

**AMENDED AND RESTATED FIRST AMENDMENT TO
PURCHASE AND DEVELOPMENT AGREEMENT**

This First Amendment to Purchase and Development Agreement (the “**First Amendment**”) is made effective as of July 7, 2020 (the “**Effective Date**”), by and among the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, located at 485 Gorman Street, Shakopee, MN 55379 (the “**Seller**”), Opus Development Company L.L.C., a Delaware limited liability company (the “**Assignor**”), located at 10350 Bren Road West, Minnetonka, MN 55343, and CIVF VI – MN1W03, LLC, a Delaware limited liability company, located at One Beacon Street, Suite 2800, Boston, MA 02108 (the “**Buyer**”).

RECITALS

WHEREAS, on November 30, 2018, the Seller and the Assignor entered into a Purchase and Development Agreement (the “**Original Agreement**”) attached hereto as EXHIBIT A with respect to the acquisition of the property legally described as Lot 1, Block 3, West Shakopee Gateway First Addition, according to the recorded plat thereof, Scott County, Minnesota (the “**Property**”); and

WHEREAS, on June 24, 2020, the Seller and the Assignor entered into a First Amendment to Purchase and Development Agreement attached hereto as EXHIBIT B, which amendment is amended and restated in its entirety by this First Amendment; and

WHEREAS, the Original Agreement contemplated one or two buildings being constructed in one or two phases on the Property (the “**Minimum Improvements**”); and

WHEREAS, the Seller previously approved the sale of the Property to the Assignor or its assigns; and

WHEREAS, the Assignor wishes to assign its right, title and interest, as purchaser, under the Original Agreement to, and to have its obligations and duties, as purchaser, under the Original Agreement assumed by, the Buyer, and the Buyer wishes to assume such obligations and duties under the Original Agreement; and

WHEREAS, the parties hereto have determined to amend the Original Agreement to memorialize the Assignor’s assignment of obligations and duties under the Original Agreement to the Buyer and the Buyer’s assumption of the same,

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

1. All references to the “**Purchase Agreement**” in the Original Agreement shall be deemed to include the Original Agreement, as amended by this First Amendment.

2. The Buyer shall acquire the Property for a purchase price of \$1,650,000 within forty-five (45) days of the date the Buyer receives final land use approvals from the City of Shakopee (i.e., June 16, 2020). The Seller will execute and deliver a limited warranty deed to the Buyer in substantially the form attached to Exhibit A of the Original Agreement.

3. The Assignor hereby assigns to the Buyer all right, title and interest of Assignor, as purchaser, in, to and under the Purchase Agreement, and Buyer hereby accepts such assignment and assumes and agrees to perform all of the obligations and duties of the purchaser under the Purchase Agreement. The Assignor is hereby released from all of the obligations and duties of the purchaser under the Purchase Agreement; provided, however, the Assignor is not released from any of the covenants of the purchaser under the Purchase Agreement related to the construction of the required Minimum Improvements, as defined in Section 13 of the Purchase Agreement.

4. Section 1 of the Original Agreement is hereby deleted and replaced with the following:

1. **SUBJECT PROPERTY.** Pursuant to the terms of this Agreement, the Seller intends to sell to the Buyer fee title to the property legally described as Lot 1, Block 3, West Shakopee Gateway First Addition, according to the recorded plat thereof, Scott County, Minnesota (the “**Property**”).

Any and all references in the Original Agreement to the Parking Easement Agreement are hereby deleted and the Seller and Buyer agree that the Parking Easement Agreement shall not be a requirement for closing on the sale of the Property.

5. Section 7.F. and Section 7.G. of the Original Agreement are hereby deleted in their entirety.

6. Section 10 of the Original Agreement is hereby deleted and replaced with the following:

10. **STORM WATER PONDS.** The Seller warrants that the City of Shakopee has completed construction of two storm water detention ponds and related improvements on the Property, which the City of Shakopee will continue to operate and maintain. The storm water detention ponds and related improvements on the Property have been dedicated to the City of Shakopee pursuant to the recorded plat of West Shakopee Gateway First Addition. The Drainage and Utility Easement described in the Original Agreement shall not be a requirement for closing on the sale of the Property.

7. Section 13.B of the Original Agreement is hereby amended as follows:

(a) The first sentence of Section 13.B is hereby deleted in its entirety and the following substituted therefor: “The Buyer will be deemed to have commenced construction of a building comprising the Minimum Improvements when the Buyer or its contractor has commenced pouring the footings for such building.”

(b) The third sentence of Section 13.B is hereby amended by deleting the date “August 1, 2020” and replacing it with the phrase “the date ninety (90) days after the Closing Date, subject to Unavoidable Delays”.

8. The last paragraph of Section 15 of the Original Agreement is hereby amended to add the phrase “or the Buyer's contractor” after the phrase “beyond the reasonable control of the Buyer.”

9. Exhibit B (Easement-Drainage and Utility) of the Original Agreement is hereby deleted.

10. Except as expressly provided in this First Amendment, all provisions of the Original Agreement remain in full force and effect, and the parties hereby ratify and confirm each and every provision thereof.

11. This First Amendment constitutes the entire agreement between the parties with respect to the subject matter herein contained and all prior negotiations with respect to the subject matter herein contained are merged into and incorporated in this First Amendment, and all prior documents and correspondence between the parties with respect to the subject matter herein contained (other than the Original Agreement) are superseded and of no further force or effect. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns under the Purchase Agreement.

12. This First Amendment may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This First Amendment may be transmitted by fax or by electronic mail in portable document format (PDF) and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures. Any party may request original signatures for this First Amendment.

13. At the request of the Seller, this First Amendment shall be recorded against the Property.

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IN WITNESS WHEREOF, the Seller, Buyer and Assignor have executed this First Amendment to Purchase and Development Agreement effective as of the Effective Date.

SELLER

Economic Development Authority for the City of Shakopee, Minnesota

By: _____
Jay Whiting
Its: President

By: _____
William H. Reynolds
Its: Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Jay Whiting, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Seller.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Seller.

Notary Public

EXHIBIT A

PURCHASE AND DEVELOPMENT AGREEMENT

PURCHASE AND DEVELOPMENT AGREEMENT

This Purchase and Development Agreement (the "Agreement") is made on November 20, 2018 (the "Effective Date"), between the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, located at 485 Gorman Street, Shakopee, MN 55379 (the "Seller"), and Opus Development Company, L.L.C., a Delaware limited liability company, located at 10350 Bren Road West, Minnetonka, Minnesota 55343, its successors and assigns (collectively, the "Buyer").

1. **SUBJECT PROPERTY.** Pursuant to the terms of this Agreement, the Seller intends to sell to the Buyer fee title to the property legally described as Lot 1, Block 3, West Shakopee Gateway First Addition, according to the recorded plat thereof, Scott County, Minnesota (the "Property"), together with an easement for surface parking purposes over the adjacent land legally described as Outlot A, West Shakopee Gateway First Addition (the "Parking Easement Agreement").

2. **OFFER/ACCEPTANCE.** In consideration of the mutual agreements herein contained, the Buyer offers and agrees to purchase and the Seller agrees to sell the Property.

3. **CONTINGENCIES.** This Agreement is contingent upon the following:

- A. The Buyer's inspection of the Property and environmental testing (if deemed necessary by the Buyer) and the Buyer receiving reports related to all appropriate due diligence, including without limitation conducting soil borings and other site engineering investigations, studies, and tests on the Property, that are satisfactory to the Buyer;
- B. The Seller's completion of and the Buyer's satisfaction with the utilities, storm water detention, and all on-site and off-site infrastructure on or adjacent to the Property;
- C. The Buyer having obtained all government approvals deemed necessary by the Buyer;
- D. The Buyer's satisfactory review of all leases, easement agreements, maintenance agreements, or any other agreements relating to the Property;
- E. The Buyer's receipt of all documents to be provided by the Seller in accordance with Section 7 of this Agreement and the Buyer's and the Seller's reasonable approval of the terms and conditions of a Parking Easement Agreement;
- F. Condition of title being satisfactory to the Buyer following the Buyer's examination of title as provided in Section 11 of this Agreement;
- G. Following the review of the items listed above, the suitability of the Property for development by the Buyer;
- H. The Board of the Seller holds a public hearing and approves the sale of the Property; and

The Buyer shall have until 30 days after the Due Diligence Period (as defined herein) to waive or remove the contingencies listed at A and C through G above. The Seller shall have until the Closing Date to remove the contingency listed in H above. The contingencies listed in A through G are solely for the benefit of the Buyer and may be waived by the Buyer. The contingency listed in H is not waivable. If the contingencies are duly satisfied or waived, then the Buyer and the Seller shall proceed to close the transaction as contemplated herein, subject to the remaining provisions of this Agreement. If, however, one or more of the contingencies is not satisfied, or is not satisfied on time, and is not waived by the Buyer, this Agreement shall thereupon be

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void, at the option of the Buyer upon written notice from the Buyer, and any Earnest Money (as defined herein), plus any accrued interest, shall be returned to the Buyer. If this Agreement is voided by the Buyer, the Buyer and the Seller shall execute and deliver to each other a termination of this Agreement.

4. PURCHASE PRICE AND TERMS.

- A. The total purchase price for the Property is \$1,650,000 (the "Purchase Price").
- B. Earnest money in the amount of \$25,000 (the "Earnest Money") is payable to the Seller within five business days of the execution of this Agreement. The Earnest Money shall be deposited in an interest-bearing escrow account with First American Title Insurance Company (the "Title Company"). The Earnest Money shall be applied towards payment of the Purchase Price at Closing.
- C. The Buyer agrees to pay by certified check or by electronic transfer of funds on the Closing Date any remaining balance due according to the terms of this Agreement. Upon payment in full of the Purchase Price by the Buyer, the Seller will deliver to the Buyer the items described in Section 7 of this Agreement.

5. DUE DILIGENCE PERIOD. Commencing on the Effective Date, the Buyer shall have an initial period of 120 days (the "Due Diligence Period") to review all documents and other materials as requested by the Buyer. The Seller agrees to cooperate with the Buyer and to timely provide the Buyer with all such documents and materials as requested. The Due Diligence Period may be extended by additional 30-day periods at the request of the Buyer; provided, however, that the extensions may not occur more than three times. Upon each extension request, the Buyer shall deposit an additional \$10,000 of Earnest Money with the Title Company within five business days of the request. Such additional Earnest Money shall be applicable to the Purchase Price at Closing. Upon such extension by the Buyer, the definition of Due Diligence Period shall be changed to such extended date and any reference in this Agreement to the Due Diligence Period shall mean the period as extended. If the Buyer is entitled to a refund of the Earnest Money under this Agreement, such refund will include all additional Earnest Money that the Buyer pays pursuant to this Section.

6. CLOSING DATE. The closing of the sale of the Property shall take place on the first business day that is at least 45 days after the Seller and the Buyer receive final land use approvals for the Buyer's intended use of the Property from the City of Shakopee (the "City") (the "Closing Date"), or sooner by agreement of the parties. The closing shall take place through an escrow with the Title Company.

7. DOCUMENTS TO BE DELIVERED AT CLOSING. The Seller agrees to deliver the following documents to the Buyer at closing:

- A. A duly recordable limited warranty deed conveying fee simple title to the Property to the Buyer, free and clear of any mortgages, liens or encumbrances other than matters created by or acceptable to the Buyer, substantially in the form attached hereto as EXHIBIT A (the "Deed"), which Deed shall be subject to the conditions subsequent required by Sections 13, 14, and 15 of this Agreement;
- B. An affidavit from the Seller sufficient to remove any exception in the Buyer's policy of title insurance for mechanics' and materialmens' liens; unsatisfied judgments and bankruptcies against or involving the Seller; unrecorded interests in the Property known to the Seller; and rights of parties in possession;
- C. An affidavit of the Seller confirming that the Seller is not a foreign person within the

meaning of Section 1445 of the Internal Revenue Code of 1986, as amended;

- D. A completed Minnesota Well Disclosure Certificate, unless the Deed includes the statement "the Seller certifies that the Seller does not know of any wells on the described Property";
- E. Any notices, certificates, and affidavits regarding any private sewage systems, underground storage tanks, and environmental conditions as may be required by Minnesota statutes, rules or ordinances;
- F. The Parking Easement Agreement;
- G. The Drainage and Utility Easement attached hereto as EXHIBIT B, between the City and the Buyer (the "Drainage and Utility Easement") related to the storm water detention ponds described in Section 10; and
- H. Such other documents that the Title Company may reasonably require to consummate the transaction that this Agreement contemplates.

8. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.

- A. The Seller shall be responsible for all real estate taxes, including any deferred real estate taxes, penalties or interest, for the years prior to the year in which closing occurs. The Buyer and the Seller shall prorate as of the Closing Date the real estate taxes for the Property that are due and payable in the year of closing.
- B. The Seller shall pay all special assessments levied against the Property as of the Closing Date, including special assessments certified for payment with the real estate taxes and all deferred assessments. The Buyer shall assume payment of any special assessments that are pending but not levied against the Property as of the Closing Date. The Seller is not aware of any current pending special assessments related to the Property and will give the Buyer notice of any special assessments that may become pending on or before the Closing Date.

9. CONDITION OF PROPERTY. The Property is vacant, undeveloped land. The Buyer acknowledges and agrees that, except as otherwise provided in this Agreement, the Property is being sold in an "as-is," "where-is" condition and with all faults, without warranty or representation of any kind, express or implied, as to the condition, suitability, or desirability of the Property to be used for any purpose. The Buyer acknowledges that the Seller has not agreed to perform any work on or about the Property except for the construction of the Storm Water Ponds.

10. STORM WATER PONDS. The Seller will cause the City to enter into the Drainage and Utility Easement, which requires the City to construct, operate and maintain two storm water detention ponds and related improvements on the Property, all as more specifically described in the Drainage and Utility Easement.

11. EXAMINATION OF TITLE. The Buyer's examination of title to the Property shall be conducted as follows:

- A. **TITLE EVIDENCE.** Within 10 days after the Effective Date, the Buyer shall, at the Seller's cost, order, and when received provide the Seller with a copy of, a title commitment issued to the Buyer by the Title Company (the "Title Commitment"). Promptly after the Buyer receives the Title Commitment, the Buyer may order, at the Buyer's cost, an

ALTA/NSPS survey of the Property prepared by a surveyor registered under the laws of the State of Minnesota and including such optional Table "A" items as the Buyer may require in the Buyer's sole discretion (the "Survey," and together with the Title Commitment, the "Title Evidence").

- B. BUYER'S OBJECTIONS.** The Buyer shall provide written objections to the Seller (the "Objections") to the form or contents of the Title Evidence or condition of title within 20 days after receipt of the Title Evidence. The Buyer's failure to make Objections within such time period shall constitute waiver of the Objections. The Seller shall have 20 days after receipt of the Objections to cure the Objections, during which period the closing will be postponed, if necessary. The Seller shall use all reasonable efforts to correct any Objections. If the Objections are not cured within such 20-day period, the Buyer will have the option to do any of the following:
- (1) Terminate this Agreement;
 - (2) Cure the Objections at the Buyer's expense, during which the closing will be postponed, if necessary; or
 - (3) Waive the Objections.

12. GOVERNMENTAL APPROVALS. The Buyer is responsible for applying for all governmental approvals required for the Minimum Improvements (defined below). The Seller agrees to cooperate (at no additional cost to the Seller) with the Buyer's efforts to obtain all permits, approvals, and consents, including but not limited to rezoning, necessary for the Buyer's intended use of the Property, including but not limited to the execution of any consents, authority documents, or applications reasonably requested by the Buyer.

13. CONSTRUCTION OF MINIMUM IMPROVEMENTS. The Buyer will construct one or two buildings on the Property in one or two phases, at the Buyer's discretion. The aggregate gross area of the one or two buildings will be at least 125,000 square feet (the "Minimum Improvements"). The Buyer acknowledges that it will be required to comply with the requirements of the planned unit development approved for the Property.

Prior to the commencement of the construction of the Minimum Improvements, the Buyer shall provide the Seller with ten (10) days' written notice of its election to build one large building or two small buildings on the Property. If the Buyer elects to construct two buildings, the Buyer shall effect a lot split of the Property and shall be responsible for obtaining the necessary approvals for subdividing the Property to create a recordable legal description for each parcel of the Property (the "Split Parcels").

The following provisions and covenants govern the Buyer's construction and operation of the Minimum Improvements, which covenants survive delivery of the Deed until terminated as provided in this Agreement.

- A.** The Buyer will construct the Minimum Improvements substantially in accordance with the plans and specifications for the Minimum Improvements that the City approves in connection with issuing a building permit for the Minimum Improvements to the Buyer (the "Plans").
- B.** The Buyer will be deemed to have commenced construction of a building comprising the Minimum Improvements when the Buyer has completed the footings for the building. The Buyer will be deemed to have substantially completed construction of a building comprising the Minimum Improvements when the Buyer's architect issues a Certificate

of Substantial Completion to the Seller. Subject to Unavoidable Delays (defined below), the Buyer will commence construction of the first, or at the election of the Buyer the only, building comprising the Minimum Improvements ("Building 1") on or before August 1, 2020 and will exercise commercially reasonable efforts to substantially complete construction of Building 1 within 18 months after commencing construction of Building 1. Subject to Unavoidable Delays, if the Buyer elects to build the second building comprising the Minimum Improvements ("Building 2"), the Buyer will commence construction of Building 2 within 24 months of substantially completing Building 1 and will exercise commercially reasonable efforts to substantially complete construction of Building 2 within 18 months after commencing construction of Building 2. In this Agreement, the parties may refer to Building 1 and Building 2 individually as a "Building" and collectively as the "Buildings." If the Buyer elects to build only one building, any references to "Building 2" herein shall be disregarded.

- C. Within 10 days after the Buyer commences construction of a Building, the Seller will issue to the Buyer a recordable document substantially in the form of EXHIBIT C, certifying that the Buyer has commenced construction of such Building (the "Certificate of Commencement"). If the Buyer elects to construct two buildings, a Certificate of Commencement shall be issued for each Building. Upon issuance of a Certificate of Commencement for either Building, the Seller's rights under Section 15 of this Agreement will expire and be of no further force and effect with respect to that part of the Property on which such Building and all site improvements serving such Building are constructed. The Seller will nevertheless retain the right to pursue any and all other rights and remedies available to the Seller under this Agreement for the Buyer's default if the Buyer, subject to Unavoidable Delays, fails to substantially complete the applicable Building on or before the target date described below.
- D. Promptly after the Buyer substantially completes a Building, the Seller will furnish the Buyer with a certificate of completion for such Building, in substantially the form attached hereto as EXHIBIT D (the "Certificate of Completion"). If the Buyer elects to construct two buildings, a Certificate of Completion shall be issued for each Building. Such certification by the Seller shall be (and it shall be so provided in the Deed and in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in the Deed with respect to the obligations of the Buyer and its successors and assigns, to construct such Building and the dates for completion thereof. If the Minimum Improvements are constructed in phases, a Certificate of Completion shall be issued for each phase. If the Seller shall refuse or fail to timely provide any certification in accordance with the provisions of this Section, the Seller shall, within 10 days after written request by the Buyer, provide the Buyer with a written statement, indicating in adequate detail in what respects the Buyer has failed to commence or complete the subject Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts are necessary, in the reasonable opinion of the Seller for the Buyer to take or perform in order to obtain such certification.
- E. The Buyer agrees that until the Seller issues the Certificate of Completion for a Building to the Buyer:
 - (1) The Buyer will not Transfer the Building to a third party without the Seller's written consent, which consent the Seller will not unreasonably withhold, condition or delay. "Transfer" means any total or partial sale, assignment,

conveyance, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property or any part thereof or any interest therein to any person or entity. The term "Transfer" does not include and the Seller's approval is not required for (i) encumbrances made or granted by way of security for the purpose of purchasing the Property and/or obtaining construction, interim or permanent financing necessary to enable the Buyer to construct the Minimum Improvements or any part thereof; (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of the Buyer's business related to the use and operation of the Property; (iii) any Transfer in any form to an affiliate of the Buyer; (iv) Transfer of the Property to a mortgagee of the Property by foreclosure or deed-in-lieu of foreclosure, or a subsequent sale or Transfer by such mortgagee to a third party purchaser, or any sale or transfer thereafter; or (v) a sale or transfer to a bona fide purchaser of the Property at a foreclosure sale, or any sale or transfer thereafter.

- (2) If the Buyer seeks to effect a Transfer of a Building prior to issuance of the Certificate of Completion for that Building, the Seller shall be entitled to require as conditions to such Transfer that:
- (i) any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Seller, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Buyer as to the portion of the Property to be transferred; and
 - (ii) Any proposed transferee, by instrument in writing satisfactory to the Seller and in form recordable in the public land records of Scott County, Minnesota, shall, for itself and its successors and assigns, and expressly for the benefit of the Seller, have expressly assumed all of the obligations of the Buyer under this Agreement as to the portion of the Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Buyer is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Seller) deprive the Seller of any rights or remedies or controls with respect to the Property, the Minimum Improvements or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no Transfer shall operate, legally, or practically, to deprive or limit the Seller of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property that the Seller would have had, had there been no such Transfer. In the absence of a specific written agreement by the Seller to the contrary, no such Transfer or approval by the Seller thereof shall be deemed to relieve the Buyer, or any other party bound in any way by this Agreement or otherwise with respect to the Property, from any of its obligations with respect thereto.

- (3) If the conditions described in clause (2) above are satisfied then the Transfer will be approved and the Buyer shall be released from its obligations under this Agreement, as to the portion of the Property that is transferred, assigned, or otherwise conveyed. The provisions of this clause (3) apply to all subsequent transferors and transferees.
- (4) Notwithstanding any contrary language in this Agreement, upon issuance of a Certificate of Completion by the Seller, the Buyer may Transfer or assign the Building for which the Certificate of Completion was issued and/or the Buyer's rights and obligations under this Agreement with respect to such Building to any third party without the prior written consent of the Seller.
14. **USE RESTRICTION.** The Buyer (including its successors and assigns) shall not lease the Property to tenants with the exclusive use of the premises as warehouse space. The Buyer shall lease the Property for use as office space and/or manufacturing space with distribution/warehousing as a supporting use. The Buyer (including its successors and assigns) further agrees that (a) it will not seek exemption from real estate taxes on the Property under State of Minnesota law; and (b) it will not Transfer the Property to any entity whose ownership or operation of the property would result in the Property being exempt from real estate taxes under State of Minnesota law (other than any portion thereof dedicated or conveyed to the City or the Seller in accordance with this Agreement). **The covenants in this paragraph survive delivery of the Deed, issuance of the Certificate of Commencement and issuance of the Certificate of Completion for the Minimum Improvements (or, if applicable, each phase of the Minimum Improvements) and shall remain in effect for seven years after the date of the Deed, whereupon this Section 14 shall automatically terminate without further action from either party, but the Seller will, if requested by the Buyer, promptly provide to the Buyer a recordable document certifying that the use restrictions set forth in this Section 14 are terminated and of no further force or effect.**
15. **REVESTING TITLE IN SELLER UPON FAILURE TO COMMENCE CONSTRUCTION.** In the event that subsequent to conveyance of the Property or any part thereof to the Buyer, the Buyer, subject to Unavoidable Delays (as defined herein), fails to carry out its obligations with respect to commencing construction of (a) one building if the Buyer elected to construct one building (including the nature and the date for the commencement thereof); or (b) if the Buyer elected to construct two buildings but fails to commence construction of Building 1 and/or Building 2 (including the nature and the date for the commencement thereof), and any such failure is not cured, ended, or remedied within 30 days after written demand from the Seller to the Buyer to do so, or for a longer time period in the event the cure of such failure reasonably requires more than 30 days to complete and the Buyer promptly commences to cure such failure within the 30-day period and, thereafter, diligently pursues the cure to completion, then the Seller shall have the right to re-enter and take possession of (i) in the event of subsection (a) above, the entire Property; or (ii) in the event of subsection (b) above, the Split Parcel(s) on which the Buyer was to have commenced construction of the applicable Building (the "Default Property"). Upon such reentry, the estate of the Default Property that was conveyed by the Deed to the Buyer will be terminated (and revested in the Seller), subject to Section 16 of this Agreement. The intent of this provision, together with other provisions of the Agreement, is that the Deed shall contain a condition subsequent, that in the event of any default on the part of the Buyer to commence construction of the Minimum Improvements as described in Section 13(B) of this Agreement and failure on the part of the Buyer to remedy, end, or abrogate such default within the period and in the manner stated in such subdivisions, the Seller, at its option, subject to Section 16 of this Agreement, may declare a termination of all the Buyer's title, rights and interests in and to the Default Property in favor of the Seller, and that all such title, rights and interests of the Buyer, and any assigns or successors in interest to said Default Property, shall

revert to the Seller, but only if the events stated in this Section have not been cured within the time periods provided above.

The Buyer shall be responsible for obtaining the necessary approvals for subdividing the Property to create a recordable legal description for the Default Property if the Default Property is less than the entire Property. If the Construction Plans provide for a shared parking lot, utilities, access or other improvements between the Default Property and the remainder of the Property, the Buyer and Seller shall promptly enter into easements and other agreements reasonably necessary for the use and enjoyment of both properties.

Notwithstanding anything to the contrary contained in this Agreement, the Seller shall have no right to re-enter or retake title to and possession of a portion of the Property for which a Certificate of Commencement has been issued by the Seller.

For purposes of this Agreement, the term "Unavoidable Delays" means delays beyond the reasonable control of the Buyer that directly result, among other reasons, from strikes, other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Seller in exercising its rights under this Agreement) which directly results in delays.

16. **RESALE OF REACQUIRED PROPERTY; DISPOSITION OF PROCEEDS.** Upon the revesting in the Seller of title to and/or possession of the Property (or, if applicable, either or both Split Parcels) or any part thereof as provided in Section 15 of this Agreement, the Seller shall, at the time and as a condition of the revesting (the "Revesting Date") refund the Purchase Price paid by the Buyer under Section 4 of this Agreement to the Buyer or, if applicable, the portion of the Purchase Price allocable to the respective Split Parcel, less (a) the Seller's actual third party out-of-pocket costs and expenses that the Seller incurs to consummate the revesting of the Default Property; (b) a pro rata share of all taxes, assessments, and water and sewer charges with respect to the Default Property or part thereof that are unpaid as of the Revesting Date; and (c) any payments made or necessary to be made to discharge any encumbrances or liens created by the Buyer and existing on the Default Property or part thereof as of the Revesting Date or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Buyer, its successors or transferees; and (d) any amounts otherwise owing the Seller by the Buyer or its successor or transferee.

17. **CLOSING COSTS AND RELATED ITEMS.**

- A. **SELLER'S COSTS.** The Seller shall be responsible for the following closing costs and related items: (1) all recording fees and charges relating to the filing of any instrument required to make title marketable; (2) the cost of the title commitment; (3) any fees for standard searches with respect to the Seller and the Property; (4) its own legal and accounting fees associated with this transaction; (5) all recording fees and charges relating to filing the Deed; (6) any state deed tax, conservation fee or other federal, state or local documentary or revenue stamps or transfer tax with respect to the Deed to be delivered by the Seller; (7) cost to record the Plat; and (8) one-half of all closing fees charged by the Title Company and any escrow fees charged by any escrow agent engaged by the parties in connection with this Agreement.
- B. **BUYER'S COSTS.** The Buyer shall be responsible for the following closing costs and related items: (1) the cost of any survey of the Property required by the Buyer; (2) the

premium required for issuance of the title insurance policy and any endorsements; (3) the fees of any soil tests, environmental assessments, inspection reports, appraisals, or other tests or reports ordered by the Buyer; (4) recording fees and charges related to the filing of this Agreement; (5) one-half of all closing fees charged by the Title Company and any escrow fees charged by any escrow agent engaged by the parties in connection with this Agreement; and (6) its own legal and accounting fees associated with this transaction.

18. INDIVIDUAL SEWAGE TREATMENT SYSTEM DISCLOSURE. The Seller has no knowledge or information regarding the existence, location, or status of any sewage treatment system on or serving the Property.

19. WELL DISCLOSURE. The Seller certifies that the Seller does not know of any wells on the Property.

20. BROKER COMMISSION. The Buyer represents that it has used Joe Owen with Colliers International as its real estate broker in connection with the purchase of the Property. Each party represents to the other that, other than as represented by the Buyer in the preceding sentence, it has not used the services of any real estate broker or agent in connection with this Agreement or the transaction contemplated by this Agreement. Each party agrees to indemnify, defend, and hold harmless the other party against and in respect of any obligation or liability based in any way upon agreements, arrangements, or understandings made or claimed to have been made by the party with any third person. The Buyer shall pay its real estate broker any and all fees, costs, and commissions due to the broker.

21. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and no other agreement prior to this Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein.

22. AMENDMENT AND MODIFICATION. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or have any effect unless made in writing, is signed by the Seller and the Buyer, and specifies with particularity the extent and nature of such amendment, modification or waiver. Any waiver by either party of any default by the other party shall not affect or impair any right arising from any previous or subsequent default.

23. BINDING EFFECT. This Agreement binds and benefits the parties and their successors and assigns.

24. NOTICES. All notices sent pursuant to this agreement shall be in writing and delivered personally or mailed to each party at the address shown above or to such other address or person as the party shall have designated in writing. If personally delivered, the notice is effective as of the earlier of the date of delivery or the date of first attempted delivery if such delivery is refused. If mailed, the notice is effective as of the date of mailing.

25. CUMULATIVE RIGHTS. Except as may otherwise be provided herein, no right or remedy herein conferred on or reserved by either party is intended to be exclusive of any other right or remedy provided by law, but such rights and remedies shall be cumulative in and in addition to every other right or remedy given herein or elsewhere or existing at law, equity or by statute.

26. DEFAULT; REMEDIES; SPECIFIC PERFORMANCE. If the Buyer defaults in any of the agreements herein, the Seller may, as the Seller's sole remedies, (a) terminate this Agreement; and (b) retain any Earnest Money paid by the Buyer as liquidated damages, time being of the essence hereof. If the Seller defaults in any of the agreements herein, the Buyer may (1) terminate this Agreement, in which event the

Seller will cause the Title Company to refund the Earnest Money to the Buyer; (2) terminate this Agreement and seek actual damages for breach of this Agreement; or (3) seek specific performance of this Agreement; provided that any action for specific performance must be brought within six months after the date of the alleged breach.

27. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

28. GOVERNING LAW. This contract shall be governed by the laws of the State of Minnesota.

29. SURVIVAL. No terms of this Purchase Agreement shall survive the delivery of the Deed, except (a) all representations and warranties; (b) the last sentence of this Section; and (b) Sections 13, 14, 15, and 16 of this Agreement, for the period of time specified in such Sections. Notwithstanding any contrary language in this Agreement, all terms and conditions of this Agreement, as well as those reflected on the Deed, will expire and terminate on the date that is seven years after the date of the Deed.

30. RECORDING; PURPOSE OF RECORDING. This Agreement shall be filed of record with the County Recorder or the Registrar of Titles of Scott County, Minnesota, as the case may be to provide record notice of the terms of Sections 13, 14, 15, and 16 of this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Seller and the Buyer have executed this Purchase and Development Agreement as of the date written above.

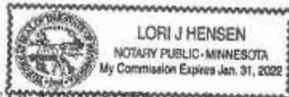
SELLER, Economic Development Authority for the City of Shakopee, Minnesota

By 
Its President

By 
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

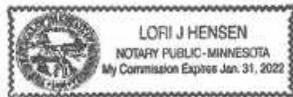
The foregoing instrument was acknowledged before me this 20 day of November, 2018, by Matt Lehman, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Seller.




Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this 20 day of November, 2018, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Seller.




Notary Public

BUYER, Opus Development Company, L.L.C.

By *[Signature]*
Its *Vice President*

STATE OF MINNESOTA)
) SS.
COUNTY OF *Waseca*)

The foregoing instrument was acknowledged before me this *30th* day of *November*, 2018, by *Matthew Rauhhorst*, the *V.P.* of Opus Development Company, L.L.C., a Delaware limited liability company, on behalf of the Buyer.



Katherine M. Moore
Notary Public

This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

FORM OF LIMITED WARRANTY DEED

Deed Tax Due: \$ _____
ECRV: _____
Date: _____

FOR VALUABLE CONSIDERATION, Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, Grantor, hereby conveys and quitclaims to Opus Development Company, L.L.C., a limited liability company under the laws of Delaware, Grantee, real property in Scott County, Minnesota, described as follows:

Lot 1, Block 3, West Shakopee Gateway First Addition, according to the recorded plat thereof, Scott County, Minnesota

Check here if part or all of the land is Registered (Torrens)

together with all hereditaments and appurtenances.

This Deed conveys after-acquired title. Grantor warrants that Grantor has not done or suffered anything to encumber the property except as described below:

Section 1. The Grantee's rights and interest in the Property are subject to Sections 13, 15, and 16 of that certain Purchase and Redevelopment Agreement, dated _____, 2018 (the "Agreement"), between the Grantor and the Grantee, recorded on _____, 2018, in the office of the [County Recorder] [Registrar of Titles] of Scott County, Minnesota as Document No _____, including without limitation the Grantor's rights to (a) re-enter and revest in the Grantor title to the property legally described above (the "Property"); provided, however, that such rights to re-enter and revest title shall terminate upon the issuance of one or more certificates of commencement as more fully described in Section 13 of the Agreement; and (b) restrict transfer of the Property upon the terms provided in the Agreement; provided, however, that such rights to restrict transfer shall terminate upon the issuance of one or more certificates of completion, as more fully described in Section 13 of the Agreement.

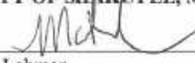
Section 2. The Grantee's rights and interest in the Property are further subject to certain use restrictions as more fully described in Section 14 of the Agreement, which shall automatically terminate seven (7) years after the date of the recording of this deed.

A-1

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- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: _____).
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

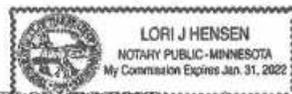
ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA

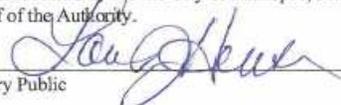
By 
 Matt Lehman
 Its President

By 
 William H. Reynolds
 Its Executive Director

STATE OF MINNESOTA)
) SS.
 COUNTY OF SCOTT)

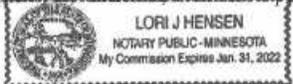
The foregoing instrument was acknowledged before me this 20 day of November, 2018, by Matt Lehman, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

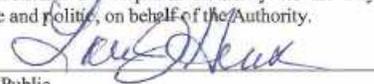



 Notary Public

STATE OF MINNESOTA)
) SS.
 COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this 20 day of November, 2018, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.




 Notary Public

This instrument was drafted by:

 Kennedy & Graven, Chartered (JAE)
 470 U.S. Bank Plaza
 200 South Sixth Street
 Minneapolis, MN 55402
 (612) 337-9300

Tax Statements should be sent to:

 Opus Development Company, L.L.C.
 10350 Bren Road West
 Minnetonka, MN 55343

(Drainage and Utility)

EASEMENT

This Easement is made as of _____, 2018, by OPUS DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company (the "Owner") in favor of the CITY OF SHAKOPEE, MINNESOTA, a Minnesota municipal corporation (the "City").

RECITALS

WHEREAS, the Owner is the fee owner of the real property described on Exhibit A (the "Property").

WHEREAS, the Owner desires to grant to the City certain easements over a portion of the Property described on Exhibit B and depicted on Exhibit C (the "Easement Area").

TERMS OF EASEMENTS

1. Grant of Easements. For good and valuable consideration, receipt of which is acknowledged by Owner, Owner grants and conveys to the City a perpetual non-exclusive easement for drainage and utility purposes over the Easement Area for public drainage and utility related purposes subject to the terms and conditions hereof.

2. Scope of Easements. The perpetual drainage and utility easements granted herein include the right of the City, its contractors, agents, and employees to enter the Easement Area at all reasonable times for the purpose of installing, constructing, reconstructing, operating, maintaining, inspecting, altering and repairing within the described Easement Area any of the following facilities and amenities: two storm water detention ponds, storm sewer, sanitary sewer, related water facilities, ground surface drainage ways and other public City owned utilities, in the Easement Area (the "City Improvements"). The easements granted herein also include the right to cut, trim, or remove from the Easement Area any trees, shrubs, or other vegetation as in the City's judgment unreasonably interfere with the easement or the City Improvements.

3. Construction, Maintenance, Repair and Replacement Obligations. The City shall construct, operate, maintain, repair and replace the City Improvements. The City shall keep the

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City Improvements in good condition and shall not unreasonably interfere with the Owner's use of the Property when constructing, operating, maintaining, repairing or replacing the City Improvements.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorney's fees, or losses resulting from any claims, actions, suits or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement area or Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Owner, its successors and assigns.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, Owner and the City have executed this Easement effective as of the date and year first above written.

OWNER:

OPUS DEVELOPMENT COMPANY, L.L.C.,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2018, by _____, the _____ of OPUS DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

This instrument was drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

SIGNATURE PAGE TO EASEMENT (Drainage and Utility)

S-1

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CITY:

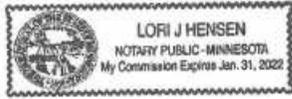
CITY OF SHAKOPEE, MINNESOTA, a Minnesota municipal corporation

By: [Signature]
Name: Bill Mars
Title: Mayor

By: [Signature]
Name: William H. Reynolds
Title: City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me on Nov 20, 2018, by Bill Mars, the Mayor, and by William H. Reynolds, the City Administrator, of the CITY OF SHAKOPEE, MINNESOTA, a Minnesota municipal corporation, on behalf of said municipal corporation.



[Signature]
Notary Public

SIGNATURE PAGE TO EASEMENT (Drainage and Utility)

B-3

EXHIBIT A

Legal Description of Property

Lot 1, Block 3, West Shakopee Gateway First Addition, according to the recorded plat thereof,
Scott County, Minnesota

A-1

545115v2 JAE SH235-31

11248903v2

EXHIBIT B

Description of Easement Area

[See attached]

[note: The parties agree that the Easement Area is within the Drainage and Utility Easement in the southeast corner of the Property that was dedicated on the plat of West Shakopee Gateway First Addition, but the legal description of the Easement Area must be certified by a surveyor]

B-1

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EXHIBIT C

Depiction of Easement Area

[See attached]

[note: The parties agree that the Easement Area is within the Drainage and Utility Easement in the southeast corner of the Property that was dedicated on the plat of West Shakopee Gateway First Addition, but the legal description of the Easement Area must be certified by a surveyor]

C-1

545115v2 JAE SH235-31

11248903v2

EXHIBIT C

FORM OF CERTIFICATE OF COMMENCEMENT

The undersigned hereby certifies that Opus Development Company, L.L.C., a Delaware limited liability company (the "Developer"), has fully satisfied its obligations under Section 13 of the Purchase and Development Agreement, dated _____, 2018 (the "Agreement"), between the Economic Development Authority for the City of Shakopee, Minnesota and the Developer, with respect to commencing construction of [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] in accordance with Section 13 of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to commencing construction of [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] under Section 13 of the Agreement, and the Seller's right to re-enter and re-vest title to the [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] pursuant to Section 13 of the Agreement is hereby terminated.

Dated: _____, 20__.

**ECONOMIC DEVELOPMENT AUTHORITY FOR
THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

Notary Public

This document drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT D

FORM OF CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Opus Development Company, L.L.C., a Delaware limited liability company (the "Developer"), has fully satisfied its obligations under Section 13 of the Purchase and Development Agreement, dated _____, 2018 (the "Agreement"), between the Economic Development Authority for the City of Shakopee, Minnesota and the Developer, with respect to construction of the [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] in accordance with Section 13 of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of the [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] under Section 13 of the Agreement, and the Seller's right to restrict transfer of the Property under Section 13(D)(1)-(4) are hereby terminated.

Dated: _____, 20__.

ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

D-1

527811v7 JAE SH235-31

Notary Public

This document drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

527811v7 JAE SH235-31

D-2

EXHIBIT B

FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT

FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT ("First Amendment") is made as of June 24, 2020 ("First Amendment Effective Date"), by and between Opus Development Company, L.L.C., a Delaware limited liability company ("Buyer"), and the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic ("Seller").

RECITALS:

A. By that certain Purchase and Development Agreement dated as of November 13, 2018 (the "**Original Purchase Agreement**") by and between Seller and Buyer, Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller, the Property, upon and subject to the conditions and limitations therein contained.

B. Seller and Buyer desire to amend the requirements regarding the construction of Minimum Improvements, upon and subject to the terms and conditions of this First Amendment.

C. The Original Purchase Agreement and this First Amendment are hereinafter collectively referred to as the "**Purchase Agreement**", and all references to the Purchase Agreement shall mean the Original Purchase Agreement, as amended by this First Amendment, whether or not such references shall expressly refer to this First Amendment. Unless otherwise provided herein, all capitalized words and terms used herein shall have the meanings ascribed to such words and terms as in the Original Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Section 13.B of the Original Purchase Agreement is hereby amended, in part, as follows:
 - a. The date "August 1, 2020" is hereby deleted in its entirety and the phrase "the date ninety (90) days after the Closing Date, subject to Unavoidable Delays" substituted therefor.
 - b. The first sentence thereof is hereby deleted in its entirety and the following substituted therefor: "The Buyer will be deemed to have commenced construction of a building comprising the Minimum Improvements when the Buyer or its contractor has commenced pouring the footings for such building."
2. The last grammatical paragraph of Section 15 of the Original Purchase Agreement is hereby amended, in part, in that the phrase "or the Buyer's contractor" is added after the phrase "beyond the reasonable control of the Buyer".
3. Except as expressly provided in this First Amendment, all provisions of the Original Purchase Agreement remain in full force and effect and are not modified by this First Amendment, and the parties hereby ratify and confirm each and every provision thereof.
4. This First Amendment constitutes the entire agreement between the parties with respect to the subject matter herein contained and all prior negotiations with respect to the subject matter herein contained are merged into and incorporated in this First Amendment, and all prior documents and correspondence between the parties with respect to the subject matter herein contained (other than the

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Original Purchase Agreement) are superseded and of no further force or effect. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns under the Purchase Agreement.

5. This First Amendment may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This First Amendment may be transmitted by fax or by electronic mail in portable document format ("pdf") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures. At the request of either party, any electronic or facsimile document is to be re-executed in original form by the parties who executed the electronic or facsimile document.

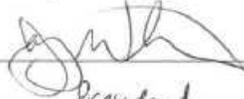
[The balance of this page has been left blank intentionally.]

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IN WITNESS WHEREOF, Seller and Buyer have executed this First Amendment as of the First Amendment Effective Date.

SELLER:

Economic Development Authority for the City of Shakopee, Minnesota,
a Minnesota public body corporate and politic

By: 
Its: President

By: 
Its: Executive Director

BUYER:

Opus Development Company, L.L.C.,
a Delaware limited liability company

By: 
Its: Vice President General Manager

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EXHIBIT A

PURCHASE AND DEVELOPMENT AGREEMENT

PURCHASE AND DEVELOPMENT AGREEMENT

This Purchase and Development Agreement (the "Agreement") is made on November 20, 2018 (the "Effective Date"), between the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, located at 485 Gorman Street, Shakopee, MN 55379 (the "Seller"), and Opus Development Company, L.L.C., a Delaware limited liability company, located at 10350 Bren Road West, Minnetonka, Minnesota 55343, its successors and assigns (collectively, the "Buyer").

1. SUBJECT PROPERTY. Pursuant to the terms of this Agreement, the Seller intends to sell to the Buyer fee title to the property legally described as Lot 1, Block 3, West Shakopee Gateway First Addition, according to the recorded plat thereof, Scott County, Minnesota (the "Property"), together with an easement for surface parking purposes over the adjacent land legally described as Outlot A, West Shakopee Gateway First Addition (the "Parking Easement Agreement").

2. OFFER/ACCEPTANCE. In consideration of the mutual agreements herein contained, the Buyer offers and agrees to purchase and the Seller agrees to sell the Property.

3. CONTINGENCIES. This Agreement is contingent upon the following:

- A. The Buyer's inspection of the Property and environmental testing (if deemed necessary by the Buyer) and the Buyer receiving reports related to all appropriate due diligence, including without limitation conducting soil borings and other site engineering investigations, studies, and tests on the Property, that are satisfactory to the Buyer;
- B. The Seller's completion of and the Buyer's satisfaction with the utilities, storm water detention, and all on-site and off-site infrastructure on or adjacent to the Property;
- C. The Buyer having obtained all government approvals deemed necessary by the Buyer;
- D. The Buyer's satisfactory review of all leases, easement agreements, maintenance agreements, or any other agreements relating to the Property;
- E. The Buyer's receipt of all documents to be provided by the Seller in accordance with Section 7 of this Agreement and the Buyer's and the Seller's reasonable approval of the terms and conditions of a Parking Easement Agreement;
- F. Condition of title being satisfactory to the Buyer following the Buyer's examination of title as provided in Section 11 of this Agreement;
- G. Following the review of the items listed above, the suitability of the Property for development by the Buyer;
- H. The Board of the Seller holds a public hearing and approves the sale of the Property; and

The Buyer shall have until 30 days after the Due Diligence Period (as defined herein) to waive or remove the contingencies listed at A and C through G above. The Seller shall have until the Closing Date to remove the contingency listed in H above. The contingencies listed in A through G are solely for the benefit of the Buyer and may be waived by the Buyer. The contingency listed in H is not waivable. If the contingencies are duly satisfied or waived, then the Buyer and the Seller shall proceed to close the transaction as contemplated herein, subject to the remaining provisions of this Agreement. If, however, one or more of the contingencies is not satisfied, or is not satisfied on time, and is not waived by the Buyer, this Agreement shall thereupon be

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void, at the option of the Buyer upon written notice from the Buyer, and any Earnest Money (as defined herein), plus any accrued interest, shall be returned to the Buyer. If this Agreement is voided by the Buyer, the Buyer and the Seller shall execute and deliver to each other a termination of this Agreement.

4. PURCHASE PRICE AND TERMS.

- A. The total purchase price for the Property is \$1,650,000 (the "Purchase Price").
- B. Earnest money in the amount of \$25,000 (the "Earnest Money") is payable to the Seller within five business days of the execution of this Agreement. The Earnest Money shall be deposited in an interest-bearing escrow account with First American Title Insurance Company (the "Title Company"). The Earnest Money shall be applied towards payment of the Purchase Price at Closing.
- C. The Buyer agrees to pay by certified check or by electronic transfer of funds on the Closing Date any remaining balance due according to the terms of this Agreement. Upon payment in full of the Purchase Price by the Buyer, the Seller will deliver to the Buyer the items described in Section 7 of this Agreement.

5. DUE DILIGENCE PERIOD. Commencing on the Effective Date, the Buyer shall have an initial period of 120 days (the "Due Diligence Period") to review all documents and other materials as requested by the Buyer. The Seller agrees to cooperate with the Buyer and to timely provide the Buyer with all such documents and materials as requested. The Due Diligence Period may be extended by additional 30-day periods at the request of the Buyer; provided, however, that the extensions may not occur more than three times. Upon each extension request, the Buyer shall deposit an additional \$10,000 of Earnest Money with the Title Company within five business days of the request. Such additional Earnest Money shall be applicable to the Purchase Price at Closing. Upon such extension by the Buyer, the definition of Due Diligence Period shall be changed to such extended date and any reference in this Agreement to the Due Diligence Period shall mean the period as extended. If the Buyer is entitled to a refund of the Earnest Money under this Agreement, such refund will include all additional Earnest Money that the Buyer pays pursuant to this Section.

6. CLOSING DATE. The closing of the sale of the Property shall take place on the first business day that is at least 45 days after the Seller and the Buyer receive final land use approvals for the Buyer's intended use of the Property from the City of Shakopee (the "City") (the "Closing Date"), or sooner by agreement of the parties. The closing shall take place through an escrow with the Title Company.

7. DOCUMENTS TO BE DELIVERED AT CLOSING. The Seller agrees to deliver the following documents to the Buyer at closing:

- A. A duly recordable limited warranty deed conveying fee simple title to the Property to the Buyer, free and clear of any mortgages, liens or encumbrances other than matters created by or acceptable to the Buyer, substantially in the form attached hereto as EXHIBIT A (the "Deed"), which Deed shall be subject to the conditions subsequent required by Sections 13, 14, and 15 of this Agreement;
- B. An affidavit from the Seller sufficient to remove any exception in the Buyer's policy of title insurance for mechanics' and materialmen's liens; unsatisfied judgments and bankruptcies against or involving the Seller; unrecorded interests in the Property known to the Seller; and rights of parties in possession;
- C. An affidavit of the Seller confirming that the Seller is not a foreign person within the

meaning of Section 1445 of the Internal Revenue Code of 1986, as amended;

- D. A completed Minnesota Well Disclosure Certificate, unless the Deed includes the statement "the Seller certifies that the Seller does not know of any wells on the described Property";
- E. Any notices, certificates, and affidavits regarding any private sewage systems, underground storage tanks, and environmental conditions as may be required by Minnesota statutes, rules or ordinances;
- F. The Parking Easement Agreement;
- G. The Drainage and Utility Easement attached hereto as EXHIBIT B, between the City and the Buyer (the "Drainage and Utility Easement") related to the storm water detention ponds described in Section 10; and
- H. Such other documents that the Title Company may reasonably require to consummate the transaction that this Agreement contemplates.

8. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.

- A. The Seller shall be responsible for all real estate taxes, including any deferred real estate taxes, penalties or interest, for the years prior to the year in which closing occurs. The Buyer and the Seller shall prorate as of the Closing Date the real estate taxes for the Property that are due and payable in the year of closing.
- B. The Seller shall pay all special assessments levied against the Property as of the Closing Date, including special assessments certified for payment with the real estate taxes and all deferred assessments. The Buyer shall assume payment of any special assessments that are pending but not levied against the Property as of the Closing Date. The Seller is not aware of any current pending special assessments related to the Property and will give the Buyer notice of any special assessments that may become pending on or before the Closing Date.

9. CONDITION OF PROPERTY. The Property is vacant, undeveloped land. The Buyer acknowledges and agrees that, except as otherwise provided in this Agreement, the Property is being sold in an "as-is," "where-is" condition and with all faults, without warranty or representation of any kind, express or implied, as to the condition, suitability, or desirability of the Property to be used for any purpose. The Buyer acknowledges that the Seller has not agreed to perform any work on or about the Property except for the construction of the Storm Water Ponds.

10. STORM WATER PONDS. The Seller will cause the City to enter into the Drainage and Utility Easement, which requires the City to construct, operate and maintain two storm water detention ponds and related improvements on the Property, all as more specifically described in the Drainage and Utility Easement.

11. EXAMINATION OF TITLE. The Buyer's examination of title to the Property shall be conducted as follows:

- A. **TITLE EVIDENCE.** Within 10 days after the Effective Date, the Buyer shall, at the Seller's cost, order, and when received provide the Seller with a copy of, a title commitment issued to the Buyer by the Title Company (the "Title Commitment"). Promptly after the Buyer receives the Title Commitment, the Buyer may order, at the Buyer's cost, an

ALTA/NSPS survey of the Property prepared by a surveyor registered under the laws of the State of Minnesota and including such optional Table "A" items as the Buyer may require in the Buyer's sole discretion (the "Survey," and together with the Title Commitment, the "Title Evidence").

- B. BUYER'S OBJECTIONS.** The Buyer shall provide written objections to the Seller (the "Objections") to the form or contents of the Title Evidence or condition of title within 20 days after receipt of the Title Evidence. The Buyer's failure to make Objections within such time period shall constitute waiver of the Objections. The Seller shall have 20 days after receipt of the Objections to cure the Objections, during which period the closing will be postponed, if necessary. The Seller shall use all reasonable efforts to correct any Objections. If the Objections are not cured within such 20-day period, the Buyer will have the option to do any of the following:
- (1) Terminate this Agreement;
 - (2) Cure the Objections at the Buyer's expense, during which the closing will be postponed, if necessary; or
 - (3) Waive the Objections.

12. GOVERNMENTAL APPROVALS. The Buyer is responsible for applying for all governmental approvals required for the Minimum Improvements (defined below). The Seller agrees to cooperate (at no additional cost to the Seller) with the Buyer's efforts to obtain all permits, approvals, and consents, including but not limited to rezoning, necessary for the Buyer's intended use of the Property, including but not limited to the execution of any consents, authority documents, or applications reasonably requested by the Buyer.

13. CONSTRUCTION OF MINIMUM IMPROVEMENTS. The Buyer will construct one or two buildings on the Property in one or two phases, at the Buyer's discretion. The aggregate gross area of the one or two buildings will be at least 125,000 square feet (the "Minimum Improvements"). The Buyer acknowledges that it will be required to comply with the requirements of the planned unit development approved for the Property.

Prior to the commencement of the construction of the Minimum Improvements, the Buyer shall provide the Seller with ten (10) days' written notice of its election to build one large building or two small buildings on the Property. If the Buyer elects to construct two buildings, the Buyer shall effect a lot split of the Property and shall be responsible for obtaining the necessary approvals for subdividing the Property to create a recordable legal description for each parcel of the Property (the "Split Parcels").

The following provisions and covenants govern the Buyer's construction and operation of the Minimum Improvements, which covenants survive delivery of the Deed until terminated as provided in this Agreement.

- A.** The Buyer will construct the Minimum Improvements substantially in accordance with the plans and specifications for the Minimum Improvements that the City approves in connection with issuing a building permit for the Minimum Improvements to the Buyer (the "Plans").
- B.** The Buyer will be deemed to have commenced construction of a building comprising the Minimum Improvements when the Buyer has completed the footings for the building. The Buyer will be deemed to have substantially completed construction of a building comprising the Minimum Improvements when the Buyer's architect issues a Certificate

of Substantial Completion to the Seller. Subject to Unavoidable Delays (defined below), the Buyer will commence construction of the first, or at the election of the Buyer the only, building comprising the Minimum Improvements ("Building 1") on or before August 1, 2020 and will exercise commercially reasonable efforts to substantially complete construction of Building 1 within 18 months after commencing construction of Building 1. Subject to Unavoidable Delays, if the Buyer elects to build the second building comprising the Minimum Improvements ("Building 2"), the Buyer will commence construction of Building 2 within 24 months of substantially completing Building 1 and will exercise commercially reasonable efforts to substantially complete construction of Building 2 within 18 months after commencing construction of Building 2. In this Agreement, the parties may refer to Building 1 and Building 2 individually as a "Building" and collectively as the "Buildings." If the Buyer elects to build only one building, any references to "Building 2" herein shall be disregarded.

- C. Within 10 days after the Buyer commences construction of a Building, the Seller will issue to the Buyer a recordable document substantially in the form of EXHIBIT C, certifying that the Buyer has commenced construction of such Building (the "Certificate of Commencement"). If the Buyer elects to construct two buildings, a Certificate of Commencement shall be issued for each Building. Upon issuance of a Certificate of Commencement for either Building, the Seller's rights under Section 15 of this Agreement will expire and be of no further force and effect with respect to that part of the Property on which such Building and all site improvements serving such Building are constructed. The Seller will nevertheless retain the right to pursue any and all other rights and remedies available to the Seller under this Agreement for the Buyer's default if the Buyer, subject to Unavoidable Delays, fails to substantially complete the applicable Building on or before the target date described below.
- D. Promptly after the Buyer substantially completes a Building, the Seller will furnish the Buyer with a certificate of completion for such Building, in substantially the form attached hereto as EXHIBIT D (the "Certificate of Completion"). If the Buyer elects to construct two buildings, a Certificate of Completion shall be issued for each Building. Such certification by the Seller shall be (and it shall be so provided in the Deed and in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in the Deed with respect to the obligations of the Buyer and its successors and assigns, to construct such Building and the dates for completion thereof. If the Minimum Improvements are constructed in phases, a Certificate of Completion shall be issued for each phase. If the Seller shall refuse or fail to timely provide any certification in accordance with the provisions of this Section, the Seller shall, within 10 days after written request by the Buyer, provide the Buyer with a written statement, indicating in adequate detail in what respects the Buyer has failed to commence or complete the subject Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts are necessary, in the reasonable opinion of the Seller for the Buyer to take or perform in order to obtain such certification.
- E. The Buyer agrees that until the Seller issues the Certificate of Completion for a Building to the Buyer:
 - (1) The Buyer will not Transfer the Building to a third party without the Seller's written consent, which consent the Seller will not unreasonably withhold, condition or delay. "Transfer" means any total or partial sale, assignment,

conveyance, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property or any part thereof or any interest therein to any person or entity. The term "Transfer" does not include and the Seller's approval is not required for (i) encumbrances made or granted by way of security for the purpose of purchasing the Property and/or obtaining construction, interim or permanent financing necessary to enable the Buyer to construct the Minimum Improvements or any part thereof; (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of the Buyer's business related to the use and operation of the Property; (iii) any Transfer in any form to an affiliate of the Buyer; (iv) Transfer of the Property to a mortgagee of the Property by foreclosure or deed-in-lieu of foreclosure, or a subsequent sale or Transfer by such mortgagee to a third party purchaser, or any sale or transfer thereafter; or (v) a sale or transfer to a bona fide purchaser of the Property at a foreclosure sale, or any sale or transfer thereafter.

- (2) If the Buyer seeks to effect a Transfer of a Building prior to issuance of the Certificate of Completion for that Building, the Seller shall be entitled to require as conditions to such Transfer that:
- (i) any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Seller, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Buyer as to the portion of the Property to be transferred; and
 - (ii) Any proposed transferee, by instrument in writing satisfactory to the Seller and in form recordable in the public land records of Scott County, Minnesota, shall, for itself and its successors and assigns, and expressly for the benefit of the Seller, have expressly assumed all of the obligations of the Buyer under this Agreement as to the portion of the Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Buyer is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Seller) deprive the Seller of any rights or remedies or controls with respect to the Property, the Minimum Improvements or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no Transfer shall operate, legally, or practically, to deprive or limit the Seller of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property that the Seller would have had, had there been no such Transfer. In the absence of a specific written agreement by the Seller to the contrary, no such Transfer or approval by the Seller thereof shall be deemed to relieve the Buyer, or any other party bound in any way by this Agreement or otherwise with respect to the Property, from any of its obligations with respect thereto.

- (3) If the conditions described in clause (2) above are satisfied then the Transfer will be approved and the Buyer shall be released from its obligations under this Agreement, as to the portion of the Property that is transferred, assigned, or otherwise conveyed. The provisions of this clause (3) apply to all subsequent transferors and transferees.
- (4) Notwithstanding any contrary language in this Agreement, upon issuance of a Certificate of Completion by the Seller, the Buyer may Transfer or assign the Building for which the Certificate of Completion was issued and/or the Buyer's rights and obligations under this Agreement with respect to such Building to any third party without the prior written consent of the Seller.
14. **USE RESTRICTION.** The Buyer (including its successors and assigns) shall not lease the Property to tenants with the exclusive use of the premises as warehouse space. The Buyer shall lease the Property for use as office space and/or manufacturing space with distribution/warehousing as a supporting use. The Buyer (including its successors and assigns) further agrees that (a) it will not seek exemption from real estate taxes on the Property under State of Minnesota law; and (b) it will not Transfer the Property to any entity whose ownership or operation of the property would result in the Property being exempt from real estate taxes under State of Minnesota law (other than any portion thereof dedicated or conveyed to the City or the Seller in accordance with this Agreement). **The covenants in this paragraph survive delivery of the Deed, issuance of the Certificate of Commencement and issuance of the Certificate of Completion for the Minimum Improvements (or, if applicable, each phase of the Minimum Improvements) and shall remain in effect for seven years after the date of the Deed, whereupon this Section 14 shall automatically terminate without further action from either party, but the Seller will, if requested by the Buyer, promptly provide to the Buyer a recordable document certifying that the use restrictions set forth in this Section 14 are terminated and of no further force or effect.**
15. **REVESTING TITLE IN SELLER UPON FAILURE TO COMMENCE CONSTRUCTION.** In the event that subsequent to conveyance of the Property or any part thereof to the Buyer, the Buyer, subject to Unavoidable Delays (as defined herein), fails to carry out its obligations with respect to commencing construction of (a) one building if the Buyer elected to construct one building (including the nature and the date for the commencement thereof); or (b) if the Buyer elected to construct two buildings but fails to commence construction of Building 1 and/or Building 2 (including the nature and the date for the commencement thereof), and any such failure is not cured, ended, or remedied within 30 days after written demand from the Seller to the Buyer to do so, or for a longer time period in the event the cure of such failure reasonably requires more than 30 days to complete and the Buyer promptly commences to cure such failure within the 30-day period and, thereafter, diligently pursues the cure to completion, then the Seller shall have the right to re-enter and take possession of (i) in the event of subsection (a) above, the entire Property; or (ii) in the event of subsection (b) above, the Split Parcel(s) on which the Buyer was to have commenced construction of the applicable Building (the "Default Property"). Upon such reentry, the estate of the Default Property that was conveyed by the Deed to the Buyer will be terminated (and revested in the Seller), subject to Section 16 of this Agreement. The intent of this provision, together with other provisions of the Agreement, is that the Deed shall contain a condition subsequent, that in the event of any default on the part of the Buyer to commence construction of the Minimum Improvements as described in Section 13(B) of this Agreement and failure on the part of the Buyer to remedy, end, or abrogate such default within the period and in the manner stated in such subdivisions, the Seller, at its option, subject to Section 16 of this Agreement, may declare a termination of all the Buyer's title, rights and interests in and to the Default Property in favor of the Seller, and that all such title, rights and interests of the Buyer, and any assigns or successors in interest to said Default Property, shall

revert to the Seller, but only if the events stated in this Section have not been cured within the time periods provided above.

The Buyer shall be responsible for obtaining the necessary approvals for subdividing the Property to create a recordable legal description for the Default Property if the Default Property is less than the entire Property. If the Construction Plans provide for a shared parking lot, utilities, access or other improvements between the Default Property and the remainder of the Property, the Buyer and Seller shall promptly enter into easements and other agreements reasonably necessary for the use and enjoyment of both properties.

Notwithstanding anything to the contrary contained in this Agreement, the Seller shall have no right to re-enter or retake title to and possession of a portion of the Property for which a Certificate of Commencement has been issued by the Seller.

For purposes of this Agreement, the term "Unavoidable Delays" means delays beyond the reasonable control of the Buyer that directly result, among other reasons, from strikes, other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Seller in exercising its rights under this Agreement) which directly results in delays.

16. **RESALE OF REACQUIRED PROPERTY; DISPOSITION OF PROCEEDS.** Upon the revesting in the Seller of title to and/or possession of the Property (or, if applicable, either or both Split Parcels) or any part thereof as provided in Section 15 of this Agreement, the Seller shall, at the time and as a condition of the revesting (the "Revesting Date") refund the Purchase Price paid by the Buyer under Section 4 of this Agreement to the Buyer or, if applicable, the portion of the Purchase Price allocable to the respective Split Parcel, less (a) the Seller's actual third party out-of-pocket costs and expenses that the Seller incurs to consummate the revesting of the Default Property; (b) a pro rata share of all taxes, assessments, and water and sewer charges with respect to the Default Property or part thereof that are unpaid as of the Revesting Date; and (c) any payments made or necessary to be made to discharge any encumbrances or liens created by the Buyer and existing on the Default Property or part thereof as of the Revesting Date or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Buyer, its successors or transferees; and (d) any amounts otherwise owing the Seller by the Buyer or its successor or transferee.
17. **CLOSING COSTS AND RELATED ITEMS.**
- A. **SELLER'S COSTS.** The Seller shall be responsible for the following closing costs and related items: (1) all recording fees and charges relating to the filing of any instrument required to make title marketable; (2) the cost of the title commitment; (3) any fees for standard searches with respect to the Seller and the Property; (4) its own legal and accounting fees associated with this transaction; (5) all recording fees and charges relating to filing the Deed; (6) any state deed tax, conservation fee or other federal, state or local documentary or revenue stamps or transfer tax with respect to the Deed to be delivered by the Seller; (7) cost to record the Plat; and (8) one-half of all closing fees charged by the Title Company and any escrow fees charged by any escrow agent engaged by the parties in connection with this Agreement.
- B. **BUYER'S COSTS.** The Buyer shall be responsible for the following closing costs and related items: (1) the cost of any survey of the Property required by the Buyer; (2) the

premium required for issuance of the title insurance policy and any endorsements; (3) the fees of any soil tests, environmental assessments, inspection reports, appraisals, or other tests or reports ordered by the Buyer; (4) recording fees and charges related to the filing of this Agreement; (5) one-half of all closing fees charged by the Title Company and any escrow fees charged by any escrow agent engaged by the parties in connection with this Agreement; and (6) its own legal and accounting fees associated with this transaction.

18. INDIVIDUAL SEWAGE TREATMENT SYSTEM DISCLOSURE. The Seller has no knowledge or information regarding the existence, location, or status of any sewage treatment system on or serving the Property.

19. WELL DISCLOSURE. The Seller certifies that the Seller does not know of any wells on the Property.

20. BROKER COMMISSION. The Buyer represents that it has used Joe Owen with Colliers International as its real estate broker in connection with the purchase of the Property. Each party represents to the other that, other than as represented by the Buyer in the preceding sentence, it has not used the services of any real estate broker or agent in connection with this Agreement or the transaction contemplated by this Agreement. Each party agrees to indemnify, defend, and hold harmless the other party against and in respect of any obligation or liability based in any way upon agreements, arrangements, or understandings made or claimed to have been made by the party with any third person. The Buyer shall pay its real estate broker any and all fees, costs, and commissions due to the broker.

21. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and no other agreement prior to this Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein.

22. AMENDMENT AND MODIFICATION. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or have any effect unless made in writing, is signed by the Seller and the Buyer, and specifies with particularity the extent and nature of such amendment, modification or waiver. Any waiver by either party of any default by the other party shall not affect or impair any right arising from any previous or subsequent default.

23. BINDING EFFECT. This Agreement binds and benefits the parties and their successors and assigns.

24. NOTICES. All notices sent pursuant to this agreement shall be in writing and delivered personally or mailed to each party at the address shown above or to such other address or person as the party shall have designated in writing. If personally delivered, the notice is effective as of the earlier of the date of delivery or the date of first attempted delivery if such delivery is refused. If mailed, the notice is effective as of the date of mailing.

25. CUMULATIVE RIGHTS. Except as may otherwise be provided herein, no right or remedy herein conferred on or reserved by either party is intended to be exclusive of any other right or remedy provided by law, but such rights and remedies shall be cumulative in and in addition to every other right or remedy given herein or elsewhere or existing at law, equity or by statute.

26. DEFAULT; REMEDIES; SPECIFIC PERFORMANCE. If the Buyer defaults in any of the agreements herein, the Seller may, as the Seller's sole remedies, (a) terminate this Agreement; and (b) retain any Earnest Money paid by the Buyer as liquidated damages, time being of the essence hereof. If the Seller defaults in any of the agreements herein, the Buyer may (1) terminate this Agreement, in which event the

Seller will cause the Title Company to refund the Earnest Money to the Buyer; (2) terminate this Agreement and seek actual damages for breach of this Agreement; or (3) seek specific performance of this Agreement; provided that any action for specific performance must be brought within six months after the date of the alleged breach.

27. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

28. GOVERNING LAW. This contract shall be governed by the laws of the State of Minnesota.

29. SURVIVAL. No terms of this Purchase Agreement shall survive the delivery of the Deed, except (a) all representations and warranties; (b) the last sentence of this Section; and (b) Sections 13, 14, 15, and 16 of this Agreement, for the period of time specified in such Sections. Notwithstanding any contrary language in this Agreement, all terms and conditions of this Agreement, as well as those reflected on the Deed, will expire and terminate on the date that is seven years after the date of the Deed.

30. RECORDING; PURPOSE OF RECORDING. This Agreement shall be filed of record with the County Recorder or the Registrar of Titles of Scott County, Minnesota, as the case may be to provide record notice of the terms of Sections 13, 14, 15, and 16 of this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Seller and the Buyer have executed this Purchase and Development Agreement as of the date written above.

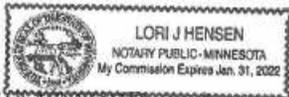
SELLER, Economic Development Authority for the City of Shakopee, Minnesota

By 
Its President

By 
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this 20 day of November, 2018, by Matt Lehman, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Seller.

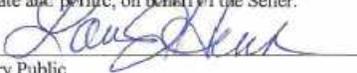



Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this 20 day of November, 2018, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Seller.




Notary Public

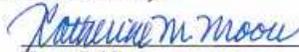
BUYER, Opus Development Company, L.L.C.

By 
Its Vice President

STATE OF MINNESOTA)
) SS.
COUNTY OF Wanabein)

The foregoing instrument was acknowledged before me this 30th day of November, 2018, by Matthew Raunhorst, the V.P. of Opus Development Company, L.L.C., a Delaware limited liability company, on behalf of the Buyer.




Notary Public

This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

FORM OF LIMITED WARRANTY DEED

Deed Tax Due: \$ _____
ECRV: _____
Date: _____

FOR VALUABLE CONSIDERATION, Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, Grantor, hereby conveys and quitclaims to Opus Development Company, L.L.C., a limited liability company under the laws of Delaware, Grantee, real property in Scott County, Minnesota, described as follows:

Lot 1, Block 3, West Shakopee Gateway First Addition, according to the recorded plat thereof, Scott County, Minnesota

Check here if part or all of the land is Registered (Torrens)

together with all hereditaments and appurtenances.

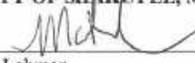
This Deed conveys after-acquired title. Grantor warrants that Grantor has not done or suffered anything to encumber the property except as described below:

Section 1. The Grantee's rights and interest in the Property are subject to Sections 13, 15, and 16 of that certain Purchase and Redevelopment Agreement, dated _____, 2018 (the "Agreement"), between the Grantor and the Grantee, recorded on _____, 2018, in the office of the [County Recorder] [Registrar of Titles] of Scott County, Minnesota as Document No _____, including without limitation the Grantor's rights to (a) re-enter and revest in the Grantor title to the property legally described above (the "Property"); provided, however, that such rights to re-enter and revest title shall terminate upon the issuance of one or more certificates of commencement as more fully described in Section 13 of the Agreement; and (b) restrict transfer of the Property upon the terms provided in the Agreement; provided, however, that such rights to restrict transfer shall terminate upon the issuance of one or more certificates of completion, as more fully described in Section 13 of the Agreement.

Section 2. The Grantee's rights and interest in the Property are further subject to certain use restrictions as more fully described in Section 14 of the Agreement, which shall automatically terminate seven (7) years after the date of the recording of this deed.

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: _____).
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

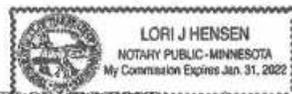
ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA

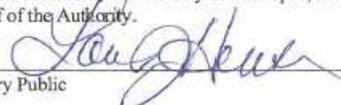
By 
 Matt Lehman
 Its President

By 
 William H. Reynolds
 Its Executive Director

STATE OF MINNESOTA)
) SS.
 COUNTY OF SCOTT)

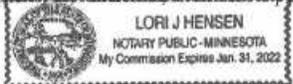
The foregoing instrument was acknowledged before me this 20 day of November, 2018, by Matt Lehman, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

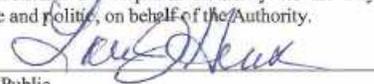



 Notary Public

STATE OF MINNESOTA)
) SS.
 COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this 20 day of November, 2018, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.




 Notary Public

This instrument was drafted by:

 Kennedy & Graven, Chartered (JAE)
 470 U.S. Bank Plaza
 200 South Sixth Street
 Minneapolis, MN 55402
 (612) 337-9300

Tax Statements should be sent to:

 Opus Development Company, L.L.C.
 10350 Bren Road West
 Minnetonka, MN 55343

(Drainage and Utility)

EASEMENT

This Easement is made as of _____, 2018, by OPUS DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company (the "Owner") in favor of the CITY OF SHAKOPEE, MINNESOTA, a Minnesota municipal corporation (the "City").

RECITALS

WHEREAS, the Owner is the fee owner of the real property described on Exhibit A (the "Property").

WHEREAS, the Owner desires to grant to the City certain easements over a portion of the Property described on Exhibit B and depicted on Exhibit C (the "Easement Area").

TERMS OF EASEMENTS

1. Grant of Easements. For good and valuable consideration, receipt of which is acknowledged by Owner, Owner grants and conveys to the City a perpetual non-exclusive easement for drainage and utility purposes over the Easement Area for public drainage and utility related purposes subject to the terms and conditions hereof.

2. Scope of Easements. The perpetual drainage and utility easements granted herein include the right of the City, its contractors, agents, and employees to enter the Easement Area at all reasonable times for the purpose of installing, constructing, reconstructing, operating, maintaining, inspecting, altering and repairing within the described Easement Area any of the following facilities and amenities: two storm water detention ponds, storm sewer, sanitary sewer, related water facilities, ground surface drainage ways and other public City owned utilities, in the Easement Area (the "City Improvements"). The easements granted herein also include the right to cut, trim, or remove from the Easement Area any trees, shrubs, or other vegetation as in the City's judgment unreasonably interfere with the easement or the City Improvements.

3. Construction, Maintenance, Repair and Replacement Obligations. The City shall construct, operate, maintain, repair and replace the City Improvements. The City shall keep the

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City Improvements in good condition and shall not unreasonably interfere with the Owner's use of the Property when constructing, operating, maintaining, repairing or replacing the City Improvements.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorney's fees, or losses resulting from any claims, actions, suits or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement area or Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Owner, its successors and assigns.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, Owner and the City have executed this Easement effective as of the date and year first above written.

OWNER:

OPUS DEVELOPMENT COMPANY, L.L.C.,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2018, by _____, the _____ of OPUS DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

This instrument was drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

SIGNATURE PAGE TO EASEMENT (Drainage and Utility)

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CITY:

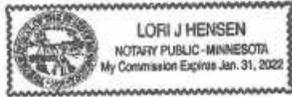
CITY OF SHAKOPEE, MINNESOTA, a Minnesota municipal corporation

By: [Signature]
Name: Bill Mars
Title: Mayor

By: [Signature]
Name: William H. Reynolds
Title: City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me on Nov 20, 2018, by Bill Mars, the Mayor, and by William H. Reynolds, the City Administrator, of the CITY OF SHAKOPEE, MINNESOTA, a Minnesota municipal corporation, on behalf of said municipal corporation.



[Signature]
Notary Public

SIGNATURE PAGE TO EASEMENT (Drainage and Utility)

EXHIBIT A

Legal Description of Property

Lot 1, Block 3, West Shakopee Gateway First Addition, according to the recorded plat thereof,
Scott County, Minnesota

A-1

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EXHIBIT B

Description of Easement Area

[See attached]

[note: The parties agree that the Easement Area is within the Drainage and Utility Easement in the southeast corner of the Property that was dedicated on the plat of West Shakopee Gateway First Addition, but the legal description of the Easement Area must be certified by a surveyor]

B-1

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EXHIBIT C

Depiction of Easement Area

[See attached]

[note: The parties agree that the Easement Area is within the Drainage and Utility Easement in the southeast corner of the Property that was dedicated on the plat of West Shakopee Gateway First Addition, but the legal description of the Easement Area must be certified by a surveyor]

C-1

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EXHIBIT C

FORM OF CERTIFICATE OF COMMENCEMENT

The undersigned hereby certifies that Opus Development Company, L.L.C., a Delaware limited liability company (the "Developer"), has fully satisfied its obligations under Section 13 of the Purchase and Development Agreement, dated _____, 2018 (the "Agreement"), between the Economic Development Authority for the City of Shakopee, Minnesota and the Developer, with respect to commencing construction of [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] in accordance with Section 13 of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to commencing construction of [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] under Section 13 of the Agreement, and the Seller's right to re-enter and re-vest title to the [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] pursuant to Section 13 of the Agreement is hereby terminated.

Dated: _____, 20__.

**ECONOMIC DEVELOPMENT AUTHORITY FOR
THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

Notary Public

This document drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT D

FORM OF CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Opus Development Company, L.L.C., a Delaware limited liability company (the "Developer"), has fully satisfied its obligations under Section 13 of the Purchase and Development Agreement, dated _____, 2018 (the "Agreement"), between the Economic Development Authority for the City of Shakopee, Minnesota and the Developer, with respect to construction of the [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] in accordance with Section 13 of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of the [Building – describe Building as provided in the Construction Plans] [the Minimum Improvements] under Section 13 of the Agreement, and the Seller's right to restrict transfer of the Property under Section 13(D)(1)-(4) are hereby terminated.

Dated: _____, 20__.

ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic, on behalf of the Authority.

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Notary Public

This document drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

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EXHIBIT B

FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT

FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT ("First Amendment") is made as of June 24, 2020 ("First Amendment Effective Date"), by and between Opus Development Company, L.L.C., a Delaware limited liability company ("Buyer"), and the Economic Development Authority for the City of Shakopee, Minnesota, a Minnesota public body corporate and politic ("Seller").

RECITALS:

A. By that certain Purchase and Development Agreement dated as of November 13, 2018 (the "**Original Purchase Agreement**") by and between Seller and Buyer, Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller, the Property, upon and subject to the conditions and limitations therein contained.

B. Seller and Buyer desire to amend the requirements regarding the construction of Minimum Improvements, upon and subject to the terms and conditions of this First Amendment.

C. The Original Purchase Agreement and this First Amendment are hereinafter collectively referred to as the "**Purchase Agreement**", and all references to the Purchase Agreement shall mean the Original Purchase Agreement, as amended by this First Amendment, whether or not such references shall expressly refer to this First Amendment. Unless otherwise provided herein, all capitalized words and terms used herein shall have the meanings ascribed to such words and terms as in the Original Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Section 13.B of the Original Purchase Agreement is hereby amended, in part, as follows:
 - a. The date "August 1, 2020" is hereby deleted in its entirety and the phrase "the date ninety (90) days after the Closing Date, subject to Unavoidable Delays" substituted therefor.
 - b. The first sentence thereof is hereby deleted in its entirety and the following substituted therefor: "The Buyer will be deemed to have commenced construction of a building comprising the Minimum Improvements when the Buyer or its contractor has commenced pouring the footings for such building."
2. The last grammatical paragraph of Section 15 of the Original Purchase Agreement is hereby amended, in part, in that the phrase "or the Buyer's contractor" is added after the phrase "beyond the reasonable control of the Buyer".
3. Except as expressly provided in this First Amendment, all provisions of the Original Purchase Agreement remain in full force and effect and are not modified by this First Amendment, and the parties hereby ratify and confirm each and every provision thereof.
4. This First Amendment constitutes the entire agreement between the parties with respect to the subject matter herein contained and all prior negotiations with respect to the subject matter herein contained are merged into and incorporated in this First Amendment, and all prior documents and correspondence between the parties with respect to the subject matter herein contained (other than the

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Original Purchase Agreement) are superseded and of no further force or effect. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns under the Purchase Agreement.

5. This First Amendment may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This First Amendment may be transmitted by fax or by electronic mail in portable document format ("pdf") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures. At the request of either party, any electronic or facsimile document is to be re-executed in original form by the parties who executed the electronic or facsimile document.

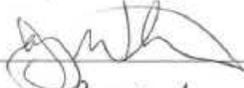
[The balance of this page has been left blank intentionally.]

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IN WITNESS WHEREOF, Seller and Buyer have executed this First Amendment as of the First Amendment Effective Date.

SELLER:

Economic Development Authority for the City of Shakopee, Minnesota,
a Minnesota public body corporate and politic

By:  _____
Its: President

By:  _____
Its: Executive Director

BUYER:

Opus Development Company, L.L.C.,
a Delaware limited liability company

By:  _____
Its: Vice President, General Manager

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