

PURCHASE AGREEMENT

This Purchase Agreement (the "Purchase Agreement") is made on _____, 2018, by and 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 Topaz Investments, LLC, a Minnesota limited liability company, 1997 Topaz Drive, Chanhassen, MN 55317, its successors and assigns (collectively, the "Buyer").

1. SUBJECT PROPERTY. The Seller is the owner of real property legally described as follows (the "Property"):

Lot 2, Block 1, West Shakopee Gateway First Addition.

(Abstract Property)

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 Purchase 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 testing on the Property, that are satisfactory to the Buyer;
- B.** Condition of title being satisfactory to the Buyer following the Buyer's examination of title as provided in Section 9 of this Purchase Agreement; and
- C.** The Seller having approved the sale of the Property to the Buyer in accordance with Minnesota Statutes, Section 469.105, as amended.

The Buyer shall have until the Closing Date (as defined herein) to remove the foregoing contingencies. The contingencies listed above at A and B are solely for the benefit of the Buyer and may be waived by the Buyer. If the contingencies are duly satisfied or waived (as applicable), then the Buyer and the Seller shall proceed to close the transaction as contemplated herein. If, however, one or more of the contingencies is not satisfied, or is not satisfied on time, and is not waived (as applicable) by the Buyer, this Purchase Agreement shall thereupon be void, at the option of the Buyer. If this Purchase Agreement is voided by the Buyer, the Buyer and the Seller shall execute and deliver to each other a termination of this Purchase Agreement.

4. PURCHASE PRICE AND TERMS. The Buyer shall pay the Seller at closing \$125,000 per acre for the Property (the "Purchase Price"). The Buyer will pay the Purchase Price by certified check or by electronic transfer of funds at the closing. Upon payment of the Purchase Price, the Seller will deliver to the Buyer the items described in Section 6.

5. CLOSING DATE. The closing of the sale of the Property shall take place no later than ninety (90) days following the date of this Purchase Agreement (the “Closing Date”). The closing shall take place at the offices of the City of Shakopee, Minnesota (the “City”), or at another location agreed to by the parties.

6. 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;
- B.** An affidavit from the Seller sufficient to remove any exception in the Buyer’s policy of title insurance for mechanics’ and materialmens’ liens 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 warranty deed includes the statement “the Seller certifies that the Seller does not know of any wells on the described Property”; and
- 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.

7. 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.

8. CONDITION OF PROPERTY. The Property is vacant, undeveloped land. The Buyer acknowledges and agrees that, except as otherwise provided in this Purchase 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 before the closing of this sale.

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

- A. SELLER'S TITLE EVIDENCE.** The Seller shall provide the Buyer with the certificate of title or abstract for the Property. Upon receipt of the certificate of title or abstract, the Buyer shall order a title commitment.
- B. BUYER'S OBJECTIONS.** The Buyer shall make written objections (the "Objections") to the form or contents of the title commitment or condition of title within 20 days after receipt of the same. 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 either of the following:
 - 1. Terminate this Purchase Agreement; or
 - 2. Cure the Objections at the Buyer's expense.

10. 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; and (2) its own legal and accounting fees associated with this transaction.
- B. BUYER'S COSTS.** The Buyer shall be responsible for the following closing costs and related items: (1) any fees incurred for updating the title; (2) any state deed tax, conservation fee or other federal, state or local documentary or revenue stamps or transfer tax with respect to the warranty deed to be delivered by the Seller; (3) the cost of any survey of the Property required by the Buyer; (4) the cost of preparing the title commitment and all premiums required for issuance of the title insurance policy; (5) any fees for standard searches with respect to the Seller and the Property; (6) the fees of any soil tests, environmental assessments, inspection reports, appraisals, or other tests or reports ordered by the Buyer; (7) recording fees and charges related to the filing of the warranty deed; (8) 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 Purchase Agreement; and (9) its own legal and accounting fees associated with this transaction.

11. 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.

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

13. BROKER COMMISSION. Each party represents to the other that it has not used the services of any real estate broker or agent in connection with this Purchase Agreement or the transaction contemplated by this Purchase 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.

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

15. AMENDMENT AND MODIFICATION. No amendment, modification or waiver of any condition, provision or term of this Purchase Agreement shall be valid or have any effect unless made in writing, is signed by the party to be bound 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.

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

17. 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; and, if mailed, the notice is effective as of the date of mailing.

18. 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.

19. DEFAULT; REMEDIES; SPECIFIC PERFORMANCE. If the Buyer defaults in any of the agreements herein, the Seller may terminate this Purchase Agreement. If this Purchase Agreement is not so terminated, the Buyer or the Seller may seek actual damages for breach of this Purchase Agreement or specific performance of this Purchase Agreement; provided that any action for specific enforcement must be brought within six months after the date of the alleged breach.

20. RIGHT TO REPURCHASE PROPERTY. If the Buyer has not begun the process of obtaining building permits from the City and commenced substantial construction of its project on the Property within six months of the date of this Purchase Agreement, then the Seller has the right to repurchase the Property from the Buyer at the original Purchase Price paid by the Buyer.

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

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

23. CITY OWNERSHIP OF PROPERTY. If any portion of the Property is owned by the City, the City will convey such interests in the Property to the Seller prior to the Closing Date.

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

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement as of the date written above.

BUYER, Topaz Investments, LLC

By _____
Its President/Chief Manager

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

By _____
Matt Lehman
Its President

By _____
William H. Reynolds
Its Executive Director