

# **BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY**

## ***Special Meeting Agenda*** **Monday, April 1, 2013**

**City Hall  
Council Chambers  
7:00 P.M. (or shortly thereafter)**




1. CALL TO ORDER
  
2. HOLD A PUBLIC HEARING ON PROPOSED SALE OF PROPERTY IN THE CITY OF BEMIDJI (Lot 1, Block 4 South Shore Addition)
  - Approve Findings
  
3. ADJOURN



# MEMORANDUM

**TO:** BEDA Commissioners  
John Chattin, BEDA Executive Director,

**FROM:** Alan R. Felix, City Attorney 

**DATE:** March 27, 2013

**RE:** Public Hearing on Proposed Sale of Development Property and Option regarding Lot 1, Block 4, South Shore Addition/B&B Enterprises, LLC

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This memorandum accompanies a draft of proposed Findings and Decision respecting the above-entitled sale(s) of BEDA-owned property in the Plat of South Shore Addition. Lot 1, Block 4, South Shore Addition is situated to the east and north of the Sanford Center, which location is illustrated on the attached aerial diagram. The proposed terms of sale of the northerly half of the Lot, the "Development Property", as well as the Combined Option and Right of First Refusal on the southerly half of the Lot, the "Option Property", are outlined in the attached copy of the signed Purchase Agreement between the BEDA and B&B Enterprises, LLC.

Pursuant to Minnesota Statute Section 469.105, the BEDA is conducting a public hearing to receive the public's comment concerning the advisability of the proposed sale(s). Per the statutory provisions, at the conclusion of the public hearing the BEDA has thirty (30) days within which to render its findings and decision respecting the proposed sale(s). Historically, the BEDA has generally rendered its decision at the conclusion of the hearing, utilizing draft findings prepared by Staff; hence, the provision of the draft findings that accompany this memo.

In a nutshell, B&B proposes to purchase the northerly portion of Lot 1 for construction of an approx. 30 unit Townhome-style housing development, with construction intended to begin in 2013. The purchase price offered for the northerly portion is \$300,000. B&B further proposes to purchase a Combination Option and Right of First Refusal for the southerly portion of Lot 1 on which they would continue build-out of the above-described development with an additional approx. 18 units. The option period is five (5) years, with the purchase price of the southerly portion to be no less than \$100,000.

Again, a summary of the substantive details of the purchase(s) are as follows:

Northerly portion of Lot 1, Block 4, South Shore Addition (the "Development Property"):

- ✓ **\$300,000 purchase price.**
  - **\$10,000 down once purchase agreement signed**
  - **\$290,000 (remainder) paid at closing**
  - **Closing to take place on or before May 9, 2013**
  - **Contingent on final BEDA approval after public hearing**

- **Condition upon BEDA conditions, i.e., timely commencement of project, transfer restriction, use restriction, and JPB approval(s)**
  - **Contingent upon negotiation and execution of Development Agreement**
- ✓ **Timely collection of applicable WAC and SAC charges – no delay, postponement or waiver.**

Southerly portion of Lot 1, Block 4, South Shore Addition (the "Option Property"):

- ✓ **B&B to purchase Combination Option/Right of First Refusal (the "Option")**
- ✓ **Option period is five (5) years from date of Purchase Agreement**
- ✓ **Option Payment price is \$5,000, to be applied against purchase price if option exercised**
- ✓ **Option is non-exclusive**
- ✓ **Option is to purchase the Option Property for no less than \$100,000**
- ✓ **Right of First Refusal in event BEDA receives third-party offer to purchase the Option Property during Option period**
- ✓ **Sale of Option conditioned on BEDA approval after public hearing**
- ✓ **If Option is exercised, final sale is conditioned on a second, independent public hearing**

**Recommendation:**

Conduct public hearing on proposed sale(s) of Development Property and Option. At conclusion of public hearing, render a decision or decisions on both the sale of the Development Property and the sale of the Option on the Option Property. If acceptable as drafted, adopt the proposed Findings and Decision, or amend and adopt such findings and decision(s) as the BEDA sees fit.

### AFFIDAVIT OF PUBLICATION

State of Minnesota, }  
County of Beltrami } SS

**-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, April 1, 2013 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 as well as an option to purchase property located in the Plat of South Shore Addition. The property subject of the proposed sale and option is legally described as:

Lot 1, Block 4, South Shore Addition;

The subparcel proposed for sale is legally described as follows:

That part of Lot 1, Block 4, South Shore Addition lying northerly of a line beginning at the southeasterly corner of the easterly termination point of Event Center Drive NE and extending to the westernmost point of Park 3, South Shore Addition, a distance of approximately 50 feet, and there terminating.

The subparcel subject of an option to purchase is legally described as follows:

That part of Lot 1, Block 4, South Shore Addition lying southerly of a line beginning at the southeasterly corner of the easterly termination point of Event Center Drive NE and extending to the westernmost point of Park 3, South Shore Addition, a distance of approximately 50 feet, and there terminating. Said parcel being adjacent to the southerly and easterly line of Park 3, South Shore Addition.

The BEDA has a tentative Purchase Agreement with B&B Enterprises, LLC. A copy of the 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 is advisable.

Kay M. Murphy, BEDA Secretary

1da; 3/15

DENNIS DOEDEN, being duly sworn, on oath says that he is the Publisher of the Newspaper known as THE PIONEER, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualifications as a qualified newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

(B) The printed City of Bemidji/BEDA Hearing 4-1-13 ..... which is attached was cut from the columns of said newspaper, and was printed and published once each day, for One ..... successive days; it was first published on Friday ..... the 15<sup>th</sup> ..... day of March ..... 20 13 ..... and was thereafter printed and published on every Friday ..... to and including Friday ..... the 15<sup>th</sup> ..... day of March ..... 20 13 ..... and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice:

abcdefghijklmnopqrstuvwxyz

BY: Dennis Doeden

TITLE: Publisher

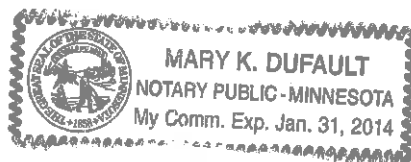
Subscribed and sworn to before me on this 15<sup>th</sup> day of March, 20 13

Mary Dufault  
Notary Public

**RATE INFORMATION**

- (1) Lowest classified rate paid by commercial users for comparable space \$ 10.25
- (2) Maximum rate allowed by law for the above matter \$ 10.25
- (3) Rate actually charged for the above matter \$ 7.65

Rate information is based on the cost of one lower case alphabet.



**PROCEEDINGS OF THE  
BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY (BEDA)**

In Re: Proposed sale of Southeast Lake Bemidji Redevelopment Project Property (in Plat of South Shore Addition) by the BEDA to Wayzata Bemidji Hospitality Associates, LLC.

**BACKGROUND AND FINDINGS**

On Monday, April 1, 2013, the Bemidji Economic Development Authority (BEDA) met and considered the proposed sale of BEDA-owned property in the Southeast Lake Bemidji Redevelopment Project Area and within the Plat of South Shore Addition, to B&B Enterprises, LLC (hereinafter "Purchaser"). The plat of South Shore Addition is the subject of the approved South Shore Planned Unit Development, and is subject to the General Planned Unit Development Guidelines dated November 6, 2009, administered by the BEDA's Design Review Committee (the "DRC") in conjunction with the Greater Bemidji Area Joint Planning Board (the "JPB").

The BEDA-owned property to be sold is legally described as:

***That part of Lot 1, Block 4, SOUTH SHORE ADDITION lying northerly of a line beginning at the southeasterly corner of the easterly termination point of Event Center Drive NE and extending to the westernmost point of Park 3, SOUTH SHORE ADDITION, a distance of approximately 50 feet, and there terminating, according to the recorded plat thereof, on file and of record in the office of the County Recorder, Beltrami County, Minnesota (hereinafter the "Development Property").***

The Development Property is approximately 6.5 acres in size.

Also to be sold to Purchaser is a Combination Option and Right of First Refusal in the BEDA-owned property legally described as follows:

***That part of Lot 1, Block 4, SOUTH SHORE ADDITION lying southerly of a line beginning at the southeasterly corner of the easterly termination point of Event Center Drive NE and extending to the westernmost point of Park 3, SOUTH SHORE ADDITION, a distance of approximately 50 feet, and there terminating. Said parcel being adjacent to the southerly and easterly line of Park 3, SOUTH SHORE ADDITION (hereinafter the "Option Property").***

The Option Property is approximately 5.0 acres in size.

The BEDA Staff has tentatively negotiated to sell the Development Property to Purchaser for Three Hundred Thousand and no/100 Dollars (**\$300,000.00**), subject to the terms of that Purchase Agreement dated March 26, 2013, and to the approval of the proposed sale by the BEDA pursuant to the public hearing held herein. Purchaser intends to use the Development Property to construct an approximate thirty (30) unit Townhome Development thereon.

Purchaser's proposed construction timeline is for construction commencement in Spring 2013, with construction to continue thereafter in phases until build-out is complete.

The BEDA Staff also has tentatively negotiated to sell the Combination Option and Right of First Refusal (hereinafter the "Option") on the Option Property to Purchaser for Five Thousand and no/100 Dollars (**\$5,000.00**), subject to the terms of that Purchase Agreement dated March 26, 2013, and to the approval of the proposed sale by the BEDA pursuant to the public hearing herein. The Option period to be five (5) years from the date of the Purchase Agreement. Purchaser's intended use of the Option Property is to continue the build-out of an additional approximate 18 units of Townhome-style development complimentary to the construction on the Development Property.

Pursuant to Minnesota Statutes Chapter 469, the BEDA has conducted a public hearing in order to determine whether the proposed sale of the Development Property and Option to Purchaser is and/or are in the best interests of the City of Bemidji and its residents and whether the proposed transaction(s) further the BEDA's own general plan of and for economic development within the Bemidji community. Pursuant to the testimony received at the hearing and, based upon the discussion of Commissioners regarding the proposed sales, the interests of the City and its residents, as well as the Authority's general plan for economic development, the Authority makes the following findings and decision:

#### FINDINGS

1. That the sale of the Development Property to B&B Enterprises, LLC will further a priority and goal of the BEDA to redevelop the Southeast Lake Bemidji Redevelopment Project Area, in particular, to accomplish a Townhome-style development north and east of the recently constructed Sanford Center.
2. That the sale of the Option for the Option property to B&B Enterprises, LLC will enhance and advance the goal of the BEDA in accomplishing the completion and build-out of the aforementioned Townhome-style development.
3. That Purchaser's proposed Townhome development use is consistent with the Southeast Lake Bemidji Planned Unit Development (PUD) approved November 19, 2009 by the JPB.
4. That the tentative development concept and unit building designs presented to the BEDA and its DRC by Purchaser, has found general approval of and with BEDA Commissioners; however, Purchaser must secure approval of the final building plans and specifications from the DRC and JPB before commencement of construction.
5. The respective sales are conditioned upon the sales closing according to and in satisfaction of the terms and conditions set forth in the Purchase Agreement negotiated between the BEDA and Purchaser, a copy of which is attached hereto as Exhibit A and incorporated by reference. The sales herein are further conditioned upon the successful negotiation and execution of a Development Agreement between the Purchaser, the BEDA, the City of Bemidji, and the JPB for construction of Purchaser's proposed Townhome project, including conditions arising from any and all JPB zoning approvals. Moreover, initiation of construction on the Development Property must begin within one (1) year after the date of conveyance of the Development Property unless Purchaser has sought and obtained an extension from the BEDA for good cause established by Purchaser.

6. It is the consensus of the BEDA Board that it is in the City's financial best interests that the proposed sales close according to and in satisfaction with those terms and conditions set forth in the above-described Purchase Agreement.
7. That the proposed sales to Purchaser will further the Authority's economic development plan for the City generally and the Southeast Lake Bemidji Redevelopment Project Area specifically, and will further the aims and purposes of Minn. Stat. §§469.090-.108.
8. That the BEDA had properly published notice of the public hearing as required by Minn. Stat. §469.105, Subd. 2.
9. That the Limited Warranty Deed to be used to convey the Development Property to Purchaser will contain the necessary covenants in compliance with Minn. Stat. §§469.090-.108.
10. That these Findings are adopted and decision(s) respecting the proposed sales are rendered within thirty (30) days of the noticed public hearing herein.

**DECISION**

**NOW, THEREFORE**, based upon the above Findings, it is the decision of the BEDA that the sale of the Development Property to B&B Enterprises, LLC, as described herein, is in the best interests of the City of Bemidji and its residents and that the proposed sale does further the Authority's general plan of economic development. Furthermore, the sale of the Option to B&B Enterprises, LLC also furthers the Authority's general plan of economic development. Therefore, it is recommended that the BEDA complete the proposed sales to Purchaser, and that BEDA and its staff take all necessary administrative steps and actions leading to completion of the sales in accordance herewith and including Minn. Stat. §§469.090-.108.

Dated: April 1, 2013

\_\_\_\_\_  
Rita C. Albrecht, President

ATTEST:

\_\_\_\_\_  
Kay M. Murphy, Secretary

# PURCHASE AGREEMENT

This Real Estate Purchase Agreement is made this 20<sup>th</sup> day of March, 2013 by and between the Bemidji Economic Development Authority, a public body corporate and politic organized under the laws of Minnesota (hereinafter the "BEDA") and B&B ENTERPRISES, LLC, a limited liability company organized under the laws of Minnesota, (hereinafter "Developer").

## WITNESSETH:

**WHEREAS**, the BEDA is the owner of a tract of land situated in the City of Bemidji, County of Beltrami, State of Minnesota, legally described as follows:

Lot 1, Block 4, SOUTH SHORE ADDITION, according to the recorded plat thereof, on file and of record in the office of the County Recorder, Beltrami County, Minnesota,

as shown on *Exhibit A* attached hereto (hereinafter the "Subject Property"); and

**WHEREAS**, Developer desires to immediately purchase the northerly portion of the Subject Property, described as follows:

That part of Lot 1, Block 4, South Shore Addition lying northerly of a line beginning at the southeasterly corner of the easterly termination point of Event Center Drive NE and extending to the westernmost point of Park 3, South Shore Addition, a distance of approximately 50 feet, and there terminating (the "Development Property").

That legal description is also identified on *Exhibit A*, and upon which Developer proposes to construct a multi-unit Townhome Development (the "Development Property"); and

**WHEREAS**, Developer further proposes to purchase a five (5) year Combination Option and Right of First Refusal respecting the southerly portion of the Subject Property, described as follows:

That part of Lot 1, Block 4, South Shore Addition lying southerly of a line beginning at the southeasterly corner of the easterly termination point of Event Center Drive NE and extending to the westernmost point of Park 3, South Shore Addition, a distance of approximately 50 feet, and there terminating. Said parcel being adjacent to the southerly and easterly line of Park 3, South Shore Addition (the "Option Property").

That legal description is also identified on *Exhibit A*, upon which Developer proposes to use for the continued build-out of the aforementioned Townhome Development; and

**WHEREAS**, Developer offers and agrees to purchase from BEDA and BEDA accepts such offers and agrees to sell and convey to Developer all of the BEDA's right, title and interest in and to the Development Property, as well as an interest in the form of a Combination Option and Right of First Refusal (hereinafter the "Option") for the Option Property, subject to the terms and conditions hereinafter stated.



**NOW, THEREFORE, the parties hereto agree as follows:**

1. **Earnest Money and Purchase Price for Development Property.** That in consideration of the mutual agreements herein contained and the sum of Ten Thousand and no/100 Dollars (\$10,000) earnest money to be paid by Developer to the BEDA within five (5) business days after the execution of this Purchase Agreement, the BEDA grants unto Developer the exclusive right to purchase the Development Property legally described above for the sum of Three Hundred Thousand and no/100 Dollars (\$300,000.00) (approximately 6.5 acres) to be paid as follows: the earnest money shall be deposited with and placed by the BEDA in an interest bearing account, and the sum of Two Hundred Ninety Thousand and no/100 Dollars (\$290,000.00) paid in cash or by certified check payable to BEDA on or before May 9, 2013 (the "Date of Closing") or such other date as the parties may agree.

The earnest money and all interest thereon shall be applied against the purchase price at Closing. Furthermore, the earnest money deposit shall be non-refundable to Developer, except that pursuant to Paragraph 4 herein, should the BEDA either fail to approve the sale, or as a result of the public hearing described therein, thereafter impose additional conditions not otherwise stated herein that Developer will not agree to, in which events, Developer may elect to terminate this Purchase Agreement and have the escrowed earnest money returned to it. Moreover, in the event Developer should satisfactorily perform all actions and obligations required under this Purchase Agreement, once executed, and such performance satisfaction is adjudged adequate by the BEDA, but the BEDA nonetheless fails to close on the sale of the Development Property, Developer may elect to terminate this Purchase Agreement and have the escrowed earnest money and any interest earned thereon returned to it.

2. **Purchase Price of Combination Option and Right of First Refusal for the Option Property.** That in consideration of the mutual covenants herein contained and the sum of Five Thousand and no/100 Dollars (\$5,000.00) paid by Developer to the BEDA within five (5) business days after execution of this Purchase Agreement, the BEDA grants unto Developer the non-exclusive Option to purchase the Option Property legally described above for the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) (approximately 5.0 acres). The term of said Option shall be five (5) years from the date of this Purchase Agreement. However, in the event an offer by a third party to purchase the Option Property has been tendered to the BEDA during said 5-year period, Developer shall have the right of first refusal to purchase said property for the sum tendered in said third party offer, but in no case shall Developer purchase the Option Property for a sum less than \$100,000.00. If Developer does not exercise the right of first refusal, BEDA may sell to the prospective purchaser under the terms contained in the offer. This option of first refusal shall continue in full force and effect if the Option Property is not sold to the prospective purchaser according to the terms of the offer.

In the event Developer exercises the Option to purchase the Option Property, the \$5,000.00 payment shall be applied against the purchase price at closing. The \$5,000.00 payment shall otherwise be non-refundable to Developer, except that pursuant to Paragraph 4 herein, should the BEDA either fail to approve the sale of either the Development Property or the Option Property, or as a result of the public hearing described therein, thereafter impose additional conditions not otherwise stated in either Section 1 or in this Section 2 that Developer will not agree to, Developer may elect to terminate that portion of the Purchase Agreement pertaining specifically to the Option Property and have the \$5,000.00 payment returned to it. It is understood and agreed by and between the parties hereto that at such time as the Option is exercised by the Developer, the sale of the Option Property shall be subject to and conditioned upon the BEDA's approval in accordance with the requirements set forth in

Paragraph 4. herein, including being subject to the results of an independent public hearing (second) pursuant to Minnesota Statutes Section 469.105.

3. Development Agreement. As a condition to the sale of the Development Property and Option to Developer, the BEDA, City of Bemidji, and the Greater Bemidji Area Joint Planning Board (hereinafter the "JPB") shall enter into a Development Agreement with Developer for construction of the residential housing development proposed by Developer for the Subject Property. Terms and conditions of the Development Agreement may be finally negotiated and agreed to subsequent to the execution of this Purchase Agreement; however, negotiation and execution of the Development Agreement shall be a condition of the BEDA's sale and conveyance of the Development Property and the Option to Developer as further described in Paragraph 4 herein. Should the Development Agreement not be executed by May 9, 2013, or such other date as may be mutually agreed to in writing by BEDA and Developer, if BEDA reasonably determines that the Developer is not proceeding in good faith and with due diligence to negotiate and enter into the Development Agreement, this Purchase Agreement shall be terminated and cancelled, and all Earnest Money and Option Payment and any interest earned thereon shall be retained by BEDA.

4. Sale Conditioned on BEDA Approval and City Approval. The sale of the Development Property and the Option are conditioned upon the BEDA's approval in accordance with the requirements of Minnesota Statutes Sections 469.090 to 469.108, including being subject to the results of a public hearing pursuant to Minnesota Statutes Section 469.105. Within 30 days of such hearing, the BEDA shall make written findings and decision whether sale of the Property and Option is or are advisable. The sale is further conditioned upon there being no taxpayer appeal of the BEDA's decision within 20 days after the decision is entered. Terms and conditions of the proposed sale (this Purchase Agreement) shall be available for review by the public prior to the hearing. Furthermore, the sale(s) described herein may be conditioned upon the BEDA's review and approval of written plans and specifications for the residential housing development, which review and approval shall be based upon the recommendation(s) of the BEDA's Design and Review Committee (the "DRC") (the BEDA may require preparation of said plans and specifications prior to the hearing).

Additionally, as provided in Paragraph 3. above, the BEDA's sale and conveyance of the Development Property and Option is further conditioned upon the successful negotiation and execution of a Development Agreement between Developer, the BEDA, the City of Bemidji, and the JPB for construction of the Project.

A decision by the BEDA not to approve a sale shall not result in any claim, cause of action, or other recourse by Developer against the BEDA, nor by any third party claiming an interest by or through the Developer. However, a decision by the BEDA not to approve the sale of the Development Property shall result in this entire Purchase Agreement being null and void, in which event all Earnest Money, the Option Payment and any interest earned thereon shall be returned to Developer. Moreover, a decision by the BEDA to approve the sale of the Development Property but not to approve the sale of the Option, shall not result in the Purchase Agreement being null and void in its entirety, but in such event the Option Payment shall be returned to Developer and result as well in those provisions in the Purchase Agreement pertaining to the Option and the Option Payment being null and void. A subsequent decision of the BEDA not to approve the sale of the Option Property after Developer has notified BEDA of its election to exercise the Option, shall result in those provisions in the Purchase Agreement pertaining to the Option and Option Property being null and void, in which event a prorated portion of the Option Payment shall be returned to Developer. Said proration shall be based on

that portion of the five (5) year option period remaining at the time of Developer's exercise of the option."

5. Additional Conditions of Sale. The sale is further conditioned on the following:

a. Use Condition. Developer, its successors and assigns, must use the Subject Property for construction of the proposed residential housing development as shown and described in the preliminary plans and specifications provided to the BEDA's Design and Review Committee, including such related accessory uses as are consistent with the Lake Oriented Development District (LD) zoning regulations, as the same may be amended from time to time, as well as with the General Planned Unit Development Guidelines dated November 6, 2009, as the same may be amended from time to time (the "PUD Guidelines"), which PUD Guidelines are administered by the BEDA's DRC and the JPB.

*Notwithstanding the foregoing, neither Developer nor its successors or assigns may use the Subject Property for casino or casino-type gambling purposes.*

b. Transfer Restriction. Excepting a transfer to an entity or affiliate owned by Developer, or for purposes of conveying a security interest in the Subject Property for mortgage or lease financing or other purposes relative to the construction and continuing operation of the proposed residential development, the Developer may not transfer title to the Subject Property nor assign its interest in the construction or use of the proposed residential development within one (1) year after the date of conveyance of the property without the written consent of the BEDA. Written consent shall be in the form of a resolution of the BEDA, which consent shall not be unreasonably withheld.

c. Commencement of Use. Within one (1) year from the date of purchase, Developer shall devote the Development Property to its/the intended use or begin work on the proposed residential development improvements to the Property to devote it to that use. If the Developer fails to do so within that one (1) year period, the BEDA may cancel the sale and rescind this Purchase Agreement and full title to the Development Property shall revert or be restored to the BEDA upon repayment to Developer of the Purchase Price paid for the Development Property, less the earnest money and any interest earned thereon which shall be retained by BEDA. BEDA may extend the time to so comply for good cause shown by Developer.

*Deed restrictions stating the foregoing conditions in 5.a., 5.b., and 5.c. above shall be included in the Limited Warranty Deed conveying the Subject Property from BEDA to Developer at Closing and in any subsequent conveyance of the Subject Property.*

d. Application for Approval of Lot Division and Other Project-related Zoning Approvals. Developer shall secure all zoning or subdivision approvals necessary or required under the JPB Ordinance for the use(s) proposed herein.

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. Developer is not required to continue the properties' enrollment in the Program, but in buying the property on an "as-is" basis, may, at its option and expense apply to and continue its own participation under the VIC Program.

f. As-Is/Waiver of Conditions. Developer has been offered the opportunity to inspect the Subject Property offered herein, and has knowledge as to the past use of the property. Developer also has been offered the opportunity to review title to said property, as well as the 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 Paragraph 5, Developer acknowledges that it is satisfied with the condition of the Subject Property and satisfied with the condition of the BEDA's title to the Subject Property and, as such, accepts the condition of BEDA's title to the Subject Property. BEDA shall not be responsible for any title corrections or physical conditions of the Subject Property being sold pursuant to this Purchase Agreement.

Developer is also aware of the risk that hazardous substances and contaminants may be present on the Subject Property. Developer indemnifies, holds harmless and hereby waives, releases and discharges forever the BEDA, as well as the City of Bemidji, 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 properties 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 properties. "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. The rights of the BEDA as a seller 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 Developer 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 Subject Property. "Seller" 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.

g. WAC and SAC Charges and Revolving fund Loan Terms. It is the mutual understanding and agreement of the parties hereto that as anticipated residential building construction takes place on the Development Property sold pursuant to this Purchase Agreement, Developer shall pay City Water Access Charges and Sanitary Sewer Access Charges in the usual practice of collection that currently exists within the City fee collection procedure process. Collection of applicable WAC and/or SAC charges shall not otherwise be delayed, postponed or waived as a condition of Developer's agreement herein to purchase the Subject Property.

h. Furthermore, it is understood and agreed between the parties hereto that Developer is intending to make an application to the City of Bemidji's Revolving Loan Fund as part of its project financing plan. However, approval of the loan by the City of Bemidji shall not be a condition of Developer's agreement herein to purchase the Subject Property.

6. Warranties, Representations and Disclaimers. The parties warrant:

a. Unless otherwise specifically agreed upon in writing in this Purchase Agreement, the Subject Property is conveyed 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, and environmental condition of the property, and that Developer is not relying on any representation or warranties, express or implied, of any kind whatsoever from the BEDA as to any matters concerning the Subject 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 zoning permits, easements or other agreements affecting the property.

b. Notwithstanding Paragraph 5f. herein, BEDA is unaware of any hazardous substance or violation of environmental regulation, arising in any manner whatsoever out of or associated with the BEDA’s past and present use of the Subject Property. Developer shall be responsible for the elimination of any adverse environmental condition, if any, on or within the Subject Property.

c. BEDA certifies that the Subject Property is serviceable, by way of extension of nearby utility mains, with municipal water and sewer utilities, and that BEDA does not know of any individual sewage treatment system on the Subject Property.

d. BEDA otherwise represents that the Subject Property is currently tax exempt and may become taxable in the hands of Developer, including mandatory annual assessments for solid waste management and storm-water utility. There 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 Sanford Center or the improvement of roads and infrastructure constructed to date and currently serving the South Shore Plat. However, future public improvements unrelated to the BEDA’s current development of the Sanford Center within the South Shore Plat, may become the basis for future special assessments levied against the Subject Property, if the same is benefited by those future improvements.

e. To the best of its knowledge, BEDA is unaware 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 otherwise disclosed 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 it is a party or by which the Subject Property or any part thereof is bound.

g. 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 Developer 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.

h. Except as conditioned herein, each of the undersigned parties warrants that it has the full authority to exercise this Purchase Agreement, and each individual signing this Purchase 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.

7. Marketability of Title. Notwithstanding Paragraph 5 herein, BEDA shall provide to Developer upon request, copies of any surveys, abstracts and title information that BEDA may have in its possession respecting the Subject Property under this Purchase Agreement.

The BEDA has delivered to Developer a copy of the Owner's Title Commitment 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 property as of the current date. Developer will have 15 days after receipt of the up to date title commitment from the Title Company to voice any objections that it finds in said commitment. BEDA will then have 10 days to correct the exceptions objected to, or to inform Developer that such objections cannot be corrected. Should there remain objections after such 10 day period, Developer shall have the right to rescind this Agreement or to waive such objections and close on the Subject Property per the terms of this Agreement. Developer shall receive marketable title subject only to those exceptions, including those easements memorialized in the Plat of South Shore Addition dated April 15, 2009. The cost of obtaining separate title insurance in favor of the Developer shall be paid by Developer. In the event Developer exercises its right to rescind this Agreement as provided above, the Earnest Money, the Option Payment and any interest earned thereon shall be returned to Developer.

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

BEDA shall not permit any encumbrances to be made upon the Development Property subject of this Purchase Agreement between the date of this Purchase Agreement and the Date of Closing.

Objections approved or waived, including exceptions respecting the Development Property, shall be "Permitted Exceptions".

8. Other exceptions to Marketable Title. In addition to "Permitted Exceptions" and the covenants and deed restrictions set forth in Paragraph 5 herein, BEDA shall convey the Development 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.

9. Pre-Closing Site-related Activities.

a. Inspections and Reviews. Up to the Date of Closing herein, Developer or its agents, during normal business hours and after reasonable advance written notice, may have access to the Subject Property to make any inspections, surveys, tests, audits or reviews of the Property, all at Developer'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. BEDA will deliver to Developer (at no cost to Developer) copies of all environmental or soil reports prepared by or for BEDA.

b. Construction Activities. Upon taking possession of the Development Property, and earlier if granted right of entry by the BEDA, and pursuant to the Developer's Agreement entered into between the Developer, the BEDA, JPB, and the City, BEDA will permit the Developer's construction contractor(s) to enter upon the Development Property and commence excavation and construction of planned Improvements in furtherance of the Residential Housing Project Construction Schedule. In turn, Developer agrees to assume all risks associated with its entry upon the Development Property and construction activities thereon, and to secure insurance coverage for that portion of the Development Property impacted by said construction and Developer's activities at its expense.

c. Costs, Liens and Indemnity. Developer 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 inspections, tests, reviews, audits or construction activities. Developer agrees to indemnify, defend, and hold the BEDA as well as the City of Bemidji 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 Developer arising out of its conducting any tests, inspections, reviews, audits or construction activities with respect to the Property, and from all claims of third parties relating thereto. Such indemnity by Developer shall survive any termination of this Purchase Agreement. Developer also agrees not to permit any mechanic's lien to attach or be filed against or upon the Subject Property or any part thereof for which payment has not or will not be made by Developer prior to Closing.

10. Closing.

a. Date of Closing. The closing of the sale of the Development Property shall take place as provided in Paragraph 1 herein. Time being of the essence. The closing may be held at the offices of Sathre Title & Abstract Inc., 315 5<sup>th</sup> St NW, Bemidji, MN, the Title Insurance and Closing Agent for the BEDA, or at such other location as is mutually acceptable.

b. Deed Delivered at Closing. Subject to the previously stated conditions and "Permitted Exceptions", BEDA agrees to give good and marketable title to the Development 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 Developer.

c. Other Documents. The Limited Warranty Deed shall be accompanied by the appropriate organizational Resolution or authorization, authorizing the conveyance, and any and all other documentation reasonably required or necessary to carry out the provisions of this Purchase Agreement.

d. Taxes and Special Assessments. With respect to the Development 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, attributable to Developer's use of the Development Property shall be paid or assumed by the Developer.

e. Closing Costs. The following costs and expenses will be paid as follows in connection with the Closing:

i. As to BEDA 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.
- Such other costs allocated to a Seller under this Purchase Agreement.

ii. As to Developer as Buyer, Developer will pay:

- Any filing fee to record the Deed to them as buyer.
- Buyer's attorney's fees.
- Title Commitment and the Premium for any title insurance policy obtained as a buyer.
- Such other costs allocated to a Buyer under this Purchase Agreement.

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

11. Commission. Each party warrants and represents to the other that there are no real estate brokerage commission or fees of any kind or type, that are or will be payable by such other party as a result of the transaction herein provided for, 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 of fee which may arise as a result of any acts of the warranting party or as a result of the transaction herein provided.

12. Possession and Insurance. Notwithstanding Developer's right of entry and access to the Subject Property as provided in Paragraph 9 herein, the Developer shall be entitled to possession of the Development Property upon the Date of Closing. Risk of loss from casualty or any liability incurred by or as a result of the Developer's use, contact or activities associated with the Subject Property prior to Closing shall be the Developer's. Risk of loss attributable to Developer's use, contact or activities associated with the Development Property after delivery of possession at Closing shall be Developer's.


13. Personal Property and Debris. Prior to the Closing Date BEDA shall remove all buildings or other structures, if any, and all personal property and debris from the Development Property.





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


**BEMIDJI ECONOMIC DEVELOPMENT  
AUTHORITY**

By   
Roger Hellquist  
Its Vice President

By   
John M. Chattin  
Its Executive Director

TIN: 41-6004972

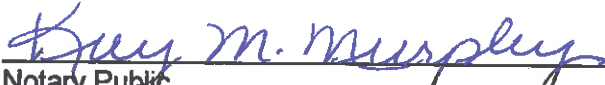
**B&B ENTERPRISES, LLC**

By   
Brian M. Freeberg  
Its Chief Manager

TIN: 900945557

STATE OF MINNESOTA     )  
  )ss.  
COUNTY OF BELTRAMI    )


The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of March, 2013, by Roger Hellquist and John M. Chattin, the Vice President and Executive Director, respectively, 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.

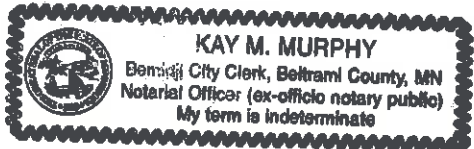
  
Notary Public

STATE OF MINNESOTA     )  
  )ss.  
COUNTY OF BELTRAMI    )



The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of March, 2013, by Brian M. Freeberg, the Chief Manager of B&B ENTERPRISES, LLC, a Minnesota limited liability company, on behalf of the company.

  
Notary Public



# Exhibit A - Lot 1 Block 4 South Shore Addition

LOT 1, BLOCK 4, SOUTH SHORE ADDITION LYING NORTHERLY OF A LINE BEGINNING AT THE SOUTHEASTERLY CORNER OF THE EASTERLY TERMINATION POINT OF EVENT CENTER DRIVE NE AND EXTENDING TO THE WESTERMOST POINT OF PARK 3, SOUTH SHORE ADDITION, A DISTANCE OF APPROXIMATELY 50 FEET, AND THERE TERMINATING. (DEVELOPMENT PROPERTY)

LAKE BEMIDJI

TRAIL

LOT 1, BLOCK 4, SOUTH SHORE ADDITION LYING SOUTHERLY OF A LINE BEGINNING AT THE SOUTHEASTERLY CORNER OF THE EASTERLY TERMINATION POINT OF EVENT CENTER DRIVE NE AND EXTENDING TO THE WESTERMOST POINT OF PARK 3, SOUTH SHORE ADDITION, A DISTANCE OF APPROXIMATELY 50 FEET, AND THERE TERMINATING. (OPTION PROPERTY)

DEVELOPMENT PROPERTY

OPTION PROPERTY

SANFORD CENTER

EVENT CENTER DR NE

LAKE SHORE DR NE GRANT AVE NE

GOULD AVE NE

RICHARDS AVE NE

4TH ST NE

3RD ST NE

