

**EDA Members:**

Dan Roe,  
President  
Wayne Groff,  
Vice President  
Robert  
Willmus,  
Treasurer  
Jason Etten  
Julie Strahan



**Economic Development Authority  
Special Meeting Agenda  
Monday, September 13, 2021  
6:00pm**

Members of the public who wish to speak during public comment or an agenda item during this meeting can do so in person or virtually by registering at [www.cityofroseville.com/attendmeeting](http://www.cityofroseville.com/attendmeeting)

**Address:**

2660 Civic Center Dr.  
Roseville, MN 55113

**Phone:**

651 - 792 - 7000

**Website:**

[www.growroseville.com](http://www.growroseville.com)

1. 6:00 P.M. Roll Call  
Voting & Seating Order: Groff, Willmus, Strahan, Etten, and Roe
2. 6:02 P.M. Pledge Of Allegiance
3. 6:03 P.M. Approve Agenda
4. 6:04 P.M. Public Comment
5. Business Items (Action Items)
  - 5.A. 6:05 PM Consider An Amendment To The Purchase Agreement With Genisys Credit Union For The Sale Of 2501 Fairview Avenue North

Documents:

[5A REPORT AND ATTACHMENTS.PDF](#)

6. 6:15 P.M. Adjourn To City Council



# REQUEST FOR ECONOMIC DEVELOPMENT AUTHORITY ACTION

Date: 09/13/2021

Item No.: 5a.

Department Approval

Executive Director Approval

*Janice Gundlach*

*Patricia J. Jensen*

Item Description: Consider amendment to Purchase Agreement with Genisys Credit Union for the sale of 2501 Fairview Avenue North – known as the Fairview Fire Station

## BACKGROUND

On April 19, 2021, the Roseville Economic Development Authority (REDA) authorized entering into a Purchase Agreement (PA) with Genisys Credit Union (Genisys) (Attachment A). The purchase agreement reflects the purchase price of \$1,375,000 and initial due-diligence period of 150 days. During the due-diligence period, Genisys conducted a Phase II Environmental Site Assessment and associated testing that revealed petroleum contaminated soil associated with a previously removed petroleum storage tank that had leaked. The contamination will need to be reported to the Minnesota Pollution Control Agency (MPCA) and since the City was the permit holder for the tank, the City will be named the Responsible Party. The MPCA administers a Petroleum Tank Release Cleanup Fund (Petrofund) to help remediate such leak sites. Genisys has agreed to conduct the clean-up as a voluntary party. Genisys will be required to enter the leak site into the MPCA’s Petrofund program, which will provide for reimbursement of certain eligible costs (although not all costs). For costs that cannot be recovered through the Petrofund, staff is recommending \$40,000 of the City’s land sale proceeds are held in an environmental escrow established at closing for which Genisys can request reimbursement from. The eligible costs for reimbursement include:

- Extent and magnitude testing to include vapor testing
- 2nd round of vapor testing - after Nov 1st
- Petrofund application fee
- MPCA Brownfield Program fees
- MPCA application assistance fees
- Soil disposal/remediation if needed
- Vapor mitigation system for building if needed
- Response action plan fees
- Environmental construction oversight fees
- Confirmation testing fees
- RAP implementation report fees

In order to conduct the additional environmental due-diligence associated with the leak, Genisys has requested a 120 day extension to complete further testing and understand the full extent of any future liability associated with the clean-up that will be required. An amendment to the PA to reflect the actions and responsibilities outlined herein is required (Attachment B).

Staff has consulted with an environmental engineer to ensure the reimbursable activities are appropriate, the \$40,000 escrow amount isn’t excessive, and the 120 day due-diligence period is reasonable in order to accomplish the additional testing and enter the various MPCA processes.

36

37 **BUDGET IMPLICATIONS**

38 The sale of Lot 2, Block 1, FAIRVIEW FIRE STATION will yield land sale proceeds and property tax  
39 revenue. Council has previously suggested the land sale proceeds replenish the fund used for purchasing  
40 Lexington Shoppes. Any funds remaining in the environmental escrow after the clean-up has occurred  
41 will be returned to the City. Any costs exceeding \$40,000 will be the responsibility of Genisys.

42 **STAFF RECOMMENDATION**

43 Staff recommends the REDA authorize the amendment to the PA with Genisys Credit Union by adopting  
44 the attached resolution (Attachment C).

45 **REQUESTED REDA BOARD ACTION**

46 By motion, adopt the resolution authorizing the President and Executive Director to enter into the  
47 amendment to the PA with Genisys Credit Union.

48 Prepared by: Jeanne Kelsey, Housing Economic Development Program Manager, 651-792-7086

- Attachments:
- A: Purchase Agreement with Genisys Credit Union
  - B: Amendment to PA with Genisys Credit Union
  - C: Resolution authorizing the amendment to PA with Genisys Credit Union

## PURCHASE AGREEMENT

1. **PARTIES.** This Purchase Agreement (this "Agreement") is made on this 19<sup>th</sup> day of April, 2021 (the "Effective Date"), by and between the Roseville Economic Development Authority, a Minnesota body corporate and politic (the "Seller") and Genisys Credit Union, a credit union chartered in the state of Michigan (the "Buyer").

2. **SALE OF PROPERTY.** The City of Roseville (the "City") is the owner of that certain real estate in the City of Roseville, County of Ramsey, and State of Minnesota, legally described on the attached Exhibit A (the "Property"). The City is in the process of platting the Property and will convey a portion of the Property which consists of approximately .909 acres (of which .687 acres is not encumbered by easements) to the Seller. The portion of the Property to be conveyed by the City to the Seller is depicted on the attached Exhibit B as Lot 2, Block 1, Fairview Fire Station (the "Sale Parcel"). The Sale Parcel consists of 39,600 square feet, of which 29,920 square feet is unencumbered. The Seller desires to sell the Sale Parcel to the Buyer in accordance with the terms and conditions of this Agreement.

### 3. PURCHASE PRICE AND MANNER OF PAYMENT.

3.1. Purchase Price. The Buyer shall pay the Seller \$1,375,000 for the Sale Parcel (the "Purchase Price").

3.2. Earnest Money. Upon approval and execution of this Agreement by the Buyer and the Seller, the Buyer shall pay to Land Title (the "Title Company") \$25,000 in earnest money and in part payment therefor (the "Earnest Money"). Said Earnest Money shall be deducted from the Purchase Price at Closing. The Earnest Money shall be refunded to Buyer only if (a) all of the contingencies are not removed or waived by the Buyer within the timeframes set forth in this Agreement and closing does not occur; or (b) in the event of an uncured Seller default, as set forth herein. If all the contingencies are removed or waived and the Buyer fails to close this transaction, the Seller's remedy shall be limited to receiving the Earnest Money as liquidated damages as is more fully described in Section 14.2. The balance of said Purchase Price less the Earnest Money shall be paid by the Buyer to the Seller on or before the Closing Date, as described in Section 6 herein, at which time the Seller's deed to the Sale Parcel shall be delivered to the Buyer.

4. **OBLIGATIONS OF THE SELLER.** The Seller shall provide the following documentation:

4.1. Representations and Warranties. The representations and warranties of the Seller contained in this Agreement must be true now and on the Closing Date in all material respects as if made on the Closing Date and the Seller shall have delivered to the Buyer on the Closing Date, a certificate dated the Closing Date, signed by an authorized representative of the Seller, certifying that such representations and warranties are true as of the Closing Date in all material respects (the "Closing Certificate").

- 4.2. Title. Title shall have been found to be acceptable to Buyer, or been made acceptable, in accordance with the requirements and terms of Section 8 below.
- 4.3. Performance of the Seller's Obligations. The Seller shall have performed all of the obligations required to be performed by the Seller under this Agreement in all material respects. Included within the obligations of the Seller under this Agreement shall be the following:
- 4.3.1. The Seller agrees to cooperate with the Buyer as reasonably necessary to permit the Buyer to investigate the Sale Parcel. Any testing that would involve taking samples of the building on the Sale Parcel must be overseen by the City's Building Inspection Department in order to ensure that the taking of samples does not cause permanent damage to the building. Within 10 days of the Effective Date of this Agreement, the Seller shall make available to the Buyer and the Buyer's agents copies of any documents in the Seller's possession relating to the Sale Parcel, including, but not limited to, all tenant leases, surveys, plats, building plans and specifications, civil plans, soils reports, environmental reports including any Phase I and Phase II environmental assessments of the Sale Parcel.
- 4.3.2. The Seller shall deliver to the Buyer the Title Evidence required in Section 8 on or before 10 days from the Effective Date.

**5. CONTINGENCIES WHICH MUST BE EXERCISED BY WRITTEN NOTICE TO THE SELLER NO LATER THAN 150 DAYS OF THE EFFECTIVE DATE OF THIS AGREEMENT (THE "CONTINGENCY DATE"):**

5.1. Buyer's Contingencies.

- 5.1.1. Testing. The Buyer shall have determined that it is satisfied with the results of, and matters disclosed by, any environmental site assessments, soil tests, engineering inspections, hazardous substances, and environmental reviews of the Sale Parcel, all such tests, assessments, inspections, and reviews to be obtained at the Buyer's sole cost and expense.
- a. The Buyer shall pay all costs and expenses of such investigation and testing and shall promptly repair and restore any damage to the Sale Parcel caused by the Buyer's testing and return the Sale Parcel to substantially the same condition as existed prior to entry. The Buyer shall not be permitted to perform any testing on the building on the Sale Parcel that would cause permanent damage to the building as determined by the City's Building Inspection Department. The Buyer shall indemnify, defend, and hold the Seller harmless from any claim for damage to person or property arising from any investigation or inspection of the Sale Parcel conducted by the Buyer, its agents or contractors, including the cost of attorneys' fees, provided, however, that the Buyer shall not be responsible for any

pre-existing conditions that are discovered by the Buyer or its consultants so long as, following discovery, the Buyer or its consultants do not materially exacerbate such conditions through their actions.

- b. Copies of any final written reports, studies, or test results obtained by the Buyer in connection with its inspection of the Sale Parcel or investigation relating to the Sale Parcel shall be delivered to the Seller promptly upon receipt of the same at no cost to the Seller.

5.1.2. Title Report. The Buyer's obligation to close hereunder is subject to its approval of a commitment of title for the Sale Parcel as is more fully described in Section 8.

5.1.3. Land Use Approvals. The Buyer having received all land use approvals from the City and any other governmental entities or agencies deemed necessary by the Buyer for its intended use of the Sale Parcel, including, but not limited to, zoning, a conditional use permit, access approval from Ramsey County with respect to any proposed drive throughs, and any other approvals necessary for the Buyer to be able to conduct drive through operations for its credit union to be located on the Sale Parcel. The Buyer shall be responsible for the costs of obtaining said land use approvals and any necessary traffic studies, with the exception of the subdivision of the Property that is needed to create the Sale Parcel, which shall be the responsibility of the City and the Seller. In the event that any land use approvals are needed by the Buyer from the City, said land use approvals will be conditioned upon the Buyer closing on its purchase of the Sale Parcel.

If, on or before the Contingency Date or if required earlier by this Agreement, if the Buyer determines that any of its contingencies listed in this Section have not been satisfied in its sole discretion, then this Agreement may be terminated by written notice from the Buyer to the Seller, which notice must be given no later than the Contingency Date. If the Buyer does not give written notice of termination on or before the Contingency Date, all of such contingencies will be deemed to have been satisfied and the parties shall proceed to close this transaction in accordance with the terms of this Agreement. If this Agreement is terminated by the Buyer in accordance with this Section, the Title Company shall return the Earnest Money to the Buyer and neither party shall have any further rights or obligations regarding this Agreement or the Sale Parcel. All of the contingencies set forth in this Agreement are specifically stated and agreed to be for the sole and exclusive benefit of the Buyer and the Buyer shall have the right to unilaterally waive any of its contingencies by written notice to the Seller.

The Buyer may obtain up to two 60-day extensions to the Contingency Date but only with respect to the contingency set forth in Section 5.1.3 above. Said request shall be made in writing by the Buyer to the Seller in accordance with Section 17 of this Agreement. Should the Buyer request a 60-day extension with respect to the contingency set forth in Section 5.1.3 above, this contingency shall be extended but all other contingencies shall be deemed satisfied or waived at the end of the

Contingency Date. The Buyer shall deposit an additional \$10,000 in additional Earnest Money with the Title Company for each extension that it requires. Said additional Earnest Money shall be refundable prior to the extension of the Contingency Date. Said additional Earnest Money shall be nonrefundable upon the expiration of the Contingency Date, except in the event of the Seller's uncured breach of this Agreement. Said additional Earnest Money shall apply towards the Purchase Price.

**6. CLOSING.** The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur within 30 days of the Contingency Date or such date on which the parties may agree (the "Closing Date"). The Buyer intends on executing Buyer's Closing Documents in advance and depositing them with the Title Company pursuant to a closing instruction letter acceptable to the Buyer and Title Company. The Seller may complete the Closing in a similar manner or attend Closing at the office of the Seller or other closing agent mutually agreed upon by Buyer and Seller, or in any other manner agreed to by the Parties. The Seller agrees to deliver possession of the Sale Parcel to the Buyer on the Closing Date.

- 6.1. Seller's Closing Documents. On the Closing Date, the Seller shall execute and deliver to the Buyer the following (collectively, "Seller's Closing Documents"), all in form and content reasonably satisfactory to the Seller and the Buyer:
  - 6.1.1. Deed. A limited warranty deed conveying the Sale Parcel to the Buyer.
  - 6.1.2. Seller's Affidavit. A seller's affidavit as required by the Title Company to issue an owner's policy of title insurance with the standard exceptions waived.
  - 6.1.3. Original Documents. Original copies of any surveys, reports, permits, and records in the Seller's possession.
  - 6.1.4. FIRPTA Affidavit. A non-foreign affidavit, properly executed, containing such information as is required by the Internal Revenue Code Section 1445(b)(2) and its regulations.
  - 6.1.5. Other Documents. Any other documents reasonably required in order to complete the transaction contemplated by this Agreement.
- 6.2. Buyer's Closing Documents. On the Closing Date, the Buyer shall execute, as appropriate, and deliver to the Seller the following (collectively, "Buyer's Closing Documents"):
  - 6.2.1. Purchase Price. The Purchase Price in good funds (certified or cashier's check or wire transfer).
  - 6.2.2. Other Documents. Such affidavits of the Buyer, certificates of value, or other documents as may be reasonably required in order to complete the transaction contemplated by this Agreement.

7. **PRORATIONS.** The Seller and the Buyer agree to the following prorations and allocation of costs regarding this Agreement:

7.1. Title Insurance and Closing Costs. The Seller shall pay the cost to record any document required to establish marketable title in the Seller; any fees incurred for updating title, including the cost of preparing the Title Commitment and title search and examination fees; the cost to subdivide the Property to create the Sale Parcel; any state deed tax, conservation fee, or other federal, state, or local documentary or revenue stamps or transfer tax with respect to the deed to be delivered by the Seller. The Buyer shall pay the cost of all premiums required for the issuance of a title insurance policy and any endorsements; the fees of any soil tests, surveys, environmental assessments, inspection reports, appraisals, or other tests or reports ordered by the Buyer; any costs associated with any land use applications requested by the Buyer; recording fees and charges related to the recording of the deed; and its own legal and accounting fees associated with this transaction. All closing fees charged by the Title Company and any escrow fees charged by any escrow agent engaged by the parties in connection with this Agreement shall be split equally between the Buyer and the Seller.

7.2. Real Estate Taxes and Special Assessments. The Seller shall pay, on or before the Closing Date, all levied special assessments, constituting a lien against the Sale Parcel as of the effective date, including, without limitation, any installments of special assessments that are payable with general real estate taxes in the year in which Closing occurs. The Sale Parcel is currently tax-exempt, but in the event that there are any general real estate taxes payable in any year prior to the year in which the Closing occurs, they shall be paid by the Seller. Any general real estate taxes payable in the year in which Closing occurs shall be prorated between the Buyer and the Seller as of the Closing Date.

7.3 Other Prorations. Prorations for operating expenses, service contracts that are assumed by Buyer in writing, and utilities shall be prorated as of the Closing Date.

8. **TITLE EXAMINATION.** Title Examination shall be conducted as follows:

8.1. Seller's Title Evidence. No later than 10 days from the Effective Date, the Seller shall furnish the following (collectively, "Title Evidence") to the Buyer:

8.1.1. Title Commitment. A title commitment for the Sale Parcel from the Title Company (the "Title Commitment").

8.1.2. Survey. A copy of any existing land survey of the Sale Parcel that is in the Seller's possession or control. The Buyer, at its option, also may obtain, at its expense, an updated survey of the Sale Parcel (the "Updated Survey"). Any Updated Survey shall be certified and delivered to the Seller as well as the Buyer and any other parties that the Buyer may designate.

8.2 Buyer's Objections. No later than 15 days after receiving the Title Commitment, the Buyer must make written objections ("Objections") to the title to the Sale Parcel



based on the Title Evidence. If the Buyer elects to obtain an Updated Survey, objections based upon the Updated Survey must be made within fifteen (15) days after receipt of said Updated Survey but in no event later than the Contingency Date. The Buyer's failure to make Objections within such time period will constitute a waiver of Objections. However, any matter which is not referenced in the Title Commitment and is first recorded, discovered, or disclosed after the effective date of the Title Commitment may be objected to by the Buyer in the manner described herein. Any matter shown on such Title Evidence and not objected to by the Buyer shall be a "Permitted Encumbrance" hereunder. Within seven days after receipt of the Buyer's Objections, the Seller shall notify the Buyer in writing if the Seller elects not to cure the Objections. If such notice is given within said seven-day period, the Buyer may either waive the Objections or terminate this Agreement by giving written notice of termination to the Seller within 10 days after the Seller's notice is given to the Buyer. If written notice by the Seller is not given within the 10-day period, the Seller shall correct any Objections within 30 days after the expiration of the 10-day period ("Cure Period"). If the Title Company is willing to issue a title insurance policy to the Buyer that does not except from title insurance coverage an item the Buyer has objected to, the objection relating to such item shall be deemed cured. If the Objections are not cured within the Cure Period, the Buyer shall have the option to do any of the following:

- 8.2.1. Terminate this Agreement by giving written notice to the Seller within 10 days after the expiration of the Cure Period and neither the Seller nor the Buyer shall have further rights or obligations hereunder. In such event the Title Company shall return all Earnest Money to the Buyer.
- 8.2.2. Waive the objections and proceed to close without reduction in the Purchase Price.

The Buyer shall make its election within 10 days after expiration of the Seller's Cure Period. A failure to make an election within such period shall be deemed an election to proceed to close pursuant to subsection 8.2.2 above.

**9. REPRESENTATIONS AND WARRANTIES BY THE SELLER.** The following representations made by the Seller are limited to the actual knowledge of Patrick Trudgeon, the Executive Director. The Seller represents and warrants to the Buyer that the following are true in all material respects now and as modified by any changes about which the Seller notifies the Buyer in writing following after the date hereof, will be true in all material respects on the Closing Date:

- 9.1. Authority. The Seller is a Minnesota body corporate and politic, duly created under and subject to the laws of the State of Minnesota; the Seller has the requisite power and authority to enter into and perform this Agreement and those Seller Closing Documents signed by it; such documents have been or will be duly authorized by all necessary action on the part of the Seller and have been or will be duly executed and delivered; such execution, delivery, and performance by the Seller of such

documents does not conflict with or result in a violation of any judgment, order, or decree of any court or arbiter to which the Seller is a party; such documents are valid and binding obligations of the Seller, and are enforceable in accordance with their terms, subject to bankruptcy, reorganization, insolvency, moratorium and other laws affecting the rights and remedies of creditors generally and principles of equity.

- 9.2. Rights of Others to Purchase the Sale Parcel. The Seller has not entered into any other contracts for the sale of the Sale Parcel, nor are there any rights of first refusal or options to purchase the Sale Parcel, leases or any other rights of others that might prevent the sale of the Sale Parcel contemplated by this Agreement or interfere with Buyer's possession or intended use of the Sale Parcel, which is a redevelopment of the Sale Parcel into a credit union retail branch facility with drive thru banking equipment, with the exception of the leases described in paragraph 23 of this Agreement.
- 9.3. Use of the Sale Parcel. To the best of the Seller's knowledge without investigation, the Sale Parcel is usable for its current uses without violating any federal, state, local, or other governmental building, zoning, health, safety, platting, subdivision, or other law, ordinance, or regulation, or any applicable private restriction, and such use is a legal conforming use. The Seller certifies that there are not any restrictions recorded against the Sale Parcel that would prohibit the Buyer from operating a credit union on the Sale Parcel. Verizon Wireless currently has facilities on the Sale Parcel that are not within an easement. The City and the Seller are currently working with Verizon Wireless to relocate the facilities (which include underground wires, cables and/or conduit) so that they are either within an already established easement area or are no longer on the Sale Parcel. The relocation of the Verizon Wireless facilities shall be completed no later than the Contingency Date and shall be reasonably satisfactory to the Buyer, whose consent shall not be unreasonable withheld, conditioned or delayed.
- 9.4. Proceedings. There is no action, litigation, investigation, condemnation, or proceeding of any kind pending or, to the best of the Seller's knowledge without investigation, threatened against any portion of the Sale Parcel.
- 9.5. Wells. To the best of the Seller's knowledge, no wells exist on the Sale Parcel.
- 9.6. Sewage Treatment Systems. To the best of the Seller's knowledge, no sewage treatment system exists on the Sale Parcel.
- 9.7. Title. At Closing, the Seller will have fee title to the Sale Parcel.
- 9.8. Notices. The Seller has not received any written notice of noncompliance with any applicable federal, state, municipal, or county environmental laws, statutes, or ordinances from any governmental authority having jurisdiction over the Sale Parcel, other than the records provided to the Buyer.

- 9.9. Use. While this Agreement is in effect, the Seller shall not transfer the Sale Parcel, or any portion thereof, or create on the Sale Parcel any easements, liens, leasehold interests, encumbrances, or other interests or take any other actions that would affect the Sale Parcel or the Seller's ability to comply with the terms of this Agreement, with the exception of the following:
- 9.9.1. The recording of a Declaration of Access Easement over the South 40 feet of the Sale Parcel. Said form of such easement is attached as Exhibit C to this Agreement. The final version of the Declaration of Access Easement must be approved by both parties and the City of Roseville prior to closing.
- 9.9.2. The recording of a Declaration of Equipment Shelter Access Easement over the West 20 feet of the Sale Parcel. Said form of such easement is attached as Exhibit D to this Agreement. The final version of the Declaration of Equipment Shelter Access Easement must be approved by both parties and the City of Roseville prior to closing.
- 9.9.3. The dedication of drainage and utility easements to the City of Roseville as shown on the plat of Fairview Fire Station, attached as Exhibit B to this Agreement. In order to allow the Buyer to utilize the portion of the Sale Parcel encumbered by the easements, the City of Roseville has agreed to execute an encroachment agreement. Said form of encroachment agreement is attached as Exhibit E to this Agreement. The final version of the encroachment agreement must be approved by both parties and the City of Roseville prior to closing.

Additionally, while this Agreement is in effect, the Seller shall operate and maintain the Sale Parcel in the same manner as it has been operated and maintained heretofore, free from waste and neglect, reasonable wear and tear excepted.

- 9.10. Insurance. While this Agreement is in effect, the Seller shall maintain or cause to be maintained, in full force and effect, all liability and other commercially reasonable insurance upon and with respect to the Sale Parcel against such hazards and in such amounts as exist on the date hereof.
- 9.11. Approvals. No consent, authorization, license, permit, registration, or approval of, or exemption or other action by, any other governmental or public body, commission, or authority is required in connection with the execution, delivery, and performance by the Seller of this Agreement.

The Seller's representations shall be true, accurate, and complete as of the date of this Agreement, in all material respects and, as modified by any notices given by the Seller to the Buyer, on the Closing Date in all material respects. If any time prior to Closing, the Buyer shall determine that any representation herein made by the Seller was not true in all material respects when made, the Buyer's sole remedy shall be to terminate this Agreement by giving notice to the Seller and seeking any applicable remedies for breach from the Seller. The Earnest Money and any additional Earnest Money paid by the Buyer shall be returned to the Buyer.

Notwithstanding the above paragraph, all representations and warranties shall terminate upon the expiration of the Reverter set forth in paragraph 22 of this Agreement. Any claim by the Buyer not made by written notice delivered to the Seller before such date the representation or warranty terminates shall be deemed waived.

**10. "AS IS, WHERE IS."** The Buyer acknowledges that it has inspected or has had the opportunity to inspect the Sale Parcel and agrees to accept the Sale Parcel "AS IS" with no right of set off or reduction in the Purchase Price. Such sale shall be without representation of warranties, express or implied, either oral or written, made by the Seller or any official, employee or agent of the Seller with respect to the physical condition of the Sale Parcel, including, but not limited to, the existence of or absence of petroleum, asbestos, lead, hazardous substances, pollutants, or contaminants in, on, or under, or affecting the Sale Parcel except as otherwise set forth within this Agreement. Other than as expressly stated herein, or expressly stated in any closing document delivered by Seller at Closing, Buyer acknowledges and agrees that the Seller has not made and does not make any representations, warranties, or covenants of any kind or character whatsoever, whether expressed or implied, with respect to warranty of income potential, operating expenses, uses, habitability, tenant ability, or suitability for any purpose, merchantability, or fitness of the Sale Parcel for a particular purpose, all of which warranties the Seller hereby expressly disclaims, except as stated above. The Buyer expressly assumes, at closing, all environmental and other liabilities with respect to the Sale Parcel. Except for the representations herein, the Buyer is solely relying upon information and knowledge obtained from its own investigation, experience, and knowledge obtained from its own investigation, experience, or personal inspection of the Sale Parcel. The foregoing provision shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

**11. REPRESENTATIONS AND WARRANTIES BY THE BUYER.** The Buyer represents and warrants to the Seller that the Buyer is a Michigan state chartered credit union; that the Buyer has the requisite capacity, power and authority to enter into this Agreement and the Buyer's Closing Documents signed by it; such documents have been or will be duly authorized by all necessary action on the part of the Buyer and have been or will be duly executed and delivered; delivery and performance by the Buyer of such documents does not conflict with or result in a violation of any judgment, order, or decree of any court or arbiter to which the Buyer is a party; such documents are valid and binding obligations of the Buyer, and are enforceable in accordance with their terms.

**12. CONDEMNATION.** If, prior to the Closing, eminent domain proceedings are commenced against all or any material part of the Sale Parcel, the Seller shall immediately give notice to the Buyer of such fact and at the Buyer's option (to be exercised within 15 days after the Seller's notice), this Agreement shall terminate, in which event neither party will have further obligations under this Agreement. The Earnest Money and any additional Earnest Money paid by the Buyer shall be returned to the Buyer. If the Buyer fails to give such notice, then there shall be no reduction in the Purchase Price, and the Seller shall assign to the Buyer at the Closing all of the Seller's right, title, and interest in and to any award made or to be made in the condemnation proceedings. Prior to the Closing, the Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without the Buyer's prior written consent. For purposes of this section, the words "a material part" means a part if acquired by a condemning authority would materially hinder Buyer's operations on the Sale Parcel.

**13. COMMISSIONS.** The Buyer is represented by Bertelle Corporation in this transaction. Bertelle Corporation shall receive a brokerage fee of 50 percent of the brokerage fee that the Seller's broker (Cushman & Wakefield) has agreed upon with the Seller in their listing agreement for the Sale Parcel. Both the Buyer and the Seller represent that they have not entered into a contract with any other real estate broker, whereby the broker is entitled to a commission resulting from the transaction contemplated by this Agreement. Each party agrees to indemnify, defend, and hold harmless the other party against any claim made by any other real estate broker for a commission or fee based on alleged acts or agreements with the indemnifying party.

**14. REMEDIES.**

14.1. Buyer's Remedies. The Seller shall not be considered in default under this Agreement unless and until: (i) the Seller has failed to materially comply with or satisfy any of the Seller's obligations in this Agreement; (ii) the Buyer has provided the Seller with written notice of such default (the "Default Notice"), which Default Notice shall specify the date on which the default occurred, the nature of the default and the Buyer's proposed cure; and (iii) the Buyer has allowed the Seller five business days (the "Cure Period"), after the Seller receives such Default Notice, to cure the default. If the Seller is in default under this Agreement for any cause other than the default of the Buyer, the Buyer may at its sole option and remedy, elect, in writing to the Seller (the "Notice of Election"), within 30 days after the Cure Period, to: (a) rescind this Agreement and receive the Earnest Money, after which, neither party shall have any further obligations to the other, except those obligations which survive termination; (b) proceed with this Agreement and take the Sale Parcel "AS IS"; or (c) file an action seeking specific performance (but not damages except for fees and costs associated with such action). In the event the Buyer does not timely deliver a Notice of Election to the Seller, it shall be deemed that the Buyer waives all previous defaults by the Seller and elects to proceed with this Agreement under option (b) above. The Buyer specifically waives any right to make a claim against the Seller for consequential damages, except for the indemnity obligations and claims for fees and costs as set forth in this Agreement.

14.2. Seller's Remedy. If the Buyer fails to consummate this Agreement for any reason except the Seller's default or the termination of this Agreement pursuant to a right to terminate given herein, the Seller's sole and exclusive remedy shall be to terminate this Agreement by giving 30 days' written notice to the Buyer, pursuant to Minnesota Statutes Section 559.21, as amended from time to time, in which case the Earnest Money and any additional Earnest Money shall be tendered to the Seller.

**15. ASSIGNMENT.** The Buyer may not assign its rights under this Agreement, without prior written consent of the Seller.

**16. SURVIVAL.** All of the terms of this Agreement and warranties and representations herein contained shall survive and be enforceable after the Closing.



**22. REVERTER.** If the Buyer fails to Commence Construction (which is hereby defined as the demolition of the existing building and related equipment and the completion of the construction of concrete footings suitable for the construction of the Credit Union branch pursuant to Buyer's specifications) within 12 months of the Closing Date and then diligently proceeds to substantially complete construction of the credit union branch ("Substantially Complete" being defined as completion and issuance of a temporary certificate of occupancy), within 12 months following the Commence Construction date, subject to delays caused by events of Force Majeure; and such failure is not cured within 30 days following written notice from the Seller, then the Seller shall have the right to re-enter and take possession of the Sale Parcel and to terminate and revest in the Seller the estate conveyed by the Deed to the Buyer, it being agreed that the Deed shall contain a condition subsequent to the effect that in the event of noncompliance with this Section 22 on the part of the Buyer, the Seller at its option may declare a termination in favor of the Seller of the title, and of all the rights and interests in and to the Sale Parcel conveyed to the Buyer, and that such title and all rights and interests of the Buyer, and any assigns or successors in interest to and in the Sale Parcel, shall revert to the Seller. In the event the Sale Parcel shall revert to Seller, the Seller shall pay to the Buyer an amount equal to eighty (80%) of the Purchase Price. If no Buyer default has occurred hereunder, then the Seller shall execute and deliver to Buyer, a quit claim deed, releasing any right of reverter.

**23. LEASES.** There is a water tower on the Property on which cellular antennas or equipment are attached or within the vicinity. The water tower is not located on the Sale Parcel. The City and the Seller are in the process of negotiating with the various entities that have the following cellular leases on the Property in order to have them release the Sale Parcel from their leases and in the event that there is any equipment or facilities on the Sale Parcel to relocate said equipment or facilities to the remanent parcel being retained by the City. Said leases and the status of the releases are as follows:

Sprint - Memorandum of Lease between City of Roseville (lessor) and C-Call Corp., dated November 1, 1994, filed January 24, 1995 as Document Number 2851405. Memorandum of PCS Site Agreement between the City of Roseville and Sprint Spectrum, L.P., dated November 11, 1996, filed January 6, 1997 as Document Number 2972185. A Memorandum of Agreement has been drafted by Sprint and presented to the City for signature.

Verizon - Memorandum of Lease between City of Roseville and Verizon Wireless (VAW) LLC, dba Verizon Wireless dated July 18, 2000, filed January 11, 2001 as Document Number 3369246. A tentative agreement has been reached between the City and Verizon.

New Cingular Wireless (AT&T) - Memorandum of Lease between City of Roseville and New Cingular Wireless PCS, LLC dated March 13, 2006, filed October 6, 2008, as Document Number 4120080 and First Amendment to Memorandum of Lease filed October 28, 2013 as Document Number 4430510. An amendment to the Lease has been drafted and presented to New Cingular Wireless for signature.

T-Mobile - Memorandum of Agreement between City of Roseville and APT Minneapolis, Inc., dated July 22, 1996, filed February 7, 1997 as Document Number 2977748. Memorandum of Lease Amendment between City of Roseville and T-Mobile Central LLC

dated October 17, 2014, filed January 20, 2016 as Document Number A04592249. A Partial Release of the Lease has been drafted by T-Mobile, the successor-in-interest to APT Minneapolis, Inc. and presented to the City for signature.

Communication Site Lease between the City of Roseville and Clear Wireless LLC, dated January 20, 2010 (not recorded), as amended by that certain First Amendment to Communications Site Lease (not recorded). This Lease has been terminated effective January 21, 2021.

(collectively, the "Leases"). The City and the Seller intend to have the Leases released from the Sale Parcel no later than the Contingency Date, but should additional time be needed for this purpose, the Seller may extend the Contingency Date for an additional 90-day period by notifying the Buyer of such extension. In that event, no additional Earnest Money shall be due from the Buyer. In the event the City or the Seller is unable to have the Leases released from the Sale Parcel, the Seller or the Buyer may terminate this Agreement and upon such termination the Seller shall pay to the Buyer an amount equal to Buyer's out of pocket expenses in performing the Contingencies described in Section 5 of this Agreement.

**24. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which will, for all purposes, be deemed to be an original, and all of which are identical. This Agreement may be further evidenced by electronic signature pages.

**25. FORCE MAJEURE.** If either party is delayed, interrupted or prevented from performing any of its obligations under this Agreement and such delay, interruption or prevention is due to (i) fire, (ii) act of God, (iii) governmental act or failure to act, (iv) labor dispute, (v) unavailability of materials or services, (vi) pandemic or epidemic disease, (vii) quarantine or 'shelter in place' order, or (viii) state of emergency (collectively, an event of "Force Majeure"), then the time for performance of the affected obligations of the party shall be extended for a period equivalent to the period of such delay, interruption or prevention on a day for day basis. Notwithstanding the foregoing to the contrary, the unavailability of materials or services shall not constitute a Force Majeure delay if there is a reasonable substitute available and the party does not use reasonable efforts to obtain it. Further, if there is a reasonable substitute available, then a Force Majeure delay for unavailability of materials or services shall not extend beyond the time reasonably necessary to determine what the substitute material or service is and to obtain the substitute material or service. The party suspending performance of an obligation for an event of Force Majeure will promptly deliver written notice to the other party of an event of Force Majeure, upon which notice all time periods for performance will be suspended from the for as long as the event is ongoing.

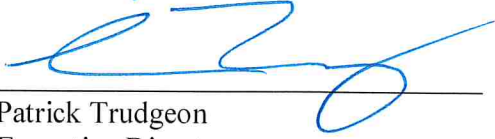


By: *Jacqueline Burton*  
Its: *President & CEO*

**SELLER**

**ROSEVILLE  
ECONOMIC DEVELOPMENT  
AUTHORITY**

By:   
Dan Roe  
Its: President

By:   
Patrick Trudgeon  
Its: Executive Director

**EXHIBIT A**

**Legal Description of the Property**

The South 200 feet of the North 266 feet of the East 410 feet of the Southeast Quarter of the Northwest Quarter of Section 9, Township 29, Range 23, lying West of a line lying 49.5 feet West of, and parallel with the East line of said Northwest Quarter, Ramsey County, Minnesota.

Parcel ID 092923240002

**EXHIBIT B**

**Depiction of the Sale Parcel**



**EXHIBIT C**

**Declaration of Access Easement**

**DECLARATION OF ACCESS EASEMENT**

The City of Roseville, a Minnesota municipal corporation (the "**Declarant**") makes this Declaration of Access Easement (this "**Declaration**") as of \_\_\_\_\_, 2021 (the "**Effective Date**").

**WHEREAS**, the Declarant owns real property in Ramsey County, Minnesota legally described as: (i) Lot 1, Block 1, Fairview Fire Station ("**Lot 1**"); and (ii) Lot 2, Block 1, Fairview Fire Station ("**Lot 2**"); and

**WHEREAS**, Lot 1 contains the Declarant's water tower; and

**WHEREAS**, the Declarant leases space on its water tower and on Lot 1 to various cellular companies for their antennas and associated equipment and facilities (the "**Cellular Lessees**"); and

**WHEREAS**, Lot 1 does not have access to a public road; and

**WHEREAS**, the Declarant will be conveying Lot 2 to the Roseville Economic Development Authority who will subsequently convey it to a third party; and

**WHEREAS**, the Declarant wants to ensure that it and the Cellular Lessees continue to have access to Lot 1 after the conveyances; and

**WHEREAS**, the Declarant desires to: (i) grant, declare, and impose an ingress and egress easement over Lot 2 for the benefit of Lot 1.

**NOW THEREFORE**, the Declarant does hereby:

**Lot 2 Ingress and Egress Easement.** The Declarant hereby grants, declares, and imposes a non-exclusive, perpetual, appurtenant easement on, over, and across the portion of Lot 2 legally described on **Exhibit A** and depicted for illustration purposes on the site plan attached as **Exhibit B** (the "**Lot 2 Ingress and Egress Easement**") for the benefit of Lot 1 to permit the owners of Lot 1 and the Cellular Lessees to use the Lot 2 Ingress and Egress Easement for vehicular and pedestrian ingress and egress between Lot 1 and Fairview Avenue. The Lot 2 Ingress and Egress Easement does not include that area of the South 40 feet of Lot 2 that is shown on **Exhibit B** as being striped and designated for parking. The Declarant, as the owner of the portion of Lot 2 subject to the Lot 2 Ingress and Egress Easement, and its successors in title to those portions of Lot 2 is responsible for maintaining, repairing, and replacing the roadway and road components (curb, gutter, etc.) located in the Lot 2 Ingress and Egress Easement. The "Roadway and the Road Components" shall be defined as the drive lane that is used to gain access from Fairview Avenue to Lot 1. It shall not include any parking areas. The costs of said maintenance, repair, and replacement of the Roadway and Road Components shall be split equally between the owner of Lot 1 and the owner of Lot 2. The owner of Lot 2 shall submit an invoice to the owner of Lot 1

for its share of any maintenance, repair or replacement costs which shall be paid by the Owner of Lot 1 within thirty (30) days of the date of the invoice. If the owner of Lot 1 reasonably believes that the owner of Lot 2 has failed to maintain, repair, or replace the Roadway and Road Components in accordance with this Declaration and any applicable laws, regulations, or other requirements and such failure continues for 14 days after the owner of Lot 1 gives the owner of Lot 2 written notice of such failure or, if such tasks cannot be completed within 14 days, after such time period as may be reasonably required to complete the required task provided that the owner of Lot 2 is making a good faith effort to complete said task. If the owner of Lot 2 does not complete the maintenance, repair, or replacement tasks within the required time period after such notice is given by the owner of Lot 1, the owner of Lot 1 shall have the right to perform such maintenance, replacement, or repair tasks. In such case, the owner of Lot 1 shall send an invoice for one half of all costs associated with the work performed by it. The Declarant is responsible for plowing snow from the Roadway at its expense along with the upkeep of any vegetation that is within the easement area. The burdens of the Lot 2 Ingress and Egress Easement run with title to the portions of Lot 2 that are subject to the Lot 2 Ingress and Egress Easement and are binding upon the Declarant, as the owner thereof and its successors in title thereto. The benefits of the Lot 2 Ingress and Egress Easement run with title to Lot 1 and inure to the benefit of the Declarant as the owner of the Lot 1 and each of its respective successors in title to all or any part of Lot 1. The Lot 2 Ingress and Egress Easement includes the right of the owners of Lot 1 and the Cellular Lessees to authorize and permit their respective employees, tenants, guests, and invitees to use the Lot 1 Ingress and Egress Easement.

**Restrictions on Interference.** The owner of Lot 2 may not use the portion of Lot 2 that is subject to the Lot 2 Ingress and Egress Easement in any manner that interferes with or impairs the use of the Lot 2 Ingress and Egress Easement for ingress and egress purposes by the owners of Lot 1, the Cellular Lessees, and their respective employees, tenants, guests, and invitees, except for reasonable interferences or impairments for reasonable periods required for the construction, repair, or replacement of the roadway or road components.

**Enforcement.** The owner of Lot 1 or the Cellular Lessees may proceed, at law or in equity, to: recover damages for any breach of the Lot 2 Ingress and Egress Easement; specifically enforce the terms of the Lot 2 Ingress and Egress Easement; or restrain or enjoin the violation of the Lot 2 Ingress and Egress Easement; provided, however, that before commencing any proceedings to recover damages, the individual or entity seeking to enforce this Declaration must give the breaching party written notice of the alleged default and a period of not less than 30 days in which to cure the alleged default. In any proceedings at law or in equity to recover damages, or to specifically enforce or restrain or enjoin the violation of the terms of this Declaration, the prevailing party shall be entitled to recover its attorney's fees and costs.

**Terms and Amendment.** This Declaration shall become effective upon its recordation in the Office of the County Recorder, Ramsey County, Minnesota. This Declaration may be amended or modified only by an instrument signed by all of the owners of Lot 1 and Lot 2. No amendment shall become effective prior to a duly executed and acknowledged copy being recorded in the Office of the County Recorder, Ramsey County, Minnesota.

**Severability.** Invalidation of any term or provision of this Declaration, by judgment or court order, shall not affect any of the other provisions hereof which shall remain in full force and effect.

**Interpretation.** Unless the context otherwise requires, the use of the singular shall include the plural and vice versa. The headings used herein are for convenience only and shall not be given any weight interpreting or construing the substantive provisions hereof.

**Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Minnesota.

**Notice.** All notices required to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and shall be sent by: (a) certified mail, return receipt requested, and the giving of such communication shall be deemed complete on the third business day after the same is deposited in a United States Post Office with postage charges prepaid; (b) reputable, overnight delivery service with acknowledgment receipt returned, and the giving of such communication shall be deemed complete on the immediately succeeding business day after the same is timely deposited with such delivery service; or (c) hand delivery by reputable delivery service. The name and address to which the notice shall be delivered to for each lot owner shall be the name and address stated for the taxpayer for the lot as stated in the Ramsey County property tax records.

**Insurance.** Each lot owner shall maintain or cause to be maintained on its respective lot comprehensive general commercial liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or are occasioned by, the condition, use or occupancy of its Lot and the Lot 2 Ingress and Egress Easement described herein. Each lot owner's liability insurance policy shall name the other lot owner, and its mortgagee if applicable, as additional insureds and certificate holders on its policy and shall contain a clause that the insurer will not cancel or change the insurance without first giving the additional insureds and mortgagee thirty (30) days prior written notice. Said insurance shall be issued by a reputable insurance company qualified to do business in the State of Minnesota, having limits of not less than One Million Dollars (\$1,000,000) per occurrence. Each lot owner shall, upon written request from the other, furnish a certificate of insurance evidencing the existence of insurance carried pursuant to this Declaration.

**Indemnification.** Each lot owner agrees to indemnify and hold the other lot owner harmless from any and all claims, debts, causes of actions, or judgments arising out of any damage to any property or injury to any person that may arise out of any of the actions within, or use of or around, the Lot 2 Ingress and Egress Easement, arising out of the negligence or misconduct by such lot owner, or its agents, employees, representatives, contractors and invitees.

*(signature page follows)*



IN WITNESS WHEREOF, the City of Roseville has executed this Declaration as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**City of Roseville,**  
a Minnesota municipal corporation

By: \_\_\_\_\_  
Dan Roe  
Its: Mayor

By:  \_\_\_\_\_  
Patrick J. Trudgeon  
Its: City Manager

STATE OF MINNESOTA    )  
  )SS:  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Dan Roe and Patrick J. Trudgeon, the Mayor and the City Manager, respectively, of the City of Roseville, a Minnesota municipal corporation on behalf of the City.

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

THIS INSTRUMENT WAS DRAFTED BY:  
Kennedy & Graven, Chartered (SJS)  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A**

**Legal Description of the Ingress and Egress Easement**

The South 40 feet of Lot 2, Block 1, Fairview Fire Station, except for that area of the South 40 feet that is striped and designated for parking as depicted on the site plan attached to this Declaration of Access Easement as **Exhibit B**, according to the recorded plat thereof, County of Ramsey, State of Minnesota.

**EXHIBIT B**

**Site Plan**

[to be added]

## EXHIBIT D

## Declaration of Equipment Shelter Access Easement

## DECLARATION OF EQUIPMENT SHELTER ACCESS EASEMENT

The City of Roseville, a Minnesota municipal corporation (the "**Declarant**") makes this Declaration of Equipment Shelter Access Easement (this "**Declaration**") as of \_\_\_\_\_, 2021 (the "**Effective Date**").

**WHEREAS**, the Declarant owns real property in Ramsey County, Minnesota legally described as: (i) Lot 1, Block 1, Fairview Fire Station ("**Lot 1**"); and (ii) Lot 2, Block 1, Fairview Fire Station ("**Lot 2**"); and

**WHEREAS**, Lot 1 contains the Declarant's water tower; and

**WHEREAS**, the Declarant leases space on its water tower and on Lot 1 to various cellular companies for their antennas and associated equipment and facilities; and

**WHEREAS**, there is an equipment shelter located on Lot 1 that is used by one of the cellular companies that can only be accessed via Lot 2 (the "**Equipment Shelter**"); and

**WHEREAS**, the Declarant will be conveying Lot 2 to the Roseville Economic Development Authority who will subsequently convey it to a third party; and

**WHEREAS**, the Declarant wants to ensure that it and any cellular companies who use the Equipment Shelter continue to have access to the Equipment Shelter via Lot 2 after the conveyances; and

**WHEREAS**, the Declarant desires to: (i) grant, declare, and impose an ingress and egress easement over Lot 2 for the benefit of Lot 1 for the purposes of accessing the Equipment Shelter on Lot 1.

**NOW THEREFORE**, the Declarant does hereby:

1. **Equipment Shelter Access Easement.** The Declarant hereby grants, declares, and imposes a non-exclusive, perpetual, appurtenant easement on, over, and across the portion of Lot 2 legally described and depicted on **Exhibit A** (the "**Equipment Shelter Access Easement**") for the benefit of Lot 1 to permit the owners of Lot 1 and any cellular lessee using the Equipment Shelter to use the Equipment Shelter Access Easement for vehicular and pedestrian ingress and egress to access the Equipment Shelter. The Equipment Shelter Access Easement may be improved for the benefit of Lot 2 as provided in paragraph 2 below. If deemed necessary for access to the Equipment Shelter, the Declarant or the cellular lessee using the Equipment Shelter may remove snow from the Equipment Shelter Access Easement area at its expense. The burdens of the Equipment Shelter Access Easement run with title to the portion of Lot 2 that is subject to the Equipment Shelter Access Easement and are binding upon the Declarant, as the owner thereof and its successors in title thereto. The benefits of the Equipment Shelter Access Easement run with title to Lot 1 and inure to the benefit of the Declarant as the owner of the Lot 1 and each of its

respective successors in title to all or any part of Lot 1. The Equipment Shelter Access Easement includes the right of the owners of Lot 1 and any cellular lessees using the Equipment Shelter to authorize and permit their respective employees, tenants, guests, and invitees to use the Equipment Shelter Access Easement to access the Equipment Shelter.

2. **Use of Easement; Restrictions on Interference.** The owner of Lot 2 may use the portions of Lot 2 that are subject to the Equipment Shelter Access Easement for purposes of providing vehicular parking, and may make associated improvements within the Easement, but may not use such area in any manner that interferes with or impairs the use of the Equipment Shelter Access Easement for ingress and egress purposes to the Equipment Shelter by the owners of Lot 1, the cellular lessees using the Equipment Shelter, and their respective employees, tenants, guests, and invitees, and further, such parties may utilize two (2) improved parking spaces on Lot 2 adjacent to the Equipment Shelter while making access to the Equipment Shelter, and may use paved and improved surfaces on Lot 2 to make vehicular access to such parking spaces.

3. **Enforcement.** The owner of Lot 1 or the cellular lessees may proceed, at law or in equity, to: recover damages for any breach of the Equipment Shelter Access Easement; specifically enforce the terms of the Equipment Shelter Access Easement; or restrain or enjoin the violation of the Equipment Shelter Access Easement; provided, however, that before commencing any proceedings to recover damages, the individual or entity seeking to enforce this Declaration must give the breaching party written notice of the alleged default and a period of not less than 30 days in which to cure the alleged default. In any proceedings at law or in equity to recover damages, or to specifically enforce or restrain or enjoin the violation of the terms of this Declaration, the prevailing party shall be entitled to recover its attorney's fees and costs.

4. **Terms and Amendment.** This Declaration shall become effective upon its recordation in the Office of the County Recorder, Ramsey County, Minnesota. This Declaration may be amended or modified only by an instrument signed by all of the owners of Lot 1 and Lot 2 and the cellular lessees using the Equipment Shelter. No amendment shall become effective prior to a duly executed and acknowledged copy being recorded in the Office of the County Recorder, Ramsey County, Minnesota. Any covenants, conditions, or restrictions contained herein shall not be subject to Minnesota Statutes Section 500.20.

5. **Severability.** Invalidation of any term or provision of this Declaration, by judgment or court order, shall not affect any of the other provisions hereof which shall remain in full force and effect.

6. **Interpretation.** Unless the context otherwise requires, the use of the singular shall include the plural and vice versa. The headings used herein are for convenience only and shall not be given any weight interpreting or construing the substantive provisions hereof.

7. **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Minnesota.

8. **Insurance.** Each lot owner shall maintain or cause to be maintained on its respective Lot comprehensive general commercial liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or are occasioned by,

the condition, use or occupancy of its Lot and the Equipment Shelter Access Easement described herein. Each lot owner's liability insurance policy shall name the other lot owner, and its mortgagee if applicable, as additional insureds and certificate holders on its policy and shall contain a clause that the insurer will not cancel or change the insurance without first giving the additional insureds and mortgagee thirty (30) days prior written notice. Said insurance shall be issued by a reputable insurance company qualified to do business in the State of Minnesota, having limits of not less than One Million Dollars (\$1,000,000) per occurrence. Each lot owner shall, upon written request from the other, furnish a certificate of insurance evidencing the existence of insurance carried pursuant to this Declaration.

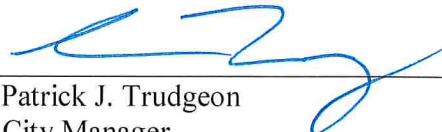
9. **Indemnification.** Each lot owner agrees to indemnify and hold the other lot owner harmless from any and all claims, debts, causes of actions, or judgments arising out of any damage to any property or injury to any person that may arise out of any of the actions within, or use of or around, the Equipment Shelter Access Easement, arising out of the negligence or misconduct by such lot owner, or its agents, employees, representatives, contractors and invitees.

*(signature page follows)*

IN WITNESS WHEREOF, the City of Roseville has executed this Declaration as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**City of Roseville,**  
a Minnesota municipal corporation

By: \_\_\_\_\_  
Dan Roe  
Its: Mayor

By:  \_\_\_\_\_  
Patrick J. Trudgeon  
Its: City Manager

STATE OF MINNESOTA    )  
  )SS:  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Dan Roe and Patrick J. Trudgeon, the Mayor and the City Manager, respectively, of the City of Roseville, a Minnesota municipal corporation on behalf of the City.

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

THIS INSTRUMENT WAS DRAFTED BY:  
Kennedy & Graven, Chartered (SJS)  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A**

**Legal Description of the Equipment Shelter Access Easement Area**

That portion of the West 20 feet of Lot 2, Block 1, Fairview Fire Station, according to the recorded plat thereof, County of Ramsey, State of Minnesota, which directly abuts the Equipment Shelter.



**EXHIBIT E**

**Encroachment Agreement**

**ENCROACHMENT AGREEMENT**

This instrument made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Roseville, a Minnesota municipal corporation, (hereinafter referred to as the "City"), with its office at 2660 Civic Center Drive, Roseville, MN 55113, and Genisys Credit Union, a \_\_\_\_\_, with its office at \_\_\_\_\_ (hereinafter referred to as the "Owner").

WITNESSETH THAT:

WHEREAS, various drainage and utility easements were dedicated to the City in the recorded plat of Fairview Fire Station, including the following drainage and utility easements:

The West 20 feet of Lot 2, Block 1, Fairview Fire Station, according to the recorded plat thereof, County of Ramsey, State of Minnesota; and

The South 40 feet of Lot 2, Block 1, Fairview Fire Station, according to the recorded plat thereof, County of Ramsey, State of Minnesota

(hereinafter referred to as the "Easements"); and

WHEREAS, the City has installed various drainage and utility improvements within the Easements (the "Drainage and Utility Improvements") and has the right to install additional drainage and utility improvements and facilities within the Easements; and

WHEREAS, the Owner is the present owner of the following described real property, with the Drainage and Utility Improvements situated upon the following described land in Ramsey County, Minnesota (the "Owned Premises"):

Lot 2, Block 1, Fairview Fire Station, according to the recorded plat thereof,  
County of Ramsey, State of Minnesota.

WHEREAS, the Owner plans to construct and install driveway, parking areas, curbing and grass (hereinafter referred to as the "Encroachments") upon and within the Easements upon obtaining this written consent; and

WHEREAS, the Owner has requested permission from the City to maintain, use, and enjoy the Encroachments upon the Easements; and

WHEREAS, the City is willing to grant such permission upon the terms and conditions set forth as follows.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. The City hereby grants permission to the Owner to maintain, operate, and use upon the Owned Premises, the said Encroachments within the Easements in the locations shown on the attached Exhibit A, subject to the following conditions:

A. That the Owner assumes all risks for damages, injuries, or loss to either property or persons, which may be incurred by the Owner or its respective agents, invitees, or licensees present on or in the vicinity of the Easement and in any way associated with said Encroachments.

B. That the permission granted herein is limited exclusively to the proposed Encroachments within the Easements.

C. That the Owner shall at all times conduct all its activities on said Easements in such a manner as not to interfere with or impede the City's operation of its Drainage and Utility Improvements and activities in any manner whatsoever.

2. The Owner agrees to indemnify, protect, and hold the City, its officials, employees, agents, and contractors harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, injury, suit, proceeding, judgment, cost, or expense of whatever kind or nature, including but not limited to reasonable attorneys' fees, arising from or as a result of any incident, act, action, cause of action, negligence, transaction or omission of the Owner in connection with, or incidental to the construction, operation, maintenance, or use of the said Encroachments within, upon or in the vicinity of the Easements, or from the operation, maintenance, use or presence of the Drainage and Utility Improvements upon or in the vicinity of the Encroachments except where such loss, cost, liability, or expense was proximately caused by the negligence of the City or its officials, employees, agents, or contractors.

3. The Owner agrees that protection of the Drainage and Utility Improvements will be maintained by the Owner at all times. The Owner shall be responsible for any damage that it causes to the Drainage and Utility Improvements.

4. Should the City need to remove any of the Encroachments within its Easements in order to construct, maintain, operate, repair, or remove any of the City's existing or additional Drainage and Utility Improvements, the Owner or its respective successors and assigns shall pay the cost of removing and replacing or reinstalling the Encroachments. The City shall not be liable for loss, damage, or replacement to the Encroachments and in this regard the Owner hereby releases the City, its officials, employees, agents, and contractors from any and all liability for any such loss or damage.

5. The parties hereto understand that this Agreement in no way constitutes a waiver by the City of its rights to enjoy its Easements unencumbered by the construction of said Encroachments within the City's Easements.

6. It is expressly agreed to by and between the parties hereto that if the Owner is in violation of any terms or conditions set forth in this Agreement, the City, at its option, may provide written notice to the Owner of such failure and the Owner shall have thirty (30) days from the date of such notice to correct such violation. The City may terminate this Agreement for any reason upon 90

days' written notice to the Owner at the address set forth above. In the event of such termination, the Owner shall immediately remove any and all of said Encroachments which may be situated on the Easements, or if the Owner fails to remove any and all of said Encroachments, the City may, at its option, remove said Encroachments at the expense of the Owner and without any liability whatsoever. It is further agreed that the failure by the City to exercise such option as to any such violation shall not constitute a waiver of the City's future right to exercise such option as to the same or any future violations.

7. All rights, powers, privileges, and duties, obligations, and liabilities created by the Easements remain in full force and effect and are not affected hereby except to the extent and in the manner set forth above.

8. The City and the Owner agree to indemnify, defend and hold the other and their respective officials, employees, agents, and contractors harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from: (1) non-compliance with any laws, regulations, and orders applicable to the ownership or the operation and maintenance of the said Encroachments or Easements on the Owned Premises described herein, and (2) any incidents, acts, releases, negligence, transactions or omissions, or conditions on or affecting the Easement caused by the City or the Owner that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easements.

This instrument and the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties and the benefits of this Agreement shall run with the land.

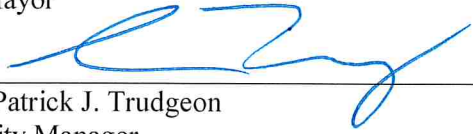
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[Remainder of page intentionally left blank. Signature and Acknowledgment pages follow.]

**COUNTERPART SIGNATURE PAGE**

**CITY OF ROSEVILLE**

By: \_\_\_\_\_  
Name: Dan Roe  
Title: Mayor

By:  \_\_\_\_\_  
Name: Patrick J. Trudgeon  
Title: City Manager

**ACKNOWLEDGMENT**

STATE OF MINNESOTA           §  
  § SS:  
COUNTY OF RAMSEY         §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Dan Roe and Patrick J. Trudgeon, the Mayor and the City Manager, respectively of the City of Roseville, a Minnesota municipal corporation, on behalf of the City.

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

**COUNTERPART SIGNATURE PAGE**

**OWNER:**

**GENYSIS CREDIT UNION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

§

§ SS:

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of Genisys Credit Union, a \_\_\_\_\_ under the laws of \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

Drafted by:

Kennedy & Graven, Chartered (SJS)  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A**

**Depiction of the Encroachments**

**[to be added]**

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**FIRST AMENDMENT TO PURCHASE AGREEMENT**

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT (this “**Amendment**”) is made effective as of this \_\_\_\_ day of September, 2021 (the “Effective Date”) by and between the Roseville Economic Development Authority, a Minnesota body corporate and politic (the “Seller”), and Genisys Credit Union, a credit union chartered in the state of Michigan (the “Buyer”).

**RECITALS**

- A. The Seller and the Buyer entered into that certain Purchase Agreement effective as of April 19, 2021 (the “Purchase Agreement”) for the purchase and sale of certain property located in the City of Roseville, County of Ramsey, State of Minnesota, as defined and legally described in the Purchase Agreement (the “Sale Parcel”).
- B. The Buyer and the Seller mutually desire to amend the Purchase Agreement.

NOW, THEREFORE, for good, fair, and valuable consideration, the Buyer and the Seller hereby agree as follows:

- 1. Section 5 of the Purchase Agreement is hereby amended to read as follows:

**5. CONTINGENCIES WHICH MUST BE EXERCISED BY WRITTEN NOTICE TO THE SELLER NO LATER THAN 270 DAYS OF THE EFFECTIVE DATE OF THIS AGREEMENT (THE “CONTINGENCY DATE”):**

5.1. Buyer’s Contingencies.

5.1.1. Testing. The Buyer shall have determined that it is satisfied with the results of, and matters disclosed by, any environmental site assessments, soil tests, engineering inspections, hazardous substances, and environmental reviews of the Sale Parcel, all such tests, assessments, inspections, and reviews to be obtained at the Buyer’s sole cost and expense.

- a. The Buyer shall pay all costs and expenses of such investigation and testing and shall promptly repair and restore any damage to the Sale Parcel caused by the Buyer’s testing and return the Sale Parcel to substantially the same condition as existed prior to entry. The Buyer shall not be permitted to perform any testing on the building on the Sale Parcel that would cause permanent damage to the building as determined by the City’s Building Inspection Department. The Buyer shall indemnify, defend, and hold the Seller harmless from any claim for damage to person or property arising from any investigation or inspection of the Sale Parcel conducted by the Buyer, its agents or contractors, including the cost of attorneys’ fees, provided, however, that the Buyer shall not be responsible for any pre-existing conditions that are discovered by the Buyer or its consultants so long as, following discovery, the Buyer or its

consultants do not materially exacerbate such conditions through their actions.

- b. Copies of any final written reports, studies, or test results obtained by the Buyer in connection with its inspection of the Sale Parcel or investigation relating to the Sale Parcel shall be delivered to the Seller promptly upon receipt of the same at no cost to the Seller.

5.1.2. Title Report. The Buyer's obligation to close hereunder is subject to its approval of a commitment of title for the Sale Parcel as is more fully described in Section 8.

5.1.3. Land Use Approvals. The Buyer having received all land use approvals from the City and any other governmental entities or agencies deemed necessary by the Buyer for its intended use of the Sale Parcel, including, but not limited to, zoning, a conditional use permit, access approval from Ramsey County with respect to any proposed drive throughs, and any other approvals necessary for the Buyer to be able to conduct drive through operations for its credit union to be located on the Sale Parcel. The Buyer shall be responsible for the costs of obtaining said land use approvals and any necessary traffic studies, with the exception of the subdivision of the Property that is needed to create the Sale Parcel, which shall be the responsibility of the City and the Seller. In the event that any land use approvals are needed by the Buyer from the City, said land use approvals will be conditioned upon the Buyer closing on its purchase of the Sale Parcel.

If, on or before the Contingency Date or if required earlier by this Agreement, if the Buyer determines that any of its contingencies listed in this Section have not been satisfied in its sole discretion, then this Agreement may be terminated by written notice from the Buyer to the Seller, which notice must be given no later than the Contingency Date. If the Buyer does not give written notice of termination on or before the Contingency Date, all of such contingencies will be deemed to have been satisfied and the parties shall proceed to close this transaction in accordance with the terms of this Agreement. If this Agreement is terminated by the Buyer in accordance with this Section, the Title Company shall return the Earnest Money to the Buyer and neither party shall have any further rights or obligations regarding this Agreement or the Sale Parcel. All of the contingencies set forth in this Agreement are specifically stated and agreed to be for the sole and exclusive benefit of the Buyer and the Buyer shall have the right to unilaterally waive any of its contingencies by written notice to the Seller.

2. All references to "additional Earnest Money" are hereby removed from the Purchase Agreement.
3. A new Section 26 is added to the Purchase Agreement which shall read as follows:



**26. RESPONSE TO PETROLEUM LEAK.**

- 26.1. Reporting the Leak. The Buyer's Phase I and Phase II environmental assessments have disclosed that there is a petroleum leak that occurred on the Sale Parcel. The Buyer shall be responsible for reporting the petroleum leak to the Minnesota Pollution Control Agency (the "MPCA"). The Buyer shall report the leak to the MPCA no later than seven days of the Effective Date of this Amendment.
- 26.2. Brownfield Program Application. The Buyer shall also be responsible for enrolling the Sale Parcel into the MPCA Brownfield Program which is a fee-for-service program that provides technical assistance and issuance of various liability assurance letters to promote the investigation, cleanup, and redevelopment of property that is contaminated with petroleum. Said application shall be made by the Buyer no later than 30 days of the Effective Date of this Amendment.
- 26.3. Reimbursement. The Seller has agreed to reimburse the Buyer for certain costs incurred by the Buyer related to the petroleum leak in an amount not to exceed \$40,000. The Seller shall deposit the \$40,000 in escrow with the Title Company, at Closing, to be paid towards the costs incurred by the Buyer for the following activities associated with the petroleum leak on the Sale Parcel: testing to determine the nature and extent of impacts to include vapor testing, a second round of vapor testing (to be completed after November 1, 2021), the MPCA Brownfield Program fees including the application fee and any application assistance and/or technical review assistance fees, response action plan (RAP) report fees (if determined by the MPCA to be necessary), soil disposal/remediation (if determined by the MPCA to be needed), installation of a vapor mitigation system for the building (if determined by the MPCA to be needed), environmental construction oversight fees, confirmation testing fees, and RAP implementation report fees. Should said activities not be completed by the Buyer by the date of Closing, the funds will remain in escrow with the Title Company until the activities are complete. Any unused funds shall be returned to the Seller. The Buyer shall be responsible for any costs that exceed \$40,000.
- 26.4. Petrofund Application. In order to mitigate the costs, the Buyer shall make application to the Petroleum Tank Release Cleanup Fund for reimbursement of its costs. The Seller will pay the cost of the Buyer's application out of the funds deposited in escrow with the Title Company.
- 26.5. Seller's Obligation for Payment of Costs. The Seller and the Buyer understand that the Seller shall only be obligated to pay the Buyer's costs as set forth in this Section in the event that the Buyer closes on its purchase of the Sale Parcel. Should the Buyer not close on its purchase of the Sale Parcel, the Seller shall not be obligated to pay any of the Buyer's costs.

## ATTACHMENT B

4. Wherever there is a conflict between the provisions contained in the Purchase Agreement, the provisions this Amendment shall control. Except as expressly amended, supplemented, or modified by this Amendment, the Purchase Agreement shall continue in full force and effect. All capitalized terms contained in this Amendment, unless specifically defined herein, shall have the meaning ascribed to them in the Purchase Agreement. This Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.
5. This Amendment may be executed in any number of identical counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as a single instrument. For purposes of this Amendment, signatures by facsimile or .pdf shall be binding to the same extent as original signatures.

**ATTACHMENT B**

IN WITNESS WHEREOF, the Seller and the Buyer have executed this Amendment as of the Effective Date set forth in the opening paragraph.

**BUYER:**

**GENISYS CREDIT UNION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**SELLER:**

**ROSEVILLE  
ECONOMIC DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
Dan Roe

Its: President

By: \_\_\_\_\_  
Patrick Trudgeon

Its: Executive Director



47 WHEREAS, by Resolution No. 88, the REDA authorized the President and Executive Director  
48 to execute the Purchase Agreement providing for the conveyance of the Property  
49 to Genisys, and  
50

51 WHEREAS, Genisys, after performing due diligence in accordance with the terms and  
52 conditions of the Purchase Agreement, uncovered contamination necessitating the  
53 need to execute a First Amendment to Purchase Agreement (the "Amendment"),  
54 attached to the Resolution as Exhibit D, to provide for additional terms and  
55 conditions for the sale of the Property and to specify additional obligations and  
56 responsibilities of both REDA and Genisys surrounding the sale of the Property.  
57

58 NOW, THEREFORE, BE IT RESOLVED, that:  
59

- 60 1. REDA approves the Amendment, subject to modifications that do not alter the  
61 substance of the transaction and that are approved by the President and the  
62 Executive Director of REDA, provided that execution of the Amendment by those  
63 officials shall be conclusive evidence of their approval.  
64
- 65 2. REDA staff and officials are authorized to take all actions necessary to perform  
66 REDA's obligations under the Amendment.  
67

68 The motion for the adoption of the foregoing resolution was duly seconded by Member  
69 \_\_\_\_\_, and upon a vote being taken thereon, the following voted in favor thereof:  
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71 and the following voted against the same:  
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73 WHEREUPON said resolution was declared duly passed and adopted.  
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Certificate

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I, the undersigned, being duly appointed Executive Director of the Roseville Economic Development Authority, hereby certify that I have carefully compared the attached and foregoing resolution with the original thereof on file in my office and further certify that the same is a full, true, and complete copy of a resolution which was duly adopted by the Board of Commissioners of said Authority at a duly called and specially held meeting thereof on September 13, 2021.

Witness my hand as the Executive Director of the Authority this \_\_\_\_ day of September, 2021.

---

Patrick Trudgeon, Executive Director  
Roseville Economic Development Authority

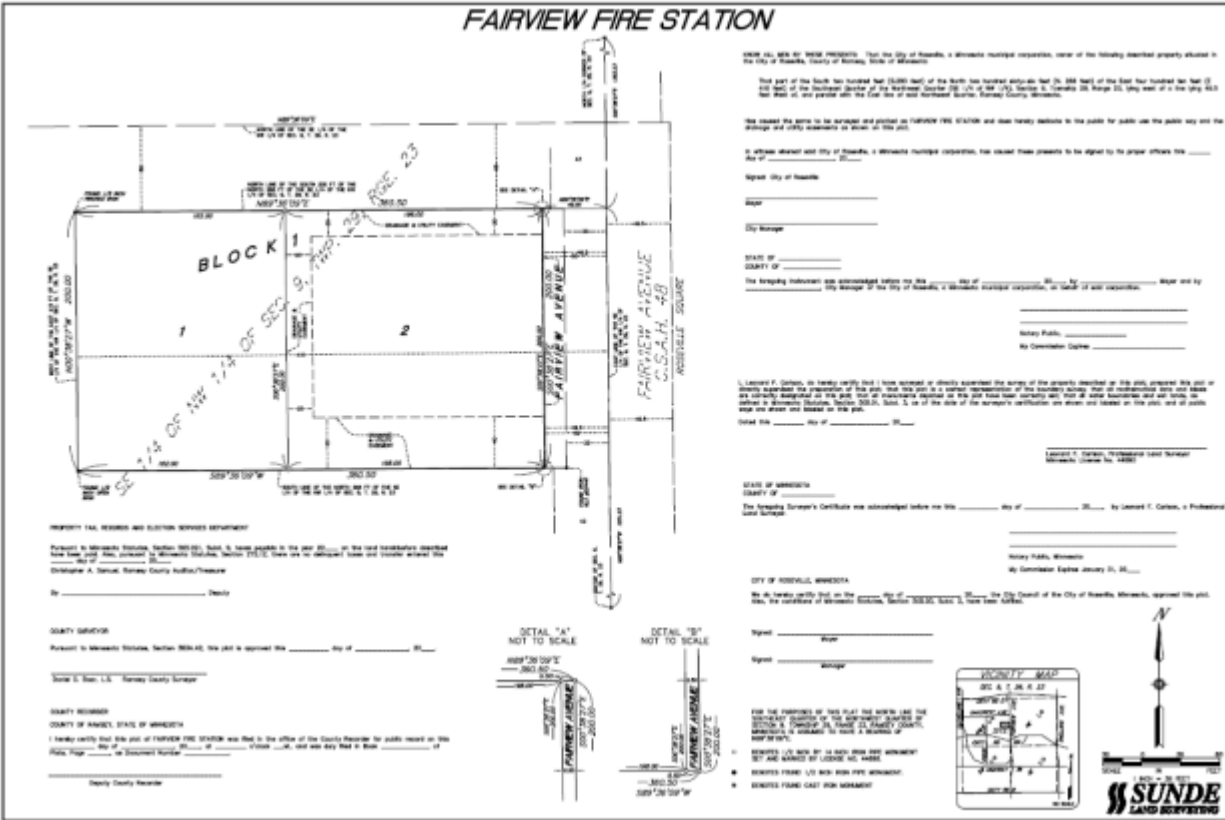
**EXHIBIT A**

The South 200 feet of the North 266 feet of the East 410 feet of the Southwest Quarter of the Northwest Quarter of Section 9, Township 29, Range 23, lying West of a line lying 49.5 feet West of, and parallel with the East line of said Northwest Quarter, Ramsey County, Minnesota

Parcel ID 092923240002

EXHIBIT B

FAIRVIEW FIRE STATION





**EXHIBIT C**

**Purchase Agreement**

**[to be attached]**

**EXHIBIT D**

**First Amendment to Purchase Agreement**

**[to be attached]**