

BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY

Special Meeting Agenda **Monday, August 5, 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 5, South Shore Addition – Northridge Construction, Inc.)
 - Approve Findings

3. ADJOURN



MEMORANDUM

TO: BEDA Commissioners
John Chattin, BEDA Executive Director,

FROM: Alan R. Felix, City Attorney

DATE: August 5, 2013

RE: Public Hearing on Proposed Sale of Development Property regarding Lot 1, Block 5, South Shore Addition (South Shore Landing, LLC, a/k/a Northridge Construction, Inc., proposed purchaser)

This memorandum accompanies a draft of proposed Findings and Decision respecting the above-entitled sale of BEDA-owned property in the Plat of South Shore Addition. Lot 1, Block 5, South Shore Addition is situated west of the Sanford Center, which location is illustrated on the attached diagram.

The proposed sale terms are outlined in the draft Purchase Agreement attached to the proposed findings.

To reiterate the procedural background for the BEDA sale process, pursuant to Minnesota Statute Section 469.105, the BEDA must conduct a public hearing to receive the public's comment concerning the advisability of the proposed sale. Per the statutory provisions, at the conclusion of the public hearing the BEDA has twenty (20) days within which to render its findings and decision respecting the proposed sale. 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.

South Shore Landing, LLC, a/k/a Northridge Construction, Inc. proposes to purchase Lot 1, Block 5 for construction of an approx. 60 unit multi-family apartment development, with construction is intended to begin in the Spring of 2014. The purchase price offered is approximately \$3.00 per square foot or \$350,000.00.

Recommendation:

Conduct public hearing on proposed sale of Lot 1, Block 5, South Shore Addition to South Shore Landing, LLC, a/k/a Northridge Construction, Inc. At the conclusion of the public hearing, render a decision on the sale of the Development Property. If acceptable as drafted, adopt the proposed Findings and Decision, or amend and adopt such findings and decision as the BEDA sees fit.

Lot 1 Block 5 - South Shore Addition



Lake Bemidji

LAKE SHORE DR NE

80.05989.00
LOT 1 BLOCK 5

EVENT CENTER DR NE

CENTRAL AVENUE

1ST ST E

CIRCUIT ST SW

PAUL BUNYAN DR S OF ST HWY 197

0 250 500 1,000 Feet

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

In Re: Proposed sale of Lot 1, Block 5, South Shore Addition by the BEDA to South Shore Landing, LLC

BACKGROUND AND FINDINGS

On Monday, August 5, 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 South Shore Landing, 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 amended March 14, 2012, and 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 One (1), Block Five (5), 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 "Development Property").

The Development Property is approximately 2.69 acres in size.

The BEDA has tentatively agreed to sell the Development Property to Purchaser for approximately \$3.00 a square foot or a total of Three Hundred Fifty Thousand and no/100 Dollars (**\$350,000.00**), subject to the terms of that Purchase Agreement dated _____, and subject also to the approval of the proposed sale by the BEDA pursuant to the public hearing held herein and subject of the Findings made herein. Purchaser intends to use the Development Property to construct an approximate sixty (60) unit Multi-family Apartment Complex Development thereon.

Purchaser's proposed construction timeline for construction commencement is Spring 2014, with construction to be completed eight (8) months thereafter.

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 to Purchaser is in the best interests of the City of Bemidji and its residents and whether the proposed transaction furthers the BEDA's own general plan of 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 sale, 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 South Shore Landing, LLC, a/k/a Northridge Construction, Inc. will further a priority and goal of the BEDA to redevelop the Southeast Lake Bemidji Redevelopment Project Area.
2. That Purchaser's proposed multi-unit, multi-family apartment housing development use is consistent with the Southeast Lake Bemidji Planned Unit Development (PUD) approved November 19, 2009 and as amended March 14, 2013 by the JPB.
3. That the tentative development concept and unit building design(s) 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.
4. The sale is conditioned upon the 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. The sale herein is 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 multi-family/multi-unit apartment 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.
5. It is the consensus of the BEDA Board that it is in the City's financial best interests that the proposed sale close according to and in satisfaction with those terms and conditions set forth in the above-described Purchase Agreement.
6. That the proposed sale 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.
7. That the BEDA had properly published notice of the public hearing as required by Minn. Stat. §469.105, Subd. 2.
8. 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.
9. That these Findings are adopted and the decision respecting the proposed sale is 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 South Shore Landing, LLC, a/k/a Northridge Construction, Inc., 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. Therefore, it is recommended that the BEDA complete the proposed sale to Purchaser, and that BEDA and its staff take all necessary administrative steps and actions leading to completion of the sale in accordance herewith and including Minn. Stat. §§469.090-.108.

Dated: _____, 2013

Rita C. Albrecht, President

ATTEST:

Kay M. Murphy, Secretary

PURCHASE AGREEMENT

This Real Estate Purchase Agreement is made this ____ day of August, 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 South Shore Landing, LLC, a for profit 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 5, 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 "Development Property"); and

WHEREAS, Developer desires to purchase the Development Property and to construct a multi-unit housing development thereon (the "Development Project"); 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, 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 Thirty-five Thousand and no/100 Dollars (\$35,000) 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 Fifty Thousand and no/100 Dollars (\$350,000.00) (approximately 2.7 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 Three Hundred Fifteen Thousand and no/100 Dollars (\$315,000.00) paid in cash or by certified check payable to BEDA on or before December 1, 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 Paragraphs 2 and 3 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 event(s), Developer may elect to terminate this Purchase Agreement and have the escrowed earnest money and any interest earned thereon 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. Development Agreement. As a condition to the sale of the Development Property, 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 multi-unit residential housing development proposed by Developer for the Development 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 as further described in Paragraph 3 herein. Should the Development Agreement not be executed by _____, 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 any interest earned thereon shall be returned to Developer less the sum of \$2,000 per month from the date of the execution of this Agreement.

3. Sale Conditioned on BEDA Approval and Other Approvals. The sale of the Development Property is 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 Development Property is 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 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 2. above, the BEDA's sale and conveyance of the Development Property 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 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 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 and any interest earned thereon shall be returned to Developer.

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

a. Use Condition. Developer, its successors and assigns, must use the Development Property for construction of the proposed multi-unit 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 Development 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 Development Property for mortgage or lease financing or other purposes relative to the construction and continuing operation of the proposed multi-unit residential development, the Developer may not transfer title to the Development 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 Closing Date, Developer shall devote the Development Property to its/the intended use or begin work on the proposed residential development improvements 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 4.a., 4.b., and 4.c. above shall be included in the Limited Warranty Deed conveying the Development Property from BEDA to Developer at Closing and in any subsequent conveyance of the Development Property.

d. Application for Approval of 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 Development Property in the Minnesota Pollution Control Agency (MPCA) Owner's Voluntary Inspection and Cleanup (VIC) Program. Developer is not required to continue the property's 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 Development 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 4, Developer acknowledges that it is satisfied with the condition of the Development Property and satisfied with the condition of the BEDA's title to the Development Property and, as such, accepts the condition of BEDA's title to the Development Property. BEDA shall not be responsible for any title corrections or physical conditions of the Development 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 Development 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 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 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 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 Development Property, or take such action as are required by the physical condition of the Development 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 Development Property.

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

a. Unless otherwise specifically agreed upon in writing in this Purchase Agreement, the Development 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 Development 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 4f. 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 Development Property. Developer

shall be responsible for the elimination of any adverse environmental condition, if any, on or within the Development Property.

c. BEDA certifies that the Development Property is serviceable by municipal water and sewer utilities, and that BEDA does not know of any individual sewage treatment system on the Development Property.

d. BEDA otherwise represents that the Development 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 Development 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 Development 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 Development Property.

f. BEDA has no knowledge that the Development 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).

g. 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 Development 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 Development Property or any part thereof is bound.

h. Waiver of Disclosure. The written disclosure required under Minnesota Statutes Sections 513.52 to 513.60, if any, may be waived if the Seller and prospective buyer agree in writing. BEDA and 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.

i. 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.

6. Marketability of Title. Notwithstanding Paragraph 4 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 Development 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 Development 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 Development 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 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 Development 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 Closing.

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

7. Other exceptions to Marketable Title. In addition to "Permitted Exceptions" and the covenants and deed restrictions set forth in Paragraphs 3 and 4 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.

8. 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 Development Property to make any inspections, surveys, tests, audits or reviews of the Development 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 Development 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 Development 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 Development 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 Development Property or any part thereof for which payment has not or will not be made by Developer prior to Closing.

9. 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 5th 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.

10. 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.

11. Possession and Insurance. Notwithstanding Developer's right of entry and access to the Development Property as provided in Paragraph 8 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 Development 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.

12. 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.

13. No Merger. The warranties, representations and covenants of Developer and the BEDA contained in this Purchase Agreement shall survive the conveyance of the Development Property and shall not be merged with the Limited Warranty Deed.

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

15. 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.

16. 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 Developer 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.

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

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

- b. To Developer: Attn: Ryan Carlson
 4050 Garden View Drive, Suite 102
 Grand Forks, ND 58201

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

19. 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.

20. 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.

21. Specific Performance. This Purchase Agreement may be specifically enforced by BEDA or Developer.

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

**BEMIDJI ECONOMIC DEVELOPMENT
AUTHORITY**

By _____
 Rita C. Albrecht
 Its President

By _____
 John M. Chattin
 Its Executive Director

TIN: _____

South Shore Landing, LLC

By _____
Ryan Carlson
Its Vice president

TIN: _____

STATE OF MINNESOTA)
)ss.
COUNTY OF BELTRAMI)

The foregoing instrument was acknowledged before me this _____ day of August, 2013, by Rita C. Albrecht and John M. Chattin, the 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 _____ day of August, 2013, by Ryan Carlson, the Vice President of South Shore Landing, LLC, a Minnesota for profit limited liability company, on behalf of the limited liability company.

Notary Public