



118 Central Avenue North, New Prague, MN 56071  
phone: 952-758-4401 fax: 952-758-1149

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**MEMORANDUM**

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**TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS  
**CC:** JOSHUA M. TETZLAFF, CITY ADMINISTRATOR  
**FROM:** KEN ONDICH – PLANNING / COMMUNITY DEVELOPMENT DIRECTOR  
**SUBJECT:** APPROVE SALE OF LOT 5, BLOCK 2, NEW PRAGUE BUSINESS PARK  
11<sup>TH</sup> ADDITION TO Q FIVE PROPERTIES, LLC (QUALITY FLOW)  
**DATE:** NOVEMBER 13, 2024

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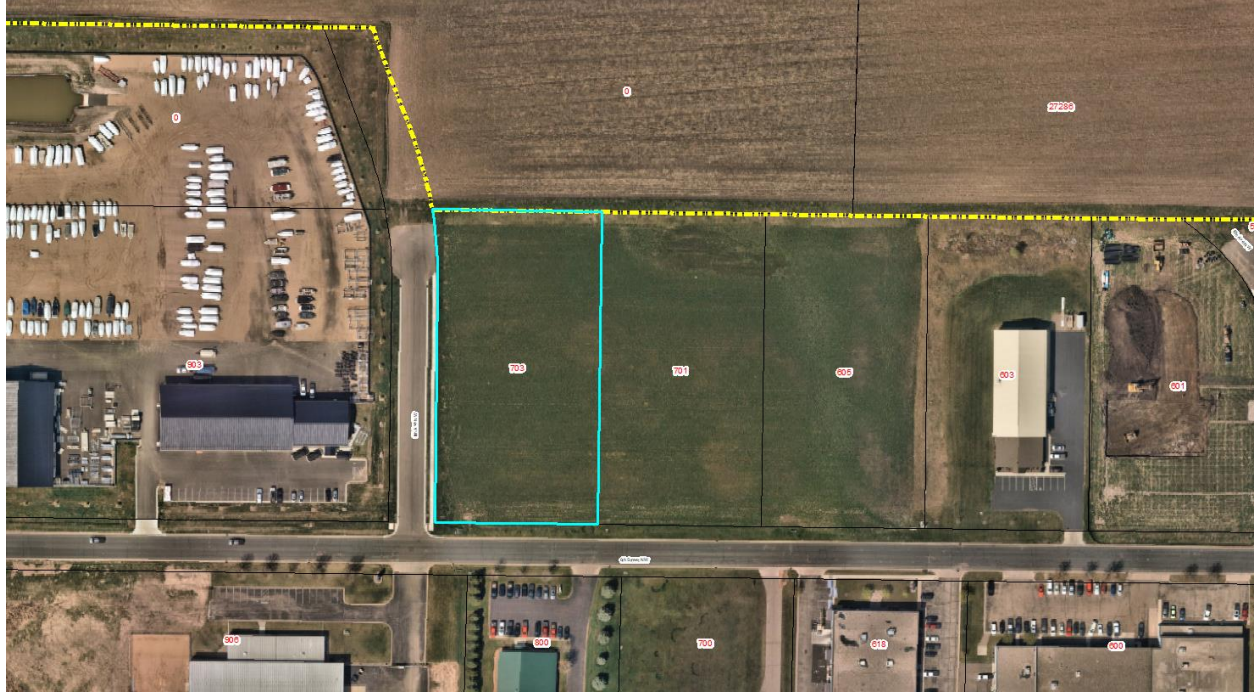
On November 13th, 2024, the New Prague EDA held a public hearing regarding the sale of one EDA owned industrial park lot to Q Five Properties, LLC (Quality Flow). During the public hearing no public comments were received, and the EDA approved Resolution No. 2024 – No. 1 titled “Approving Sale of Land and Purchase and Development Agreement...”.

The action taken by the EDA must be approved by the City Council per the EDA’s Enabling Resolution. City Attorney Scott Riggs drafted the attached resolution for the City Council’s consideration to approve the actions taken by the EDA on November 13th.

Attached are the memo, resolution and purchase and development agreement reviewed by the EDA.

**Staff Recommendation**

Approve the attached resolution titled “...Approving Certain Actions by the New Prague Economic Development Authority”.



Lot 5, Block 2 – 1.98 Acres Total

**CITY OF NEW PRAGUE, MINNESOTA**

**RESOLUTION NO. 24-11-18-02**

**RESOLUTION APPROVING CERTAIN ACTIONS BY THE  
NEW PRAGUE ECONOMIC DEVELOPMENT AUTHORITY**

WHEREAS, the City of New Prague (“City”) is a municipal corporation organized and operating under the laws of Minnesota; and

WHEREAS, the City established the New Prague Economic Development Authority (the “Authority”) by resolution (the “Enabling Resolution”), pursuant to Minnesota Statutes, sections 469.090 to 469.1081 (the “EDA Act”); and

WHEREAS, the Enabling Resolution prohibits the Authority from selling land without the prior approval of the City; and

WHEREAS, on November 13, 2024, the Authority adopted Resolution No. 2024 – No. 1 entitled New Prague Economic Development Authority Resolution Approving Sale of Land and Purchase and Development Agreement Between the Authority and Q Five Properties, LLC (the “Authority Resolution”), subject to the required conditions of approval of the City; and

WHEREAS, the purpose of the Authority Resolution was to enter into an agreement (the “Contract”) between the Authority and Q Five Properties, LLC (the “Developer”) regarding the sale of land to the Developer and Developer’s project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of New Prague, Minnesota, as follows:

1. The sale of land by the Authority and the Contract by and among the Authority and the Developer are hereby approved.
2. The City and the Authority are further authorized to take all actions necessary or convenient to carry out the intent and purpose of this Resolution.

Adopted by the City Council of the City of New Prague, Minnesota, this 18th day of November, 2024.

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Duane Jirik, Mayor

ATTEST:

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Joshua M. Tetzlaff  
City Administrator



118 Central Avenue North, New Prague, MN 56071  
phone: 952-758-4401 fax: 952-758-1149

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## MEMORANDUM

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**TO:** EDA MEMBERS  
**CC:** JOSHUA M. TETZLAFF, CITY ADMINISTRATOR  
**FROM:** KEN ONDICH – PLANNING / COMMUNITY DEVELOPMENT DIRECTOR  
**SUBJECT:** CONSIDER EDA SALE OF LOT 5, BLOCK 2, NEW PRAGUE BUSINESS PARK 11<sup>TH</sup> ADDITION TO Q FIVE PROPERTIES, LLC  
**DATE:** NOVEMBER 7, 2024

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On November 13th, 2024, the New Prague EDA will be considering the sale of land owned by the EDA in the Industrial Park to Q Five Properties, LLC (Quality Flow).

Specifically, the lot to be sold is Lot 5, Block 2, New Prague Business Park 11<sup>th</sup> Addition. The lot is approximately 1.97 acres in size and is proposed to be purchased for \$184,498.38 (or \$2.15 sq. ft.) as outlined in the previously approved letter of intent from back in October 2024.

They plan to construct an approximately 6,120 sq. ft. building that includes offices and shop space. Similar to past purchase and development agreements, a provision is included that requires the building to have a 4' wainscoting along the bottom of the building where abutting a public right of way (in this case 6<sup>th</sup> Street NW and 6<sup>th</sup> Ave. NW).

A public hearing is required to be held by the EDA per M.S. 469.105 prior to the sale during the EDA meeting. Following the public hearing at 7:30AM, the EDA will need to consider adopting the attached resolution Approving Sale of Land and Purchase and Development Agreement between the EDA and Q Five Properties, LLC.

After approval of the resolution, the matter will be forwarded to the City Council for their review and approval on November 18<sup>th</sup>, 2024.

### **Staff Recommendation**

Hold the required public hearing and approve the attached resolution approving the sale of land to Q Five Properties, LLC.

**RESOLUTION NO. 2024 – No. 1**

**NEW PRAGUE ECONOMIC DEVELOPMENT AUTHORITY  
RESOLUTION APPROVING SALE OF LAND AND PURCHASE  
AND DEVELOPMENT AGREEMENT BETWEEN THE  
AUTHORITY AND Q FIVE PROPERTIES, LLC**

**WHEREAS**, the City Council (the “Council”) of the City of New Prague (the "City") has previously established the New Prague Economic Development Authority (the "Authority") which administers economic development activities in the City; and

**WHEREAS**, the Authority owns certain property within the City legally described as set forth in Exhibit A (the “Property”); and

**WHEREAS**, the Authority has received a purchase offer and development proposal from Q Five Properties, LLC, a Minnesota limited liability company, having its principal office at 800 6th Street NW, New Prague, MN 56071 (the "Developer") for use as office, shop and warehouse space to be maintained and constructed on the Property; and

**WHEREAS**, the Developer has proposed to acquire the Property from the Authority, and in connection with that proposal the Authority has caused to be prepared a Purchase and Development Agreement between the Authority and Developer (the “Contract”) set forth in Exhibit B and incorporated herein by reference; and

**WHEREAS**, the Authority has reviewed the Contract providing for the sale of the Property and the construction of improvements to be located on the Property totaling at least \$1,000,000.00, and has concluded that the proposed sale of and improvements to the Property are consistent with and promote the goals and objectives for which the Authority was established; and

**WHEREAS**, pursuant to the Contract, the Authority agrees to convey the Property described in the Contract to the Developer for \$184,498.38, subject to certain terms and conditions; and

**WHEREAS**, the Authority has on November 13, 2024, held a public hearing pursuant to Minnesota Statutes, Section 469.105 regarding conveyance of the Property to the Developer at which all interested persons were given an opportunity to be heard; and

**WHEREAS**, the Enabling Resolution of the Authority, as amended, prohibits the Authority from selling and conveying the Property without the prior approval of the Council; and

**WHEREAS**, the Authority respectfully requests that the Council approve the land sale contemplated herein by resolution; and

**WHEREAS**, the Authority finds that conveyance of the Property to the Developer is in the public interest because it will further the objectives of the Authority and City; and

**WHEREAS**, the Authority has reviewed the Contract and finds, subject to the approval of the Council, that the execution thereof by the Authority and performance of the Authority's obligations thereunder are in the best interest of the Authority, the City and its residents.

**NOW, THEREFORE, BE IT RESOLVED** by the Commissioners of the New Prague Economic Development Authority (the "Commissioners") that the above-referenced recitals are incorporated herein to this Resolution.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** by the Commissioners that the Authority approves the conveyance of the Property to the Developer, subject to the approval of the Council and subject to satisfaction of all terms and conditions of the Contract, and authorizes and directs the President and Executive Director to execute the Contract, deed and related documents necessary to carry out such real estate transaction.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** by the Commissioners that subject to the approval of the Council of the sale of the Property, the Authority hereby approves the Contract, including all necessary accompanying documents or agreements included therein, in substantially the form presented to the Authority on this date, subject to modifications that do not materially alter the Authority's rights and obligations under the Contract and that are approved by the Authority's President and Executive Director, which approvals shall be conclusively evidenced by execution of the Contract.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** by the Commissioners that the proper Authority officials are authorized to execute the Contract and take any and all other steps necessary or convenient in order to carry out the Authority's obligations under the Contract.

**NOW, THEREFORE, BE IT FINALLY RESOLVED** by the Commissioners that Authority and City staff and consultants are hereby directed to take all appropriate action and to prepare any appropriate documents to facilitate the directives of the Authority as provided in this Resolution.

Adopted this 13<sup>th</sup> day of November, 2024.

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Brent Quast, President

ATTEST:

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Joshua M. Tetzlaff, Executive Director

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot 5, Block 2, NEW PRAGUE BUSINESS PARK 11TH ADDITION, Scott  
County, Minnesota.

**EXHIBIT B**

**PURCHASE AND DEVELOPMENT AGREEMENT**

**[Insert Purchase and Development Agreement]**



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**PURCHASE AND DEVELOPMENT AGREEMENT**

**By and Between**

**NEW PRAGUE ECONOMIC DEVELOPMENT AUTHORITY**

**and**

**Q FIVE PROPERTIES, LLC**

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This document drafted by:

KENNEDY & GRAVEN, CHARTERED (SJR)  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402  
(612) 337-9300

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EXHIBIT A	LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY
EXHIBIT B	FORM OF QUIT CLAIM DEED
EXHIBIT C	LIST OF PRELIMINARY PLAN DOCUMENTS
EXHIBIT D	FORM OF CERTIFICATE OF COMPLETION AND RELEASE OF FORFEITURE

## PURCHASE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of November, 2024, by and between the New Prague Economic Development Authority, a public body corporate and politic under the laws of Minnesota, having its principal office at 118 Central Avenue North, New Prague, MN 56071 (the “Authority”) and Q Five Properties, LLC, a Minnesota limited liability company, having its principal office at 800 6<sup>th</sup> Street NW, New Prague, MN 56071 (the “Developer”).

WITNESSETH:

WHEREAS, the Authority believes that the sale and development of land pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of New Prague 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 has been undertaken.

NOW, THEREFORE, in consideration of the covenants and the mutual obligations contained herein, the Authority and the Developer hereby covenant and agree with the other as follows:

### ARTICLE I

#### Definitions

Section 1.1. Definitions. In this Agreement, the following terms shall have the meanings given unless a different meaning clearly appears from the context:

“Act” means the Authority Development Districts Act, Minnesota Statutes, sections 469.124 through 469.134, as amended.

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

“Authority” means the New Prague Economic Development Authority.

“Certificate of Completion and Release of Forfeiture” means the certificate, in the form contained in Exhibit D attached hereto, which will be provided to the Developer pursuant to Article IV of this Agreement.

“City” means the city of New Prague, a municipal corporation under the laws of Minnesota.

“Construction Plans” means the final plans for construction of the Minimum Improvements to be submitted by the Developer and approved by the Authority.

“County” means Scott County, Minnesota.

“Date of Closing” means the date set forth in Section 3.7 of this Agreement or the actual date upon which the conveyance of the Development Property closes.

“Developer” means Q Five Properties, LLC, a Minnesota limited liability company.

“Development Property” means the real property upon which the Minimum Improvements will be constructed, which property is legally described in Exhibit A attached hereto.

“Development Property Deed” means the quit claim deed in the form attached hereto as Exhibit B, by which the Authority will convey the Development Property to the Developer.

“EDA Act” or “Economic Development Authority Act” means Minnesota Statutes, sections 469.090 through 469.1081, as amended.

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

“Minimum Improvements” means devoting the Development Property to its intended use and construction of approximately a 6,120 square foot building and facilities for use as office, shop and warehouse space, as identified and set forth in Exhibit C and constructed in accordance with the Construction Plans submitted to and approved by the Authority. After completion of the Minimum Improvements, the term shall mean the Development Property as improved by the Minimum Improvements.

“Minimum Market Value” means a market value for real estate tax purposes of at least \$1,000,000.00 with respect to the Development Property and Minimum Improvements as of January 1, 2026, for taxes payable beginning in 2027.

“Preliminary Plans” means, collectively, the plans, drawings and specifications for the construction of the Minimum Improvements which are listed on Exhibit C attached hereto.

“Sale” means any sale, conveyance, lease, exchange, forfeiture, or other transfer of the Developer's interest in the Minimum Improvements or the Development Property, whether voluntary or involuntary. A mortgage used to finance the purchase of the Development Property is excluded as a Sale.

“State” means the state of Minnesota.

“Termination Date” means one year from the Date of Closing or the date of the Certificate of Completion issued by the Authority, whichever comes first.

“Unavoidable Delays” means delays which are the direct result of unanticipated adverse weather conditions; strikes or other labor troubles; 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, except those of the Authority reasonably contemplated by this Agreement, any acts or omissions of any federal, State or local governmental unit which directly result in delays in construction of the Minimum Improvements.

“Use” means the Developer devoting the Development Property to its intended use, with such use including, but not limited to, a 6,120 square foot building and facilities for use as office, shop and warehouse space, or to any or all lawful business operations, with applicable or appropriate licenses obtained, if needed.

Section 1.2. Exhibits. The following exhibits are attached to and by reference made a part of this Agreement:

- Exhibit A. Legal description of the Development Property
- Exhibit B. Form of Quit Claim Deed
- Exhibit C. List of Preliminary Plan Documents
- Exhibit D. Form of Certificate of Completion and Release of Forfeiture

Section 1.3. Rules of Interpretation. (a) This Agreement shall be interpreted in accordance with and governed by the laws of Minnesota.

(b) The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(c) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

(d) Any titles of the several parts, articles and sections of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 1.4. Incorporation of Recitals and Exhibits. The Recitals set forth in the preamble to this Agreement and the Exhibits attached to this Agreement are incorporated into this Agreement as if fully set forth herein.

## ARTICLE II

### Representations and Warranties

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

(a) The Authority is a public body corporate and politic under the laws of Minnesota. The Authority has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The persons executing this Agreement and related agreements and documents on behalf of the Authority have the authority to do so and to bind the Authority by their actions.

(c) The Authority has received no notice or communication from any local, State or federal official that the activities of the Developer or the Authority in the Development District may be or will be in violation of any environmental law or regulation. The Authority is aware of no facts the existence of which would cause it to be in violation of any local, State or federal environmental law, regulation or review procedure.

Section 2.2. Representations and Warranties by the Developer. The Developer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Developer is a Minnesota corporation, duly organized and in good standing under the laws of Minnesota and is not in violation of any provisions of its articles of incorporation or by-laws. The Developer has the power to enter into this Agreement and carry out its obligations hereunder. The persons executing this Agreement and related agreements and documents on behalf of the Developer have the authority to do so and to bind the Developer by their actions.

(b) In the event the Development Property is conveyed to the Developer, the Developer, or assigns, will construct, operate and maintain the Minimum Improvements on the Development Property in substantial accordance with the terms of this Agreement, the Construction Plans and all local, State and federal laws and regulations, including, but not limited to, environmental, zoning, building code and public health laws regulations.

(c) The Developer will apply for and use its best efforts to obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, the 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 or used for their intended purpose.

(d) 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 or any 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.

(e) The Developer represents that there is no business subsidy provided by the Authority because the Developer is purchasing the Development Property at fair market value.

Section 2.3. Representations Ongoing. The representations and warranties set forth in this Article II shall be continuing and shall be true and correct as of the Date of Closing with the same force and effect as if made at that time. All such representations and warranties shall survive closing and shall not be merged in the delivery and execution of the deed or other instruments of conveyance called for in this Agreement.



## ARTICLE III

### Conveyance of Development Property

Section 3.1. Conveyance of the Development Property. In order to facilitate the financial feasibility of the development of the Development Property and in consideration of the Developer's fulfillment of its covenants and obligations under this Agreement to construct the Minimum Improvements, and subject to the conditions precedent to closing outlined in Section 3.5 and the contingencies to Closing outlined in Section 3.6 of this Agreement, the Authority agrees to sell the Development Property to the Developer for One Hundred Eighty-Four Thousand, Four Hundred Ninety-Eight and 38/100 dollars (\$184,498.38).

The Developer has paid to the Authority on or before November 18th, 2024, earnest money in the amount of \$10,000.00 which shall be credited to the Developer at the time of closing. The Authority agrees to convey title and possession of the Development Property to the Developer by quit claim deed in the form attached hereto as Exhibit B. The conveyance of the Development Property and the Developer's use of the Development Property shall be subject to all of the conditions, covenants, restrictions and limitations imposed by this Agreement and the Development Property Deed. The conveyance of title to the Development Property and the Developer's use of the Development Property shall also be subject to the building and zoning laws and ordinances and all other City, State and federal laws and regulation, easements and rights of way.

Section 3.2. Condition of Title. Within fourteen (14) days of the date of this Agreement, the Authority agrees to submit to the Developer a commitment for title insurance regarding the Development Property. The Developer shall have twenty (20) days after delivery of the commitment to examine same and to make any objections concerning the condition of title regarding the Development Property. Objections to the condition of title shall be made in writing and addressed to the Authority. Failure on the part of the Developer to make objections within twenty (20) days shall constitute a waiver of same and of the Developer's right to object to the condition of title. If the Developer provides written objections to title, the Authority shall have forty-five (45) days thereafter to cure the defects cited by the Developer or to inform the Developer in writing that the Authority cannot or will not cure said defects. If there are no defects in title to which the Developer objects in writing or the Developer fails to object in a timely manner or if the Authority cures the defects within the prescribed period, the parties will proceed to closing. If there are defects in title to which the Developer has objected in a timely manner and which the Authority cannot or will not cure, the Developer may terminate this Agreement at its option within ten (10) days of notice from the Authority of its inability or unwillingness to cure. The Authority shall have no obligation to cure any defects in the title of the Development Property. If the Developer chooses to terminate this Agreement pursuant to this Section 3.2, the Developer agrees to execute a quit claim deed regarding the Development Property in favor of the Authority and the Authority shall refund to the Developer all earnest money and deposits received. Thereafter the parties shall have no further obligation towards one another with regard to this Agreement or the Development Property. The Developer may also choose to proceed to closing on the Development Property and take title subject to the defect. Notwithstanding any other provision herein to the contrary, if the Developer proceeds to closing within less than the time periods set forth herein for receipt of a commitment for title insurance and objection to title defects, such action shall be deemed to be a

waiver by the Developer of its right to examine and object to the condition of title of the Development Property.

Section. 3.3. Financing. Before conveyance of the Development Property by the Authority, the Developer agrees to submit to the Authority evidence of a commitment for financing which is adequate, in the Authority's sole opinion, for the construction of the Minimum Improvements. If the Authority finds that the financing complies with the terms of this Section 3.3 and is sufficiently committed and adequate in amount to provide for the construction of the Minimum Improvements, the Authority shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection and the Developer shall have 30 days thereafter to submit a commitment for additional or alternate financing acceptable to the Authority. If the Developer fails to submit a commitment for financing acceptable to the Authority within said period of time or any additional period to which the Authority may agree, the Authority may notify the Developer of its failure to comply with the requirement of this Section 3.3 and may terminate this Agreement at its sole discretion.

Section 3.4. Representations.

(a) The Authority makes the following representations and disclosures regarding the Development Property:

1. The Authority has conducted a Phase I environmental study regarding the Development Property. Such report is available to the Developer upon request.
2. The Authority has conducted a geotechnical survey of the Development Property. Such report is available to the Developer upon request.
3. The Authority has conducted a wetland delineation of the Development Property. Such report is available to the Developer upon request.
4. The Authority has conducted a topographical survey of the Development Property. Such report is available to the Developer upon request.
5. The Authority represents that six (6) inch water and eight (8) inch sanitary sewer hook-ups exist or are available to the Development Property.
6. The Authority represents that primary electric distribution infrastructure is installed and is available to the Development Property.
7. The Authority represents that it will be constructing storm sewer service facilities across the northern edge of the Development Property for hook-up by the Developer.
8. The Authority represents that it has surveyed and platted the Development Property. The plat of NEW PRAGUE BUSINESS PARK 11<sup>TH</sup> ADDITION identifying the property lines for the Development Property is available to the Developer upon

request.

The Developer has 30 days to review the documents noted above in this Section 3.4(a) and to make any objections, or any objections shall be deemed waived.

(b) Other than as represented herein by the Authority, the Developer acknowledges that the Authority makes no representations or warranties as to the condition of the soils on the Development Property or its fitness for its intended use and for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property.

(c) After execution of this Agreement and within thirty (30) days thereafter, the Developer may notify the Authority of its desire to undertake tests and inspections of the Development Property regarding the presence of pollution, contamination or hazardous substances on the Development Property and the suitability of the soils for the Developer's intended purposes. The Developer, and person or persons selected by Developer shall be permitted access to the Development Property for the purpose of conducting such studies and investigations of the Development Property as Developer deems appropriate, which studies and investigations shall be conducted at Developer's sole expense and pursuant to any other terms and conditions of this Agreement. Developer agrees to indemnify the Authority against any liability, cost or expense incurred by the Authority as a result of Developer's actions, including but not limited to fines, court costs, reasonable attorneys' fees and remedial costs. Such studies may include without limitation, physically inspecting the Development Property, conducting soil tests, and reviewing the Authority's records concerning the Development Property which records shall be made reasonably available to Developer within ten (10) days after execution of this Agreement, including prior studies, investigations and surveys, if any, in the Authority's possession.

(d) Other than as represented herein by the Authority, the Developer acquires the Development Property "as is." After execution of this Agreement and within thirty (30) days thereafter, the Developer may notify the Authority of its desire to undertake tests and inspections of the Development Property regarding the presence of pollution, contamination or hazardous substances on the Development Property and the suitability of the soils for the Developer's intended purposes, which studies and investigations shall be conducted at Developer's sole expense and pursuant to any other terms and conditions of this Agreement. In the event that the Developer, following such tests and inspections, determines in its sole judgment that the condition of the Development Property is unsuitable for its intended use and for construction of the Minimum Improvements, the Developer may terminate this Agreement and return the Development Property to its condition prior to undertaking such tests and inspections. Regardless of whether the Developer avails itself of the right to conduct tests and inspections on the Development Property pursuant to this Section 3.4, after closing the Authority shall have no obligation or liability to the Developer for any unsuitability with respect to the soil conditions or the presence of any pollution, contamination or hazardous substances on the Development Property. Notwithstanding any other provision herein to the contrary, if the Developer proceeds to closing within less than the period of time allowed in this Section 3.4 for testing, such action shall be deemed to be a waiver by the Developer of its right to test on the Development Property.

(e) The Authority does not know of any wells on the Development Property, and will so certify in the deed conveying the Development Property to the Developer.

Section 3.5. Conditions Precedent to Conveyance. Notwithstanding anything herein to the contrary, the Authority shall not be obligated to convey the Development Property to the Developer until the following conditions precedent have been satisfied:

(a) The Developer has submitted a commitment or other evidence of financing which is adequate, in the Authority's sole discretion, to fully finance construction of the Minimum Improvements;

(b) The Developer has submitted and the Authority has approved the Construction Plans;

(c) The Authority has held a public hearing and fulfilled all requirements of Minnesota Statutes, Section 469.105;

(d) There has been no Event of Default on the part of the Developer which has not been cured;

(e) The Authority has received approval from the City of New Prague City Council for the sale of the Development Property as contemplated in this Agreement; and

(f) All of the above condition precedents shall occur within the time frame established in Section 3.7 of this Agreement, unless extended by the Developer and the Authority. If such extension is not obtained, all earnest money and deposits shall be returned to the Developer within ten (10) days thereafter.

Section 3.6. Intentionally Omitted.

Section 3.7. Closing; Delivery and Recording. (a) Subject to the substantial satisfaction of all of the terms and conditions contained in this Agreement which must be satisfied prior to the Authority's conveyance of the Development Property to the Developer, the Authority shall execute and deliver the Development Property Deed to the Developer at closing. Closing shall occur on the Date of Closing which shall be the earlier of December 31st, 2024, or as soon thereafter as reasonably practicable, or as determined by the parties. The Developer shall have possession of the Development Property upon the Date of Closing. Closing shall be at the offices of the City, 118 Central Avenue North, New Prague, MN 56071 or such other location to which the parties may agree. Prior to closing, the Authority shall submit to the Developer a copy of the Development Property Deed and other closing documents for review. The Development Property Deed shall be in recordable form and shall be recorded among the County land records.

(b) On the Date of Closing, the Developer shall be responsible for and pay:

(1) the cost of recording the Development Property Deed and this Agreement;

- (2) all fees associated with obtaining the commitment for title insurance and the policy of title insurance;
  - (3) the cost of copies of all additional title documents necessary for the examination of title;
  - (4) for any documents related to or in connection with the financing of the Development Property, including but not limited to, recording fees and mortgage registration tax;
  - (5) one-half of the title company closing fees, if any; and
  - (6) all of the Developers' attorney's fees.
- (c) On the Date of Closing, the Authority shall be responsible for and pay:
- (1) transfer taxes, including State deed tax, to allow the Developer to record the Development Property Deed;
  - (2) costs of recording any instruments used to clear title encumbrances;
  - (3) one-half of the title company closing fees, if any; and
  - (4) all of the Authority's attorney's fees.
- (d) On the Date of Closing, the following costs will be paid on a pro rata basis in the year of closing between the Authority and the Developer:
- (1) utilities furnished to the Development Property; and
  - (2) real estate taxes and special assessments, if any.

Section 3.8. Attorney Costs. The Developer shall pay its own costs to prepare and review this Agreement and any other legal fees associated with the Development Property that are the responsibility of the Developer. The Authority shall pay its own costs to prepare and review this Agreement and any other legal fees associated with the Development Property that are the responsibility of the Authority.

## **ARTICLE IV**

### **Construction of Minimum Improvements**

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property in accordance with the Construction Plans and at all times prior to the Termination Date will devote the Development Property to its intended Use and maintain, preserve and keep the Minimum Improvements or cause

the Minimum Improvements to be maintained, preserved and kept in good repair and condition. The Developer recognizes that it is because the Developer has agreed will to devote the Development Property to its intended Use and to construct the Minimum Improvements that the Authority is willing to sell the Development Property to the Developer. The Developer acknowledges that, in addition to the requirements of this Agreement, construction of the Minimum Improvements will necessitate compliance with other reviews and approvals by the Authority and possibly other governmental agencies and review board of the Industrial Park and agrees to submit all applications for and pursue to their conclusion all other approvals needed prior to constructing the Minimum Improvements.

Section 4.2. Construction Plans. (a) Within ninety (90) days after execution of this Agreement, the Developer shall submit dated Construction Plans to the Authority. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in substantial conformity with the Preliminary Plans and this Agreement. The Authority will approve the Construction Plans if they (1) conform to the Preliminary Plans listed in Exhibit C attached hereto; (2) conform to all applicable federal, State and local laws, ordinances, rules and regulations; (3) are adequate to provide for the construction of the Minimum Improvements; (4) conform to the State building code; (5) if there has occurred no uncured Event of Default on the part of the Developer. No approval by the Authority shall relieve the Developer of the obligation to comply with the terms of this Agreement, the terms of any applicable federal, State and local laws, ordinances, rules and regulations in the construction of the Minimum Improvements. No approval by the Authority shall constitute a waiver of an Event of Default.

(b) If the Developer desires to make any change in the Construction Plans after their approval by the Authority, including any change to the design or materials of the Minimum Improvements or any other change which would also require review or reapproval under any applicable code, ordinance or regulation, the Developer shall submit the proposed change to the Authority for its approval. If the proposed change conforms to the requirements of this section 4.2 with respect to the original Construction Plans or is otherwise acceptable to the Authority, the Authority shall approve the proposed change. Such change in the Construction Plans shall be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Such rejection shall be made within ten (10) days after receipt of the written notice of such change from the Developer.

Section 4.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer shall commence construction of the Minimum Improvements no later than thirty (30) days from the Date of Closing. Subject to Unavoidable Delays, the Developer shall have substantially completed the construction of the Minimum Improvements no later than twelve (12) months from the Date of Closing. 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 Construction Plans. The Developer shall make such reports to the Authority regarding construction of the Minimum Improvements as the Authority deems necessary or helpful in order to monitor progress on construction of the Minimum Improvements.

Section 4.4. Certificate of Completion and Release of Forfeiture. (a) After substantial completion of the Minimum Improvements in accordance with the Construction Plans and all terms

of this Agreement, the Authority will furnish the Developer with a Certificate of Completion and Release of Forfeiture in the form of Exhibit D hereto. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Development Property Deed with respect to the obligations of the Developer to construct the Minimum Improvements and the dates for the beginning and completion thereof. The Certificate of Completion and Release of Forfeiture shall only be issued after issuance of a certificate of occupancy by the City.

(b) The Certificate of Completion and Release of Forfeiture provided for in this section 4.4 shall be in such form as will enable it to be recorded in the proper County office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority shall refuse or fail to provide such certification in accordance with the provisions of this section 4.4, the Authority shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default of a material term of this Agreement, and what measures or acts will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

Section 4.5. Reconstruction of Improvements. If the Minimum Improvements are damaged or destroyed before or after completion thereof and issuance of a Certificate of Completion and Release of Forfeiture, but before the Termination Date, the Developer agrees, for itself and its successors and assigns, to reconstruct the Minimum Improvements to a value at least equal to the Minimum Market Value within one year of the date of the damage or destruction. No delay or failure by the Developer or any successor or assign to reconstruct the Minimum Improvements as required by this Section 4.5 shall alter or limit the Developer's obligations under this Agreement, which shall remain in full force and effect until the Termination Date. The Minimum Improvements shall be reconstructed in accordance with the approved Construction Plans, or such modifications thereto as may be requested by the Developer and approved by the Authority in accordance with Section 4.2 of this Agreement. The Developer's obligation to reconstruct the Minimum Improvements pursuant to this Section 4.5 shall end on the Termination Date.

## ARTICLE V

### Insurance

Section 5.1. Required Insurance. (a) The Developer agrees to provide and maintain at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the Authority, furnish the Authority with proof of payment of premiums on:

(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 non-reporting form on the so-called "all risk" form of policy;

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$1,000,000 for each occurrence (to accomplish the above - required limits, an umbrella excess liability policy may be used); and

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

The policies of insurance required pursuant to clauses (i) and (ii) above shall be in form and content reasonably satisfactory to the Authority and shall be placed with financially sound and reputable insurers licensed to transact business in Minnesota. The policy of insurance delivered pursuant to clause (i) above shall contain an agreement of the insurer to give not less than sixty (60) days' advance written notice to the Authority in the event of cancellation of such policy or change affecting the coverage thereunder.

(b) Upon completion of construction of the Minimum Improvements, and prior to the Termination Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, heating system explosion, water damage, demolition cost, debris removal, collapse and flood, in an amount not less than the full insurable replacement value of the Minimum Improvements or the Minimum Market Value, whichever is greater. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of coinsurance provisions or otherwise, without the prior consent thereto in writing by the Authority. The term "full insurable replacement value" shall mean the actual replacement cost of the Minimum Improvements and shall be determined from time to time at the request of the Authority, but not more frequently than once every three years, by an insurance consultant or insurer, selected and paid for by the Developer and approved by the Authority; and

(ii) Such other insurance, including worker's compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for worker's compensation.

Section 5.2. Evidence of Insurance. All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of Minnesota to assume the risks covered thereby. The Developer agrees to deposit annually with the Authority copies of 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 V, each policy shall contain a provision that the insurer shall not cancel nor materially modify it without giving written notice to the Developer and the Authority at least sixty (60) days before the cancellation or modification becomes effective (ten (10) days for non-payment of premium). Not less than fifteen (15) days prior to the expiration of any policy, the Developer shall furnish the Authority evidence satisfactory to the Authority that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V, or that there is no necessity therefor under the terms of this Agreement. 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 Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

## ARTICLE VI

### Collection of Taxes

Section 6.1. Taxes. The Developer agrees that prior to the Termination Date: (1) it will not seek administrative or judicial review of the applicability of any tax statute determined by any Tax Official to be applicable to the Minimum Improvements or the Development Property or raise the inapplicability of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; (2) it will not seek administrative or judicial review of the constitutionality of any tax statute determined by any Tax Official to be applicable to the Minimum Improvements or the Development Property or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; (3) it will not cause a reduction in the Minimum Market Value paid in respect of the Minimum Improvements through:

- (a) willful destruction of the Minimum Improvements or any part thereof;
- (b) willful refusal to reconstruct damaged or destroyed property pursuant to section 4.5 of this Agreement;
- (c) a request to the County assessor to reduce the Minimum Market Value of all or any portion of the Minimum Improvements;
- (d) a petition to the board of equalization of the County to reduce the Minimum Market Value of all or any portion of the Development Property;
- (e) a petition to the board of equalization of the State or the commissioner of revenue of the State to reduce the Minimum Market Value of all or any portion of the Development Property;
- (f) an action in a district court of the State or the tax court of the State seeking a reduction in the Minimum Market Value of the Development Property;
- (g) an application to the commissioner of revenue of the State or to any local taxing jurisdiction requesting an abatement of real property taxes;

(h) any other proceedings, whether administrative, legal or equitable, with any administrative body within the County or the State or with any court of the State or the federal government; or

(i) a transfer of the Development Property or Minimum Improvements, or any part thereof, to an entity exempt from the payment of real property taxes under State law.

The Developer shall not, prior to the Termination Date, apply for a deferral of property tax on the Development Property or the Minimum Improvements.

Section 6.2. Right to Collect Delinquent Taxes. The Developer understands that the real estate taxes on the Development Property and the Minimum Improvements must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that the Developer is also obligated at all times prior to the Termination Date by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that at all times prior to the Termination Date this obligation creates a contractual right on behalf of the Authority to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the Authority shall also be entitled to recover its reasonable out-of-pocket costs, expenses and attorney fees.

## ARTICLE VII

### **Prohibition Against Sale; Encumbrances; Indemnification**

Section 7.1. Prohibition Against Sale of Minimum Improvements. The Developer represents and agrees that its use of the Development Property and its other undertakings pursuant to the Agreement, are, and will be, for the purpose of development of the Development Property and not for speculation in land holding. The Developer further recognizes that in view of the importance of the construction of the Minimum Improvements on the Development Property to the general welfare of New Prague, the fact that any act or transaction involving or resulting in a significant change in the identity of the Developer is of particular concern to the Authority. The Developer further recognizes that it is because of such qualifications and identity that the Authority is entering into the Agreement with the Developer, and, in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby by it to be performed. For the foregoing reasons, the Developer represents and agrees that, prior to the issuance of the Certificate of Completion and Release of Forfeiture, there shall be no Sale of the Development Property or the Minimum Improvements by the Developer nor shall the Developer suffer any such Sale to be made, without the prior written approval of the Authority.

Section 7.2. Limitation Upon Encumbrance of Development Property. Prior to the issuance of the Certificate of Completion and Release of Forfeiture, the Developer agrees not to engage in any financing creating any mortgage or other encumbrance or lien upon the Development Property or the Minimum Improvements, whether by express agreement or operation of law, or suffer any

encumbrance or lien to be made on or attached to the Development Property or the Minimum Improvements, other than the liens or encumbrances directly and solely related to the purchase of the Development Property and the construction of the Minimum Improvements and approved by the Authority, which approval shall not be withheld or delayed unreasonably if the Authority determines that such lien or encumbrance will not threaten its security in the Development Property or the Minimum Improvements.

Section 7.3. Release and Indemnification Covenants. (a) Except for any misrepresentation or any willful or wanton misconduct or negligence of the Authority or the governing body members, officers, agents, servants, consultants and employees thereof (the "Indemnified Parties"), and except for any breach by the Indemnified Parties of their representative's obligations under this Agreement, the Indemnified Parties shall not be liable for and the Developer shall indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person (collectively, the "Claim") occurring at or about or resulting from any defect in the portion of the Development Property or the Minimum Improvements owned by Developer at the time the Claim occurred.

(b) Except for any misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their representative's obligations under this Agreement, the Developer agrees to protect and defend the Indemnified Parties, now and 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 from the acquisition, construction, installation, ownership, maintenance and operation of the Development Property or the Minimum Improvements (collectively, the "Claim"); provided, however, notwithstanding the foregoing, the Developer's indemnification and hold harmless shall apply only with regard to the portion of the Development Property or Minimum Improvements owned by the Developer at the time the Claim occurred.

(c) Except for any misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their representations and obligations under this Agreement, the Indemnified Parties 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 (collectively, the "Claims") owned by the Developer at the time of the Claim.

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

## ARTICLE VIII

### Events of Default

Section 8.1. Events of Default Defined. Each and every one of the following shall be an Event of Default under this Agreement:

- (a) Failure by the Authority or the Developer to proceed to closing on the Development Property after compliance with or the occurrence of all conditions precedent to closing;
- (b) Failure by the Developer to commence and complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Article IV of this Agreement, including the timing thereof, unless such failure is caused by an Unavoidable Delay;
- (c) Failure by the Developer to pay real estate taxes or special assessments on the Development Property and Minimum Improvements as they become due;
- (d) Appeal or challenge by the Developer or any party on its behalf of the Minimum Market Value prior to the Termination Date;
- (e) Use by the Developer or others of the Minimum Improvements for purposes other than those contemplated and permitted by this Agreement, including failure to comply with Sections 9.3 and 9.10 of this Agreement;
- (f) Transfer or Sale of the Development Property or the Minimum Improvements or any part thereof by the Developer in violation of Sections 6.1 or 7.1 of this Agreement and without the prior written permission by the Authority;
- (g) If the Developer shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors or shall consent to the appointment of a receiver; or
- (h) Failure by either party to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement or the Assessment Agreement.

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in Section 8.1 of this Agreement occurs, the non-defaulting party may take any one or more of the following actions after providing 30 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 30 days, the defaulting party does not provide assurances to the non-defaulting party 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 this Agreement, including refusing to close on the Development Property, until it receives assurances from the defaulting party, deemed adequate by

the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement;

(b) Terminate or rescind this Agreement;

(c) If the default occurs prior to completion of the Minimum Improvements, the Authority may withhold the Certificate of Completion and Release of Forfeiture;

(d) If the default occurs prior to issuance of the Certificate of Completion and Release of Forfeiture, revert title in the name of the Authority pursuant to Section 8.3 of this Agreement;

(e) Take whatever action, including legal or administrative action, which may appear necessary or desirable to the non-defaulting party to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the defaulting party under this Agreement; and

(f) If the Developer's default occurs prior to the Date of Closing, the Authority may retain any and all earnest money paid by the Developer pursuant to Section 3.1 of this Agreement.

Section 8.3. Revesting Interest in the Authority Upon Happening of Event of Default Subsequent to Conveyance to Developer. Pursuant to the requirements of Minnesota Statutes, Section 469.105, subd. 6, in the event that subsequent to conveyance of the Development Property to the Developer and prior to the issuance of a Certificate of Completion and Release of Forfeiture for the Minimum Improvements:

(a) the Developer, subject to Unavoidable Delays, fails to begin construction of the Minimum Improvements in conformity with this Agreement and such failure to begin construction is not cured within 30 days after written notice from the Authority to the Developer to do so; or

(b) subject to Unavoidable Delays, the Developer, after commencement of the construction of the Minimum Improvements, fails to carry out its obligations with respect to the completion of construction of the Minimum Improvements (including the nature and the date for the completion thereof), or abandons or substantially suspends construction work, and any such failure, abandonment, or suspension shall not be cured, ended, or remedied within 30 days after written demand from the Authority to the Developer to do so; or

(c) the Developer shall fail to pay real estate taxes or assessments on the Development Property when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Authority made for such payment, removal, or discharge, within 30 days after written demand by the Authority to do so or such longer period, not to exceed 60 days, as may reasonably be necessary to remove said lien or encumbrance; provided, that if the Developer shall first notify the Authority of its intention to do so, it may in good faith contest any mechanics' or other lien to remain undischarged and unsatisfied during the period of such contest and any appeal, but only if the

Developer provides the Authority with a bank letter of credit or other security in the amount of the lien, in a form satisfactory to the Authority, pursuant to which the bank will pay to the Authority the amount of any lien in the event the lien is finally determined to be valid or, as an alternative to such forms of security, has made a deposit with the district court in the manner provided in Minnesota Statutes, section 514.10. During the course of such contest, the Developer shall keep the Authority informed respecting the status of such defense; or

(d) there is, in violation of Sections 6.1 or 7.1 of this Agreement, any transfer of the Development Property to an entity exempt from payment of real estate taxes or any Sale of the Development Property or the Minimum Improvements or any part thereof, and such violation shall not be cured within 30 days after written demand by the Authority to the Developer;

Then the Authority shall have the right to re-enter and take possession of the Development Property and to terminate and revest in the Authority the interest of the Developer in the Development Property; provided, however, that any exercise by the Authority of its rights or remedies hereunder shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way the lien of any mortgage or other encumbrance specifically and previously authorized by the Authority in writing under this Agreement or any rights or interests provided in this Agreement for the protection of the holders of an approved encumbrance.

Section 8.4. Resale of Reacquired Development Property; Disposition of Proceeds. Upon the revesting in the Authority of title to and/or possession of the Development Property or any part thereof as provided herein, the Authority shall, pursuant to its responsibilities under law, use its best efforts to sell the Development Property or part thereof as soon and in such manner as the Authority shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by the Authority) who will assume the obligation of making or completing the Minimum Improvements or such other improvements in their stead as shall be satisfactory to the Authority in accordance with the uses specified for such Development Property or part thereof. During any time while the Authority has title to and/or possession of a parcel obtained by reverter, the Authority will not disturb the rights of any owner of any housing unit on such parcel. Upon resale of the Development Property, the proceeds thereof shall be applied:

(a) First, to reimburse the Authority for all costs and expenses incurred by them, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the Development Property (but less any income derived by the Authority from the property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Development Property or part thereof (or, in the event the Development Property is exempt from taxation or assessment or such charge during the period of ownership thereof by the Authority, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the Authority assessing official) as would have been payable if the Development Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Development Property or part thereof at the time of revesting of title thereto in the Authority or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the subject improvements or any part thereof on the Development Property or part

thereof; and any amounts otherwise owing the Authority by the Developer and its successor or transferee; and

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the amount actually invested by it in making any of the subject improvements on the Development Property or part thereof.

(c) Any balance remaining after such reimbursements shall be retained by the Authority as its property.

Section 8.5. No Remedy Exclusive. No remedy herein conferred upon or reserved to the parties 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 Authority or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in Article IX of this Agreement.

Section 8.6. No Additional Waiver Implied by One Waiver. In the event any covenant or 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 IX

### Additional Provisions

Section 9.1. Conflict of Interests; Representatives Not Individually Liable. No officer, official, or employee of the Authority shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such officer, official, or employee participate in any decision relating to the Agreement which affects his or her personal financial interests, directly or indirectly. No officer, official, or employee of the Authority shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach or for any amount which may become due or on any obligation under the terms of this Agreement.

Section 9.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement, it will comply with all applicable equal employment and nondiscrimination laws and regulations.

Section 9.3. Restrictions on Use. The Developer, for itself and its successors and assigns, agrees to devote the Property and Minimum Improvements only to such land use or uses as may be permissible under the City's land use regulations. The Developer, for itself, its successors and

assigns, acknowledges the limitations on use of the Property and the Minimum Improvements imposed by Section 469.105 of the EDA Act and agrees to comply with such restrictions.

Section 9.4. Provisions Not Merged With Deed; No Merger of Representations, Warranties. None of the provisions, representations or warranties contained in this Agreement are intended to be merged into any instruments of conveyance delivered at closing or shall be merged by reason of delivery of the Development Property Deed, but instead shall survive closing, and the parties shall be bound accordingly. The Development Property Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 9.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, any notice, demand, or other communication under the Agreement or any related document by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified United States mail, postage prepaid, return receipt requested, or delivered personally to:

- (a) in the case of the Authority: 118 Central Avenue North  
New Prague MN 56071  
Attn: Executive Director
  
- (b) in the case of the Developer: Q Five Properties, LLC  
800 6<sup>th</sup> Street NW  
New Prague, MN 56071  
Attn: Patrick G. Malay

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 9.5.

Section 9.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.7. Disclaimer of Relationships. The Developer acknowledges that nothing contained in this Agreement nor any act by the Authority or the Developer shall be deemed or construed by the Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the Authority and the Developer.

Section 9.8. Release of Claims. The Developer and the Developer's attorneys, agents, employees, former employees, insurers, heirs, administrators, representatives, successors and assigns, hereby releases and forever discharges the Authority, and its attorneys, agents, representatives, employees, former employees, insurers, heirs, executors and assigns of and from any and all past, present or future claims, demands, obligations, actions or causes of action, at law or in equity, whether arising by statute, common law or otherwise, and for all claims for damages, of whatever kind or nature, and for all claims for attorneys' fees, and costs and expenses, including but not limited to all claims of any kind arising out of the negotiation, Developer consideration, execution and performance of this Agreement between the parties.



Nothing contained in this paragraph 9.8. is intended to prevent the exercise of any rights available pursuant to this Agreement.

Section 9.9. Modification and Waiver. No purported amendment, modification or waiver of any provision of this Agreement shall be binding unless set forth in a written document signed by both the Authority and the Developer (in the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof.

Section 9.10. Restrictions on Use. The Developer agrees that prior to the issuance of the Certificate of Completion and Release of Forfeiture, the Developer and its successors and assigns: (a) shall use the Development Property solely for the purpose of constructing and operating the Minimum Improvements pursuant to the terms of this Agreement and as defined by the definition of Use as set forth in this Agreement; (b) shall not discriminate upon the basis of race, color, creed, sex, national origin, or any other classification prohibited by law in the lease, rental, use or occupancy of any portion of the Minimum Improvements on the Development Property or any improvements erected or to be erected thereon, or any part thereof; and (c) shall otherwise comply with the restrictions on use set forth in this Agreement.

Section 9.11. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 9.12. Attorney Fees. Whenever any Event of Default occurs and if the Authority 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, the Developer agrees that it shall, within ten days of written demand by the Authority, pay to the Authority the reasonable fees of such attorneys and such other expenses so incurred by the Authority.

Section 9.13. Choice of Law and Venue; Interpretation. This Agreement shall be governed by, enforced and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 9.14. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Agreement. This Agreement may be modified, amended, terminated, or waived, in whole or in part, only by a writing signed by all of the parties.

Section 9.15. No Broker. The Authority represents that it has not engaged any real estate broker in connection with the sale of the Development Property. The Developer has engaged the

services of a broker in connection with the sale of the Development Property and the Developer will be solely responsible for the costs of such broker and shall defend, indemnify and hold the Authority harmless from any claims of such broker.

Section 9.16. Specific Performance. This Agreement may be specifically enforced by the parties, provided that any action for specific enforcement is brought within six months after the date of the alleged breach. This paragraph is not intended to create an exclusive remedy for breach of this Agreement; the parties reserve all other remedies available at law or in equity.

Section 9.17. Additional Documents. The Authority and the Developer agree to cooperate with the other and their representatives regarding any reasonable requests made subsequent to the execution of this Agreement to correct any clerical errors in this Agreement and to provide any and all additional documentation deemed necessary by either party to effectuate the transaction contemplated by this Agreement.

IN WITNESS WHEREOF, the Authority and the Developer have caused this Agreement to be duly executed in their names and behalves on or as of the date first above written.

**AUTHORITY:**

**NEW PRAGUE ECONOMIC  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Brent Quast  
President

By: \_\_\_\_\_  
Joshua M. Tetzlaff  
Executive Director

STATE OF MINNESOTA    )  
                                          ) ss.  
COUNTY OF SCOTT        )

The foregoing instrument as acknowledged before me this \_\_\_\_\_ day of November, 2024, by Brent Quast and Joshua M. Tetzlaff, President and Executive Director, respectively, of the New Prague Economic Development Authority, a public body corporate and politic under the laws of Minnesota, on behalf of the New Prague Economic Development Authority.

\_\_\_\_\_  
Notary Public

**DEVELOPER:**

**Q FIVE PROPERTIES, LLC**

By: \_\_\_\_\_  
Patrick G. Malay  
Its: Chief Executive Officer

STATE OF MINNESOTA     )  
                                      ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was executed this \_\_\_\_ day of November, 2024, by Patrick G. Malay, the Chief Executive Officer of Q Five Properties, LLC, a Minnesota limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION**

The Development Property is located in Scott County, Minnesota, and is legally described as:

Lot 5, Block 2, NEW PRAGUE BUSINESS PARK 11TH ADDITION, Scott County, Minnesota.

**EXHIBIT B**

**FORM OF QUIT CLAIM DEED**

STATE DEED TAX DUE HEREON: \$ \_\_\_\_\_

Date: \_\_\_\_\_, 2024.

THIS INDENTURE, between the New Prague Economic Development Authority, a public body corporate and politic, under the laws of the State of Minnesota, Grantor, and Q Five Properties, LLC, a Minnesota limited liability company, Grantee.

WITNESSETH, that the Grantor, in consideration of the sum of One Hundred Eighty-Four Thousand, Four Hundred Ninety-Eight and 38/100 dollars (\$184,498.38) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, quit claim and convey to the Grantee, its successors and assigns, forever, all of the tract or parcel of land lying and being in the County of Scott and State of Minnesota described as follows:

Lot 5, Block 2, NEW PRAGUE BUSINESS PARK 11TH ADDITION, Scott County, Minnesota.

To have and to hold the same, together with all hereditaments and appurtenances thereunto belonging or in any way appertaining, to the Grantee, its successors and assigns, forever. Subject to and together with, however, the provisions of the Permitted Encumbrances described and referred to in Exhibit A attached hereto and incorporated herein by reference, including, without limitation, the right of the Grantor upon the happening of an Event of Default under that certain Purchase and Development Agreement between Grantor and Grantee dated as of November \_\_\_\_\_, 2024, to re-enter and take possession of the Development Property and the improvements thereon and terminate the estate and all right, title and interest of the Grantee in and to the Development Property and improvements thereon, and revert in the Grantor all right, title, estate and interest of the Grantee in the Development Property and improvements thereon, free of any lien of any mortgage and other liens, except as permitted pursuant to the provisions of the Purchase and Development Agreement.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed in its behalf by its president and its executive director on \_\_\_\_\_, 2024.

- The Seller certifies that the seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document.
- 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.

NEW PRAGUE ECONOMIC DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
Brent Quast  
President

By: \_\_\_\_\_  
Joshua M. Tetzlaff  
Executive Director

STATE OF MINNESOTA    )  
                                          ) ss.  
COUNTY OF SCOTT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Brent Quast and Joshua M. Tetzlaff, the president and executive director, respectively, of the New Prague Economic Development Authority, a public body corporate and politic under the laws of Minnesota, on behalf of the Economic Development Authority.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
Kennedy & Graven, Chartered (SJR)  
150 South Fifth Street, Suite 700  
Minneapolis MN 55402  
(612) 337-9300

Property Tax Statements for the Property described in this instrument should be sent to:  
Q Five Properties, LLC  
800 6th Street NW  
New Prague, MN 56071  
Attn: Patrick G. Malay

**EXHIBIT A TO  
QUIT CLAIM DEED**

Permitted Encumbrances

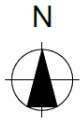
1. Taxes and installments of special assessments payable in 2024 and in subsequent years.
2. Building and zoning laws; federal, state and local laws, ordinances and regulations.
3. Easements for public streets, drainage, utilities, highways and roads now existing.
4. The terms, conditions, covenants and agreements set forth in the Purchase and Development Agreement between the Grantor and Grantee named in the Deed to which this Exhibit is attached, which Purchase and Development Agreement is hereby made a part hereof by reference thereto.
5. Mortgage used to finance the purchase of the Development Property.



# EXHIBIT C

## LIST OF PRELIMINARY PLAN DOCUMENTS

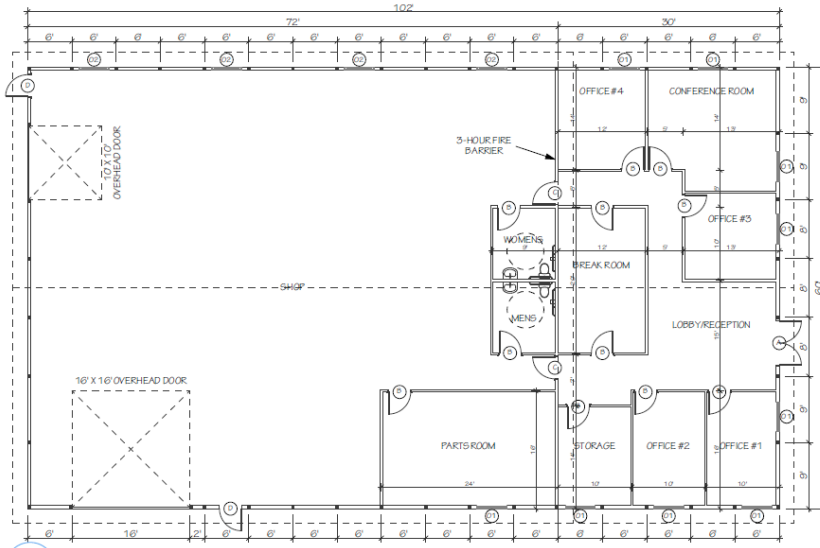
The Minimum Improvements shall be constructed in accordance with the following preliminary plan documents:



1" = 100'

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514	DRAWN BY:	10/2/2024
	DATE:	PLAN NUMBER:
	SHEET:	
PROJECT NAME: G5 Properties		
PROJECT LOCATION: New Prague, MN 56071		
BUILDING DESCRIPTION: 60'-0" X 30'-0" X 10'-0" OFFICE		
DESIGN NUMBER: 60'-0" X 72'-0" X 20'-0" SHOP		
150 Industrial Drive West, Minnesota 55086 370-482-2444 600-770-4276 www.raminc.com Contract License Number: 2019155		



1  
A1 1st FLOOR PLAN  
SCALE: 3/32" = 1'-0"

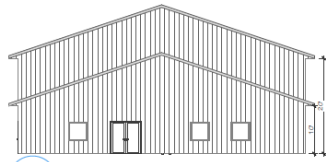
SYMBOL	1"	2"	3"	4"	5"	6"
DOOR						
WINDOW						
FINISH	4007 Concrete	4007 Concrete	4007 Concrete	4007 Concrete	4007 Concrete	4007 Concrete

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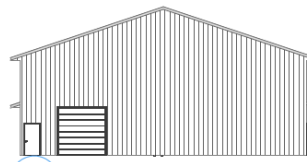
PROJECT NAME: **Q5 Properties**  
 PROJECT LOCATION: **New Prague, MN 56071**  
 BUILDING DESCRIPTION: **60'-0" X 72'-0" X 10'-0" OFFICE**  
**60'-0" X 72'-0" X 20'-0" SHOP**  
 DESIGN NUMBER: \_\_\_\_\_

DATE: 10/22/2024  
 SHEET: 1 OF 2

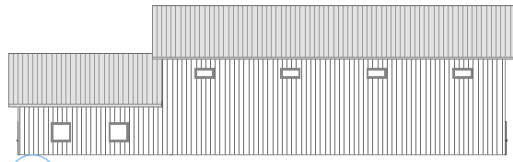
150 Industrial Drive  
 Winnetka, Minnesota 55785  
 320-485-3444 800-714-0726  
 Fax 320-485-3425  
 Contract/License Number: 2517876



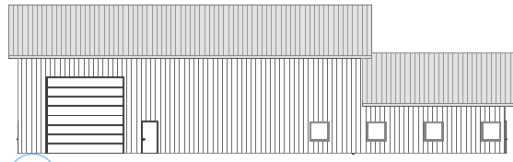
1 EAST ELEVATION  
SCALE: 1/16" = 1'-0"



2 WEST ELEVATION  
SCALE: 1/16" = 1'-0"



3 NORTH ELEVATION  
SCALE: 1/16" = 1'-0"



4 SOUTH ELEVATION  
SCALE: 1/16" = 1'-0"

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UNAUTHORIZED REPRODUCTION OF THESE PLANS IS A VIOLATION OF FEDERAL LAW.

PROJECT NAME:	Q.5 Properties
PROJECT LOCATION:	New England, NH 03071
BUILDING DESCRIPTION:	60'-0" X 30'-0" X 10'-0" OFFICE
DESIGN NUMBER:	60'-0" X 72'-0" X 20'-0" SHOP
DRAWN BY:	S.A.
DATE:	10/22/2024
SHEET:	2 OF 2

<p>150 Industrial Park Westborough, MA 01581 508-336-3333 508-336-3334 www.ramgc.com Contractors License #00197815</p>
--------------------------------------------------------------------------------------------------------------------------------------------

**EXHIBIT D**

**FORM OF  
CERTIFICATE OF COMPLETION  
AND RELEASE OF FORFEITURE**

WHEREAS, the New Prague Economic Development Authority (the “Grantor”), by a deed recorded in the office of the County Recorder in Scott County, Minnesota, as Document No. \_\_\_\_\_, has conveyed to Q Five Properties, LLC, a Minnesota limited liability company, (the “Grantee”), the following described land in County of Scott and State of Minnesota, to-wit:

Lot 5, Block 2, NEW PRAGUE BUSINESS PARK 11TH ADDITION, Scott County, Minnesota.

and

WHEREAS, said deed was executed pursuant to that certain Purchase and Development Agreement by and between the Grantor and the Grantee dated the \_\_\_\_ day of November, 2024, and recorded in the office of the County Recorder in Scott County, Minnesota, as Document No. \_\_\_\_\_, which Purchase and Development Agreement contained certain covenants and restrictions regarding completion of the Minimum Improvements; and

WHEREAS, said Grantee has performed said covenants and conditions in a manner deemed sufficient by the Grantor to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all construction of the Minimum Improvements specified to be done and made by the Grantee has been completed and the covenants and conditions in the Purchase and Development Agreement have been performed by the Grantee therein and that the provisions for forfeiture of title and right to re-entry for breach of condition subsequent by Grantor is hereby released absolutely and forever, and the County Recorder in Scott County, Minnesota, is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions relating to completion of the Minimum Improvements.

Dated: \_\_\_\_\_, 20\_\_.

NEW PRAGUE ECONOMIC  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Brent Quast  
President

By: \_\_\_\_\_  
Joshua M. Tetzlaff  
Executive Director

STATE OF MINNESOTA     )  
                                          ) ss.  
COUNTY OF SCOTT         )

The foregoing instrument as acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by Brent Quast and Joshua M. Tetzlaff, the president and executive director, respectively, of the New Prague Economic Development Authority, a public body corporate and politic, on behalf of the New Prague Economic Development Authority.

\_\_\_\_\_  
Notary Public