



CITY OF LE SUEUR
REQUEST FOR COUNCIL ACTION

TO: Mayor and City Council
FROM: Samantha DiMaggio – Community Development Director
SUBJECT: Public Hearing – Business Subsidy – Building Good Downtowns, LLC.
DATE: For the City Council Meeting of June 22, 2020

PURPOSE/ACTION REQUESTED

Consider approving a Business Subsidy for Building Good Downtowns, LLC.

SUMMARY

The State of Minnesota requires that prior to awarding a Business Subsidy, that the city have a formal policy and criteria in place. The City of Le Sueur's policy was originally adopted in 1999. Since it has been 20 years, the Economic Development Authority recently updated and adopted a Business Subsidy Policy on May 26, 2020 which is included for your review. As per our policy and state statute, a Public Hearing is required prior to approving a Business Subsidy.

The City of Le Sueur part owner of a parking lot located adjacent to Valleygreen Square Mall in downtown Le Sueur. The mall is under contract to be acquired by Building Good Downtowns, LLC, as part of their acquisition, they've requested to purchase the adjoining parking lot for \$1.00. The parking lot is approximately 1.37 acres and is has been valued at \$180,000 by Le Sueur County. Since the parking lot is being sold considerably less than it's valued, this would be considered a Business Subsidy and requires a Public Hearing and Development Agreement.

RECOMMENDATION

Staff is recommending the sale of the parking lot for \$1.00 and is requesting the City Council authorize the execution of a Development Agreement for the Business Subsidy.

CITY OF LE SUEUR, MINNESOTA
ECONOMIC DEVELOPMENT AUTHORITY **RESOLUTION 2020-003**

APPROVING A REVISED BUSINESS SUBSIDY POLICY

WHEREAS, Minnesota Statutes, Sections 116J.993 through 116J.995 (the "Statutes") require the adoption of criteria for the granting of business subsidies as def med in the Statutes;

WHEREAS, the Economic Development Authority, City of Le Sueur, Minnesota (the "EDA") has determined that it is necessary and appropriate to" adopt business subsidy criteria pursuant to the Statutes;

WHEREAS, the EDA has performed all actions required by law to be performed prior to the adoption and approval of the proposed business subsidies, including the holding of a public hearing upon published notice as required by law; and

WHEREAS, the EDA previously approved Business subsidy criteria on October 11, 1999, and has now determined to amend and restate the criteria in accordance with requirements of the Business Subsidy Act.

NOW, THEREFORE, BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY THAT:

1. The business subsidy criteria, contained in Exhibit A of this resolution are hereby approved, ratified, established, and adopted and shall be placed on file at the City of Le Sueur, Minnesota.
2. City staff are authorized to transmit a copy of the Policy to the Minnesota Department of Employment and Economic Development in accordance with the Business Subsidy Act.

PASSED by the Economic Development Authority of the City of Le Sueur on this 26 day of May 2020.

ATTEST



President



Executive Director

VOTE: X MANKE X FAVOLISE X MEGER X WENISCH
X PFARR X MAHONEY X SULLIVAN



EXHIBIT A

Amended: May 26, 2020
Originally Adopted: Oct. 11, 1999

Business Subsidy Policy

I. Purpose

The purpose of the Le Sueur Business Subsidy Policy is to establish criteria for the granting of business subsidies, including assistance through Tax Increment Financing, Tax Abatement, and other incentive and assistance programs that may become available through the City of Le Sueur. *For the purposes of this document, the term "City" includes the Le Sueur City Council, the Le Sueur Economic Development Authority, staff, financial consultants, and legal counsel.*

This policy will be used as criteria for providing subsidies, in addition to the requirements and limitations set forth by provision of Minnesota Statutes Section 116J.993 through 116J.995, as amended (the "Business Subsidy Act").

The criteria set forth in this Business Subsidy Policy shall be used as a guide in processing and reviewing applications requesting business subsidy assistance and shall be used in conjunction with other relevant policies of the City and the Authority.

The City may amend this Business Subsidy Plan at any time. Amendments to this Plan are subject to public hearing requirements contained in the Business Subsidy Act. The City reserves the right to approve or reject projects on a case-by-case basis, taking into consideration established policies, project criteria, and demand on City services in relation to the potential benefits from the project. Meeting policy criteria does not guarantee the award of business assistance for the project. Approval or denial of one project is not intended to set precedent for approval or denial of another project.

The City can deviate from this policy for projects that supersede the objects identified herein. Any applicant who is not in good standing with the city, regarding licenses, fees or other specific charges will not be considered for a business subsidy.

II. Business Subsidy Criteria

The following criteria shall be utilized in evaluating a request for a business subsidy. However, that an applicant meets these criteria does not create a constitutional right to a business subsidy. The City may at any time and at its own discretion modify these criteria as permitted by the Act.

1. *Public Purpose.* The business subsidy must meet a public purpose which may include, but may not be limited to, increasing the tax base. Job retention may only be used as a public purpose in cases where job loss is specific and demonstrable.
2. *Increase Tax Base.* The Act provides that an increase in tax base cannot be the sole basis for generating a business subsidy. However, the City considers an increase in tax base to be a critical factor in granting a business subsidy.
3. *Wage & Job Creation.* The project provided a business subsidy must create at least one full-time equivalent job paying at least 150% of the State minimum wage in effect at the time the subsidy is granted. The maximum amount of subsidy per job created will be equal to the annual salary of the job(s) being created that comply with the wage requirement. If, after the public hearing, the City determines that the creation or retention of jobs is not a goal of the specific project, the job creation goal may be set at zero (0).
4. *"But-For" Test.* There is a substantial likelihood that the project would not go forward without the business subsidy. This criterion may be met based solely on representation of the recipient of the business subsidy.
5. *Other Economic or Redevelopment Goals.* If creation of jobs is determined not to be a goal of a project (and by extension wages) the proposed business subsidy must achieve specific, tangible, and measurable goals related to one or more of the following:
 - a. To encourage additional unsubsidized private development in the area, either directly or indirectly through "spin off" development.
 - b. To remove blight and/or encourage development of commercial and industrial areas in the city that result in higher quality development or redevelopment and private investment.
 - c. To facilitate the development process and to achieve development on sites which would not otherwise be developed but for the use of a business subsidy.
 - d. To support a project that will improve the quality of life in the City by providing a desirable good or service and addressing an unmet demand in the community.
 - e. To promote revitalization and redevelopment in the Main Street Corridor.

In granting business subsidies, the City may deviate from the criteria outlined above if a) the reasons for the deviation is documented in writing, and b) reported to the Minnesota Department of Employment and Economic Development (DEED) pursuant to the Act.

III. APPLICATION PROCESS

The applicant will complete and submit the City's Application for Business Subsidy along with the required application fee (refer to the current year's adopted fee schedule). The application fee covers the City's outside legal counsel review, and financial analysis costs. The applicant will also provide any additional information requested by the City. The applicant will be liable for any additional costs beyond the initial deposit. All materials submitted to the City in connection with a business subsidy application shall become the property of the City and is subject to data privacy law. The review process shall involve at least the following:

1. Staff shall review the application materials and make a preliminary recommendation to the City Council and/or EDA regarding

- a. The completeness of the application,
 - b. Whether the application meets the goals of this policy, and
 - c. Whether the application complies with the criteria established in this policy.
2. In the event that the City Council and/or EDA concur with the recommendation in a. above, a public hearing will be set at which the City will consider a final recommendation related to the application. The final review and recommendation by City shall take into account at least the following:
 - a. Applicable credit analysis.
 - b. Financial structure of the proposed project/application.
 - c. Legal compliance of the project/application.
3. At the time of the scheduled public hearing, staff will make a final recommendation to the City regarding this application. The City may adopt the recommendation or direct staff to develop alternative information and/or alternatives for action by the City.
4. If the business subsidy is approved, the business and the city will enter into a business subsidy agreement.

IV. BUSINESS SUBSIDY AGREEMENT

1. A recipient must enter into a subsidy agreement with the grantor of the subsidy that includes:
 - a. A description of the subsidy, including the amount and type of subsidy, and type of district if the subsidy is tax increment financing.
 - b. A statement of the public purposes for the subsidy.
 - c. Measurable, specific, and tangible goals for the subsidy.
 - d. A description of the financial obligation of the recipient if the goals are not met.
 - e. A statement of why the subsidy is needed.
 - f. A commitment to continue operations in the jurisdiction where the subsidy is used for at least five years after the benefit date.
 - g. The name and address of the parent corporation of the recipient, if any.
 - h. A list of all financial assistance by all grantors for the project.
2. Business subsidies in the form of grants must be structured as forgivable loans. For other types of business subsidies, the agreement must state the fair market value of the subsidy to the recipient, including the value of conveying property at less than a fair market price, or other in-kind benefits to the recipient.
3. If a business subsidy benefits more than one recipient, the grantor must assign a proportion of the business subsidy to each recipient that signs a subsidy agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.
4. The state or local government agency and the recipient must both sign the subsidy agreement and, if the grantor is a local government agency, the agreement must be approved by the local elected governing body, except for the St. Paul Port Authority and a seaway port authority.

5. Notwithstanding the provision in paragraph (a), clause (6), a recipient may be authorized to move from the jurisdiction where the subsidy is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. For the purpose of this paragraph, if the grantor is a state government agency other than the Department of Iron Range Resources and Rehabilitation, "jurisdiction" means a city or township.

V. Compliance and Reporting

1. Any assistance that does not meet the definition of a "business subsidy" will be excluded from the requirement of holding a public hearing prior to granting a business subsidy. All assistance that meets the definition shall be subject to the requirement of a public hearing.
2. Every recipient of a business subsidy must enter into a business subsidy agreement with the City, in which the agreement must fulfill the requirements of the Act.
3. Both the recipient and the City must comply with the business subsidy reporting and monitoring requirements of the Act.
4. In the event that a recipient fails within two (2) years of the benefit date as defined in the Act to meet the job and wage goals set forth in the business subsidy agreement, the recipient or its successors and assigns shall be liable to repay to the City the assistance plus interest. The City may prorate repayment to reflect partial fulfillment of the goals set forth in the business subsidy agreement. The rate of interest charged must be set at no less than the implicit price deflator for government consumption expenditures and gross investment for local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce.
5. The city may, after holding a public hearing, extend the time for compliance with the business subsidy agreement job and wage goals by up to one (1) year.

VI. FINANCIAL ASSISTANCE NOT CONSIDERED A BUSINESS SUBSIDY:

1. A business subsidy of less than \$150,000.
2. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria.
3. Public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
4. Redevelopment property polluted by contaminants as defined in 116J.552, subdivision 3.
5. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50 percent of the total cost.
6. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services.
7. Assistance for housing.
8. Assistance for pollution control or abatement, including assistance for a tax increment financing hazardous substance sub-district as defined under M.S. §469.174, subdivision 23;

9. Assistance for energy conservation.
10. Tax reductions resulting from conformity with federal tax law.
11. Workers' compensation and unemployment insurance.
12. Benefits derived from regulation.
13. Indirect benefits derived from assistance to educational institutions.
14. Funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1999.
15. Assistance for a collaboration between a Minnesota higher education institution and a business.
16. Assistance for a tax increment financing soils condition district as defined under section 469.174, subdivision 19.
17. Redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current years estimated market value.
18. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
19. Federal assistance until the assistance has been repaid to, and reinvested by, the state or local government agency.
20. Funds from dock and wharf bonds issued by a seaway port authority.
21. Business loans and loan guarantees of \$150,000 or less.
22. Federal loan funds provided through the United States Department of Commerce, Economic Development Administration.
23. Property tax abatements granted under M.S. §469.1813 to property that is subject to valuation under Minnesota Rules, chapter 8100.

VII. Definitions

"Benefit date" means the date that the recipient receives the business subsidy. If the business subsidy involves the purchase, lease, or donation of physical equipment, then the benefit date begins when the recipient puts the equipment into service. If the business subsidy is for improvements to property, then the benefit date refers to the earliest date of either:

"Business Subsidy" means a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business, and as defined by the Business Subsidy statute M.S. §116J.993 - 116J.995.

"Business Subsidy Report" means the annual reports submitted each year for each business receiving a business subsidy in the community. The report is submitted by the local government unit in order to comply with M.S. §116J.994 Subd. 7. (b).

“Criteria” means the equitably applied, uniform standards by which the City bases its decision to award any business subsidy to a private business or development project establishing a business and creating jobs in the City of Le Sueur.

“DEED” means Minnesota Department of Employment and Economic Development.

“Full-Time Equivalent Job” The number does not reflect headcount, but rather all annual hours recorded by the employer over a specific period of time divided by 40 hours per week.

“Grantor” means the city department, city attorney, local or regional economic development agency or other authorized entity that is empowered to solicit, negotiate, and form business subsidy agreements on behalf of the City of Le Sueur.

“Public purpose” A business subsidy must meet a public purpose which may include, but may not be limited to, increasing the tax base. Job retention may only be used as a public purpose in cases where job loss is specific and demonstrable.

“Recipient” means any business entity that receives a business subsidy as defined by M.S. §116J.993, and that has signed a Business Subsidy Agreement with a city.

Draft 2, June 17, 2020

CONTRACT
FOR
PRIVATE REDEVELOPMENT
By and Between
CITY OF LE SUEUR, MINNESOTA
and
BUILDING GOOD DOWNTOWNS, LLC

Dated: _____, 2020

CONTRACT FOR PRIVATE REDEVELOPMENT

THIS AGREEMENT, made as of the _____ day of _____, 2020, by and between the CITY OF LE SUEUR, MINNESOTA, a Minnesota municipal corporation (the “City”), and BUILDING GOOD DOWNTOWNS, LLC, a Minnesota non-profit corporation (the “Developer”).

WITNESSETH:

WHEREAS, the City has undertaken a program to promote economic development and job opportunities and to promote the development of land which is underutilized within the City, and in this connection created Development District No. _____ (hereinafter referred to as the “Project”) in an area (hereinafter referred to as the “Project Area”) located in the City; and

WHEREAS, the City intends on creating Tax Increment Financing District No. _____ (the “TIF District”) within the Project Area, all pursuant to Minnesota Statutes, Sections 469.124 to 469.134, as amended (the “Act”) and Minnesota Statutes, Sections 469.174 to 469.1799, as amended (the “Tax Increment Act”) in furtherance of the redevelopment of the ValleyGreen Square Mall (hereinafter referred to as the “Mall”) located on lots 9-16, Block 32, Town of Le Sueur, according to the plat thereof recorded in the office of the Le Sueur County Recorder (“Development Property”); and

WHEREAS, pursuant to the Act, the City is authorized to undertake certain activities to facilitate the redevelopment of such underutilized land by private enterprise; and

WHEREAS, the Developer intends on acquiring the Development Property in the Project Area and TIF District and has proposed to redevelop the Development Property by remodeling the retail and service areas on the ground floor and constructing 14 residential apartments on the second floor (the “Minimum Improvements”) all in accordance with the plans attached hereto as Exhibit A.

WHEREAS, in order to achieve the objectives of the Development Plan for the Project the City is prepared to reimburse the Developer for certain public development costs of the Project in accordance with the Development Plan and this Agreement; and

WHEREAS, the City believes that the development of the Project Area pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Project has been undertaken and is being assisted.

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:

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Act” means Minnesota Statutes, Sections 469.124 to 469.134, as amended.

“Agreement” means this Agreement, as the same may be from time to time modified, amended, or supplemented.

“Certificate of Completion” means the certification provided to the Developer, or the purchaser of any part, parcel or unit of the Development Property, pursuant to Section 4.4 of this Agreement.

“City” means the City of Le Sueur, Minnesota.

“City Representative” means the City Administrator or person designated in writing by the City Administrator to act as the City Representative of the City of Le Sueur.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Developer on the Development Property, including the Minimum Improvements, which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following: (1) public plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means the County of Le Sueur, Minnesota.

“Developer” means Building Good Downtowns, LLC or its permitted successors and assigns.

“Development Property” means the real property described on the attached Exhibit B.

“Event of Default” means an action by the Developer listed in Article IX of this Agreement.

“Holder” means the owner of a Mortgage.

“Minimum Improvements” means remodeling the retail and service areas on the ground floor and constructing 14 apartments on the second floor of the Development Property consistent with the plans attached as Exhibit A hereto.

“Parking Lot Purchase Agreement” means that certain purchase agreement between Developer and the City dated _____ for the purchase of Lots 1 through 8 of Block

32, Town of Le Sueur, according to the plat thereof recorded in the office of the Le Sueur County Recorder.

“Project” means the City’s Development District No. _____.

“Project Area” means the real property located within the boundaries of the Project.

“Public Development Costs” means those costs to be paid or reimbursed to the Developer by the City in connection with the development hereunder as set forth in Section 3.2.

“State” means the State of Minnesota.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the City as tax increment pursuant to the Tax Increment Act.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 to 469.1799, as amended.

“Tax Increment District” or “TIF District” means the City’s Tax Increment Financing District No. _____, to be created by the City.

“Tax Increment Plan” or “TIF Plan” means the City’s Tax Increment Financing Plan for Tax Increment Financing District No. _____, as it may be approved by the City Council and as it may be amendeds from time to time.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of 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 City in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer’s obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 of this Agreement.

“Vacated Right of Way” means that property legally described on the attached Exhibit C, which includes the east half of Main Street which has been vacated as well as approximately 15 additional feet of lots 9 through 16, Block 32, Town of Le Sueur.

“Vacated Right of Way Purchase Agreement” means that certain purchase agreement between Developer and the City dated _____ for the purchase of the Vacated Right of Way.

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertaking on its part herein contained:

(a) The City is a statutory city duly organized and existing under the laws of the State. Under the provisions of the Act, the City has the power to enter into this Agreement and carry out its obligations hereunder, and execution of this Agreement has been duly, properly and validly authorized by the City.

(b) The City proposes to assist in financing certain Public Development Costs necessary to serve the Development Property and Minimum Improvements in accordance with the terms of this Agreement.

(c) The activities of the City are undertaken for the purpose of fostering additional rental housing within the City and for the purpose of assisting in the revitalization of commercial property in the City.

(d) Upon Developer providing the City documentation demonstrating that Developer has spent at least \$700,000 total in: 1) remodeling costs; and/or 2) costs of constructing said 14 apartment units in the Mall building, and/or 3) the cost of reconstructing a new façade on the building; and/or 4) any work necessary to structurally support the Mall building, the City shall contribute \$300,000 to the cost of reconstructing a new façade on the Mall building and for work necessary to reconstruct the front of the Mall building.

(e) The City shall prepare a TIF District plan and shall follow the statutory process to notice and hold a public hearing to consider establishing a TIF District over the Development Property for the purpose of refunding a portion of the tax increments generated by the TIF District to the Developer to assist in financing the Minimum Improvements. Nothing in this Agreement shall require the City to establish a TIF District over the Development Property.

(f) Upon Developer removing that portion of the Mall building from the Vacated Right of Way, and upon Developer deeding the Vacated Right of Way property to the City pursuant to that certain purchase agreement between Developer and City dated _____, 2020, and upon the Developer producing evidence of financing commitments sufficient to fund the Municipal Improvements, the City shall undertake the restoration of the Main Street right of way as a public street such that it functions in a way that allows automobile traffic to pass in both directions simultaneously over the Vacated Right of Way property. The City shall use good faith efforts to design restoration of the Main Street right of way such that it can be bid and construction can begin in 2021. The City shall not be obligated to restore the Main Street right of way if Developer is in default of this Agreement, the Vacated Right of Way Purchase Agreement, or the TIF Agreement, or if the cost to the City of restoring the Main Street right of way exceeds \$ _____. In the event the cost to the City of restoring the Main Street right of way exceeds \$ _____, the City shall make good faith efforts to redesign the restoration of Main Street such that the City's cost of such restoration falls below \$ _____, in which case the City shall proceed with restoration efforts.

(g) The City (and/or the Le Sueur Economic Development Authority) shall deed Lots 1 through 8 of Block 32, Town of Le Sueur, according to the plat thereof recorded in the office of the Le Sueur County Recorder "(Parking Lot)" to the Developer pursuant to that certain purchase

agreement between the City and Developer dated _____, 2020 (“Parking Lot Purchase Agreement”). Developer shall use the Parking Lot property for parking for the Development Property for a minimum of two years from the date of closing. If, upon completion of the Minimum Improvements and after two years following the closing, the Parking Lot property contains more parking spaces than needed by City ordinance to support the operation of the Development Property, the Developer may sell or develop such portions of the Parking Lot that are not required by City ordinance to support the operation of the Minimum Improvements. The remainder of the Parking Lot shall be used to support the operations of the Minimum Improvements.

(h) The City shall forgive that certain Revolving Loan dated December 16, 2004, made by the City of Le Sueur to ValleyGreen Square, Inc. in the original amount of \$400,000 (“Note”), upon the Developer providing proof of marketable title to the Vacated Right of Way, said forgiveness being an obligation the City undertook in the Vacated Right of Way Purchase Agreement.

Section 2.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited liability company, duly organized and in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its articles of incorporation or bylaws, is duly authorized to transact business within the State, has power to enter into this Agreement and has duly authorized the execution, delivery, and performance of this Agreement by proper action of its officers.

(b) The Developer shall purchase in fee simple the Development Property and the Vacated Right of Way property and shall, upon the City forgiving that certain Revolving Loan dated December 16, 2004, made by the City of Le Sueur to ValleyGreen Square, Inc. in the original amount of \$400,000 (“Note”), said forgiveness being an obligation the City undertook in the Vacated Right of Way Purchase Agreement, convey the Vacated Right of Way to the City in fee simple by October 31, 2020 pursuant to that Vacant Land Purchase Agreement between the City and Developer dated _____, 2020.

(c) The Developer shall, by October 31, 2020, demolish and remove that portion of the existing Mall building located on the Vacated Right of Way property as well as all personal property associated with that portion of the Mall building. Upon completion of such demolition and removal, the City shall pay to developer the final \$325,000 purchase installment for the Vacated Right of Way. The Developer shall be responsible tying off all electrical, plumbing, refrigeration, heating, ventilation and other utilities that are located on the Real Property, and shall be responsible for shoring up the remaining portion of the Mall building and repairing any damage to the building that occurs during said demolition. Developer accepts full responsibility for the cost of reconstructing a new façade on the building and for any work necessary to reconstruct the front of the building, except for such contribution that the City shall make in accordance with Section 2.1(d). Developer shall provide the City with receipts, invoices and other documentation as may reasonably be required to satisfy any State agencies that are funding any portion of such demolition costs.

(d) Upon approval of the TIF by the City, the Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, a Tax Increment Financing agreement to be entered into between Developer and the City relating to the

Development Property, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations). Subject to Unavoidable Delays, the Developer will commence construction of the Minimum Improvements by _____ 2020, and will substantially complete construction of the Minimum Improvements by _____. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in conformity with the Plans as attached as Exhibit A.

(e) The Developer has received no notice or communication from any local, state or federal official that the activities of the Developer or the City in the Project Area may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the City is aware). The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state or federal environmental law, regulation or review procedure.

(f) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Developer shall not obtain a building permit for any portion of the Minimum Improvements before _____, 2020, the date of approval of the TIF Plan for the TIF District.

(g) Simultaneous with the City's deeding the Parking Lot Property to the Developer, the Developer shall grant the City a drainage and utility easement over the Parking Lot Property as described on the attached Exhibit D.

(g) Upon completion of the Minimum Improvements, Developer shall use the Parking Lot property for parking for the Development Property and shall continue such use as long as the Development Property is operating. If, upon completion of the Minimum Improvements and after using all of the Parking Lot property for parking for two years after closing, the Parking Lot property contains more parking spaces than needed by City ordinance to support the operation of the Development Property, the Developer may sell or develop such portions of the Parking Lot that are not required by City ordinance to support the operation of the Minimum Improvements. The remainder of the Parking Lot shall be used to support the operations of the Minimum Improvements.

(h) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(i) Whenever any Event of Default occurs and if the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the City prevails in such action, the Developer agrees that it shall, within ten days of written demand by the City, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

(j) The proposed development by the Developer hereunder, including the Minimum Improvements, would not occur but for the tax increment financing assistance being provided by the City hereunder.

(k) The Developer shall promptly advise the City in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting the Developer or its business which may delay or require changes in construction of the Minimum Improvements.

ARTICLE III

Related Agreements

Section 3.1 Related Agreements. Developer and City have entered into or intend to enter into the following agreements that relate to this Agreement:

- (a) Vacated Right of Way Purchase Agreement;
- (b) Parking Lot Purchase Agreement;
- (c) TIF Agreement.

In the event that the City does not approve the TIF District, the parties will not enter into a TIF Agreement and the Developer shall not be required to construct the Minimum Improvements.

Section 3.2 Agreements to be Read Together. The parties intend for the agreements to be read and interpreted together to fulfill, as much as possible, the redevelopment of the Mall and the reopening and reconstruction of Main Street.

ARTICLE IV

Insurance

Section 4.1. Insurance. (a) The Developer will provide and maintain at all times during the process of constructing the Site Improvements and Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the City, furnish the City with proof of payment of premiums on policies covering the following:

(i) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City;

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used). The City shall be listed as an additional insured on the policy; and

(iii) Workers' compensation insurance, with statutory coverage.

(b) All insurance required in this Article ____ of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the City policies evidencing all such insurance, or a certificate or certificates or binders

of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article IV of this Agreement, each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the City at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(c) The Developer and the City agree that all of the insurance provisions set forth in this Article IV shall terminate upon completion of the Minimum Improvements and demolition and removal of that portion of the Mall building that is located on the Vacated Right of Way.

ARTICLE V

Financing

Section 5.1. Mortgage Financing. In the event the Developer obtains mortgage financing that applies to the Development Property, Developer shall cause such mortgage holder to subordinate said mortgage to the terms of this Agreement such that the terms of this Agreement shall apply to the Development Property in the event such mortgage holder forecloses on the mortgage and takes possession of the Development Property.

ARTICLE VI

Prohibitions Against Assignment and Transfer; Indemnification

Section 6.1. Representation as to Development. The Developer represents and agrees that its purchase of the Development Property, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of development of the Development Property and not for speculation in land holding.

Section 6.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant), without the

prior written approval of the City unless the Developer remains liable and bound by this Development Agreement in which event the City's approval is not required. Any such transfer shall be subject to the provisions of this Agreement.

(b) In the event the Developer, upon transfer or assignment of the Development Property or any portion thereof, seeks to be released from its obligations under this Development Agreement as to the portions of the Development Property that is transferred or assigned, the City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer as to the portion of the Development Property to be transferred.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement as to the portion of the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Developer is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development 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 City) deprive the City of any rights or remedies or controls with respect to the Development Property 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 of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII, shall be in a form reasonably satisfactory to the City.

In the event the foregoing conditions are satisfied then the Developer shall be released from its obligation under this Agreement, as to the portion of the Development Property that is transferred, assigned or otherwise conveyed.

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign any portion of the Development Property or the Developer's interest

in this Agreement without the prior written consent of the City, provided that the transferee or assignee is bound by all the Developer's obligations hereunder. The Developer shall submit to the City written evidence of any such transfer or assignment, including the transferee or assignee's express assumption of the Developer's obligations under this Agreement. If the Developer fails to provide such evidence of transfer and assumption, the Developer shall remain bound by all its obligations under this Agreement.

Section 6.3. Release and Indemnification Covenants. (a) The Developer releases from and covenants and agrees that the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the City and the governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to protect and defend the City and the governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Minimum Improvements.

(c) The City and the governing body members, officers, agents, servants and employees thereof shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

ARTICLE VII

Events of Default

Section 7.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any failure by any party to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, or under any loan agreement, promissory note, or related document in connection with this Agreement.

Section 7.2. Remedies on Default. Whenever any Event of Default referred to in Section 7.1 of this Agreement occurs, the non-defaulting party may exercise its rights under this Section 7.2 after providing thirty days written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty days or, if the Event of Default is by its nature

incurable within thirty days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

- (a) Suspend its performance under the Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under the Agreement.
- (b) Cancel and rescind or terminate the Agreement.
- (c) Upon a default by the Developer, the City may terminate the TIF District.
- (d) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
- (e) Cancel or rescind any of the related agreements identified in Article III of this Agreement.

Section 7.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 7.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE VIII

Additional Provisions

Section 8.1. Conflict of Interests; City Representatives Not Individually Liable. The City and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 8.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, state and local equal employment and non-discrimination laws and regulations.

Section 8.3. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 8.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at _____; and

(b) in the case of the City, is addressed to or delivered personally to the City at City Hall, City of Le Sueur, 203 South Second Street, Le Sueur MN 56058, Attn: City Administrator;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 8.7. Recording. The City may record this Agreement and any amendments thereto with the Le Sueur County recorder. The Developer shall pay all costs for recording.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed and the Developer has caused this Agreement to be duly executed in its name and behalf as of the date first above written.

CITY OF LE SUEUR, MINNESOTA

By _____
Gregory Hagg, Mayor

By _____
Stacy Lawrence, City Clerk

STATE OF MINNESOTA)
) SS.
COUNTY OF WRIGHT)

The foregoing instrument was acknowledged before me this _____, 2020 by _____ and _____, the Mayor and City Clerk of the City of Le Sueur, Minnesota, on behalf of the City.

Notary Public

BUILDING GOOD DOWNTOWNS, LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF WRIGHT)

The foregoing instrument was acknowledged before me this _____, 2020 by _____, the _____ of Building Good Downtowns, LLC, on behalf of the non-profit corporation.

Notary Public

EXHIBIT A
MINIMUM IMPROVEMENTS

EXHIBIT B

DEVELOPMENT PROPERTY

[Insert Legal Description]

EXHIBIT C

VACATED RIGHT OF WAY

[Insert Legal Description]

EXHIBIT D

Drainage and Utility Easement