

BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY

A G E N D A

July 6, 2009

7:00 P.M. (or soon thereafter)

1. CALL TO ORDER

2. HOLD PUBLIC HEARING ON PROPOSED SALE OF PROPERTY IN THE CITY OF BEMIDJI (Located along Nymore Beach Road NE and Nymore Beach)

3. CLOSE THE MEETING
Pursuant to §13.44, Subd. 3, and to develop or consider offers or counter-offers for the purchase or sale of real or personal property.

4. ADJOURN

**LEGAL ADVERTISEMENT
NOTICE OF PUBLIC HEARING
ON PROPOSED SALE OF PROPERTY IN THE CITY OF BEMIDJI**

The Bemidji Economic Development Authority (BEDA) hereby gives Notice of a Public Hearing to be held on Monday, July 6, 2009 at 7:00 p.m. or soon thereafter in the Council Chambers of City Hall, 317 4th Street NW, Bemidji, MN, to consider the proposed sale of property located along Nymore Beach Road NE and Nymore Beach, Bemidji, MN. The property is legally described as:

Tract A (Westerly portion of former Georgia Pacific site)

That part of Government Lot 4, Section 16, Township 146 North, Range 33 West of the 5th Principal Meridian, described as follows: Commencing at the intersection of the easterly line of Lot 5, Auditor's Plat No. 14 according to the Official Plat thereof on file in the Records Office in and for the County of Beltrami, State of Minnesota and the northerly right of way of Trunk Highway No. 197 as shown on Minnesota Department of Transportation Right of Way Plat No. 04-26; thence North 24 degrees 09 minutes 41 seconds East along the easterly line of said Lot 5 a distance of 24.11 feet to the beginning of the tract to be described; thence continuing North 24 degrees 09 minutes 41 seconds East along said easterly line 525.69 feet; thence South 89 degrees 57 minutes 35 seconds East 213.28 feet; thence South 24 degrees 15 minutes 01 seconds West 322.73 feet; thence southwesterly 268.66 feet along a non-tangential curve, concave to the southeast, having a radius of 280.67 feet and a central angle of 54 degrees 50 minutes 40 seconds, the chord of said curve bears South 65 degrees 26 minutes 03 seconds West and has a chord length of 258.52 feet; thence South 38 degrees 00 minutes 43 seconds West 98.69 feet to the point of beginning, containing 1.63 acres or less.

AND

Tract B (Nymore Beach)

That part of Government Lot 4, Section 16, Township 146 North, Range 33 West of the 5th Principal Meridian, described as follows: Commencing at the intersection of the easterly line of Lot 5, Auditor's Plat No. 14 according to the Official Plat thereof on file in the Records Office in and for the County of Beltrami, State of Minnesota and the northerly right of way line of Trunk Highway No. 197 as shown on Minnesota Department of Transportation Right of Way Plat No. 04-26; thence North 24 degrees 09 minutes 41 seconds East along the easterly line of said Lot 5 a distance of 549.80 feet to the beginning of the tract to be described; South 89 degrees 57 minutes 35 seconds East 213.28 feet; thence North 2 degrees 54 minutes 21 seconds West 154 feet, more or less, to the southerly shoreline of Lake Bemidji; thence southwesterly along said shoreline 364 feet, more or less, to the easterly line of said Lot 5; thence South 24 degrees 09 minutes 41 seconds West along said easterly line 82 feet, more or less, to the point of beginning, containing 0.52 acres, more or less.

The BEDA has a proposed Purchase Agreement for the sale of the property to the Edgewater Group. A copy of the Purchase Agreement may be viewed at City Hall, 317 4th Street NW, Bemidji, MN 56601.

At the Hearing, the BEDA will review and consider the Purchase Agreement and determine if the sale of the Property is advisable.

Kay M. Murphy, City Clerk

PROCEEDINGS OF THE BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY (BEDA)

In Re: Proposed sale of Southeast Lake Bemidji Re-Development Project Property by the BEDA to Edgewater Group.

BACKGROUND AND FINDINGS

On Monday, July 6, 2009, the Bemidji Economic Development Authority (BEDA) considered the proposed sale of BEDA-owned property in the Southeast Lake Bemidji Re-Development Project Area to Edgewater Group, Richard Siegert principal (Siegert is also the owner of the adjacent Hampton Inn and Green Mill Restaurant property(s)). The BEDA-owned property to be sold consists of two abutting tracts, the most northerly parcel, entitled Tract B, being the current Nymore Public Beach property situated on accreted land next to the remnant foundation of the former Crookston Lumber Mill, and the second parcel, entitled Tract A, lying immediately south of Tract B and being the most westerly portion of the former Georgia-Pacific property purchased by the BEDA from Shorequest, Inc.

Edgewater intends to use the property either for expansion of the current Hampton Inn/Green Mill business(es) or for new hotel and/or restaurant construction. The BEDA is retaining a 5-year access/use interest in Tract B, the current Nymore Beach property, for continued use as a public beach, pending establishment of the proposed new Nymore Beach along the BEDA's Southshore property situated easterly of the tracts in question.

The BEDA Staff has negotiated to sell the two tracts to Edgewater Group for \$650,000, with \$575,000 paid in cash and \$75,000 as in-kind consideration for the BEDA's continued 5-year use of the existing Nymore Beach. Pursuant to a purchase agreement executed by the parties, an escrow payment of \$50,000 has been deposited by the Edgewater Group in an interest bearing escrow account at Sathre Title & Abstract Inc., pending closing of the sale. Per the purchase agreement, Edgewater is presently engaged in title and environmental investigation of the property. The two tracts are also subject of the BEDA's on-going Quiet Title and Planned Unit Development actions. Edgewater's tentative timeline for expansion and/or construction is an approximate two (2) year window. Zoning restrictions prevent building construction on Tract B, which parcel serves as a shore land compliment to building on and use(s) made of Tract A.

Pursuant to Minnesota Statutes Chapter 469, the BEDA conducted a public hearing in order to determine whether the proposed sale of Tracts A and B is in the best interests of the City of Bemidji and its residents and whether the proposed transaction furthers the BEDA's own general plan of economic development. Pursuant to the testimony received at the hearing and, based upon the discussion of Commissioners regarding the sale, the interests of the City and its residents, as well as the Authority's general plan for economic development, the Commission makes the following findings and decision:

1. Tracts A proposed for sale to Edgewater Group, is part of the former Georgia-Pacific property purchased as a part of the greater purchase by the BEDA from Shorequest, Inc. in furtherance of the City and BEDA's proposed Southeast Lake Bemidji Re-Development Project, including construction of the proposed Bemidji Regional Event Center.
2. Tract B proposed for sale to Edgewater Group, is part of the City's Nymore Beach Park and currently is occupied by the existing Nymore Public Swimming Beach. The Nymore Beach Park is constructed on accreted land which consists of fill placed over log pilings and rock placed in the lakebed by former owners prior to construction of the former Crookston Lumber Mill in the early part of the 20th Century.
3. Tracts A and B proposed for sale in this transaction are otherwise intended to be developed as commercial lots under the pending Planned Unit Development/Conditional Use Permit application before the Greater Bemidji Area Joint Planning Board, with the ultimate intended use of the property being for commercial or business re-development purposes.
4. It is in the Community's best interest that Nymore Beach ultimately be relocated to the Southshore area in front of the historic Beach House constructed there in the early 1940's, and that the lakebed and shoreline for the new beach be cleaned up and rehabilitated to timely accommodate a new public swimming beach as part of the overall recreational redevelopment plan for the Southeast Lake Bemidji Re-development Area. The accreted land and deteriorating subsurface conditions attributable thereto at the site of the current Nymore Beach, are contributing to that facility becoming a liability to the general recreational program of the City and to the sound economic redevelopment plan generally for the surrounding area.
5. It is the consensus of the BEDA that it is in the City's financial best interests that the sale close according to and upon satisfaction of those conditions set forth in the terms of the Purchase Agreement negotiated between the BEDA and the Edgewater Group, a copy of which is attached hereto as Exhibit A and incorporated by reference.
6. That it is recognized that the Edgewater Group may not be able to commence construction of a hotel and/or restaurant capital improvement on Tract A within one year from the date of this sale, but the BEDA also finds good cause to waive the statutory requirement under Minnesota Statutes Section 469.101, Subd. 5, to permit commencement of construction on the property within a two (2) year period after the sale and exchange.
7. That the sale will further the Authority's general economic development plan for the City generally and the Southeast Lake Bemidji Redevelopment Project Area

specifically. The sale will enable immediate provision of a commercial lot with complimentary shore front that can be re-developed in furtherance of the Authority's general economic development plan for the Bemidji community.

DECISION

NOW, THEREFORE, based upon the above Findings, it is the decision of the BEDA that the sale of Tracts A and B described herein is in the best interests of the City of Bemidji and its residents and that the proposed transaction does further the Authority's general plan of economic development. Therefore, it is further recommended that the BEDA complete the sale, and that BEDA and City staff make all necessary administrative steps and actions leading to completion of the sale of the properties.

COPY

PURCHASE AGREEMENT

This Real Estate Purchase Agreement is made this 17th day of June, 2009, by and between the **Bemidji Economic Development Authority** (hereinafter the "BEDA") and the **Edgewater Group**, Richard Siegert, Owner (hereinafter "Edgewater").

WITNESSETH:

WHEREAS, the BEDA is a public body corporate and politic organized under the laws of Minnesota, and the owner of the parcels of land (Tract "A" and Tract "B") situated in the City of Bemidji, County of Beltrami, State of Minnesota, legally described in and shown on Exhibit A attached hereto, (hereinafter the "**Subject Property**"); and

WHEREAS, Edgewater offers and agrees to purchase from BEDA and BEDA accepts such offer and agrees to sell and convey to Edgewater all of the BEDA's right, title and interest in and to the Subject Property, subject to the terms and conditions hereinafter stated.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Earnest Money and Purchase Price.** That in consideration of the mutual agreements herein contained and the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) earnest money to be paid by Edgewater to the BEDA within two (2) business days after the execution of this Purchase Agreement, the BEDA grants unto Edgewater the exclusive right to purchase the Subject Property legally described above for the sum of Six Hundred Fifty Thousand and no/100 Dollars (\$650,000) to be paid as follows: the earnest money shall be deposited with Sathre Title & Abstract, Inc. and placed in an interest bearing account, and the sum of \$525,000 paid in cash or by certified check payable to BEDA on or before September 8, 2009 (the "Date of Closing") or such other date as the parties may agree.

The remainder of \$75,000 represents "in-kind" consideration for the BEDA's continued access to and use of existing Nymore Public Beach (Tract "B" on Exhibit A) as set forth in Section 2.a. hereinafter.

The earnest money and all interest earned thereon shall be applied against the purchase price and closing costs at Closing. The earnest money deposit shall be non-refundable to Edgewater, except that should the BEDA fail to pursue its quiet title proceeding and PUD Process to completion as described in Sections 2.a. and 2.b. hereinafter, or pursuant to Section 2.a. hereinafter either the BEDA Board fails to approve the sale or after public hearing imposes conditions that Edgewater will not agree to, Edgewater may elect to terminate this purchase agreement and have the escrowed earnest money returned.

2. **Conditions of Sale.** The sale of the Subject Property is further conditioned on the following:

- a. **BEDA Approval.** BEDA Board approval after public hearing pursuant to Minnesota Statutes Section 469.101, Subd. 5. Per the Statute, BEDA is required to make written Findings in support of its Decision, and may attach such further conditions as it deems necessary in the public's interest.

AKF
NS

- b. Continued Use of Nymore Beach by Public. That for a period of five (5) years after the Date of Closing of the existing Nymore Beach (Tract "B"), or until the opening of the new Nymore Beach Area east of the Subject Property, whichever occurs first, the existing public beach and facilities related thereto, including vehicular parking, if any, will continue to be available to the use and enjoyment of the general public. BEDA will continue to have access to and will maintain existing Nymore Beach on behalf of and for the public's use. A deed restriction stating the foregoing reservation shall be included in the Limited Warranty Deed conveying the Subject Property from BEDA to Edgewater at Closing, and any subsequent conveyance of the Subject Property during the ensuing five year period. Before expiration of the five year period, the BEDA will raze the bathhouse at the existing Nymore Beach, remove all cement and debris associated therewith, and fill the building site with clean fill.
- c. Quiet Title Proceeding. BEDA has initiated a Court Proceeding to quiet title to all of its property in the Southeast Lake Bemidji Area north of First Street SE, including the Subject Property. It's the parties' mutual intention to have marketability of title to the Subject Property enhanced through this Quiet Title Action.
- d. PUD Petition Process. BEDA is also currently pursuing a Planned Unit Development (PUD) platting/subdivision process before the Greater Bemidji Area Joint Planning Board, with the intention that after the subdivision process the Subject Property will have platted lot and block legal descriptions in the proposed Southshore Redevelopment Plat, the configuration and dimensions of which shall correspond to the lots depicted on the attached Exhibit A. At its election, Edgewater may take conveyance of the Subject Property as platted lots after completion of the BEDA's Quiet Title and PUD proceedings, or receive a conveyance using the current metes and bounds description and join with the BEDA in both the pending Court and Subdivision petitions. In either case, the BEDA will be responsible for all cost and fees associated with the Quiet Title Proceedings, as well as those associated with the preparation, approval and filing of the PUD and a Final Plat. As a co-owner and party to the PUD and Plat, Edgewater will co-sign and execute the Plat and any associated documents required for the final approval and filing of the PUD and Final Plat.
- e. MPCA VIC Program Participation. BEDA has previously enrolled the Subject Property in the Minnesota Pollution Control Agency (MPCA) Owner's Voluntary Inspection and Cleanup (VIC) Program. If BEDA should receive any No Association Determination from the MPCA prior to closing on the Subject Property, BEDA agrees to assign such Determination to Edgewater (if assignable, with all costs of such assignment to be paid by Edgewater). If a No Association Determination has not been issued prior to Closing, Edgewater is not required to continue the properties' enrollment in the Program, but may, at its option apply to and continue its own participation under the VIC Program, at its own expense.
- f. Removal of Bond Encumbrance. If, for reason of and under the State Bonding Grant Agreement between the City of Bemidji and the MN Dept. of Finance and Employee Relations for the Bemidji Regional Event Center, the Subject Property is considered by the Commissioner of said Department to be Bond Financed Property within the meaning of Minn. Stat. Section 16A.695, the BEDA shall cause the City, pursuant to the terms of such grant agreement, to obtain a written statement signed by the

Commissioner approving the conveyance to Edgewater. The written statement shall be attached to and be recorded with the deed to Edgewater.

- g. Easements. In addition to any existing easements of record encumbering the Subject Property, Edgewater shall receive conveyance of the Subject Property subject also to BEDA's reservation of any municipal utility easements that benefit the Subject Property and the Southeast Lake Bemidji Redevelopment Project properties generally as depicted or otherwise shown on attached Exhibit A.
- h. Nymore Beach Road Abandonment or Vacation. BEDA shall cause the existing Nymore Beach Road from its intersection with the new Lakeshore Drive to the existing Nymore Beach Park, to be abandoned or vacated by the City of Bemidji, whichever process is deemed most appropriate by the City. At the same time the BEDA shall cause the City to review all of the existing municipal infrastructure on the Subject Property to be evaluated for possible relocation as part of the BEDA's Southeast Lake Bemidji Redevelopment activities. Within a reasonable time after execution of this Agreement, BEDA shall cause the bituminous surface of Nymore Beach Road to be removed and disposed of from a point constituting the intersection of existing Nymore Beach Road and the northerly boundary line of the northern-most street access of Edgewater's existing Green Mill property, to the easterly boundary of Tract "B".
- i. Inspections and Reviews. Upon execution of this Agreement, Edgewater Group or its agents, during normal business hours and after reasonable advance written notice, may also have access to the Subject Property to make any inspections, surveys, tests, audits or reviews of the Property, all at Edgewater's sole cost and expense. Inspections and tests may include invasive Phase II environmental inspections or other invasive inspections or sampling of soil or ground water. Edgewater will deliver to BEDA (at no cost to BEDA) copies of all environmental or soil reports prepared by or for Edgewater.
- j. Construction Activities. Edgewater shall allow the BEDA its agents, assigns and construction contractors, continued access to the Subject Property until the Closing Date, September 8, 2009, and herein grants BEDA a temporary construction easement for purposes of completion of BEDA's redevelopment construction activities during that time period. In turn, BEDA agrees to assume all risks associated with its construction activities thereon, and to secure insurance coverage for the property and BEDA's activities at BEDA's expense.
- k. Costs, Liens and Indemnity. BEDA will not suffer or permit any mechanic's liens to attach to or be filed against or upon the Subject Property, or any part thereof by reason of any of the foregoing construction activities. BEDA agrees to indemnify, defend, and hold Edgewater harmless from any and all losses, damages, professional fees, and all related liabilities, costs and expenses (including all attorneys fees), and any liens filed in connection therewith, suffered, incurred or paid by Edgewater arising out of BEDA's conducting any construction activities with respect to the Subject Property, and from all claims of third parties relating thereto. Such indemnity by BEDA shall survive any termination of this Agreement. Similarly, Edgewater will not suffer or permit any mechanic's lien to attach to the Subject Property by reason of any inspections, tests, audits or reviews of the Subject

Property pursuant to Section 2.h. above, for which payment has not or will not be made by Edgewater prior to closing.

- l. Waiver of Conditions. Edgewater has been offered the opportunity to inspect the Subject Property offered herein and to review title to said property, as well as BEDA's title clearing efforts, prior to the execution of this Purchase Agreement. By executing this Purchase Agreement, and except as otherwise provide in this Section 4, Edgewater acknowledges that they are satisfied with the condition of the Seller's property and satisfied with the condition of the title to the Subject Property or the title clearing efforts and, as such, accepts the condition and condition of title to the properties, subject to completion of title clearing efforts currently underway and the release or satisfaction of any Mortgage liens and/or Contract for Deeds placed on the property by the BEDA as a party to this Agreement. Other than the quiet title proceeding undertaken by the BEDA respecting the Subject Property and the satisfaction of the condition in Section 2.e., BEDA shall not be responsible for any title corrections or physical conditions of the Subject Property sold pursuant to this Agreement.

- m. As-Is. Edgewater has been allowed to make an inspection of the Subject Property and has knowledge as to the past use of the property. Based upon this inspection and knowledge, Edgewater is aware of the condition of the Subject Property and is aware that it is purchasing the Subject Property on an "as is, where is" and "with all faults" basis with any and all patent and latent defects, including those relating to the physical condition, condition of title and environmental condition of the property, and is not relying on any representation or warranties, express or implied, of any kind whatsoever from the BEDA as to any matters concerning the property, except as otherwise made in the purchase agreement, including the physical condition of the property and any defects thereof, the presence of any hazardous substances, wastes or contaminants in, on or under the property, the condition or existence of any of the above ground or underground structures or improvements in, on or under the property, the condition of title to the property, and the existence of any leases, easements or other agreements affecting the property. Edgewater is aware of the risk that hazardous substances and contaminants may be present on the Subject Property. Edgewater indemnifies, holds harmless and hereby waives, releases and discharges forever the BEDA from any and all present or future claims or demands, and any and all damages, loss, injury, liability, claims or costs, including fines, penalties and judgments, and attorney's fees (collectively "losses"), arising from or in any way related to the condition of the Subject Property or the condition of title or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any hazardous substances or contaminants in, on or under the property. "Losses" shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any environmental law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, (c) losses arising under any environmental law enacted after transfer, (d) losses sustained as a result of the physical condition of the property or (e) losses sustained as a result of the condition of the title. The rights of BEDA under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this agreement or otherwise. This indemnity specifically includes the obligation of Edgewater to remove, close, remediate, reimburse or take other actions requested or

required by any governmental agency concerning any hazardous substances or contaminants on the Subject Property, or take such action as are required by the physical condition of the property or condition of title. "BEDA" as the term is used herein shall be given its broadest meaning and shall include but not be limited to seller, its officers, directors, shareholders, governors, members, managers, employees or agents.

3. **Warranties, Representations and Disclaimers.** The parties warrant:
- a. Unless otherwise specifically agreed upon in writing in this Purchase Agreement, the property conveyed hereunder is conveyed on an "as is" basis.
 - b. BEDA otherwise represents that the Subject Property is currently tax exempt and may become taxable in the hands of Edgewater, including mandatory, annual assessments for solid waste management and storm-water utility. There otherwise are no outstanding assessments for past public improvements benefitting the Subject Property, nor will there be special assessments levied for public improvements related to the construction of the BREC or the improvement of roads and infrastructure currently planned to serve the BREC and the redevelopment of the Southeast Lake Bemidji Project Area. Future public improvements unrelated to the BEDA's current redevelopment of the BREC and the Southeast Lake Bemidji Project Area, may become the basis for future special assessments levied against the Subject Property, if the same is benefited by those future improvements.
 - c. BEDA certifies that the Subject Property will be serviceable by municipal water and sewer utilities, and that BEDA does not know of any individual sewage treatment systems or private wells on the Subject Property.
 - d. Notwithstanding Section 2 herein, each party is unaware of any hazardous substance or violation of environmental regulation, arising in any manner whatsoever out of or associated with the party's past and present use of their respective properties. Edgewater shall be responsible for the elimination of any adverse environmental condition, if any, on or within the Subject Property purchased hereunder.
 - e. To the best of its knowledge, BEDA is not aware of any clandestine drug lab(s), for methamphetamine or any other controlled substance production, ever having occurred or existed on the Subject Property.
 - f. BEDA warrants that it has not received any notice from any government authorities as to violations of any laws, ordinances, or regulations with respect to the Subject Property. Additionally, BEDA asserts that except as provided in Section 2.e. herein, neither the execution or delivery of this Agreement nor the consummation of the transaction contemplated hereby will result in any breach or violation of, or default under, any judgment, decree, order, lease, agreement, indenture or other instrument or document to which they are a party or by which the property or any part thereof is bound.
 - g. Each of the undersigned parties warrants that it has the full authority to execute this Agreement, and each individual signing this Agreement on behalf of a corporation

hereby warrants that he or she has full authority to sign on behalf of the corporation that he or she represents and to bind such corporation thereby.

- h. **Waiver of Disclosure.** The written disclosure required under Minnesota Statutes Sections 513.52 to 513.60, if any, may be waived if the Seller and prospective buyer agree in writing. BEDA and Edgewater each hereby waive the written disclosure required under Sections 513.52 to 513.60. Waiver of the disclosure under Sections 513.52 to 513.60 does not waive, limit, or abridge any obligation for disclosure as a seller created by any other law.

4. **Marketability of Title.** Notwithstanding Section 2 herein, BEDA shall provide to the Edgewater, copies of any surveys, abstracts and title information that it may have in its possession respecting the Subject Property.

- a. *Subject Property.* The BEDA has delivered to Edgewater a copy of the current Owner's Title Policy issued by Sathre Title & Abstract, Inc. (the "Title Company") showing the status of title of the Subject Property and all encumbrances and exceptions, including easements, restrictions, rights-of-way, covenants, reservations and other conditions, if any, affecting the Subject Property. BEDA also has delivered to Edgewater a copy of the Summon and Complaint filed by BEDA seeking to quiet title to a larger parcel of property which includes the Subject Property. Edgewater shall participate in the quiet title action, and upon completion receive marketable title subject only to those exceptions which survive the proceeding, including those easements reserved herein or memorialized in the attached Exhibit A. The Subject Property shall receive a lot and block description as a result of the BEDA's PUD Subdivision Process (proposed Southshore Redevelopment Plat), the resulting configuration and dimensions of which shall correspond to Tracts "A" and "B" depicted in the attached Exhibit A. BEDA shall pay all costs or fees associated with said Quiet Title and PUD Subdivision Process(es).

BEDA agrees to satisfy any recorded or unrecorded contracts for deed, mortgages or liens incurred by against the Subject Property which are curable solely by the payment of money either prior to Closing or simultaneously with Closing. Except as provide under this Agreement, BEDA is not required to cure any title defect respecting the Subject Property.

Except as provided under Section 2 herein, Seller shall not permit any encumbrances to be made upon the Subject Property subject of this Agreement between the date of this Purchase Agreement and the Date of Closing.

Objections approved or waived, including exceptions surviving the Quiet Title proceedings respecting the Subject Property, shall be "**Permitted Exceptions**".

5. **Other exceptions to Marketable Title.** In addition to "Permitted Exceptions" and the covenants and deed restrictions set forth in Section 2 hereof, BEDA shall convey to Edgewater the Subject Property subject to the following exceptions:

- a. Building and zoning laws, ordinances, State and Federal regulations;
- b. Reservation of any minerals or mineral rights, if any, by the State of Minnesota;
- c. Right-of-way, utility and drainage easements.
- d. Easements, covenants and restrictions of record.

8. **Closing.**

- a. Date of Closing. The closing of the sale of the Subject Property shall take place on or before September 8, 2009, or such date or dates as may be mutually agreed upon in writing by the BEDA and Edgewater. Time being of the essence. The closing(s) may be held at the offices of Sathre Title & Abstract Inc., 315 5th St NW, Bemidji, MN., the Title Insurance and Closing Agent for the BEDA.
- b. Deed Delivered at Closing. Subject to the previously stated conditions and "Permitted Exceptions", BEDA agrees to give good and marketable title to the Subject Property in fee-simple, together with all improvements, hereditaments and appurtenances thereunto belonging and all of the right, title and interest in and to any streets or alleys adjoining or abutting thereon, and to convey the same by **Limited Warranty Deed** joined in by all individuals known collectively as the BEDA and in a form acceptable to counsel for each party.
- c. Other Documents. The Limited Warranty Deed shall be accompanied by the appropriate organizational Resolution or authorization and, if applicable, a certified copy of an Ordinance, authorizing the conveyance, and any and all other documentation reasonably required or necessary to carry out the provisions of this Agreement.
- d. Taxes and Special Assessments. No outstanding special assessments currently exist against the Subject Property. However, mandatory annual assessment for County Solid Waste and Municipal Storm Water Utility do impact the property. With respect to the Subject Property, real estate taxes and special assessments due and payable in the years prior to the year of Closing, if any, including any deferred real estate taxes, will be the responsibility of the BEDA. Real estate taxes and special assessments due and payable in the year of Closing, if any, shall be prorated to date of Closing. Real estate taxes and special assessments due and payable in the years following Closing, if any, shall be paid or assumed by Edgewater.
- e. Closing Costs. The following costs and expenses will be paid as follows in connection with the Closing(s):
- i. As Seller, BEDA will pay:
 - Cost of preparation of the Deed and documents of conveyance.
 - State Deed Tax upon delivery of the Deed to Buyer.
 - Seller's attorney's fees, if any.
 - Fees for recording of Satisfaction(s) of Mortgages and/or other liens affecting the property, and including deeds to Seller in satisfaction of outstanding Contracts for Deed.
 - Cost of obtaining Title commitment, if any
 - Such other costs allocated to a Seller under this Agreement.
 - i. As Buyer, Edgewater will pay:
 - Any filing fee to record the Deed to them as buyer.
 - Buyer's attorney's fees.
 - Premium for any title insurance policy obtained as a buyer.
 - Such other costs allocated to a Buyer under this Agreement.

*Each party shall pay one-half of the Closing fee charged by the Title/Closing Agent.

6. **Commission.** Each party warrants and represents to the other that no real estate brokerage commission or fees of any kind or type are or will be payable by such other party as a result of the transaction herein provided for, or, if any such commission or fees are payable, the warranting party shall pay the same and hereby indemnify such other party of, from and against any and all claims for any real estate brokerage commission or fee which may arise as a result of any acts of the warranting party.

7. **Possession and Insurance.** Notwithstanding BEDA's continued right of entry and access to the Subject Property as provided in Section 2 herein, and subject to any necessary construction activity upon the Subject Property by BEDA in relation to BREC Construction activities, Edgewater shall be entitled to possession of the Subject Property upon the Date of Closing. Risk of loss from casualty or any liability incurred by or as a result of the BEDA's use, contact or activities associated with the Subject Property both prior to and after Closing shall be the BEDA's. Risk of loss from casualty or any liability incurred by or as a result of Edgewater's use, contact or activities associated with the Subject Property after delivery of possession at Closing shall be Edgewater's.

8. **Personal Property and Debris.** Prior to the Closing Date, and excepting property related to the continued use of Tract "B" (Nymore Beach) and debris due to BEDA's BREC Construction activities, BEDA shall remove all buildings or other structures, if any, and all personal property and debris from the Subject Property.

9. **No Merger.** The warranties, representations and covenants of Edgewater and the BEDA contained in this Agreement shall survive the conveyance of the Subject Property and shall not be merged with the Limited Warranty Deed.

10. **Time is of The Essence.** Time is of the essence in this Agreement.

11. **Entire Agreement; Amendments.** This Purchase Agreement constitutes the entire agreement between the parties and no other agreement prior to this Purchase Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. Any purported amendment hereto shall not be effective unless it shall be set forth in writing and executed by both parties hereto.

12. **Binding Effect; No Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors and assigns. Neither Edgewater nor the BEDA may assign or transfer all or any part of its respective rights under this Agreement without the written consent of the other.

13. **Notice.** Any notice, demand, request or other communication which may or shall be given or served by each party to the other shall be deemed to have been given or served on the date the same as deposited in the United States mail, postage prepaid and addressed as follows:

a. To BEDA: Bemidji Economic Development Authority
Attn: John Chattin, Executive Director
317 4th Street NW
Bemidji, MN 56601

b. To Edgewater: Attn: Richard Siegert, Owner
Edgewater Group
Bemidji, MN 56601

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

15. **Counterparts.** This agreement may be executed in any number of counterparts, each of which will be an original, but such counterparts together will constitute one and the same instrument.

16. **Severability.** In the event any one or more of the provisions of this agreement, or any application thereof, shall be found to be invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions or any application thereof shall not in any way be affected or impaired thereof.

17. **Specific Performance.** This Purchase Agreement may be specifically enforced by either party to this Agreement, provided action to enforce the specific performance shall be commenced within **six (6) months** after the right of action arises

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands, the day and year first printed above.

**BEMIDJI ECONOMIC DEVELOPMENT
AUTHORITY**

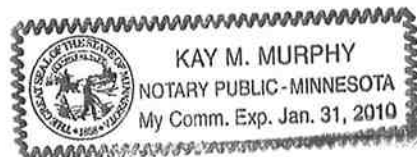
By 
John Chattin
Its Executive Director

TIN: 41-6004972

STATE OF MINNESOTA)
)ss.
COUNTY OF BELTRAMI)

The foregoing instrument was acknowledged before me this 17th day of June, 2009, by John Chattin, the Executive Director of the Bemidji Economic Development Authority (BEDA), a body politic and corporate duly organized under the laws of the State of Minnesota, on behalf of the BEDA as Seller.


SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT



EDGEWATER GROUP

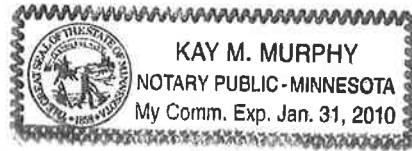
By Richard Siegert
Richard Siegert
Its Owner

TIN: 41-1401676

STATE OF MINNESOTA)
)ss.
COUNTY OF BELTRAMI)

The foregoing instrument was acknowledged before me this 17th day of June, 2009, by, Richard Siegert, the Owner of Edgewater Group, a Minnesota Corporation, on behalf of such corporation as purchaser.

Kay M. Murphy
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT





City Attorney's Office

MEMORANDUM

TO: BEDA Members
FROM: Alan Felix, City Attorney
DATE: July 6, 2009
RE: Closed Meeting Procedure

Minnesota Statute Section 13D.05, Subd. 3 provides that:

A public body may close a meeting to review confidential or non-public appraisal data under §13.44, Subd. 3, and to develop or consider offers or counter-offers for the purchase or sale of real or personal property.

In order to do so, a BEDA member should make a motion, such as:

I move to close this meeting in accordance with Minnesota Statute Section 13D.05, Subd. 3 for the purpose of reviewing confidential or non-public appraisal data relating to the acquisition of real property, as well as to develop or consider offers or counter-offers for the purchase of said property.

The President would then call for a second, discussion and a vote as with any other motion. Once approved, the President should invite any public or media to leave.

The proceedings of the meeting must be tape-recorded and that tape maintained for a period of eight years. The tape must also be made available after all real or personal property discussed at the meeting has been purchased or sold or the BEDA has abandoned the purchase or sale. The real property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. Of course, an agreement that is reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting.

AF/km