

AMENDED AND RESTATED PURCHASE AGREEMENT

THIS AMENDED AND RESTATED PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into this _____ day of _____, 20____, by and between _____, and _____, as tenants-in-common (hereinafter jointly referred to as “**Seller**”) and _____ Economic Development Authority, a body corporate and politic under the laws of the State of Minnesota (hereinafter referred to as “**Purchaser**”).

Seller and Purchaser entered into a purchase agreement dated _____ for the Subject Premises, defined below (the “**Original Agreement**”). This Agreement fully replaces the Original Agreement. In consideration of the mutual terms, covenants, conditions and agreements hereinafter contained, it is hereby agreed by and between the parties as follows:

1. **Sale of Property.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller real property (the “**Subject Premises**”) located in _____ County, Minnesota, legally described as follows:

See Exhibit “A” attached hereto and made a part hereof.

2. **Purchase Price and Manner of Payment.** The total purchase price (the “**Purchase Price**”) to be paid by Purchaser to Seller for the Subject Premises shall be _____ and 00/100 Dollars (\$_____). The Purchase Price shall be paid as follows:

- i. On the Effective Date, defined below, Purchaser shall pay to Seller a non-refundable fee of _____ and 00/100 Dollars (\$_____) in consideration of Seller’s execution of this Agreement, provided that the fee shall be deducted from the Purchase Price;
- ii. On the Effective Date, Purchaser shall deposit the sum of _____ and 00/100 Dollars (\$_____) (the “**Earnest Money**”) with _____ (“**Title**”) (All Earnest Money provided for in this Agreement shall be applied directly to the purchase of the right of way necessary to construct the collector road and utilities servicing the Subject Premises, should the Purchaser move forward in acquiring the Subject Premises);
- iii. On or before the Contingency Date, defined below, Purchaser shall deposit with Title the sum of _____ and 00/100 Dollars (\$_____) as additional Earnest Money, and
- iv. The balance of _____ and 00/100 Dollars (\$_____) shall be paid in cash on _____, 20____ (the “**Date of Closing**”), upon which date possession of the Subject Premises shall be delivered to Purchaser.

3. **Contingencies.** This Agreement and closing hereunder shall be and hereby is made contingent upon each of the following:

- (a) On the Closing Date, title to the Subject Premises is in the condition required by Paragraph 5 below;
- (b) All warranties and representations of Seller hereunder being true and correct as of the date hereof and on the Date of Closing;
- (c) Purchaser determining, on or before _____, 20____ (the “**Contingency Date**”) that it is satisfied with the Subject Premises, in its sole and unfettered opinion. Purchaser and its agents shall have the right to enter onto the Subject Premises for the purposes of making soil tests and such other physical inspection and investigation as Purchaser deems necessary; provided, however, that Purchaser shall not interfere with the operation of the Subject Premises, and, provided further, that Purchaser shall indemnify and hold Seller and the Subject Premises harmless from all liabilities arising from entry upon or testing of the Subject Premises, including but not limited to liabilities arising from mechanic’s, materialmen’s or other liens filed against the Subject Premises in connection with work performed or material furnished by or at the direction of Purchaser. Purchaser shall deliver to Seller without cost copies of all tests received;
- (d) Purchaser determining, on or before the Contingency Date, that it is satisfied with the matters disclosed by its review of any reports obtained by Purchaser from third parties in connection with investigation of the Subject Premises for the presence of hazardous or toxic waste; and

If any of the foregoing contingencies have not been satisfied or waived by Purchaser on or before such date as is expressly set forth above for determination of satisfaction of such contingency, then this Agreement may be terminated at Purchaser’s option by written notice given to Seller and Title prior to the applicable date, and upon receipt of written notice of termination by Title and Seller, any Earnest Money deposited by Purchaser with Title, together with interest earned thereon, shall be returned to Purchaser, and upon such return neither party shall have any further rights or obligations with respect to this Agreement or the Subject Premises, provided that the indemnity of Purchaser under Paragraph 3(c) above shall survive such termination. If notice of termination of this Agreement for failure to satisfy any contingency set forth above is not given by Purchaser on or before such date as is expressly set forth above with respect to a contingency above for determination of satisfaction of such contingency, such contingency shall be deemed waived by Purchaser. Purchaser shall have the right to unilaterally waive any contingency and proceed to close. Each party shall cooperate with the other in satisfying the conditions hereof, provided that Seller shall have no obligation to incur any expense with respect to such cooperation.

4. **Option and Right to Purchase a Portion of the Subject Premises.** In the event Purchaser terminates this Agreement pursuant to its right of termination under Paragraph 3 above, Purchaser shall have the right and privilege to purchase the _____ parcel of the Subject Premises, all as more particularly described in Exhibit “B” attached hereto and made a part hereof, which parcel shall not exceed _____ acres in total (the “_____”) by written

notice given to Seller on or before the Contingency Date, provided that if Purchaser fails to give notice that it will purchase the _____ on or before the Contingency Date, its right to do so shall be deemed waived.

In the event Purchaser gives notice of its intent to purchase the Southerly Parcel:

- (1) the Purchase Price shall be _____ and 00/100 Dollars (\$_____),
- (2) Purchaser's obligation to purchase the _____ shall be subject to the contingencies set forth in Paragraph 3, provided that if notice of termination of this Agreement for failure to satisfy any contingency set forth in Paragraph 3 is not given by Purchaser on or before such date as is expressly set forth in Paragraph 3 with respect to a contingency for determination of satisfaction of such contingency, such contingency shall be deemed waived by Purchaser, and
- (3) closing of the purchase of the _____ shall be the Date of Closing.

In the event Purchaser purchases the _____, the following shall be the post-closing obligations of both Seller and Purchaser:

a. **Seller's Obligations.**

Seller shall provide over the remainder of the Subject Premises (i) easements for the construction of a collector road, and (ii) easements for ponding purposes over the wetlands which would be necessary for the development of all of the Subject Premises, all as generally shown on Exhibit "B-1" attached hereto and made a part hereof. The exact location and size of the collector road and ponding easements shall be subject to the mutual agreement of the parties.

b. **Purchaser's Obligations.**

Purchaser shall construct, or cause to be constructed: (i) a collector road as shown on Exhibit "B-1" and (ii) within the collector road easement, sanitary sewer, watermain and storm sewer also as shown on Exhibit "B-1", all of which costs shall be the expense of the Purchaser and no portion thereof shall be required to be paid by Seller.

5. **Evidence of Title.** Seller has caused Title, as agent for _____, to provide Title Commitment No. _____ with an effective date of ____, 20__ (the "**Commitment**") to Purchaser for its review. Purchaser shall be allowed fifteen (15) days after the Effective Date for examination of title and the making of any written objections. If Purchaser makes any written objections, Seller shall be allowed until the Contingency Date to either cure the written objections or agree in writing to cure the written objections before the Closing Date. Purchaser agrees that Seller's lease of the Subject Property for farming purposes for the 20__ growing season will be a Title Exception, hereafter defined. Any title matters which are not objected to by Purchaser will be "**Title Exceptions**" and set out in the Deed.

If Seller fails to cure the objections as required, Purchaser shall have the option of either:

- a. Notifying Seller and Title in writing that this Agreement is terminated and promptly receiving a refund of the Earnest Money from Title; or
- b. Waiving its objections and proceeding to Closing.

6. **Representations and Warranties by Seller.** Seller represents and warrants to Purchaser that:

- (a) It has all requisite power and authority to execute this Agreement and the closing documents referred to herein to be executed by them.
- (b) On the Date of Closing, Seller will own all of the properties and assets being conveyed hereby, free and clear of all liens, charges and encumbrances.
- (c) Seller has received no notice of any action, litigation, investigation or proceeding of any kind pending against Seller, nor to the best of Seller's knowledge is any action, litigation, investigation or proceeding pending or threatened against the Subject Premises, or any part thereof.
- (d) On the Date of Closing, there will be no service contracts in effect in connection with the Subject Premises, except those which are terminable on thirty (30) days' written notice.
- (e) To the best of Seller's knowledge, Seller has complied with all statutes and ordinances regulating sale and use of the Subject Premises.
- (f) To the best of Seller's knowledge, and except as disclosed in any reports delivered to Purchaser by Seller or obtained by Seller: (1) no toxic or hazardous substances (including, without limitation, asbestos, urea from formaldehyde, the group of organic compounds known as polychlorinated byphenyls, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601-9657, as amended) have been generated, treated, stored, released or disposed of, or otherwise deposited in or located on the Subject Premises, including without limitation, the surface and subsurface waters of the Subject Premises, nor has any activity been undertaken on the Subject Premises which would cause (i) the Subject Premises to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Subject Premises within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCA"), 42 U.S.C. Section 6901 *et seq.*, or any similar state law or local ordinance or any other environmental law; (ii) a release or threatened release of hazardous waste from the Subject Premises within the meaning of, or otherwise bring the Subject Premises within the ambit of, CERCLA, or any similar state law or local ordinance or any other environmental law; or (iii) the discharge of pollutants or affluent into any

water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. Section *et seq.*, or the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*, or any similar state law or local ordinance or any other environmental law, (2) there are no substances or conditions in or on the Subject Premises which may support a claim or cause of action under RCA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental requirements, and (3) no underground deposits which cause hazardous wastes or underground storage tanks are located on the Subject Premises.

- (g) Seller has not entered into any other contracts for the sale of the Subject Premises, nor as of the Date of Closing will there be any rights of first refusal or options to purchase on the Subject Premises.
- (h) Seller has not entered into any commitments or agreements with any governmental agency or public or private utility affecting the Subject Premises which have not been disclosed in writing by Seller to Purchaser.
- (i) To the best of Seller's knowledge, Seller is not in default with respect to any of its obligations or liabilities pertaining to the Subject Premises.
- (j) Seller has not entered into any brokerage or agency agreements in relation to the sale of the Subject Premises and there is no brokerage fee or commission due and owing to any person or entity in relation to the sale of the Subject Premises.

Notwithstanding any provision herein to the contrary, if a closing occurs hereunder, Seller shall indemnify Purchaser, its successors and assigns, against and shall hold Purchaser, its successors and assigns, harmless from any loss, cost, expense or damage, including reasonable attorney's fees directly arising out of or resulting from the breach of any of the representations and warranties herein contained, whether such loss, cost, expense or damage arises prior to or after closing, provided that Purchaser did not have knowledge of said breach on or before the Date of Closing. All warranties and representations herein contained shall survive a closing.

7. **Closing.** On the Date of Closing, Seller shall execute and deliver to Purchaser, or cause to be executed and delivered to Purchaser, a properly executed Warranty Deed, subject to the Title Exceptions, with such other documentation as may be necessary to convey to Purchaser, or its assigns or nominee, title in the condition required under Paragraph 5 above.

The closing and delivery of all such documents shall take place at the office of _____, _____, Minnesota _____, or at such other reasonable location as may be agreed upon by Purchaser and Seller. Seller agrees to deliver possession of the Subject Premises to Purchaser on the Date of Closing.

8. **Costs and Prorations.** Seller and Purchaser agree to the following prorations and allocation of costs in connection with this Agreement and the transactions contemplated hereby:

- (a) Seller shall pay the costs of the title commitment prepared by Title.

prepaid, return receipt requested, properly addressed in the manner above provided, and if served personally or sent by reputable overnight courier, on the date of service or delivery. Any party hereto may change its address for the service of notice hereunder by delivering written notice of said change to the other party hereunder, in the manner above specified, ten (10) days prior to the effective date of such change.

12. **Effective Date of Agreement.** This “**Effective Date**” of this Agreement shall be the date of execution by the last party to do so. The last party to execute this Agreement shall fill in the Effective Date on the blank line in the preamble to this Agreement.

13. **Captions.** The paragraph headings or captions appearing in this Agreement are for convenience only and are not a part of this Agreement and are not to be considered interpreting this Agreement.

14. **Entire Agreement; Modification.** This written Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties hereto with respect to the Subject Premises. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants or conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties hereto.

15. **Binding Effect.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. When used herein, the singular shall include the plural, the plural shall include the singular, and the use of one gender shall include all other genders, as and when the context so requires.

16. **Controlling Law.** This Agreement has been made and entered into under the laws of the State of Minnesota and said laws shall control the interpretation hereof.

17. **Remedies.** If either party shall default in its obligations hereunder, the sole remedies available to either party shall be:

- i. to terminate this Agreement by written notice to the other party, in which event neither party shall have any further rights or obligations hereunder, provided that Purchaser’s indemnity under Paragraph 3(c) shall survive such termination; or
- ii. to seek performance of this Agreement.

18. **Counterparts; Authority.** This Agreement may be signed in one or more counterparts, all of which taken together shall be deemed one original. The individuals executing the Agreement and the documents referred to herein on behalf of the parties have the legal power, right and actual authority to bind such party to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be executed by the parties are, and shall be, valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

19. **Severability.** If any provision in this Agreement, or any application thereof, shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected thereby and shall not be rendered invalid or unenforceable.

20. **Providing Data, Etc.** In the event Purchaser elects to purchase either the Subject Premises or the southerly Parcel, Seller shall provide Purchaser with whatever data it has on said property, including but not limited to, topographies, development concepts, development costs, etc. In the event Purchaser does not elect to purchase any of the property pursuant to this Purchase Agreement, Purchaser shall deliver to Seller any information or studies that it has completed relative to the property.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

SELLER:

Dated: _____ By _____

Its _____

Dated: _____ By _____

Its _____

Dated: _____ By _____

Its _____

PURCHASER:

_____ **ECONOMIC DEVELOPMENT
AUTHORITY**

Dated: _____

By _____
_____, Executive Director

ACCEPTANCE BY TITLE COMPANY

The undersigned title company, _____ Title, LLC, referred to in the foregoing Contract as “**Title**”, hereby acknowledges receipt of a fully executed copy (or executed counterparts) of the foregoing Amended and Restated Purchase Agreement and \$_____, as part of the Earnest Money referred to therein and accepts the obligations of the title company as set forth in the Agreement.

_____ Title, LLC

_____, MN _____

By: _____
Its: _____

EXHIBIT A

Legal Description

As set forth in the Title Commitment No. _____ with an Effective Date of _____, 20____
delivered by Seller to Purchaser

Depiction of Subject Premises

(Street map)

EXHIBIT B

Legal Description

(to be provided upon survey of the _____ Parcel)

Depiction of ____ Parcel

(Aerial photo)

EXHIBIT B-1

[Subject to Seller's review and approval]