securities, or the right to designate or elect at least a majority of the members of its governing body by contract or otherwise;

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

City means the City of Chaska, Minnesota and its authorized successors and assigns;

Closing Date or Closing means not later than March 1, 2018 or such other date as agreed to by the City and Developer, as provided herein, on which the Developer will convey title of the Sale Property to the City;

Completion Date means the date on which the Certificate of Completion with respect to the Project is executed by the EDA and the City pursuant to Section 4.8;

Construction Costs means the capital costs of the construction of the Project, including the costs of labor and materials; construction management and supervision expenses; insurance and payment or performance bond premiums; architectural and engineering fees and expenses; property taxes; usual and customary fees or costs payable to the EDA or the City, or any other public body with regulatory authority over construction of the Project (e.g. building permits and inspection fees); the developer fee; and all other costs chargeable to the capital account of the Project under generally accepted accounting principles;

Construction Documents shall mean the following documents, all of which shall be in form and substance acceptable to the Developer, the EDA and the City: (a) evidence satisfactory to EDA and the City showing that the Project conforms to applicable zoning, subdivision and

building code laws and ordinances, including a copy of the building permit for the Project; (b) a copy of the executed standard form of agreement between owner and architect for architectural services for the Project, if any, and (c) a copy of the executed general contractor's contract for the Project, if any;

Construction Plans means the plans, specifications, drawings and related documents for the construction of the Project which shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building inspector of the City;

County means Carver County, Minnesota;

Developer means J & L Properties West, LLC, and its authorized successors and assigns;

Development Property means the real property legally described in **Exhibit B** attached to this Agreement under the heading "Development Property";

EDA means the Chaska Economic Development Authority and its authorized successors and assigns;

Event of Default means any of the events described in Section 5.1 hereof;

Interfund Loan means the interfund loan of non-federal funds from a fund of the EDA to be determined which was used to finance the City's costs of acquiring the Sale Property and the Access and Parking Easement and constructing the improvements to the parking lot located on the Sale Property, in the aggregate amount of \$_____ with interest thereon at the rate of ____% per annum, all as set forth in a resolution to be adopted by the EDA;

Net Tax Capacity has the meaning provided in Minnesota Statutes, Section 273.13, subd. 21b, as it may be amended from time to time;

Option Agreement means the Option Agreement, between the EDA and the Developer, in the form attached as **Exhibit G**;

Organizational Documents shall mean the following which shall be in form and substance acceptable to EDA and the City: (a) Articles of Organization and Operating Agreement of the Developer, accompanied by a Certificate of Good Standing from the Minnesota Secretary of State; (b) An opinion of counsel for Developer stating that the Developer is a Minnesota corporation duly organized and existing under the laws of the State of Minnesota, that this Agreement, the Option Agreement, each of the Developer's Documents and each of the documents executed pursuant to Section 4.11 hereof have been duly executed and delivered and are the legal and binding obligations of Developer, enforceable in accordance with their respective terms, subject to matters of bankruptcy, stay, insolvency, reorganization or other laws relating to or affecting creditors' rights generally or by principles of equity;

Project means the acquisition and the renovation of the interior and exterior of the existing building located on the Development Property, including without limitation the Storefront Improvements and improvements to the parking lot for the Project as further described in **Exhibit F**;

Sale Property means the real property consisting of an approximately 38,822 square foot area adjacent to the Development Property in the City and legally described in **Exhibit A** attached to this Agreement;

Seller means C.H. and C. P. Klein, L.L.P., a Minnesota limited liability partnership as the current owner of the Development Property and the Sale Property;

State means the State of Minnesota;

Storefront Improvements means the façade improvements to the Project and renovation of the existing atrium at the main entrance on the side of the building facing the parking lot located on the Development Property as further described in **Exhibit F**;

Tax Abatement Act means Minnesota Statutes, Sections 469.1812 through 469.1815, as amended;

Tax Abatement Program means the actions by the City pursuant to the Tax Abatement Act and undertaken in support of the Project, including without limitation this Agreement and the resolution of the City authorizing the Tax Abatements and the findings of fact set forth therein;

Tax Abatements means the amount calculated in each tax-payable year as follows: the City tax rate for such tax-payable year multiplied by the Net Tax Capacity of the Development Property, then abated in accordance with the Tax Abatement Program. The Development Property will not contribute to fiscal disparities;

Termination Date means the earlier of (i) February 1, 2039; or (ii) any earlier date this Agreement is cancelled in accordance with the terms hereof; or (iii) any earlier date the Interfund Loan is paid or deemed paid in full in accordance with the terms thereof;

Title Company means **Title Mark, LLC**, or other title company designated by the City in connection with the acquisition of the Sale Property; and;

Total Development Costs means the Developer's costs of the Project as set forth in a sources and uses statement delivered to the EDA pursuant to Section 3.4(2)(h) hereof; and

Unavoidable Delays means delays, outside the control of the party claiming their occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, acts of war or terrorism, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City or the EDA) which directly result in delays, acts of the public enemy or acts of terrorism and discovery of unknown hazardous materials or other concealed site conditions or delays of contractors due to such discovery.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section .1. Representations and Warranties of the EDA. The EDA makes the following representations and warranties:

(1) The EDA is a body corporate and politic organized and existing under the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The EDA proposes, subject to the further provisions of this Agreement and all conditions required by law, to provide certain financial assistance to the Developer for certain costs incurred in connection with the Project as further provided in this Agreement.

(3) The EDA makes no representation or warranty, either express or implied, as to the Development Property or its condition, or that the Development Property shall be suitable for the Developer's purposes or needs.

(4) No member of the Board of Commissioners of the EDA, or officer of the EDA, has either a direct or indirect financial interest in this Agreement.

Section .2. Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a municipal corporation organized and existing under the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The City proposes, subject to the further provisions of this Agreement, to provide certain financial assistance to the Developer for certain costs incurred in connection with the Project as further provided in this Agreement.

(3) The City makes no representation or warranty, either express or implied, as to the Development Property or its condition, or that the Development Property shall be suitable for the Developer's purposes or needs.

(4) No Councilmember of the City, or officer of the City, benefits financially from this Agreement within the meaning of Minnesota Statutes, Sections 412.311 and 471.87.

Section .3. Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer is a Minnesota limited liability company duly and validly organized and existing in good standing under the laws of the State, and has power and authority to enter into this Agreement and to perform its obligations hereunder and is not in violation of any provision of the laws of the State.

(2) The Developer intends to acquire fee title to the Development Property and the Sale Property, and upon such acquisition will cause the Project to be constructed in accordance with the terms of this Agreement, the Tax Abatement Program, and all local, state and federal laws and regulations including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations.

(3) The Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(4) The Developer will obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met for the construction and operation of the Project.

(5) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(6) The Developer understands that the EDA and the City may subsidize or encourage the development of other developments in the City, including properties that compete with the Development Property and the Project, and that such subsidies may be more favorable than the terms of this Agreement, and that neither the EDA nor the City has represented that development of the Development Property will be favored over the development of other properties.

(7) Subject to Unavoidable Delays, the construction of the Project will commence on or before _____, 2018 and, barring Unavoidable Delays, the Project will be substantially completed by _____, 2018. Notwithstanding the foregoing, failure of the Developer to substantially complete the Project shall not be an Event of Default unless the Project is not substantially completed by _____, 2018.

ARTICLE III

ACQUISITION AND CONVEYANCE OF SALE PROPERTY

Section .1. Purchase and Sale of Sale Property; Purchase Price; AS IS. The Developer agrees to obtain fee title to the Development Property and the Sale Property. Subject to satisfaction of all conditions required by law to implement the terms of this Agreement, satisfaction of the conditions set forth in Section 3.3(1) and the other terms of this Agreement, the City agrees to acquire the Sale Property and the Access and Parking Easement from the Developer, and Developer agrees to sell the Sale Property to the City, for a purchase price in the amount of \$194,110 and Developer agrees to sell the Access and Parking Easement to the City, for a purchase price in the amount of \$11,255 for a total purchase price of \$205,365 (the "Purchase Price") and to pay the Purchase Price as provided in Section 3.2 hereof. Except as expressly stated herein, the Developer is selling the Sale Property and the Access and Parking Easement AS IS without further representations, warranties or covenants.

Section .2. Payment of Purchase Price. The Purchase Price for the Sale Property and the Access and Parking Easement shall be paid by the City to the Developer at Closing in cash or certified funds or by wire transfer. Real estate taxes payable in the year of Closing will be pro-rated between the City and the Developer to the Closing Date. The Developer shall pay all real estate taxes payable in previous years, the entire unpaid balance of special assessments, and all installments of special assessments levied and pending, including special assessments installments payable after the year of Closing. The Developer also agrees to pay all assessments related to service charges furnished to the Sale Property prior to the Closing Date (e.g., delinquent water or sewer bills, removed or diseased trees), including those charges levied, pending, or certified to taxes payable in the year of Closing.

Section .3. Contingencies to Closing on Development Property.

(1) City's Contingencies. The City's obligation to close on the purchase of the Sale Property and the Access and Parking Easement is expressly conditioned upon each of the following contingencies being satisfied or waived:

(a) obligations required to be performed by Developer under this Agreement as of the Closing Date, including but not limited to, delivery of all of the Developer's Documents described in Section 3.4(2) hereof and the satisfaction of the conditions set forth in this Section and Section 4.2 hereof; and

(b) the City shall have completed such environmental investigation (including soil conditions) with respect to the Sale Property as it deems prudent and shall be satisfied with the results thereof; and

(c) the City and the Developer shall have reached an agreement on a cost sharing arrangement for the construction of improvements to both the City's portion and the Developer's portion of the parking lot, any documents necessary in connection therewith shall have been executed, the Developer shall have deposited funds in escrow

with the City for the payment of the Developer's portion of the parking lot improvements, and the City shall have determined of whether construction of the parking lot improvements will be publicly bid or performed by City Public Works; and

(d) all permits, site plan and other approval necessary to permit construction of the proposed improvements to the parking lot located on the Sale Property and the Development Property have been completed; and

(e) the Developer shall have submitted the Construction Plans to the EDA and the City, and the EDA and the City shall have approved the Construction Plans pursuant to Section 4.5 hereof; and

(f) the EDA and the Developer shall have obtained final Plat approval, and obtained Seller consent to such Plat, or obtained the necessary subdivision approvals to create the Sale Property as a separate legal parcel; and

(g) the Developer shall have obtained all necessary financing for development of the Project; and

(h) the City shall have approved a building permit for the construction of the Project; and

(i) the City shall have determined that development contemplated by this Agreement is in conformance with the development objectives set forth in the resolution of the City authorizing the Tax Abatement Program; and

(j) the City shall have established a Tax Abatement Program and approved the Tax Abatements after a public hearing and satisfaction of all other conditions required by law to implement the terms of this Agreement;

(k) on the Closing Date, the Title Company shall be irrevocably committed to issue to City an owner's policy of title insurance with respect to the Sale Property in form and substance approved by City; and

(l) the Developer shall have delivered its Organizational Documents.

(2) Developer's Contingencies. The Developer's obligation to close on the sale of the Sale Property is expressly conditioned upon each of the following contingencies being satisfied or waived:

(a) the Developer shall have acquired fee title to the Development Property and the Sale Property; and

(b) the City and the Developer shall have reached an agreement on a cost sharing arrangement for the construction of improvements to both the City's portion and the Developer's portion of the parking lot, any documents necessary in connection therewith shall have been executed, the Developer shall have deposited funds in escrow with the City for the payment of the Developer's portion of the parking lot improvements,

and the City shall have determined of whether construction of the parking lot improvements will be publicly bid or performed by City Public Works; and

(c) the City shall have performed all of the obligations required to be performed by City under this Agreement as of the Closing Date; and

(d) the Developer shall have obtained financing acceptable to the Developer for development of the Project; and

(e) the Developer shall have received or the City shall have determined that the Developer will receive all necessary rezoning, variances, conditional use permits and other permits, site plan and other approvals needed to permit the construction of the Project including without limitation any needed variances.

(3) City's and Developer's Options. In the event that any of the foregoing contingencies fail to be satisfied on or before the Closing Date, the Developer or the City, as the case may be, may:

(a) terminate this Agreement; provided that the contingencies in Section 3.3(1) are solely for the benefit of the City and may not be a cause for termination by the Developer and the contingencies in Section 3.3(2) are solely for the benefit of the Developer and may not be a cause for termination by the City; or

(b) waive such failure and proceed to close; provided that the contingencies in Section 3.3(1) are solely for the benefit of the City and may be waived only by the City and the contingencies in Section 3.3(2) are solely for the benefit of the Developer and may be waived only by the Developer; or

(c) the Developer and City may mutually agree to extend the Closing Date.

Section .4. Closing.

(1) Time and Place. Subject to the terms and conditions of this Agreement, the Closing on the purchase and sale of the Sale Property shall take place on the Closing Date and shall take place at such place which is mutually acceptable to the parties. The Developer shall deliver possession of the Sale Property on the Closing Date.

(2) Developer's Documents. At the Closing, the Developer shall execute, where appropriate, and deliver all of the following "Developer's Documents":

(a) A limited warranty deed, conveying marketable title to the Sale Property to the City, properly executed on behalf of the Developer, subject to matters of public record disclosed by the title commitment obtained by the City pursuant to Section 3.6 and not objected to by the City.

(b) The Access and Parking Easement;

(c) An affidavit of Developer regarding liens, judgments, tax liens, bankruptcies, parties in possession, survey and mechanics' or materialmen's liens and other matters affecting title to the Sale Property and/or as may be reasonably required by Title Company to delete the so-called "standard exceptions" from the title insurance policy.

(d) A transferor's certification stating that Developer is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code, and containing such additional information as may be required thereunder.

(e) A settlement statement consistent with this Agreement.

(f) Well disclosure certification, if required, or, if there is no well on the Sale Property, the limited warranty deed given pursuant to paragraph 3.4(2)(a) above must include the following statement: "The Seller certifies that the Seller does not know of any wells on the described real property."

(g) A "bring-down" certificate, certifying that all of the warranties made by Developer in this Agreement remain true as of the Closing Date.

(h) The Developer's estimate of the Total Development Costs of the Project and sources of revenue to pay such costs and proforma cash flow for the Project.

(i) The Option Agreement.

(j) Any other documents reasonably required by the Title Company to evidence that title to the Sale Property is marketable and that the Developer has complied with the terms of this Agreement.

(k) Such other documents as shall be required to carry out the intent of this Agreement.

Section .5. Closing Costs. The City will pay: (a) fees for title evidence obtained by the City; (b) title insurance premium costs; (c) the recording fee for the deed transferring title to the City; (d) environmental investigation costs incurred by it; and (e) any survey costs related to the Sale Property portion. The Developer will pay all other fees normally paid by sellers, including (a) any transfer taxes, Well Disclosure fees, and recording fees, other than recording the deed, required to enable the City to record its deed from the Developer under this Agreement and (b) fees and charges related to the filing of any instrument required to make title marketable. The City and the Developer will each pay half of the closing fees charged by the Title Company to close the transaction contemplated by this Agreement. Each party shall pay its own attorney fees. The Developer and the City each represent to the other that neither party has utilized the services of any real estate broker or agent in connection with this Agreement or the transaction contemplated by this Agreement. Each party agrees to indemnify, defend, and hold harmless the other party against and in respect of any such obligation and liability based in any way upon agreements, arrangements, or understandings made or claimed to have been made by a party with any third person.

Section .6. Title. The City has 20 days from the date hereof to obtain a commitment for an owner's title insurance policy issued by the Title Company naming the City as the proposed owner-insured of the Sale Property (the "Commitment") together with copies of all documents referred to in the Commitment. The City shall have 20 days from the date it receives such Commitment to raise any objections to title it may have. Objections not made within such time will be deemed waived. The Developer shall have 90 days from the date of such objection to affect a cure; provided, however, that the Developer shall have no obligation to cure any objections, and may inform the City of such. The City may then elect to close notwithstanding the uncured objections or declare this Agreement null and void, and the parties will thereby be released from any further obligation hereunder.

Section .7. Refuse and Hazardous Materials. The Developer has not performed and has no actual knowledge of any excavation, dumping or burial of any refuse materials or debris of any nature whatsoever on the Sale Property. To the Developer's actual current knowledge and belief, there are no "Hazardous Materials" (as hereinafter defined) on the Sale Property that would subject the City to any liability under either federal or state laws, including, but not limited to, the disposal of any foreign objects or materials upon or in the Sale Property, lawful or otherwise. Without limiting the generality of the foregoing, the Developer represents and warrants to the City that, to the Developer's actual current knowledge and belief:

- (1) The Sale Property is not now and has never been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process or in any manner deal with Hazardous Materials;
- (2) No Hazardous Materials have ever been installed, placed, or in any manner handled or dealt with on the Sale Property;
- (3) There are no underground or aboveground storage tanks on the Sale Property; and
- (4) Neither the Developer nor any prior owner of the Sale Property or any tenant, subtenant, occupant, prior tenant, prior subtenant, prior occupant or person (collectively, "Occupant") has received any notice or advice from any governmental agency or any other Occupant with regard to Hazardous Materials on, from or affecting the Sale Property.

The term "**Hazardous Materials**" as used herein includes, without limitation, gasoline, petroleum products, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any material containing asbestos, or any other substance or material as may be defined as a hazardous or toxic substance by any federal, state or local environmental law, ordinance, rule, or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (42 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S. C. Section 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) and in the regulations adopted and publications promulgated pursuant thereto.

The Developer's representations and warranties set forth in this Section shall be continuing and are deemed to be material to the City's execution of this Agreement and the City's performance of its obligations hereunder. All such representations and warranties shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time; and all of such representations and warranties shall survive the closing and any cancellation or termination of this Agreement, and shall not be affected by any investigation, verification or approval by any party hereto or by anyone on behalf of any party hereto. The Developer agrees to defend, indemnify and hold the City harmless for, from, and against any loss, costs, damages, expenses, obligations and attorneys' fees incurred should an assertion, claim, demand, action or cause of action be instituted, made or taken, which is contrary to or inconsistent with the representations or warranties contained herein.

Section .8. City's Right to Inspect. The City is hereby granted the right to enter upon and inspect, analyze and test the Sale Property for all reasonable purposes, including conducting soil tests; provided, that the Developer is given at least 24 hours' prior written notice. The City shall pay for the cost of all investigations of the Sale Property which are ordered by City for purposes of conducting its own investigations of the Sale Property.

Section .9. Relocation Benefits; Indemnification. The Developer acknowledges that the Developer is not being displaced from the Sale Property as a result of the transaction contemplated by this Agreement and that the Developer is not eligible for relocation assistance and benefits and that the Purchase Price includes compensation for any and all relocation assistance and benefits for which the Developer or any other entitled party may be eligible. The provisions of this paragraph shall survive closing of the transaction contemplated by this Agreement.

Section .10. Developer Representations. The Developer represents and warrants that:

(1) Mechanics' Liens. Prior to the Closing, the Developer shall pay in full all amounts due for labor, materials, machinery, fixtures or tools furnished within the 120 days immediately preceding the Closing in connection with construction, alteration or repair of any structure upon or improvement to the Sale Property.

(2) Legal Proceedings. To Developer's actual current knowledge, there are no legal actions, suits or other legal or administrative proceedings, pending or threatened, that affect the Sale Property or any portion thereof; and the Developer has no knowledge that any such action is presently contemplated.

(3) Leases. There are no third parties in possession of the Sale Property, or any part thereof; and that there are no leases, oral or written affecting the Sale Property or any part thereof.

(4) Title. Prior to Closing the Developer shall obtain good, indefeasible and marketable fee simple title to the Sale Property.

(5) Condemnation. To the actual current knowledge of the Developer there is no pending condemnation or similar proceeding affecting the Sale Property or any portion thereof, and the Developer has no actual knowledge that any such action is contemplated.

(6) Defects. The Developer does not have actual knowledge of any latent or patent defects in the Sale Property, such as sinkholes, weak soils, unrecorded easements and restrictions.

(7) Legal Compliance. The Developer has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to and affecting the Sale Property and the Developer shall continue to comply with such laws, ordinances, regulations, statutes, rules and restrictions.

(8) Legal Capacity. The Developer has not filed, voluntarily or involuntarily, for bankruptcy relief within the last year under the United States Bankruptcy Code, nor has any petition for bankruptcy or receivership been filed against the Developer within the last year.

(9) Tax Implications. The Developer has not relied on the City, the EDA, their governing bodies' members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof regarding any tax consequences to the Developer regarding the receipt of the Purchase Price and other amounts which may be paid by the City or the EDA under this Agreement.

Section .11. Post-Closing Obligations of the Developer with Respect to the Sale Property. Except as explicitly set forth in Sections 3.7 and 3.10 of this Agreement or as otherwise provided in the Access and Parking Easement, after the Closing, the Developer shall have no obligations with respect to the Sale Property, including, without limitation, the Developer shall have no obligation to repair, maintain, pay taxes with respect to, or remediate the Sale Property.

ARTICLE IV
UNDERTAKINGS BY DEVELOPER, EDA AND CITY

Section .1. Total Development Costs and Public Costs. Upon satisfaction of all conditions required by law to implement the terms of this Agreement, including without limitation to establishment of a Tax Abatement Program after a public hearing, and satisfaction of the conditions set forth in Section 3.3(1) and 3.3(2) and the other terms of this Agreement, the City and the EDA have agreed to provide certain financial assistance to the Developer as hereinafter set forth. The Developer agrees that it will construct the Project on the Development Property.

Section .2. Reimbursement; Interfund Loan. The City proposes to use the proceeds of an Interfund Loan in an amount equal to \$_____ (the "Reimbursement Amount") to provide funds to finance the City's costs of purchasing the Sale Property and the Access and Parking Easement and the costs of constructing improvements to the portion of the parking lot located on the Sale Property upon satisfaction of all of the following conditions:

- (a) The City has established a Tax Abatement Program and approved the Tax Abatements after a public hearing and satisfaction of all other conditions required by law to implement the terms of this Agreement; or
- (b) There shall not be an Event of Default that has occurred and is continuing under this Agreement that has not been cured during the applicable cure period;
- (c) This Agreement shall not have been terminated pursuant to Section 5.2 hereof.

Section .3. Continuing Operation; Option to Purchase. If the Developer (a) ceases operating the Development Property as a grocery store, (b) fails to cause the Development Property to be operated as a grocery store, in a manner substantially similar to the operations as of the date of this Agreement, or (c) causes a Transfer (as defined in Section 6.3 hereof) of the Development Property, the EDA shall have the right to exercise its option to purchase the Development Property pursuant to the Option Agreement in the form attached hereto as **Exhibit G**.

Section .4. Developer to Pay EDA's and City Fees and Expenses. Except as otherwise provided in Section 3.5 with respect to the costs of the Closing on the Sale Property, the Developer will pay all the EDA's and City's Administrative Costs (as defined below). For the purposes of this Agreement, the term "Administrative Costs" means out of pocket costs incurred by the EDA or the City together with staff and consultant (including engineering, legal, financial adviser, environmental advisor, planning advisor, etc.) costs of the EDA and the City, all attributable to or incurred in connection with establishing the Tax Abatement Program and review, negotiation and preparation of this Agreement (together with any other agreements entered into between the parties hereto contemporaneously therewith) and review and approvals of any land use, zoning and subdivision applications for the Development Property, and other documents and agreements in connection with the Project; provided, however, that certain of

such costs are required to be paid, or additional funds deposited in escrow, in accordance with the City's policies and procedures for development and permitting. The Developer is obligated pay such Administrative Costs within 10 days after receipt of a written notice from the EDA or the City containing evidence of Administrative Costs incurred by the EDA or the City or at the Closing, whichever is later.

Section .5. Compliance with Environmental Requirements.

(1) The Developer shall comply with all applicable local, state, and federal environmental laws and regulations, and will obtain, and maintain compliance under, any and all necessary environmental permits, licenses, approvals or reviews.

(2) The EDA and the City make no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Development Property of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 961-9657, as amended) (collectively, the "Hazardous Substances").

(3) The Developer waives any claims against the City, for indemnification, contribution, reimbursement or other payments arising under federal and state law and the common law or relating to the environmental condition of the land comprising the Development Property.

Section .6. Construction Plans.

(1) Prior to the commencement of construction of the Project, the Developer will deliver to the EDA and the City the Construction Plans and a sworn construction cost statement certified by the Developer and the general contractor (the "Sworn Construction Cost Statement"). The EDA and the City shall promptly review any Construction Plans upon submission and deliver to the Developer a written statement approving the Construction Plans or a written statement rejecting the Construction Plans and specifying the deficiencies in the Construction Plans. The EDA and the City shall approve the Construction Plans if: (i) the Construction Plans substantially conform to the terms and conditions of this Agreement; (ii) the Construction Plans are consistent with the goals and objectives of the Tax Abatement Program; (iii) the Construction Plans comply with the site plan, including without limitation using consistent construction materials and architectural style; and (iv) the Construction Plans do not violate any applicable federal, State or local laws, ordinances, rules or regulations. If the Construction Plans are not approved by the EDA and the City, then the Developer shall make such changes as the EDA and the City may reasonably require and resubmit the Construction Plans to the EDA or the City for approval. If the EDA and the City have not rejected the Construction Plans in writing within 15 calendar days of submission, such Construction Plans shall automatically be deemed approved by the EDA and the City.

(2) The approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the EDA or the City does not constitute a representation or warranty by the EDA or the City that the Construction Plans or the Project comply with any applicable building code, health or safety regulation, zoning regulation, environmental law or other law or regulation, or that the Project will meet the qualifications for issuance of a certificate of occupancy, or that the Project will meet the requirements of the Developer or any other users of the Project. Approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the EDA or the City will not constitute a waiver of an Event of Default. Nothing in this Agreement shall be construed to relieve the Developer of its obligations to receive any required approval of the Construction Plans from any City department.

Section .7. Commencement and Completion of Construction. Subject to the terms and conditions of this Agreement and to Unavoidable Delays, the Developer will commence construction of the Project by _____, 2018 and shall substantially complete the Project by _____, 2018. Notwithstanding the foregoing, failure of the Developer to substantially complete the Project shall not be an Event of Default unless the Project is not substantially completed by _____, 2018. The Project will be constructed by the Developer on the Development Property in conformity with this Agreement and the Construction Plans approved by the EDA and the City. No material changes shall be made to the Construction Plans for the Project without the EDA's and the City's prior written approval, unless the aggregate of such changes do not increase or decrease the Total Development Costs by more than 10%. No changes which materially alter (a) the Project's site plan, (b) exterior appearance, (c) quality, (d) exterior materials, or (e) number of parking spaces included in the Construction Plans shall be made without the EDA's and the City's prior written consent. The approval of the EDA and the City will not be unreasonably withheld, unreasonably conditioned or unreasonably delayed. Prior to completion, upon the request of the EDA or the City, and subject to applicable safety rules, the Developer will provide the EDA or the City reasonable access to the Development Property. "Reasonable access" means at least one site inspection per month during regular business hours. During construction, marketing and rentals of the Project, the Developer will deliver progress reports to the EDA and the City from time to time as mutually agreed upon by the EDA, the City and the Developer.

Section .8. Certificate of Completion. The Developer shall notify the EDA and the City when construction of the Project has been substantially completed. At no cost to the Developer, the EDA and the City shall promptly inspect the Project in order to determine whether the Project has been constructed in substantial conformity with this Agreement and the approved Construction Plans. If the EDA and the City determine that the Project has not been constructed in substantial conformity with this Agreement and the approved Construction Plans, the EDA and the City shall deliver a written statement to the Developer indicating in adequate detail the specific respects in which the Project has not been constructed in substantial conformity with the approved Construction Plans and Developer shall promptly remedy such deficiencies. Promptly upon determining that the Project has been constructed in substantial conformity with this Agreement and the approved Construction Plans, the EDA and the City will furnish to the Developer a Certificate of Completion in the form attached hereto as **Exhibit D** certifying the completion of the Project. The Certificate of Completion issued for the Project shall conclusively satisfy and terminate the agreements and covenants of the Developer in this Agreement to construct the Project. The Developer may cause the Certificate of Completion to

be recorded in the proper office for recordation of deeds and other instruments pertaining to the Development Property.

Section .9. Additional Responsibilities of the Developer.

(1) The Developer will construct, operate and maintain, or cause to be operated and maintained, the Project in substantial accordance with the terms of this Agreement, the Tax Abatement Program and all local, State, and federal laws and regulations including, but not limited to zoning, building code, public health laws and regulations, except for approved variances necessary to construct the Project contemplated in the Construction Plans approved by the EDA and the City.

(2) The Developer will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(3) The Developer will not construct any building or other structures on, over, or within the boundary lines of any public utility easement unless such construction is provided for in such easement or has been approved by the utility involved.

(4) The Developer, at its own expense, will replace any public facilities and public utilities damaged during the construction of the Project, in accordance with the technical specifications, standards and practices of the owner thereof.

(5) The Developer will provide and maintain or cause to be maintained at all times and, from time to time at the request of the EDA or the City, furnish the EDA or the City with proof of payment of premiums on insurance of amounts and coverages normally held by owners of property similar to the Project.

Section .10. Encumbrance of the Development Property. Until the Termination Date, without the prior written consent of the EDA not unreasonably withheld or delayed, neither the Developer nor any successor in interest to the Developer will engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Development Property, or portion thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Development Property except for the purpose of obtaining funds only to the extent necessary for financing or refinancing the acquisition and construction of the Project (including, but not limited to, land and building acquisition, labor and materials, professional fees, development fees, real estate taxes, reasonably required reserves, construction interest, organization and other direct and indirect costs of development and financing, costs of constructing the Project, and an allowance for contingencies) including without limitation land use restriction agreements in connection with such financings.

Section .11. No Business Subsidy. The assistance provided by the City and the EDA to the Developer comprises loans and guarantees totaling an amount less than \$75,000. Therefore, the assistance for the Project does not constitute a “business subsidy” and the provisions of Minnesota Statutes, Section 116J.993 through 116J.995 do not apply.

Section .12. Other EDA Financial Assistance. The following financial assistance shall be provided as non-recourse loans to Developer;

(1) EDA Sign/Awning Matching Grant. Subject to satisfaction of the conditions set forth in Section 3.3(1) and all other conditions required by law to implement the terms of this Agreement, the EDA agrees to provide a sign/awning matching grant in an amount not to exceed \$2,500 to the Developer subject to the following conditions:

(a) The Developer shall have submitted to the EDA an Application for Storefront Improvement Loan;

(b) The Developer's proposed sign and/or awnings are found by the EDA to be consistent with the Historic Chaska Downtown Design Manual and/or the Downtown Chaska Signage Design Guidelines and the Storefront Improvements exceed minimum City requirements and the Storefront Improvement Program Objectives; and

(c) Upon completion of the Project, the Developer shall have submitted evidence in the form of invoices or other evidence acceptable to the EDA that it has provided matching funds for the acquisition and installation of a new sign and/or awnings and the Storefront Improvements for the Project. The EDA grant will be provided in an amount equal to the matching funds provided by the Developer in an amount not to exceed \$2,500.

(2) EDA Storefront Rehabilitation Loan. Subject to satisfaction of the conditions set forth in Section 3.3(1) and all other conditions required by law to implement the terms of this Agreement, the EDA agrees to provide a low interest loan to the Developer for the construction of certain Storefront Improvements on the Closing Date in an amount not to exceed \$50,000 subject to the following conditions:

(a) The Developer shall have submitted to the EDA an Application for Storefront Improvement Loan;

(b) The Developer's proposed architectural design for the building is found by the planning staff of the City to be consistent with the City's Comprehensive Plan and zoning ordinance, has an architectural relationship with other downtown structures, and is "quality" in nature in accordance with the Historic Chaska Downtown Design Manual and the Planning Commission has approved the site and building plans;

(c) The Developer's proposed architectural design for the building includes Storefront Improvements which exceed minimum City requirements and the Storefront Improvement Program Objectives;

(d) The EDA shall have determined that the Project qualifies for a loan in the amount \$50,000 in accordance with the Storefront Improvement Program guidelines; and

(e) The Developer shall have entered into the Storefront Improvement Loan Agreement with the EDA regarding the provision of the loan in a form acceptable to the EDA and shall have delivered to the EDA the Storefront Improvement Note in a form

acceptable to the EDA and the Storefront Improvement Mortgage in a form acceptable to the EDA.

(3) EDA Architectural Grant. Subject to satisfaction of the conditions set forth in Section 3.3(1) and all other conditions required by law to implement the terms of this Agreement, the EDA agrees to provide an architectural feasibility grant in an amount not to exceed \$500 for the Storefront Improvements and sign improvements to the Developer subject the following conditions:

(a) The City Planning Department shall have approved the initial rehabilitation plans;

(b) The Developer shall have submitted an Application for Initial Architectural Feasibility Grant to the EDA; and

(c) The EDA shall have found that the Project is determined to be both architecturally and financially feasible.

Section .13. City Energy Retrofit Rebate. Upon the submission of applications substantially in the forms attached hereto as **Exhibit E** for the City's electric utility rebate programs and subject to satisfaction of the conditions set forth in Section 3.3(1) and all other conditions required by law to implement the terms of this Agreement, the City agrees to provide all available rebates to the Developer that the Developer qualifies for in accordance with the terms of those programs.

Section .14. Real Property Taxes. The Developer shall, so long as this Agreement remains in effect, pay all real property taxes with respect to all parts of the Development Property acquired and owned by it which are payable pursuant to any statutory or contractual duty that shall accrue subsequent to the date of its acquisition of title to the Development Property (or part thereof) and until title to the property is vested in another person. The Developer agrees that for tax assessments so long as this Agreement remains in effect:

(a) It will not seek administrative review or judicial review of the applicability of any tax statute relating to the property taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings with respect to the Development Property, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(b) It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Development Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(c) Other than the Tax Abatement Program provided for in his Agreement, it will not seek any further tax deferral or abatement, either presently or prospectively authorized under Minnesota Statutes, Section 469.181, or any other State or federal law, of the property taxation of the Development Property so long as this Agreement remains in effect;

(d) Prior to the Termination Date, the Developer agrees that it will not take any action which will result in the Development Property becoming exempt from real estate property taxes or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the property would result in the Development Property being exempt from real estate property taxes under State law;

(e) Prior to the Termination Date, the Developer agrees it will not seek reduction in the assessed market value of the Project for property tax purposes below \$_____.

ARTICLE V
EVENTS OF DEFAULT

Section .1. Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay any real property taxes assessed with respect to the Development Property.

(2) Subject to Unavoidable Delays, failure by the Developer to proceed with due diligence to substantially complete the construction of the Project pursuant to the terms, conditions and limitations of this Agreement by _____, 2018.

(3) Failure of the Developer to observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(4) If, prior to the Termination Date, the Developer shall

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(b) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within 60 days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within 60 days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section .2. Remedies on Default. Whenever any Event of Default referred to in Section 5.1 occurs and is continuing, either the EDA or the City, as specified below, may take any one or more of the following actions after the giving of 30 days’ written notice to the Developer, but only if the Event of Default has not been cured within said 30 days; provided that if such Event of Default cannot be reasonably cured within the 30 day period, and the Developer has provided reasonable assurances to EDA and the City that it is proceeding with due diligence to cure such default, such 30-day cure period shall be extended for an additional period deemed reasonably necessary by the EDA and the City to effect the cure, but in any event not to exceed an additional 180 days:

(1) The EDA or the City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed reasonably adequate by the EDA and the City, that the Developer will cure its default and continue its performance under this Agreement.

(2) The EDA or the City may terminate this Agreement.

(3) The EDA may seek specific performance of the obligations of the Developer pursuant to this Agreement or damages to the extent otherwise set forth herein as to any obligation, agreement, or covenant of the Developer under this Agreement; provided, however, no personal liability shall be asserted or enforceable against the owner or members of the Developer for any amounts due and payable under Section 4.3 or Section 4.12, all such liability being expressly waived by the City.

(4) The EDA or the City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section .3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the EDA or the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section .4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section .5. Indemnification of EDA and the City.

(1) The Developer releases from and covenants and agrees that the EDA and the City, and their governing bodies' members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, except to the extent caused by any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the EDA or the City in this Agreement.

(3) All covenants, stipulations, promises, agreements and obligations of the EDA or the City, respectively, contained herein shall be deemed to be the covenants, stipulations,

promises, agreements and obligations of the EDA or the City, respectively, and not of any governing body member, officer, agent, servant or employee of the EDA or the City, respectively.

The release and indemnification covenants in this Section 5.5 shall not apply to any liability the City or the EDA would otherwise have, absent this Agreement, with respect to publicly owned property.

Section .6. Reimbursement of EDA and City Attorneys' Fees. If the Developer shall default under any of the provisions of this Agreement, and the EDA and the City shall employ attorneys or incur other reasonable expenses for the collection of payments due hereunder, or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer contained in this Agreement, the Developer will on demand therefor reimburse the EDA and the City for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section .7. Developer Remedies on Default; Reimbursement of Developer Attorney Fees. Whenever any Event of Default occurs by the EDA or the City, the Developer may, after 30 days' prior written notice to the City and the EDA, suspend its performance under this Agreement and/or take whatever action at law or in equity may appear necessary or desirable to the Developer to enforce performance and observance of any obligation, agreement, or covenant of the EDA or the City under this Agreement. Nothing in this Agreement shall entitle the Developer to make any claim against the EDA or the City for any damages whatsoever and the Developer's remedies are strictly limited to the foregoing. However, if the Developer prevails in an adjudicated proceeding to compel specific performance of any obligation, agreement, or covenant of the EDA or the City under this Agreement on which the City or the EDA is in default and the Developer shall employ attorneys or incur other reasonable expenses in connection with such proceeding, the City or the EDA will on demand therefor reimburse the Developer for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

ARTICLE VI
ADDITIONAL PROVISIONS

Section .1. Restrictions on Use. The Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that, through the Termination Date, the Developer and such successors and assigns shall operate, or cause to be operated, the Project in accordance with City zoning, and shall not seek, or permit the Development Property to be used for a purpose which qualifies for, an exemption from property taxes. If the Developer ceases to operate the project as a grocery store the development property is and shall be subject to Section 4.3 and the Option Agreement.

Section .2. Reports. The Developer shall provide the EDA and the City reports in a timely manner with such information about the Project as the EDA or the City may reasonably request for purposes of satisfying any reporting requirements imposed by law on the EDA and the City.

Section .3. Limitations on Transfer and Assignment.

(1) Prior to the Termination Date, except as provided in Section 4.9 or Section 6.3(3), the Developer will not sell, assign, convey, lease or transfer in any other mode or manner (collectively, "Transfer") this Agreement or the Development Property or the Project, or any interest therein, without the express written approval of the EDA and the City, which consent will not be unreasonably withheld, conditioned or delayed;

(2) The Developer shall not, prior to the Termination Date, permit any Transfer of the Development Property or the Project to any entity whose ownership or operation of the property would result in the Development Property being exempt from real estate taxes under State law;

(3) The EDA and the City shall be entitled to require, as conditions to any approval of any Transfer of this Agreement, the Development Property, the Project, or applicable portion thereof, that:

(a) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the EDA and the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer;

(b) Any proposed transferee, by instrument in writing satisfactory to the EDA and the City shall, for itself and its successors and assigns, and expressly for the benefit of the EDA and the City have expressly assumed any of the remaining obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject.

(c) There shall be submitted to the EDA and the City for review all instruments and other legal documents involved in effecting transfer, and if approved by EDA and the City, their approval shall be indicated to the Developer in writing;

(d) The Developer and its transferees shall comply with such other conditions as the EDA may reasonably require in order to achieve and safeguard the purposes of the Act, the Abatement Program, and this Agreement; and

(e) In the absence of a specific written agreement by the EDA and the City to the contrary, no such transfer or approval by the EDA and the City thereof shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Project, from any of its obligations with respect thereto.

(4) The Developer agrees to pay all reasonable legal fees and expenses of the EDA and the City, including fees of the city attorney and outside counsel retained by the EDA or the City to review the documents submitted to the EDA in connection with any Transfer.

(5) Nothing contained in this Section shall prohibit the Developer from (i) entering into leases with tenants in the ordinary course of business, (ii) entering into easement or other agreements necessary for the operation of the Project, (iii) admitting or removing members in accordance with the applicable Organizational Documents.

Section .4. Conflicts of Interest. No member of the governing body or other official of the EDA or the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the EDA or the City shall be personally liable to the EDA or the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section .5. Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section .6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) in the case of the Developer is addressed to or delivered personally to:

J & L Properties West, LLC
d/b/a Cooper's Foods
710 N. Walnut Street
Chaska, MN 55318
Attn: Gary Cooper

(b) in the case of the EDA is addressed to or delivered personally to the EDA at:

Chaska Economic Development Authority
Chaska City Hall
One City Hall Plaza
Chaska, MN 55318
Attn: Executive Director

(c) in the case of the City is addressed to or delivered personally to the City at:

City of Chaska
Chaska City Hall
One City Hall Plaza
Chaska, MN 55318
Attn: City Administrator

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section .7. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section .8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section .9. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section .10. Term; Termination. This Agreement shall terminate on the Termination Date. After the Termination Date, if requested by the Developer, the EDA and the City will provide a termination certificate as to the Developer's obligations hereunder.

Section .11. Provisions Surviving Rescission, Expiration or Termination. Sections 5.5 and 5.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section .12. Superseding Effect. This Agreement reflects the entire agreement of the parties with respect to the development of the Development Property, and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to the development of the Development Property.

Section .13. Relationship of Parties. Nothing in this Agreement is intended, or shall be construed, to create a partnership or joint venture among or between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement. All covenants, stipulations, promises, agreements and obligations of the EDA or the City contained

herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the EDA and the City and not of any governing body member, officer, agent, servant or employee of the EDA or the City.

Section .14. Venue. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota, and the Developer agrees that all legal actions initiated by the Developer, the City or the EDA with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State of Minnesota, Carver County, District Court and shall not be removed therefrom to any other federal or state court.

Section .15. Merger. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property or the Sale Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any party unless in writing and signed by all parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

IN WITNESS WHEREOF, the EDA has caused this Agreement to be duly executed in its name and on its behalf, the City has caused this Agreement to be duly executed in its name and on its behalf, and the Developer has caused this Agreement to be duly executed in its name and on its behalf, on or as of the date first above written.

**CHASKA ECONOMIC DEVELOPMENT
AUTHORITY**

By: _____
Mark Windschitl
Its: President

By: _____
Matt Podhradsky
Its: Executive Director

This is a signature page to the Purchase and Development Agreement

CITY OF CHASKA, MINNESOTA

By: _____
Mark Windschitl
Its: Mayor

By: _____
Matt Podhradsky
Its: City Administrator

This is a signature page to the Purchase and Development Agreement

J & L PROPERTIES WEST, LLC

By: _____
Gary Cooper
Its: _____

This is a signature page to the Purchase and Development Agreement

EXHIBIT A

LEGAL DESCRIPTION OF SALE PROPERTY

The real property situated in the City of Chaska, County of Carver, State of Minnesota, legally described as follows:

EXHIBIT B

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

The real property situated in the City of Chaska, County of Carver, State of Minnesota, legally described as follows:

EXHIBIT C

ACCESS AND PARKING EASEMENT

EXHIBIT D

CERTIFICATE OF COMPLETION OF PROJECT

THIS CERTIFICATE, made this ____ day of _____, 201__ from the CHASKA ECONOMIC DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the laws of the State of Minnesota (the “EDA”), the CITY OF CHASKA, MINNESOTA, a municipal corporation existing under the Constitution and laws of the State of Minnesota (the “City”), for the benefit J & L PROPERTIES WEST, LLC, a Minnesota limited liability company (the “Developer”).

WHEREAS, the EDA and the City entered into a Purchase and Development Agreement (the “Agreement”), dated _____ ____, 2018, with the Developer related to the Developer’s acquisition and renovation of the building located at 710 N. Walnut Street in the City (the “Project”) on the property legally described as follows (the “Development Property”):

[INSERT LEGAL DESCRIPTION]; and

WHEREAS, the Developer has constructed the Project in a manner deemed sufficient by the EDA and the City to permit the execution of this certification;

NOW THEREFORE, the EDA and the City do hereby certify that the Developer has satisfactorily completed the Project and terms and conditions as recited in the Agreement. The Developer is released and forever discharged from its obligations with respect to construction of the Project under Article III of the Agreement. Any remaining obligations under the Agreement shall be solely contractual obligations of the Developer and parties to whom the Developer expressly assigns, and who expressly assume, the Developer’s obligations under the Agreement. The remaining covenants of the Developer under the Agreement are not intended to run with title to the Development Property or bind successors in title to the Development Property.

The EDA has, as of the date and year first above written, set its hand hereon.

CHASKA ECONOMIC DEVELOPMENT AUTHORITY

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss
COUNTY OF CARVER)

On this ____ day of _____, 201___, before me a Notary Public within and for said County, personally appeared _____, to me personally known, who, being by me duly sworn, did say that she/he is the Executive Director of the Chaska Economic Development Authority, the corporation named in the foregoing instrument, and said instrument was signed in behalf of said political subdivision by authority of its Board of Commissioners, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

The City has, as of the date and year first above written, set its hand hereon.

CITY OF CHASKA, MINNESOTA

By: _____
Its: City Administrator

STATE OF MINNESOTA)
) ss
COUNTY OF CARVER)

On this ____ day of _____, 201____, before me a Notary Public within and for said County, personally appeared _____, to me personally known, who, being by me duly sworn, did say that she/he is the City Administrator of the City of Chaska, Minnesota, the municipal corporation named in the foregoing instrument, and said instrument was signed in behalf of said municipal corporation by authority of its City Council, and said _____ acknowledged said instrument to be the free act and deed of said municipal corporation.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
KENNEDY & GRAVEN, CHARTERED (JSB)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

EXHIBIT E
CITY ELECTRIC UTILITY REBATE APPLICATIONS

EXHIBIT F

DESCRIPTION OF PROJECT

Developer will complete the following improvements to the building on the development property:

1. Remove and replace HVAC unit to the right of roof access
2. Remove and replace fence and gates on the northwest side of the building
3. Remove and replace tile within the store in the areas that surround the shelving aisles, which generally consist of the entry store perimeter including the produce, dairy, meat, bakery, deli, central aisle, and checkout areas. Repair tile within the shelving aisles.
4. Remove and replace the acoustical ceiling tiles throughout the store.
5. Remove and replace the four entry and exit doors and operators.
6. Remove and replace exit doors by the office and by the restrooms.
7. Repair back dock and warehouse area with new lighting and paint.
8. Repair cart area with paint, flooring, and lighting.
9. Re-paint areas in the entrance, main retail area, hall to the restrooms, and inside restrooms.

EXHIBIT G
OPTION AGREEMENT