

# ***BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY***

## ***Special Meeting Agenda*** **Monday, May 16, 2016**

**City Hall  
Council Chambers  
6:00 P.M. (or shortly thereafter)**



1. CALL TO ORDER
  
2. HOLD A PUBLIC HEARING ON PROPOSED SALE AND OPTION OF PROPERTY IN THE CITY OF BEMIDJI (Lots 2 and 3, Block 3 , South Shore Addition – Icon Architectural Group LLC)
  - Approve Findings
  
3. ADJOURN

## **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, May 16, 2016 at 6:00 p.m. or soon thereafter in the Council Chambers of City Hall, 317 4<sup>th</sup> 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 properties subject of the proposed sale and option is legally described as:

Lots 2 and 3, Block 3, SOUTH SHORE ADDITION, according to the recorded plat thereof, on file and of record in the office of the County Recorder, Beltrami County, Minnesota.

The parcel proposed for sale is legally described as follows:

Lot 3, Block 3, SOUTH SHORE ADDITION, subject to an unrecorded Public Marina Access right-of-way easement over, under and across the easterly 35.00 feet thereof, said easement comprising an area of approximately 8,980 square feet.

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

Lot 2, Block 3, SOUTH SHORE ADDITION.

The BEDA has a tentative Purchase Agreement with ICON Architectural Group, LLC. A copy of the Agreement may be viewed at City Hall, 317 4<sup>th</sup> Street NW, Bemidji, MN 56601.

Purchaser desires to purchase the properties to construct a mixed use development comprised of an approximate 34-unit condominium residential building and a retail commercial development comprising no less than 20% of the development properties.

At the Hearing, the BEDA will review and consider the Purchase Agreement and Purchaser's proposed Development Project for the properties and determine if the sale is advisable.

Kay M. Murphy, BEDA Secretary

Published: May 6, 2016

**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 ICON Architectural Group, LLC.

**BACKGROUND AND FINDINGS**

On Monday, May 16, 2016, the Bemidji Economic Development Authority (BEDA) met and considered the proposed sale of BEDA-owned property interests 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, as the same have been amended from time to time, 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:

***Lot 3, Block 3, SOUTH SHORE ADDITION, according to the recorded plat thereof, on file and of record in the office of the County Recorder, Beltrami County, Minnesota, subject to an unrecorded Public Marina Access right-of-way easement over, under and across the easterly 35.00 feet thereof, said easement comprising an area of approximately 8,980 square feet (hereinafter the "Development Property").***

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

***Lot 2, Block 3, SOUTH SHORE ADDITION, according to the recorded plat thereof, on file and of record in the office of the County Recorder, Beltrami County, Minnesota (hereinafter the "Option Property").***

The BEDA Staff has tentatively negotiated to sell the Development Property to Purchaser for **Five Hundred Twenty Thousand Nine Hundred Fifty-five and 82/100 Dollars (\$520,955.82)**, subject to the terms of that Purchase Agreement dated May 3, 2016, 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-four (34) unit condominium residential building and retail commercial development thereon.

Purchaser's proposed construction timeline is for construction commencement in \_\_\_\_\_.

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 the sum of **Fifteen Thousand and no/100 Dollars (\$15,000.00)**, securing an acquisition price of **Four Hundred Ninety-two Thousand Four Hundred Forty-five and 80/100 Dollars (\$492,445.80)**, subject to the terms of that Purchase Agreement dated May 3, 2016, and to the approval of the proposed Option by the BEDA pursuant to the public hearing herein. The Option period to be eighteen (18)

months from the date of the Purchase Agreement. Purchaser's intended use of the Option Property is to continue 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 the Combination Option and Right of First Refusal 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 ICON Architectural Group, LLC will further a priority and goal of the BEDA to redevelop the Southeast Lake Bemidji Redevelopment Project Area, in particular, to accomplish a condominium residential building and retail commercial development south and west of the Sanford Center.
2. That the sale of the Combination Option and Right of First Refusal for the Option Property to ICON Architectural Group, LLC will enhance and advance the goal of the BEDA in accomplishing the completion and build-out of the aforementioned condominium residential building and retail commercial development.
3. That Purchaser's proposed condominium residential building and retail commercial development use is consistent with the Southeast Lake Bemidji Planned Unit Development (PUD) approved November 19, 2009, as the same have been amended from time to time, 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 each sale 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. Each sale herein is further conditioned upon the successful negotiation and execution of any Development Agreement which may be subsequently required between the Purchaser, the BEDA, the City of Bemidji, and the JPB for construction of Purchaser's proposed condominium residential building and retail commercial 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 ICON Architectural Group, 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 ICON Architectural Group, LLC also furthers the Authority's general plan of economic development. Therefore, it is recommended that the BEDA complete each proposed sale to Purchaser, and that BEDA and its staff take all necessary administrative steps and actions leading to completion of each sale in accordance herewith and including Minn. Stat. §§469.090-.108.

Dated: May 16, 2016

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

ATTEST:

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

# PURCHASE AGREEMENT

This Real Estate Purchase Agreement is made this 3<sup>rd</sup> day of May, 2016 by and between the Bemidji Economic Development Authority, a public body corporate and politic organized under the laws of Minnesota (hereinafter the "BEDA"), and ICON ARCHITECTURAL GROUP, LLC or its assignee, a limited liability company organized under the laws of North Dakota, (hereinafter "Purchaser").

## WITNESSETH:

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

Lots 2 and 3, Block 3, 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**, Purchaser desires to immediately purchase the following described portion of the Subject Property:

Lot 3, Block 3, SOUTH SHORE ADDITION, subject to an unrecorded Public Marina Access right-of-way easement over, under and across the easterly 35.00 feet thereof, said easement comprising an area of approximately 8,980 square feet (the "**Development Property**").

Said Development Property is also shown on *Exhibit A*, and upon which Purchaser proposes to construct a mixed use development comprised of an approximate 34-unit condominium residential building and a retail commercial development comprising no less than 20% of the Development Property (the "**Development Project**"); and

**WHEREAS**, Purchaser further proposes to purchase an 18-month Combination Option and Right of First Refusal respecting that portion of the Subject Property, described as follows:

Lot 2, Block 3, SOUTH SHORE ADDITION (the "**Option Property**").

Said Option Property is also shown on *Exhibit A*, and which Purchaser proposes to use for the continued build-out of the aforementioned Development Project; and

**WHEREAS**, Purchaser offers and agrees to purchase from BEDA and BEDA accepts such offers and agrees to sell and convey to Purchaser all of the BEDA's right, title and interest in and to the Development Property, and an interest in the form of a non-exclusive Combination Option and Right of First Refusal (hereinafter the "**Option**") for the Option Property, and, in the event of exercise of said Option, the right title and interest in and to the Option Property, all 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 Purchaser to the BEDA within **five (5) business days** after the execution of this Purchase Agreement, the BEDA grants unto Purchaser the exclusive right to purchase the Development Property legally described above for the sum of **Five Hundred Twenty Thousand Nine Hundred Fifty-five and 82/100 Dollars (\$520,955.82)** (approximately 2 acres or 87555.60 sq. ft. at the rate of **\$5.95 per square foot**) to be paid as follows: the earnest money shall be deposited with the BEDA (City Finance Department), and the sum of **Five Hundred Ten Thousand Nine Hundred Fifty-five and 82/100 Dollars (\$510,955.82)** paid in cash or by certified check payable to BEDA on or before 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 Purchaser, except as otherwise provided hereinafter in this Purchase Agreement

Purchaser shall have a period of **ninety (90) days**, after receipt of a fully executed duplicate original of this Purchase Agreement, to conduct such due diligence investigation as Purchaser deems appropriate. Purchaser may cancel this Purchase Agreement for any reason during the due diligence period and receive a refund of all earnest money.

Moreover, in the event Purchaser 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, Purchaser 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 **Fifteen Thousand and no/100 Dollars (\$15,000.00)** paid by Purchaser to the BEDA within **five (5) business days** after execution of this Purchase Agreement, the BEDA grants unto Purchaser the non-exclusive Option to purchase the Option Property legally described above for the sum of **Four Hundred Ninety-two Thousand Four Hundred Forty-five and 80/100 Dollars (\$492,445.80)** (approximately 1.9 acres or 82,764 sq. ft. at the rate of **\$5.95 per square foot**). The term of said Option shall be eighteen (18) months from the date of this Purchase Agreement. However, in the event an offer by a third party to purchase the Option Property is tendered to the BEDA during said 18-month period, Purchaser shall have the right of first refusal to purchase said Option Property for the sum tendered in said third party offer, but in no case shall Purchaser purchase the Option Property for a sum less than \$492,445.80. If Purchaser does not exercise the right of first refusal within 30 days of third party offer, BEDA may sell to the prospective purchaser under the terms contained in the third party 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 third party offer. During the 90-day due diligence period, BEDA shall withdraw from active marketing of the Option Property.

In the event Purchaser exercises the Option to purchase the Option Property, the \$15,000.00 payment shall be applied against the purchase price at closing. As with the Development Property, Purchaser shall have a period of **ninety (90) days**, after exercise of the Option, to conduct such due diligence investigation respecting the Option Property as Purchaser

deems appropriate. Purchaser may cancel this Purchase Agreement for any reason during the due diligence period and receive a refund of all earnest money. The \$15,000.00 payment shall otherwise be non-refundable to Purchaser, except that pursuant to Paragraph 5. 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 in Paragraph 5., thereafter impose additional conditions not otherwise stated in this Purchase Agreement that Purchaser will not agree to, Purchaser may elect to terminate that portion of the Purchase Agreement pertaining specifically to the Option Property and have the \$15,000.00 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 Purchaser, 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 5. herein, including being subject to the results of an independent public hearing (second) pursuant to Minnesota Statutes Section 469.105.

3. **Closing.** The closing of the sale of the Development Property, and of the Option Property if the Option is exercised, shall take place no sooner than **thirty (30) days** after the conclusion of the BEDA's approval process for the sale as provided in Paragraph 5. herein, and may occur at such other date as may be mutually agreed upon in writing by the BEDA and Purchaser. The closing may be held at City Hall, 317 4<sup>th</sup> Street NW, Bemidji, MN, or at the offices of Sathre Title & Abstract, Inc., 315 5<sup>th</sup> St. NW #2, Bemidji, MN 56601, the BEDA's closing agent.

4. **Development Agreement.** As a condition of the sale of the Development Property and Option, and the Option Property if the Option is exercised, the BEDA, City of Bemidji, and the Greater Bemidji Area Joint Planning Board (hereinafter the "JPB") may enter into a Development Agreement with Purchaser for construction of the mixed residential housing and commercial development proposed by Purchaser 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 may be a condition of the BEDA's sale and conveyance of the Development Property and Option to Purchaser as further described in Paragraph 5. herein. Should a Development Agreement, if required, not be timely executed, and the BEDA reasonably determines that the Purchaser 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.

5. **Sales Conditioned on BEDA Approval and City Approval.** The sales of the Development Property and Option, and the Option Property if the Option is exercised, are conditioned upon the BEDA's approval of each sale 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 each such hearing, the BEDA shall make written findings and decision whether sale of the Development Property and Option, and the Option Property if the Option is exercised, is advisable. Each 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 each 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 mixed residential housing and commercial 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 4. above, the BEDA's sale and conveyance of the Development Property and Option, and Option Property if the Option is exercised, may be further conditioned upon the successful negotiation and execution of a Development Agreement between Purchaser, the BEDA, the City of Bemidji, and the JPB for construction of the Development Project.

A decision by the BEDA not to approve a sale shall not result in any claim, cause of action, or other recourse by Purchaser against the BEDA, nor by any third party claiming an interest by or through the Purchaser. 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 Purchaser. 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 Purchaser 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 Purchaser 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 all of the Option Payment shall be returned to Purchaser.

Purchaser shall be responsible for securing all land use, zoning or subdivision approvals necessary or required under the JPB's Land Use and Zoning Ordinance for the use(s) proposed herein.

6. **Additional Conditions of Sale.** Each sale is further conditioned on the following:

a. **Use Condition.** Purchaser, its successors and assigns, must use the Development Property, and the Option Property if exercised, for construction of the proposed mixed residential and commercial development as shown and described in the preliminary plans and specifications provided to the BEDA's DRC, including such related accessory uses as are consistent with the JPB's 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 have been 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 Purchaser nor its successors or assigns may use the Development Property for casino or casino-type gambling purposes.*

b. **Transfer Restriction.** Excepting a transfer to an entity or affiliate owned by Purchaser, or for purposes of conveying a security interest in the Development Property and/or Option Property for mortgage or lease financing or other purposes relative to the construction and continuing operation of the proposed Development Project, the Purchaser may not transfer title to the Development Property (nor to Option Property) nor assign its interest in the construction or use of the proposed Development Project within one (1) year after the date of

conveyance of the Development Property, or the date of conveyance of the Option Property respecting that portion of the project constructed upon the Option 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, Purchaser shall devote the Development Property, and similarly the Option Property if purchased, to its/the intended use or begin work on the proposed Development Project improvements to devote them to that use. If the Purchaser 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 Subject Property shall revert or be restored to the BEDA upon repayment to Purchaser of the Purchase Price paid for the Subject Property, less the earnest money which shall be retained by BEDA. BEDA may extend the time to so comply for good cause shown by Purchaser.

*Deed restrictions stating the foregoing conditions in 6.a., 6.b., and 6.c. above shall be included in the Limited Warranty Deed conveying the Subject Property from BEDA to Purchaser at Closing and in any subsequent conveyance of the Subject Property.*

d. MPCA VIC Program Participation. BEDA has previously included the Subject Property in the enrollment of its greater South Shore holdings in the Minnesota Pollution Control Agency (MPCA) Owner's Voluntary Inspection and Cleanup (VIC) Program. Purchaser is not required to continue the Subject Property's enrollment in the VIC Program, but in buying the property on an "as-is" basis, Purchaser may, at its option and expense elect to apply to and participate in the VIC Program. Moreover, with respect to the Subject Property's current enrollment in the VIC Program, prior to closing the BEDA will be filing an affidavit for recording against the Subject Property, which affidavit(s) notify (ies) potential purchasers of BEDA's activities conducted with respect to the Subject Property under the VIC Program and the status of the property as a result of those activities.

e. As-Is/Waiver of Conditions. The Purchaser acknowledges that the BEDA makes no representations or warranties as to the conditions of the soils on the Subject Property, or the fitness of the Subject Property for construction of the proposed Development Project or any other purpose for which the Purchaser may make use of such property. Purchaser has been offered, and will continue to have the opportunity to inspect the Subject Property offered herein and to review title to said property, and is responsible for acquiring sufficient knowledge as to the past use of the Subject Property. By closing on the sale(s) of the Subject Property subject of this Purchase Agreement, and except as otherwise provide in this Purchase Agreement, Purchaser acknowledges that they are 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.

Purchaser has been advised of the risk that hazardous substances and contaminants may be present on the Subject Property. Except for, and in addition to Purchaser's indemnification obligations for pre-closing/site-related activities as described in Paragraph 10. of this Purchase Agreement, Purchaser, upon completing the purchase of any portion of the Subject Property, shall indemnify and hold harmless the BEDA and hereby waives, releases and discharges forever the BEDA, from any and all present or future claims or demands, and any 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 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 Subject 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. The rights of the BEDA under this paragraph 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 Purchaser 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. "BEDA" as the term is used herein shall be given its broadest meaning and shall include but not be limited to BEDA, its officers, directors, shareholders, governors, members, managers, employees or agents.

f. **WAC and SAC Charges.** It is the mutual understanding and agreement of the parties hereto that as anticipated residential and commercial building construction takes place on the Subject Property sold pursuant to this Purchase Agreement, Purchaser shall pay Water Access Charges and Sanitary Sewer Access Charges to the City of Bemidji 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 Purchaser's agreement herein to purchase any portion of the Development Property.

g. **Watercraft Slips.** It is the mutual understanding and agreement of the parties that upon Purchaser's purchase of the Subject Property, the appropriate governmental authority will authorize Purchaser to lease up to 20% of available slips in the currently DNR approved marina along the shoreline of the South Shore PUD area. In addition, Purchaser shall have a right to lease a minimum of 20% of any slips provided by the City (marina currently has a capacity of 20 slips but is permitted by the DNR to have a maximum capacity of 80 slips). BEDA shall cooperate with Purchaser in obtaining such authorization.

h. **Revolving Loan Fund Loan.** It is understood and agreed between the parties hereto that Purchaser is intending to make an application to the City of Bemidji's Revolving Loan Fund as part of its Development Project financing plan. However, approval of any Revolving Loan Fund Loan by the City of Bemidji shall not be a condition of Purchaser's agreement herein to purchase the Subject Property.

7. **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 Purchaser 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 6e. herein, BEDA, except as revealed in any affidavit submitted by it under the VIC program, 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.

c. BEDA certifies that the Subject Property is serviceable by municipal water and sewer utilities, and that BEDA does not know of any individual wells or sewage treatment systems on the Subject Property (excepting individual Monitoring Wells present upon the Subject Property for groundwater monitoring purposes).

d. The Subject Property has legal access to Lakeshore Drive NE, a public street.

e. BEDA otherwise represents that the Subject Property is currently tax exempt and may become taxable in the hands of Purchaser, 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.

f. 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.

g. BEDA has no knowledge that the Subject Property has any conditions that are protected by federal or state law (such as American Indian burial grounds, other human burial grounds, historic structures, or archeological sites).

h. 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.

i. 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 Purchaser 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.

j. Mechanic's Lien. There has been no labor or material furnished to the Subject Property on behalf of the BEDA for which payment has not been made. In the event that any such lien or charges placed against the Subject Property or any part thereof subsequent to

closing, and the same had as its basic work or materials furnished to the Subject Property prior to closing, BEDA agrees to promptly cause the same to be removed and take such other actions as may be appropriate in order to satisfy the same of record.

k. **Unrecorded Interests.** BEDA has no knowledge of any unrecorded easements, rights of way or interest, express or implied, written or oral, whether at law or in equity, which exists to benefit or burden the Subject Property, except as previously mentioned herein including the Public Marina Access right-of-way easement on the Development Property.

l. **Authority.** 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 or limited liability company hereby warrants that he or she has full authority to sign on behalf of the corporation or limited liability company that he or she represents and to bind such corporation or company thereby.

8. **Marketability of Title.** Notwithstanding Paragraph 7 herein, BEDA shall provide to Purchaser 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 shall also within twenty-five (25) days after acceptance of this Purchase Agreement furnish to Purchaser a current title commitment for an Owner's Title Insurance Policy ("Commitment") issued by Sathre Title and Abstract, Inc., 315 5<sup>th</sup> Street NW, Bemidji, Minnesota (the "Title Company") naming the Purchaser as the proposed insured. The Commitment shall show 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 which would appear in a Title Policy, if issued, and committing to issue such Title Policy to Purchaser for the full amount of the Purchase Price for the Subject Property at the Closing, together with such endorsements as are deemed necessary by Purchaser, at no additional cost to BEDA. The cost of obtaining the Commitment shall be paid by BEDA. The cost of obtaining title insurance shall be paid by Purchaser.

After execution of the Purchase Agreement and upon receipt of the Commitment, Purchaser shall have fifteen (15) days to examine title under the Commitment and, upon examining said Commitment, Purchaser shall have the right to rescind this Purchase Agreement or to waive any objections and close on the Subject Property per the terms of the Purchase Agreement.

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

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

Any objections approved or waived by Purchaser under this paragraph shall be "Permitted Exceptions".

9. **Other exceptions to Marketable Title.** In addition to "Permitted Exceptions", Seller shall convey Marketable Title to the Subject Property to the Purchaser subject only to the following exceptions:

- a. Building and zoning laws, ordinances, State and Federal regulations;
- b. Restrictions of record relating to use or improvement of premises without effective forfeiture provisions.
- c. Reservation of any minerals or mineral rights to the State of Minnesota;
- d. Utility, drainage and highway easements which do not interfere with the Property; and
- e. Easements, conditions, covenants, declarations and restrictions which are now of record.

10. **Pre-Closing Site-related Activities.**

a. **Inspections and Reviews.** Up to the Date of Closing herein, Purchaser 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 Subject Property, all at Purchaser'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 Purchaser (at no cost to Purchaser) copies of all environmental or soil reports respecting the Subject Property prepared by or for the BEDA.

b. **Costs, Liens and Indemnity.** Purchaser 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, or audit activities. Purchaser agrees to indemnify, defend, and hold the BEDA 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 Purchaser arising out of its conducting any tests, inspections, reviews, or audit activities with respect to the Subject Property, and from all claims of third parties relating thereto. Such indemnity by Purchaser shall survive any termination of this Purchase Agreement. Purchaser 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 Purchaser prior to Closing.

11. **Closing Related.**

a. **Date of Closing.** The closing of the sale(s) of the Subject Property shall take place as provided in Paragraph 3 herein. 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 Subject Property in fee-simple, together with all improvements, hereditaments and appurtenances thereunto belonging, 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 Purchaser. At the closing of

the Development Property, BEDA shall deliver to Purchaser the Combination Option and Right of First Refusal respecting the Option Property.

c. **Other BEDA Documents.** The Limited Warranty Deed shall be accompanied by the appropriate BEDA organizational authorization or resolution authorizing the sale and 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 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, attributable to Purchaser's use of the Subject Property shall be paid or assumed by the Purchaser.

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

- i. As to BEDA as BEDA, BEDA will pay:
  - Preparation of Title Commitment.
  - Cost of preparation of the Deed and documents of conveyance, including the Combination Option and right of First refusal.
  - State Deed Tax upon delivery of the Deed to Purchaser.
  - BEDA's attorney's fees, if any.
  - Fees for recording of any Satisfaction(s) of Mortgage and/or other liens affecting the Property.
  - Such other costs allocated to BEDA under this Purchase Agreement.
- ii. As to Purchaser as Buyer, Purchaser will pay:
  - Fees for filing and recording of the Deed from BEDA.
  - Purchaser's attorney's fees.
  - Premium for title insurance policy obtained as a Purchaser.
  - Such other costs allocated to Purchaser under this Purchase Agreement.

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

12. **Commission.** Each party shall be responsible for payment of their own real estate brokerage commission or fees.

13. **Possession and Insurance.** Notwithstanding Purchaser's right of entry and access to the Subject Property as provided in Paragraph 10 herein, the Purchaser shall be entitled to possession of each portion of the Subject Property upon the respective Date(s) of Closing. Risk of loss from casualty or any liability incurred by or as a result of the Purchaser's use, contact or activities associated with the Subject Property prior to Closing shall be the Purchaser's. Risk of loss attributable to Purchaser's use, contact or activities associated with the Subject Property after delivery of possession at Closing shall be Purchaser's.

14. **No Merger.** The warranties, representations and covenants of Purchaser and the BEDA contained in this Purchase Agreement shall survive the conveyance of the Subject Property and shall not be merged with the Limited Warranty Deed(s).

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

16. **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.

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

18. **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 is deposited in the United States mail, postage prepaid and addressed as follows:

- a. To BEDA: Bemidji Economic Development Authority  
Attn: Nathan Mathews, Executive Director  
317 4<sup>th</sup> Street NW  
Bemidji, MN 56601
  
- b. To Purchaser: ICON Architectural Group, LLC or its assignee  
4000 Garden View Drive, Suite 101  
Grand Forks, ND 58201

19. **Governing Law.** This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and any cause of action arising out of this Purchase Agreement shall be venued in Beltrami County District Court.


20. **Counterparts.** This Purchase 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.

21. **Severability.** In the event any one or more of the provisions of this Purchase 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.



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

**BEMIDJI ECONOMIC DEVELOPMENT  
AUTHORITY**

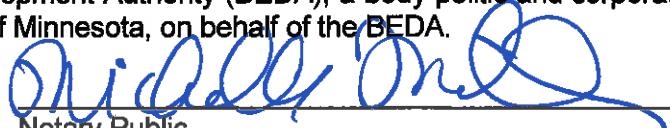
By   
Ron Johnson  
Its Vice President

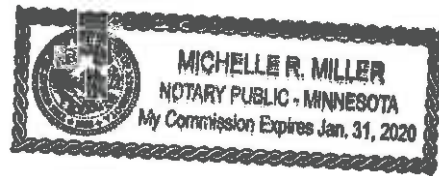
By   
Nathan Mathews  
Its Executive Director

TIN: \_\_\_\_\_

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF BELTRAMI    )

The foregoing instrument was acknowledged before me this 4th day of May, 2016, by Ron Johnson and Nathan Mathews, 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

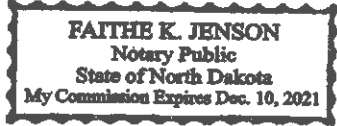


ICON ARCHITECTURAL GROUP, LLC

By [Signature]  
Mike Kuntz  
Its Vice President

TIN: 30-070949

STATE OF NORTH DAKOTA     )  
  )ss.  
COUNTY OF Grand Forks    )



The foregoing instrument was acknowledged before me this 2nd day of May, 2016, by Mike Kuntz, the Vice President of ICON ARCHITECTURAL GROUP, LLC, a limited liability company organized under the laws of North Dakota, on behalf of the company.

[Signature]  
Notary Public



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

### Exhibit A



1:2,130

Date: 4/29/2016

This is a public utility map and does not constitute a warranty or any other legal responsibility and should not be used for any other purpose.