

**PURCHASE AND SALE AGREEMENT  
(Unimproved Property)**

**Agreement Date: November \_\_\_, 2015**

**ARTICLE I**

**PARTIES**

The parties to this Agreement are the CHASKA ECONOMIC DEVELOPMENT AUTHORITY, a Minnesota municipal corporation ("Seller"), and UNITED PROPERTIES DEVELOPMENT LLC, a Minnesota limited liability company, and its successors and assigns ("Buyer"). This Agreement sometimes refers to Seller and Buyer individually as a "Party" and collectively as the "Parties."

**ARTICLE II**

**PROPERTY/PURCHASE AND SALE**

2.1 **Property**. The real property that is the subject of this Agreement is located in the City of Chaska, Carver County, Minnesota and is legally described on the attached **EXHIBIT A** and depicted on the attached **EXHIBIT A-1** ("Property"). The Property is unimproved and has been assigned Tax Identification Numbers 305440112 and 305440060. The term "Property" as used in this Agreement includes all hereditaments and appurtenances to the Property.

2.2 **Purchase and Sale**. Seller will sell the Property to Buyer pursuant to the terms of this Agreement and Buyer will purchase the Property from Seller pursuant to the terms of this Agreement.

**ARTICLE III**

**PURCHASE PRICE AND PAYMENT**

3.1 **Purchase Price**. The purchase price for the Property is \$1.99689372 per square foot multiplied by the lesser of (i) the actual Developable Area of the Property or (ii) 7.76 acres of Developable Area, and then subtracting from that sum the amount calculated under Article 13.10 of this Agreement ("Purchase Price"). The term "Developable Area" means the gross area of the Property less any and all parts of the Property that are wetland or that are or will be (in connection with the development of the Property) subject to any public or private dedications, easements or rights-of-way. The Developable Area of the Property will be determined by the Survey (defined below). Seller estimates, but does not represent or warrant, that the Property's Developable Area is 7.76 acres (338,025 square feet). Based on this estimate, the estimated (and maximum) Purchase Price is \$675,000, less the reduction calculated in accordance with Article 13.10 of this Agreement.

3.2 **Earnest Money**. Buyer will deposit cash in the amount of \$25,000 ("Earnest Money") with First American Title Insurance Company ("Earnest Money Agent" or "Title

Company”) within 2 business days after the Agreement Date. If Buyer fails to timely deposit the Earnest Money, then this Agreement is null and void and neither Party will have any obligation to the other. If Buyer timely deposits the Earnest Money, then Earnest Money Agent will hold the Earnest Money in escrow pursuant to the Escrow Agreement attached as **EXHIBIT B**. The Earnest Money remains the property of Buyer unless disbursed to Seller pursuant to the Escrow Agreement. Buyer and Seller must each pay one half of the Earnest Money Agent’s fee for holding and disbursing the Earnest Money. All interest the Earnest Money earns will inure to the party that is entitled to the Earnest Money under the terms of this Agreement. Upon Seller’s full performance of Seller’s obligations under this Agreement, the Earnest Money will be delivered to Seller and applied toward payment of the Purchase Price pursuant to Section 3.3.

3.3 **Payment Terms.** Upon Seller’s full performance of Seller’s obligations under this Agreement, at Closing, Buyer will:

- a. Direct the Earnest Money Agent to tender the Earnest Money and any interest earned on the Earnest Money to Seller in cash or certified funds, and
- b. Tender the balance of the Purchase Price to Seller in cash, certified funds or wire transferred funds.

## **ARTICLE IV**

### **CLOSING**

4.1 **Closing.** The closing of the transaction this Agreement contemplates (“Closing”) will occur through an escrow with Title Company no later than 3:00 p.m. on the first business day that is at least 30 days after the date Buyer receives all Entitlements (as defined below), or on such other date as the Parties may establish pursuant to this Agreement (“Date of Closing”), at which time:

- a. Seller will:
  - (i) Execute and/or deliver to the closing agent, with copies to Buyer, and make arrangements to have the closing agent record or file in the appropriate county land records, any documents necessary to establish the marketability of Seller’s title to the Property, subject only to Permitted Encumbrances;
  - (ii) Execute and deliver to Buyer the Deed (defined below);
  - (iii) Execute and deliver to Buyer and Title Company an appropriate Minnesota Uniform Conveyancing Form Affidavit (Form 116-M, 117-M or 118-M) evidencing the absence of bankruptcies, judgments or tax liens involving parties with the same or similar names as the Seller and evidencing the absence of mechanic’s lien rights affecting the Property, unrecorded interests affecting the Property, persons in possession of the Property and known encroachments or boundary line questions affecting the Property;

(iv) Deliver to Buyer and Title Company appropriate corporate resolutions authorizing Seller's conveyance of the Property to Buyer and identifying the individuals authorized to execute the Deed and any other documents required by this Agreement;

(v) Execute and deliver to Buyer a non-foreign affidavit in recordable form containing such information as is required under Internal Revenue Code Section 1445(b)(2) and any regulations relating to Internal Revenue Code Section 1445(b)(2);

(vi) Execute and deliver to the closing agent, Buyer or other appropriate party appropriate Federal Income Tax Reporting Forms;

(vii) Execute and deliver to the closing agent, with a copy to Buyer, a completed Minnesota Department of Health Well Disclosure Certificate or include on the Deed the statement "The Seller certifies that the Seller does not know of any wells on the described real property" or the statement "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" followed by Seller's signature;

(viii) Execute and deliver to the closing agent, with copies to Buyer, and make arrangements to have the closing agent record or file in the appropriate county land records, the affidavits described in Minnesota Statutes Sections 116.48, subdivision 6 and 115B.16, subdivision 2 if required;

(ix) Deliver to Buyer the Date Down Certificate described in Section 7.1;

(x) Pay or provide evidence of payment of the following: the cost of providing the Title Commitment as defined in Section 5.1(b); the State Deed Tax due upon the execution of the conveyance described in Section 4.2; the fees due upon the recording any documents necessary to place record title in the condition provided for in this Agreement; Seller's share of real estate taxes and, if applicable, levied or pending special assessments pursuant to Article VI; the commission or fee due any real estate agent that Seller has employed in connection with this transaction; and one-half of Title Company's fee to conduct and insure the Closing;

(xi) Deliver to Buyer a copy of the signed settlement statement in the form provided by Title Company; and

(xii) Provide Buyer with all information necessary for Buyer to complete a certificate of real estate value.

b. Buyer will:

(i) Tender the Purchase Price to Seller in accordance with Article III above;

(ii) Pay or provide evidence of payment of the following: the portion of Buyer's share of real estate taxes and, if applicable, levied or pending special assessments pursuant to Article VI; all costs associated with Buyer's financing, if any, including mortgagee's title insurance policy costs and premiums, if any; the premium for Buyer's owner's policy of title insurance, if any; the fees due upon the recording the Deed; and one-half of Title Company's fee to conduct and insure the Closing; and

(iii) Complete a certificate of real estate value.

4.2 **Conveyance Terms.** Upon Buyer's full performance of Buyer's obligations under this Agreement, at Closing, Seller will execute and deliver to Buyer a Limited Warranty Deed ("Deed") conveying fee title to the Property to Buyer subject only to:

a. Building, zoning and subdivision statutes, laws, ordinances and regulations;

b. Reservations of minerals or of mineral rights in favor of the State of Minnesota, if any;

c. The lien of real estate taxes and special assessments not yet due and payable; and

d. Any defects in the marketability of Seller's actual or record title to the Property which exist as of the Date of Closing and to which Buyer does not object pursuant to Section 5.2(a).

(collectively, "Permitted Encumbrances").

4.3 **Possession.** Upon Buyer's full performance of Buyer's obligations under this Agreement, Seller will deliver possession of the Property to Buyer. Before delivering possession of the Property to Buyer, Seller must remove all personal property, refuse and debris from the Property. If Seller fails to do so before Seller's delivery of possession of the Property to Buyer, Buyer may declare such personal property, refuse and debris abandoned and dispose of such materials in any manner Buyer deems appropriate. Buyer may recover from Seller all costs associated with Buyer's disposal of personal property, refuse or debris left on the Property subsequent to Buyer's acceptance of possession of the Property. If Seller refuses to pay such amounts upon demand, then Buyer may initiate a legal action against Seller to recover such amounts along with any costs and attorneys' fees Buyer incurs in connection with such action.

## ARTICLE V

### DUE DILIGENCE

5.1 **Due Diligence Materials.**

a. Property Documents. Within 5 days after the Agreement Date, Seller will provide to Buyer a copy of all documents and materials in Seller's possession or in the possession of Seller's agents or contractors pertaining to the Property, including, but not limited to, any and all plats, title commitments, title policies, surveys, soil reports, engineering reports, environmental reports, title documents and all documentation related to off-site ponding requirements applicable to the Property (collectively, "Property Documents").

b. Title Commitment. Within 5 days after the Agreement Date, Buyer, at Seller's sole cost and expense, will order a commitment from Title Company to issue an ALTA form 2006 Owner's Policy of Title Insurance in the amount of the Purchase Price, insuring Buyer's title to the Property ("Title Commitment"), together with a copy of all documents referenced in the Title Commitment. The Title Commitment must have an effective date no later than the Agreement Date. The Title Commitment must include affirmative coverages for appurtenant easements, if any, zoning and contiguity. The Title Commitment must obligate Title Company to delete standard exceptions from the Commitment and the policy upon Title Company's receipt of the Survey (defined below) and a seller's affidavit in the form described in Section 4.1(a).

c. Survey. Within 45 days after Buyer receives the Title Commitment, Buyer will obtain, at Seller's sole cost and expense, a survey of the Property meeting the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2011 prepared by a surveyor registered under the laws of the State of Minnesota ("Survey") and including such optional Table "A" items as Buyer requires in its reasonable discretion. The Survey will define the Developable Area of the Property for all purposes under this Agreement.

The Title Commitment and Survey are referred to collectively in this Agreement as the "Evidence of Title." The Property Documents and the Evidence of Title are referred to collectively in this Agreement as the "Due Diligence Materials."

## **5.2 Buyer's Review and Inspection.**

a. Evidence of Title. Within 15 days after Buyer's receipt of the last item of the Evidence of Title or within 5 days after Buyer's discovery of a defect in the marketability of Seller's actual or record title to the Property which defect was not reasonably ascertainable from the Evidence of Title, Buyer may give Seller written notice of alleged defect(s) in the marketability of Seller's actual or record title to the Property and request that Seller make Seller's title marketable ("Objections"). The Permitted Encumbrances may not serve as a basis for an Objection. Any defects in the marketability of Seller's title to the Property to which Buyer does not object, in writing, within the time period set forth above, will be deemed Permitted Encumbrances. If Buyer notifies Seller of Objections within the time period set forth above, Seller will use commercially reasonable efforts to make Seller's actual and record title to the Property marketable and Seller will have 30 days from Seller's receipt of Buyer's Objections to do so and, if necessary, the Date of Closing will be rescheduled accordingly. If Seller makes Seller's title marketable within the 30 day period, Seller will notify Buyer and Buyer's

contingency relating to the Evidence of Title is deemed satisfied. If Seller is unable to make Seller's title to the Property within the 30 period, Seller will so notify Buyer and Buyer may either:

(i) Terminate this Agreement pursuant to Article XII below; or

(ii) Notify Seller that Buyer waives Buyer's Objections. If Buyer waives Buyer's Objections, the matters giving rise to such Objections will be deemed Permitted Encumbrances and the Parties must fully perform their obligations under this Agreement. If necessary, the Parties will establish a new Date of Closing by mutual written agreement. If the Parties cannot establish a new Date of Closing by mutual written agreement, the Date of Closing will be the date 15 days after the effective date of Buyer's notice to Seller that Buyer waives Buyer's Objections.

If Buyer does not notify Seller of Buyer's election to terminate this Agreement pursuant to subsection (a)(i) above or waive Buyer's Objections pursuant to subsection (a)(ii) above within 10 days after the expiration of the 30 day period provided for above, Buyer is deemed to have waived Buyer's Objections.

b. Property Documents/Physical Inspection. Buyer will have the period commencing on the date Buyer receives the last item of the Property Documents until 11:59 p.m. on the first business day that is at least 120 days after the date Buyer receives the last item of the Property Documents to review and inspect the Property and Property Documents to determine the feasibility of Buyer's intended use of the Property ("Feasibility Period"). Notwithstanding any contrary language in this Agreement, Buyer may terminate this Agreement pursuant to Article XII at any time before the time the Feasibility Period expires if for any reason and at its sole discretion Buyer determines that the Property, Property Documents and/or the condition of the Property for Buyer's intended use of the Property is not acceptable to Buyer. At all times prior to the Date of Closing, Buyer and its agents have the right, upon reasonable notice to Seller, to go upon the Property to inspect the Property and to determine the condition of the Property, including specifically the presence or absence of Hazardous Substances in, on, or about the Property. Seller agrees to cooperate with Buyer in this regard. Buyer agrees to repair any damage to the Property caused by such inspections and to return the Property to substantially the same condition as existed prior to Buyer's inspection. **Buyer acknowledges that Buyer is purchasing the Property in reliance on the representations of Seller set forth in Section 7.1 and Buyer's inspection of the Property pursuant to this Section 5 and on Buyer's judgment regarding the sufficiency of such inspections. Buyer is not relying on any written or oral representations, warranties or statements that Seller or Seller's Agents have made except for the representations and warranties set forth in Section 7.1 of this Agreement. Subject to Buyer's right to terminate this Agreement pursuant to Article XII, Buyer is purchasing the Property in "AS IS" condition relying only on the representations and warranties set forth in Section 7.1.**

c. **Entitlements.** Buyer will have the period commencing on the Agreement Date until 11:59 p.m. on the first business day that is at least 120 days after the Agreement Date (“Entitlement Period”) to obtain any rezoning or subdivision approvals, variances, conditional use permits, operating permits or other federal, state or local approvals or permits necessary for Buyer to construct an office/warehouse building on the Property that is at least 100,000 rentable square feet (collectively, “Entitlements”). Buyer will diligently apply for and pursue the Entitlements at Buyer’s sole cost and expense. Seller will cooperate with Buyer in Buyer’s pursuit of Entitlements but is not required to incur any material cost or expense in connection with such cooperation. Notwithstanding any contrary language in this Agreement, Buyer may terminate this Agreement pursuant to Article XII at any time before the Entitlement Period expires if for any reason and at Buyer’s sole discretion Buyer does not or determines that it will not receive all Entitlements. Buyer’s failure to terminate this Agreement within the Entitlement Period constitutes Buyer’s waiver of this contingency.

## **ARTICLE VI**

### **TAXES AND ASSESSMENTS**

The Parties will pay the real estate taxes (which term, as used in this Agreement, includes service charges assessed against real property on an annual basis pursuant to Minnesota Statutes Section 429.101) and special assessments as follows:

a. On or before the Date of Closing, Seller must pay all real estate taxes and service charges and any penalties and interest due and payable with respect to the Property for all years prior to the year of Closing, including all real estate taxes and special assessments and interest which have been deferred pursuant to Minnesota Statutes Section 273.11, commonly known as the “Green Acres” statute;

b. On or before the Date of Closing, Seller must pay or provide for the payment of all special assessments levied or pending against the Property as of the Date of Closing, including special assessments certified for payment with the current year’s real estate taxes; provided, however, that Buyer will assume payment of any and all installments of special assessments due and payable after the Date of Closing that were incurred to extend utility service to the Property;

c. Buyer and Seller must pro rate the real estate taxes and service charges (if any) due and payable in the year of closing on a per-diem basis using a calendar year, to the Date of Closing. The Parties must pro-rate these amounts using current year real estate tax information, if available, and, if current year tax information is not available, using the amount of the real estate taxes due and payable in the year immediately preceding the year of Closing. Any such proration is final and no subsequent adjustments, refunds or additional payments will be made; and

d. Buyer must pay all real estate taxes and service charges due and payable in the years following the year of Closing.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES

7.1 **By Seller.** Seller represents and warrants to Buyer as follows:

a. The individuals executing this Agreement on behalf of Seller represent to Buyer that they have the legal authority to execute this Agreement on behalf of Seller and to bind Seller. Seller has the legal authority to enter into this Agreement and to sell the Property.

b. Seller is not a foreign person, foreign partnership, foreign trust or foreign estate as those terms are defined in Section 1445 of the Internal Revenue Code.

c. There have been no bankruptcy or dissolution proceedings involving Seller during the time Seller has had any interest in the Property.

d. There are no unsatisfied judgments of record against Seller.

e. There are no state or federal tax liens filed against Seller.

f. There has been no labor or materials furnished to the Property for which payment has not been made.

g. There are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interests relating to the Property.

h. There are no persons in possession of any portion of the Property other than pursuant to a recorded document.

i. Seller has not received notice of any new public improvement project(s), the cost of which a governmental entity may assess against the Property.

j. The Property is not in violation of any statute, law, ordinance or regulation.

k. To the best of Seller's knowledge, there is no action, litigation, governmental investigation, condemnation or administrative proceeding of any kind pending against Seller or involving any portion of Property, and no third party has threatened Seller with commencement of any such action, litigation, investigation, condemnation or administrative proceeding.

l. Seller is not in default in the performance of any of Seller's obligations under any mortgage, contract for deed, easement agreement, covenant, condition, restriction or other instrument relating to the Property.

m. To the best of Seller's knowledge, there are no wells, as that term is defined in Minnesota Statutes Section 103I.005, subdivision 21, located on the Property.



n. To the best of Seller's knowledge, there are no underground or above ground storage tanks of any size or type located on the Property and no underground sewage treatment system is located on or serves the Property.

o. To the best of Seller's knowledge, there are no Hazardous Substances located on the Property; the Property is not subject to any liens or claims by government or regulatory agencies or third parties arising from the release or threatened release of Hazardous Substances in, on or about Property; and the Property has not been used in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substances. For purposes of this Agreement, the term "Hazardous Substance" includes but is not limited to any substance designated as a hazardous substance or a toxic pollutant by the Clean Water Act, Title 33 U.S.C. Section 1251, et seq.; any element, compound, mixture, solution or substance designated as a hazardous substance by the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. Section 9601, et seq.; any hazardous waste having the characteristics identified in or developed and promulgated pursuant to the Solid Waste Disposal Act, Title 42, U.S.C. Section 6921; any hazardous air pollutant as defined under Section 112 of the Clean Air Act, Title 42 U.S.C. Section 7412, any imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act, Title 15 U.S.C. Section 2606 and any "Hazardous Waste," "Hazardous Substance," "Pollutant or Contaminant" as defined in the Minnesota Environmental Response and Liability Act, Minnesota Statutes, Section 115B.02. The term "Hazardous Substance" also includes, but is not limited to, a substance declared to be hazardous under the above described Federal and State Acts after the date of this Agreement, so long as such substance was located on the Property as of Closing, and such term also includes polychlorinated biphenyls, urea formaldehyde, petroleum, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas) or related substances.

p. To the best of Seller's knowledge, methamphetamine production has not occurred on the Property.

q. Seller has engaged only Cushman & Wakefield/NorthMarq ("Seller's Agent") to act as Seller's real estate agent in connection with this transaction and Seller is solely responsible for the payment of any commission or fee due to Seller's Agent in connection with this transaction.

If, at any time prior to the Date of Closing, Seller acquires actual knowledge of events or circumstances which render the representations set forth in this Section 7.1 inaccurate in any respect, Seller must immediately notify Buyer. Seller will indemnify Buyer, its successors and assigns, against and will hold Buyer, its successors and assigns, harmless from any expenses or damages, including reasonable attorneys' fees, Buyer incurs because of Seller's breach of any of the above representations and warranties; the inaccuracy of any of the above representations when made; or Seller's failure to notify Buyer, before the Date of Closing, if the representations set forth above become inaccurate. The representations, warranties and indemnification set forth above survive the Closing and Seller's delivery of the Deed to Buyer. Buyer's acceptance of the

Deed from Seller and payment of the Purchase Price to Seller with knowledge that one or more of the matters set forth above are not as represented and warranted will not constitute Buyer's waiver or release of any claims due to such misrepresentation or breach of warranty. At closing, an authorized representative of Seller must execute and deliver to Buyer a certificate of Seller certifying that the representations contained in this Section 7.1 are true as of the Date of Closing or, if such representations are no longer true, describing, in detail, the reasons why the representations are no longer true ("Date Down Certificate").

7.2 **By Buyer.** Buyer represents and warrants to Seller as follows:

a. The individuals executing this Agreement on behalf of Buyer have the legal and corporate authority and the legal capacity to execute this Agreement on behalf of Buyer and to bind Buyer. Buyer has the full and complete authority to enter into this Agreement and to purchase the Property.

b. Buyer has engaged only Cushman & Wakefield/NorthMarq ("Buyer's Agent") to act as Buyer's real estate agent in connection with this transaction. Seller is solely responsible for the payment of any commission or fee due to Buyer's Agent in connection with this transaction.

If, at any time prior to the Date of Closing, Buyer acquires actual knowledge of events or circumstances which render the representations set forth in this Section 7.2 inaccurate in any respect, Buyer must immediately notify Seller. Buyer will indemnify Seller, its successors and assigns, against and will hold Seller, its successors and assigns, harmless from any expenses or damages, including reasonable attorneys' fees, Seller incurs because of Buyer's breach of any of the above representations and warranties; the inaccuracy of any of the above representations when made; or Buyer's failure to notify Seller, before the Date of Closing, if the representations set forth above become inaccurate. The representations, warranties and indemnifications set forth above survive the Closing of this transaction and Seller's delivery of the Deed to Buyer. Seller's delivery of the Deed to Buyer and acceptance of Buyer's Purchase Price payment with knowledge that one or more of the matters set forth above are not as represented and warranted will not constitute Seller's waiver or release of any claims due to such misrepresentation or breach of warranty.

## ARTICLE VIII

### INDEMNIFICATION

8.1 **By Seller.** Seller must indemnify and defend Buyer against and hold Buyer harmless from any and all claims, causes of action, administrative orders, costs, expenses and liabilities of every kind and nature and howsoever originating and existing, arising out of Seller's operation or ownership of the Property prior to the Date of Closing, whether currently known or unknown including, but not limited to, claims relating to Hazardous Substances on the Property and including Buyer's attorneys' fees and costs incurred in defending against claims to establish or enforce such liabilities.

8.2 **By Buyer.** Buyer must indemnify and defend Seller and hold Seller harmless from any and all claims, causes of action, administrative orders, costs, expenses and liabilities of every kind and nature howsoever originating and existing, arising out of any and all the Buyer's operation or ownership of the Property subsequent to the Date of Closing, including, but not limited to, claims relating to Hazardous Substances on the Property and including Seller's attorneys' fees and costs incurred in defending claims to establish or enforce such liabilities.

## **ARTICLE IX**

### **CONDEMNATION**

If a public or private entity with the power of eminent domain commences condemnation proceedings against all or any part of the Property, Seller must immediately notify Buyer, and Buyer may, at Buyer's sole option, terminate this Agreement pursuant to Article XII below. Notwithstanding the foregoing, Buyer may not terminate this Agreement if the condemnation is for a right-of-way or utility and such condemnation will not materially affect Buyer's intended use of the Property. Buyer will have 30 days from Buyer's receipt of Seller's notice to Buyer to exercise Buyer's termination right. If Buyer does not exercise Buyer's termination right, then the Parties must fully perform their obligations under this Agreement, with no reduction in the Purchase Price, and Seller must assign to Buyer, on the Date of Closing, all of Seller's right, title and interest in any award made or to be made in the condemnation proceedings. Seller may not designate counsel, appear or otherwise act with respect to any such condemnation proceedings without Buyer's prior written consent unless Buyer fails to respond within 5 days to a request for written consent.

## **ARTICLE X**

### **ASSIGNMENT**

Buyer may not assign Buyer's rights and obligations under this Agreement to a third party without Seller's written consent, which consent Seller will not unreasonably withhold, condition or delay, except that Buyer may assign Buyer's rights and obligations under this Agreement to an affiliate without Seller's consent. Buyer must notify Seller of any assignment to an affiliate.

## **ARTICLE XI**

### **DEFAULT**

11.1 **By Buyer.** If Buyer defaults in the performance of any of Buyer's obligations under this Agreement, then Seller may, as Seller's sole and exclusive remedy, terminate this Agreement pursuant to Minnesota Statutes Section 559.21 and retain the Earnest Money and any interest which the Earnest Money has earned as liquidated damages. The Earnest Money Agent must disburse the Earnest Money to Seller upon Seller's delivery to Earnest Money Agent of a copy of a Notice of Cancellation of Purchase Agreement which satisfies the requirements of Minnesota Statutes Section 559.21; an Affidavit of Service stating that the Notice of Cancellation was served upon Buyer and an Affidavit stating that Buyer failed to comply with

the requirements of the Notice of Cancellation within the time period set forth in Minnesota Statutes Section 559.21;

11.2 **By Seller.** If Seller defaults in the performance of any of Seller's obligations under this Agreement, then Buyer may, as Buyer's sole and exclusive remedies:

a. Terminate this Agreement pursuant to Article XII, below and Escrow Agent must refund the Earnest Money and all interest earned on the Earnest Money to Buyer. Additionally, Seller must deliver to Buyer, in cash or certified funds, the sum of \$25,000 as liquidated damages, which Buyer may receive as compensation for Seller's default due to the difficulty and uncertainty of ascertaining Buyer's actual damages.

b. Initiate a civil action to compel Seller's specific performance of Seller's obligations under this Agreement provided that Buyer commences such action within 9 months after the date of Seller's default. In any such action for specific performance, Buyer may also recover Buyer's attorneys' fees and costs. If Buyer elects to initiate a civil action to compel Seller's specific performance of Seller's obligations under this Agreement and later dismisses the action or if Seller is otherwise not compelled to specifically perform its obligations under this Agreement, then Buyer may exercise the remedy Section 11.2(a) describes.

## **ARTICLE XII**

### **TERMINATION**

Certain Sections of this Agreement allow Buyer to terminate this Agreement under certain conditions. Certain Sections of this Agreement allow Seller to terminate this Agreement under certain conditions. The following procedures govern the Parties' exercise of their termination rights:

c. A Party intending to terminate this Agreement ("Terminating Party") must notify the non-terminating Party ("Non-Terminating Party") of the Terminating Party's intent to terminate this Agreement.

d. The Terminating Party's notice must recite the Section of this Agreement that authorizes the Terminating Party's termination of this Agreement and must describe the facts and circumstances which the Terminating Party asserts justify termination under the referenced Section.

e. If the Non-Terminating Party disputes the Terminating Party's right to terminate this Agreement, the Non-Terminating Party must so notify the Terminating Party within 3 business days after the Non-Terminating Party's receipt of the Terminating Party's notice of termination.

f. If the Non-Terminating Party does not dispute the Terminating Party's right to terminate the Agreement, Buyer must execute and deliver to Seller a recordable quit claim deed conveying the Property to Seller, and on the receipt of such a quit claim

deed, Seller must return or instruct the Earnest Money Agent to return the Earnest Money and any interest which the Earnest Money has earned to Buyer.

g. If the Parties dispute the validity of an attempted termination of this Agreement, either Party may initiate a civil action in a court of competent jurisdiction to determine the status of this Agreement and the Party that prevails in any such action is entitled to recover the costs and reasonable attorneys' fees which such Party incurs in the action from the non-prevailing Party.

## ARTICLE XIII

### MISCELLANEOUS

13.1 **Time**. Time is of the essence for all provisions of this Agreement.

13.2 **Survival of Terms**. The Parties' obligations under this Agreement and the representations and warranties which the Parties have recited in this Agreement survive Seller's delivery of the Deed to Buyer and the Closing of the transaction this Agreement contemplates for a period of 1 year.

13.3 **Notices**. All notices given under this Agreement must be in writing and must be sent by personal delivery, certified mail, return receipt requested; for next day delivery by a nationally recognized overnight delivery service that provides evidence of the date of delivery; or by electronic mail, in any case with all charges prepaid, addressed to the appropriate party at its address listed below. The notice will be effective as of the date the Party sending such notice deposits the notice with the United States Postal Service with all necessary postage paid, for delivery to the other Party via certified mail, return receipt requested, at the address set forth below. If a Party delivers a notice provided for in this Agreement in a different manner than described in the preceding sentence, the notice is effective as of the date the other party actually receives the notice.

To Buyer:	United Properties Development LLC 3600 American Boulevard West, Ste. 750 Minneapolis, MN 55431 Attn: Brandon Champeau E-mail: <a href="mailto:brandon.champeau@uproperties.com">brandon.champeau@uproperties.com</a>
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With a copy to:	Briggs and Morgan, P.A. 2200 IDS Center 80 South Eighth Street Minneapolis, MN 55402-2157 Attn: Patrick E. Mascia E-mail: <a href="mailto:pmascia@briggs.com">pmascia@briggs.com</a>
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To Seller:	Chaska Economic Development Authority c/o City of Chaska
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One City Hall Plaza  
Chaska, MN 55318  
Attn: Jeffry Dahl  
E-mail: JDahl@chaskamn.com

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
E-mail: \_\_\_\_\_

All notices given in accordance with this Section are deemed received 3 business days after having been deposited with the U.S. Postal Service (if sent by certified mail), on the date evidenced if by personal delivery or electronic mail or 1 business day after deposit (if sent by overnight delivery). Notices given by counsel to a Party in accordance with the above are deemed given by such Party.

13.4 **Full Agreement.** The Parties acknowledge that this Agreement represents the full and complete agreement of the Parties relating to the purchase and sale of the Property and all matters related to the purchase and sale of the Property. This Agreement supersedes and replaces any prior agreements between the Parties, either oral or written, and any amendments or modifications to this Agreement must be in writing and executed by both Parties to be effective.

13.5 **Governing Law.** This Agreement has been made under the laws of the State of Minnesota and such laws control its interpretation.

13.6 **Counterparts.** This Agreement may be executed in counterparts, each of which, when taken together, constitute fully executed originals.

13.7 **E-Mail or PDF Signatures.** Signatures transmitted by electronic mail in PDF format are valid and enforceable as original signatures.

13.8 **Successors and Assigns.** The rights and obligations of the Parties inure to the benefit of and bind the Parties' successors and assigns.

13.9 **Like-Kind Exchange.** Seller acknowledges that Buyer is contemplating a "like-kind exchange" under Section 1031 of the United States Internal Revenue Code (simultaneous, deferred or reverse) and similar provisions of applicable state law ("Exchange") and Buyer may, without Seller's consent, assign its rights under this Agreement to a qualified intermediary to effect the Exchange. Seller will make reasonable efforts to cooperate with Buyer's reasonable requests to effect the Exchange; provided that (i) Seller is not required to incur any additional costs, expenses or liability in connection with the Exchange, (ii) Seller is not obligated to execute any note, contract, deed or other document not otherwise expressly provided for in this Agreement providing for any personal liability (other than a consent to assignment to the qualified intermediary, if required), (iii) Seller is not obligated to take title to any property other than the Property, (iv) Buyer is not released from any obligations or liability under this Agreement and (v) Buyer will indemnify, defend and hold Seller harmless from and against all

expenses, losses, costs (including, without limitation, reasonable attorney's fees), damages and claims resulting from the Exchange or attempted Exchange. Seller disclaims any responsibility for the qualification of the transaction contemplated by this Agreement as a tax-deferred exchange under Internal Revenue Code Section 1031, as amended, and Buyer agrees that Seller will not be liable for any tax liability, interest or penalties arising thereunder by virtue of Seller's cooperation in the consummation of any such Exchange or attempted Exchange.

**13.10 Foundation/Concrete Removal.** There are certain concrete footings and foundations on the Property that Buyer desires to remove and dispose ("Foundation Improvements"). Buyer will obtain up to three (3) bids from contractors Buyer selects in its sole discretion to remove and dispose the Foundation Improvements and will present such bids to Seller. On or before the Closing, Seller will select one of the bids, which acceptance shall constitute authority from Seller to Buyer for Buyer to enter into a contract with the selected bidder to remove and dispose the Foundation Improvements. Seller will pay all costs of removing and disposing the Foundation Improvements and will reduce the Purchase Price calculated under Article 3.1 of this Agreement by the amount of the selected bid, plus an oversight fee payable to Buyer in an amount equal to \_\_\_\_ % of the selected bid amount. The terms and conditions of this Article 13.10 survive the Closing.

(Signature page follows)

Seller and Buyer have executed this Agreement as of the Agreement Date.

SELLER:

CHASKA ECONOMIC DEVELOPMENT  
AUTHORITY,  
a Minnesota municipal corporation

By \_\_\_\_\_  
Printed \_\_\_\_\_  
Title \_\_\_\_\_

BUYER:

UNITED PROPERTIES DEVELOPMENT  
LLC,  
a Minnesota limited liability company

By \_\_\_\_\_  
Printed \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Printed \_\_\_\_\_  
Title \_\_\_\_\_



EXHIBIT A  
TO PURCHASE AND SALE AGREEMENT

(Legal Description of the Property)

EXHIBIT B  
TO PURCHASE AND SALE AGREEMENT

FILE NO. \_\_\_\_\_

**ESCROW AGREEMENT**

CHASKA ECONOMIC DEVELOPMENT AUTHORITY (“Seller”) and UNITED PROPERTIES DEVELOPMENT LLC (“Buyer”) are parties to the purchase and sale of the real estate (“Property”) described in the attached Purchase and Sale Agreement dated November \_\_, 2015 (“Purchase Agreement”). As provided in Section 3.2 of the Purchase Agreement, Buyer deposits the sum of \$25,000 (“Earnest Money”) with First American Title Insurance Company (“Earnest Money Agent”). Earnest Money Agent must hold the Earnest Money in an interest bearing account with an institution whose accounts are insured by a governmental agency or instrumentality. Interest on the Earnest Money will accrue to Buyer unless Buyer defaults under the terms of the Purchase Agreement and Seller elects to retain the earnest money as liquidated damages, in which case Seller is entitled to such interest.

Upon notification by both parties in writing that the transaction has closed, Earnest Money Agent must pay the Earnest Money to the Seller. If either party notifies Earnest Money Agent that the transaction has not closed, Earnest Money Agent must pay the Earnest Money as follows:

1. Upon receipt of instruments regarding the release of the Earnest Money executed by both parties Earnest Money Agent must deliver the Earnest Money pursuant to such instructions;
2. If Seller delivers a Notice of Cancellation of Purchase Agreement describing the Purchase Agreement and the Property, together with an Affidavit of Service evidencing service of the Notice of Cancellation on Buyer and an Affidavit of Failure to Comply with Notice completed, executed and acknowledged to Earnest Money Agent on or before the date 60 days after the Date of Closing as defined in the Purchase Agreement, Earnest Money Agent must deliver the Earnest Money to Seller.
3. If no disposition of the Earnest Money has been made by the date 60 days after the Date of Closing, as defined in the Purchase Agreement, Earnest Money Agent must return the Earnest Money to Buyer.

Earnest Money Agent has no responsibility for any decision concerning performance or effectiveness of the Purchase Agreement, and is only responsible to act pursuant to the procedures set forth above. Buyer and Seller agree to hold Earnest Money Agent harmless from any claims or defenses arising out of this Escrow Agreement and indemnify Earnest Money Agent for all costs and expenses in connection with this escrow, including court costs, attorney’s fees, except for claims arising out of Earnest Money Agent’s failure to account for the funds held and costs and expenses incurred by the parties in connection with such a claim.

To the extent that the provisions of this Escrow Agreement are inconsistent with the provisions of the Purchase Agreement, the provisions of this Escrow Agreement control.

Earnest Money Agent's fee for acting as an escrow agent is \$\_\_\_\_\_. Buyer and Seller agree to share such cost equally.

SELLER:

BUYER:

CHASKA ECONOMIC DEVELOPMENT  
AUTHORITY

UNITED PROPERTIES DEVELOPMENT  
LLC

By:  
Printed:  
Title:

By:\_\_\_\_\_  
Printed:\_\_\_\_\_  
Title:\_\_\_\_\_

Address:

Address:

Earnest Money Agent acknowledges receipt of this Agreement and the Earnest Money and agrees to hold the Earnest Money as above specified.

Dated this \_\_\_\_ day of November, 2015.

FIRST AMERICAN TITLE INSURANCE  
COMPANY

By:\_\_\_\_\_  
Printed:\_\_\_\_\_  
Title:\_\_\_\_\_