

PURCHASE AND DEVELOPMENT AGREEMENT

THIS PURCHASE AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of October ____, 2024 (“**Effective Date**”), by and between DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and political subdivision under the laws of the State of Minnesota (“**Seller**”) and TWIN PORTS TESTING II, INC., a Wisconsin corporation and JBJ ATLAS PROPERTIES, LLC, a Minnesota limited liability company, collectively referred to as “**Buyer**” and each shall be jointly and severally liable for all Buyer obligations under this Agreement.

RECITALS

A. DEDA is the current owner of real property in Duluth, St. Louis County, Minnesota, legally described on the attached **Exhibit A** (the “**Real Property**”).

B. Buyer wishes to obtain title to the Property (defined below) for economic development purposes and is desirous of acquiring the Property for the development of an approximately ten thousand (10,000) square foot building in which to conduct its materials testing business; and the Seller is desirous of Buyer doing so.

C. DEDA has the power to sell and convey property owned by it if it determines that the sale and conveyance are in the best interest of the City of Duluth (“**City**”) and its people, and that the transaction furthers its general plan of economic development, and the closing of this transaction is conditioned upon DEDA making such findings.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt, sufficiency and mutuality of which are acknowledged, Buyer and Seller agree as follows:

1.0 Property to Be Purchased. Subject to Buyer’s compliance with the terms and conditions of this Agreement, Seller shall sell the Property to Buyer on the terms and conditions set forth in this Agreement. Buyer shall purchase from Seller the following (collectively, the “**Property**”):

- (a) the Real Property; and
- (b) all improvements located on the Real Property, if any.

Seller shall convey and Buyer shall accept title to the Property subject to (i) the easements, restrictions and reversionary clause set forth in the quit claim deed attached as **Exhibit B** (the “**Deed**”); (ii) the Memorandum of Development Agreement, substantially in the form attached as **Exhibit C**; (iii) the Permitted Exceptions (defined in Section 4.3 below).

2.0 Purchase Price. The purchase price to be paid by Buyer for the purchase of the Property shall be Five Thousand Two Hundred Dollars and no/100 Dollars (\$5,200.00) multiplied times the

gross acreage of the Property to the nearest one one-hundredth (1/100th) of an acre (the property is approximately 5 acres) of the Real Property (the “**Purchase Price**”). The Purchase Price shall be determined by survey obtained at the expense of Buyer; the total Purchase Price shall be the number of surveyed acres times the price per acre described above.

2.1 Deposit of Funds. Buyer shall cause all funds to be paid at Closing (defined below) to be deposited into Seller fund 860-860-8641-4640.

2.2 Non-Refundable Fee. Pursuant to Seller’s fee schedule, Buyer has paid a non-refundable development application fee of \$1,000, the receipt of which is acknowledged by Seller.

3.0 Closing. The closing of the purchase and sale of the Property from Seller to Buyer contemplated by this Agreement (the “**Closing**”) shall occur on a date mutually acceptable to Seller and Buyer but no later than January 15, 2025 (the “**Closing Date**”). The Executive Director (“**Director**”) of DEDA has the authority to extend this Closing Date by three months upon a showing of good cause. The Closing shall take place at the office of First American Title & Abstract Company (“**Title**”) in Duluth, Minnesota, or at such other place as the parties shall mutually agree upon. At Closing, the Director has the authority to amend this Agreement to attach a complete and correct legal description of the Property determined by survey.

4.0 Contingencies.

4.1 Seller Contingency. Seller’s obligation to sell the Property to Buyer is contingent upon the timely occurrence or satisfaction of each of the following conditions prior to or on the Closing Date:

- Public Hearing. Sale of the Real Property is contingent upon a determination by DEDA as to the advisability of the sale; that the sale and conveyance are in the public interest, the best interests of the City of Duluth and its people; and that the transaction furthers DEDA’s general plan for economic development, after a public hearing required under Minnesota Statutes, Section 469.105. The parties understand and agree that the sale/purchase of the Property is contingent upon the Board of Commissioners of DEDA.
- Preliminary Plans. Prior to the above public hearing required by Minnesota Statutes, Section 469.105, subd. 2, and pursuant to Minnesota Statutes, Section 469.105, subd. 7, the Buyer shall submit to Seller for approval preliminary plans and specifications for the development of the Real Property, which approval by the Director must be in writing. The Buyer has submitted a proposal to purchase the Real Property for to build an approximately ten thousand (10,000) square foot building in which to conduct its business. The business of Buyer is focused on the nondestructive testing of materials, including material integrity and welding and other testing services for various enterprises located in the tri-state area. This work includes construction materials testing, testing of other materials, testing fuels

analysis, industrial hygiene, and geotechnical drilling and engineering as well as consulting (the “**Project**”).

- Final Plans. Prior to the transfer of title of the Real Property, the Buyer shall submit to Seller the final plans and specifications for the development of the Real Property; no transfer shall be made unless and until such plan are approved in writing by the Director. The detail of the plans and specifications shall enable Seller to determine with reasonable certainty that the Project on the Real Property is or will be in compliance with the law and will, if carried out, provide for the intended use.

4.2 Title. Seller shall have no obligation to provide Buyer with a title commitment or an owner’s policy of title insurance covering the Property. Buyer may elect to purchase a title commitment at its own expense from Title, which shall in no event delay Closing (the “**Title Commitment**”). In the event that the Title Commitment reflects that the title to the Property is not in a condition that is acceptable to Buyer, Buyer may object to the title defects by specifying its objections in writing to Seller within 15 days of receipt of the Title Commitment. At Seller’s election, Seller may fix any title defects or may decline to fix any title defects by delivering written notice to Buyer within 14 days of receipt of Buyer’s title objections. If Seller agrees to fix the title defects, Seller shall fix the title defects and the parties shall proceed to the Closing subject to the terms and conditions of this Agreement. If Seller declines to fix, the title defects or fails to do so prior to the Closing Date, Buyer may: (i) terminate this Agreement by delivering written notice of termination to Seller; or (ii) waive its objections and proceed to the Closing. If Buyer does not cancel this Agreement prior to Closing, Buyer shall accept title to the Property in as-is condition as of the Closing. Any title exceptions, defects or encumbrances that are not objected to by Buyer as set forth in this Section 4.2, or are initially objected to but later waived or deemed waived by Buyer as set forth in this Section 4.2, are referred to collectively in this Agreement as the “**Permitted Exceptions**.”

4.3 Property Inspection. Buyer shall have determined, on or before the expiration of the Due Diligence Period, that it is satisfied with the condition of the Property. The Due Diligence Period shall terminate seventy-five (75) days after execution of this Agreement. Buyer agrees to provide Seller a cop of all Due Diligence Investigations. If Buyer is unsatisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to Seller prior to the Closing Date. If Buyer terminates this Agreement pursuant to this paragraph, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly provided for in this Agreement.

4.4 Right of Entry. Seller hereby authorizes the Buyer and its employees, agents or contractors (collectively, the “**Buyer’s Representatives**”) to enter upon the Property to conduct the Due Diligence Investigations. Buyer, its agents, contractors, employees or invitees shall conduct their activities on the Property in an orderly and lawful manner, securing at their own expense all required permits and licenses. Buyer shall pay all costs and expenses of such investigation and testing, and shall repair any damages it causes to the Property.

- 4.5 Hold Harmless and Indemnity. During the Term, Buyer agrees to indemnify, defend and hold harmless Seller from and against any and all liabilities, damages, costs, expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands, or judgments of any nature whatsoever to the extent arising from Buyer or Buyer's Representative's performance of the Due Diligence Investigations (but specifically excluding any liabilities arising from discovery of any hazardous substances or other pre-existing conditions on the Property). On ten (10) days written notice from Seller, Buyer will appear and defend all lawsuits against Seller growing out of such injuries or damage.
- 4.6 Insurance. Prior to Buyer's entry upon the Property, Buyer shall deliver to Seller or cause Buyer's Representatives to deliver to Seller, a certificate or certificates of insurance evidencing general liability and automobile liability insurance with coverage in amounts not less than \$1,5000,000.00 Single Limit and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability; and other customary coverages including worker's compensation coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota law; and shall name Seller and the City of Duluth as an additional insured on each policy except Buyer's worker's compensation policy. Umbrella coverage with a "form following" provision may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above.
- 4.7 Condition of Property. Buyer, at its sole expense, agrees to keep the Property in a clean and safe condition during the Term, not to make any improvements without the prior written approval of Seller, to restore the Property to substantially the condition existing prior to Due Diligence Investigations conducted by Buyer or Buyer's Representatives, and to repair any damaged improvements prior to the end of the Term. Buyer shall not be liable for the mere discovery of existing conditions on the Property, and shall have no obligation to remediate any hazardous or dangerous condition created by Seller or existing on the Property prior to Buyer's entry.
- 4.8 DEED Contingency. Seller acknowledges that Buyer may pursue certain incentives related to the Property from the Minnesota Department of Employment and Economic Development ("DEED") and Seller agrees to reasonably cooperate with Buyer's pursuit of certain incentives under Minnesota Job Creation Fund and the Minnesota Investment Fund (the "State Incentives"). The sale of the Property is contingent on Job Creation Fund and Minnesota Investment Fund awards to Buyer from DEED (the "DEED Contingency"). Buyer shall have the right to terminate this Agreement due to a failure to receive State Incentives.
- 5.0 Conditions to Closing.
- 5.1 Seller's Conditions to Closing. The Closing of the transaction contemplated by this Agreement and the obligation of Seller to sell the Property shall be subject to the following conditions:
- (a) Representations. Buyer's representations in this Agreement shall be true at the time of Closing as though such representations were made at such time.

- (b) Performance by Buyer. Buyer shall have performed all of its obligations under this Agreement.
- (c) Approval. The DEDA Board shall have adopted a resolution approving the conveyance on the terms and conditions set forth in this Agreement (the “DEDA Board Contingency”). The DEDA Board Contingency cannot be waived.

If the conditions set forth at 5.1(a) and (b) have not been satisfied or waived prior to the Closing Date, this Agreement may be terminated, at the option of Seller, by written notice from Seller to Buyer delivered to Buyer no later than the Closing Date. All of the contingencies set forth in Section 5.1 of this Agreement are for the sole and exclusive benefit of Seller and Seller shall have the right to unilaterally waive any contingency by written notice to Buyer.

- 5.2 Buyer’s Conditions to Closing. Seller will cause Barr Engineering to furnish all environmental information developed from Barr’s work on the real property. Such information shall be furnished within ten (10) days of the execution hereof. The Closing of the transaction contemplated by this Agreement and the obligation of Buyer to purchase the Property shall be subject to the Buyer having provided a no association determination from the State of Minnesota Pollution Control Agency (the “MPCA”).

It is expressly understood by the parties that Closing is not conditioned upon Seller obtaining a no further action determination from the MPCA. However, Seller agrees to make reasonable efforts to seek a no further action determination in connection with its ownership of the Property.

- 6.0 Buyer Representations. Buyer makes the following representations:

- (a) Authority to Enter into Agreement. Buyer is a Wisconsin corporation qualified to do business in Minnesota and in good standing under the laws of the State of Minnesota, has the full power and authority to: (i) enter into this Agreement; and (ii) purchase the Property in accordance with this Agreement.
- (b) No Additional Consent Needed. No consent or authorization from any other person, entity or government agency is required for Buyer to enter into and perform Buyer’s obligations under this Agreement except as has already been obtained.
- (c) No Impact on Other Agreements. The execution of this Agreement will not constitute a breach or default under any agreement to which Buyer is bound.
- (d) No Other Actions Affecting Agreement. There is no suit, action, legal, administrative or other proceeding or inquiry pending or threatened against Buyer which could affect Buyer’s ability to enter into and perform Buyer’s obligations under this Agreement. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending

or threatened against Buyer, nor are any such proceedings contemplated by Buyer.

- (e) Prompt Payment of Obligations. Buyer shall promptly pay when due any and all charges for engineering, surveying or other studies, reports, assessments or investigations which are commissioned or requested by Buyer.
- (f) Buyer Investment Commitment. To fulfill the economic development purposes of the sale of the Property, Buyer agrees: (i) to develop the Project described in 4.1 under “preliminary plans”, and create 17 new FTE jobs that are new to the state of Minnesota. Buyer agrees that its development of the Property shall be constructed and installed only in conformance with approved plans and must conform to all applicable building, zoning, or other codes or ordinances. Buyer will acquire any and all necessary permits for the construction on the Property. Buyer hereby agrees that no later than two (2) years from the date of conveyance, Buyer will have completed the construction of the Project as defined in this Agreement on the Property and will have created the number of jobs as stated herein.
- (g) One-year Deadline. Within one (1) year of the date of conveyance of the Property, Buyer shall devote the Property to the intended use as set forth in this Section, or begin improvements to the Property to devote it to that use. Buyer shall not transfer title to the Property within one year of purchase without the consent of Seller.
- (h) Developer Default. If Buyer fails to commence work on time or devote the Property to its intended use on time, Seller may cancel the sale and title to the Property shall revert to Seller, at Seller’s election, and in that event, Buyer shall promptly offer a deed to the Property legally described herein, to Seller, who will then refund Buyer the amount of the Purchase Price paid by Buyer to Seller, without interest, less any taxes or other encumbrances affecting the marketability of title. Notwithstanding the foregoing, the DEDA Executive Director may, at their discretion, consider an extension of time for good cause shown by Buyer, and upon conditions to protect the public interest. In the event an extension is granted, such extension shall be to a date certain.

Each of the above representations is material and is relied upon by Seller. Each of the above representations shall be deemed to have been made as of the Closing and shall survive the Closing.

7.0 Statutory Disclosures. Seller’s employees directly handling the sale of the Property on behalf of Seller have no actual knowledge of the following with respect to the Property: (1) the presence of a well, underground storage tank or subsurface sewage treatment system; (2) methamphetamine production on the Property; (3) records or reports relating to lead-based paint and/or lead-based paint hazards; or (4) radon concentrations.

8.0 As Is Provisions. Buyer is purchasing the Property “AS IS” and “WHERE IS”, and with all faults. Seller makes no representations or warranties, whether express or implied, by

operation of law or otherwise, with respect to the quality, physical condition or value of the Property, the compliance of the Property with applicable building or fire codes or other laws or regulations. Buyer agrees that Seller is not liable or bound by any guarantees, promises, statements, representations or information pertaining to the Property made or furnished by Seller or any agent, officer, director, employee or other person representing or purporting to represent Seller, except as and to the extent expressly set forth in Section 7.0. To the fullest extent allowed by Minnesota and Federal law, Buyer and Seller agree as follows: Buyer expressly waives the requirement of any disclosure not expressly contained in this Agreement (including, without limitation, any disclosure required pursuant to Minn. Stat. §513.52-513.60), and Buyer agrees to take the Property "As Is" notwithstanding any matter set forth in any disclosure statement required by Minnesota law.

BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN SECTION 7.0, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO:

- (a) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY;
- (b) THE INCOME TO BE DERIVED FROM THE PROPERTY;
- (c) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON;
- (d) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCE OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY OR ANY FRANCHISE LICENSE OR AGREEMENT OR ANY GRANT OR SIMILAR AGREEMENT;
- (e) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY;
- (f) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY;
- (g) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY;
- (h) THE AVAILABILITY OF WATER OR OTHER RESOURCES OR UTILITIES;
OR

- (i) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION OR POLLUTION RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING SOLID WASTE, AND INCLUDING THE DISPOSAL, RELEASE OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS SUBSTANCE.

9.0 Independent Investigation. The consummation of this transaction shall constitute Buyer's acknowledgment that Buyer has independently inspected and investigated the Property and has made and entered into this Agreement based upon such inspection and investigation and its own examination of the condition of the Property. Upon Closing, Buyer shall assume the risk that adverse matters, including but not limited to construction defects and adverse physical and environmental conditions and the suitability or unsuitability of the Property for Buyer's intended uses, may not have been revealed by Buyer's investigations. Buyer, upon Closing, shall be deemed to have waived, relinquished and released Seller from and against, and covenanted not to sue any of the foregoing with regard to, any and all claims, demands, causes of action (including causes of action in tort or under any environmental law), losses, damages, liabilities (whether based on strict liability or otherwise), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against Seller at any time (including without limitation to the extent covered by or that would be covered by [as opposed to paid] by insurance) by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws), the suitability of the Property for any purposes contemplated by Buyer and any and all other acts, omissions, events, circumstances or matters regarding the Property.

10.0 Buyer Reliance. All information, whether written or oral, previously, now, or hereafter made available to Buyer by Seller, its agents, or any other person acting for or on behalf of Seller, whether in the form of appraisals, market studies, projections, brochures, maps, surveys, soil reports, engineering studies, environmental studies, inspection reports, plans and specifications, and all other information and materials have been or will be furnished by Seller to Buyer solely as an accommodation, and neither Seller nor its agents has verified the accuracy of such information or the qualifications of the persons preparing such information. Buyer agrees that, notwithstanding the fact that Buyer has received certain information from Seller, or its respective agents or consultants, Buyer has relied solely upon and will continue to rely solely upon its own analysis and will not rely on any information provided by Seller, or its agents or consultants.

11.0 Real Estate Taxes and Special Assessments. Real estate taxes and any special assessments payable in the year 2024 shall be prorated between Seller and Buyer to the Closing Date. Buyer shall be responsible for all real estate taxes and assessments that are levied or become pending against the Property following Closing and all subsequent years.

12.0 Closing Documents. At or prior to Closing, the parties shall execute and deliver the following, as applicable:

- (a) The Deed, substantially in the form attached as Exhibit B.
- (b) Resolution by Seller, in recordable form, authorizing the conveyance of the Property to Buyer.
- (c) All other documents required by this Agreement or reasonably required by Title to effectuate the provisions of this Agreement.

13.0 Closing Costs. The following costs and expenses shall be paid in connection with the Closing:

- (a) Buyer shall pay the cost of:
 - (i) All fees associated with the issuance of a title commitment, if any, including state and federal tax lien, judgment and bankruptcy searches;
 - (ii) The premium for a title policy insuring title to the Property in the name of Buyer in the amount of the Purchase Price;
 - (iii) Any surveys, reports or inspection reports obtained by Buyer;
 - (iv) All state deed taxes and/or transfer taxes on the Deed;
 - (v) All recording fees, including but not limited to record the Deed and Seller's resolution authorizing the sale of the Property to Buyer;
 - (vi) Title's closing fees;
 - (vii) All attorneys' fees and expenses incurred by Buyer; and
 - (viii) Any other item allocated to Buyer in this Agreement.
- (b) Seller shall pay the cost of:
 - (i) All attorneys' fees and expenses incurred by Seller;
 - (ii) All expenses, including recording fees, to correct any objections that Seller elects to undertake pursuant to Section 4.3 above; and
 - (iii) Any other item allocated to Seller in this Agreement.

14.0 Commission. Seller and Buyer represent and warrant to each other that they have not

engaged the services of any broker in connection with the sale and purchase contemplated by this Agreement. Seller and Buyer shall each indemnify and hold the other harmless of any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party.

15.0 Risk of Loss. If there is any loss or damage to the Property between the date of this Agreement and the date of Closing, the risk of loss shall be on Seller, whichever may have title to the Property. If the Property is destroyed or damaged prior to the Closing, Buyer may cancel this Agreement upon written notice to Seller and in such event, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

16.0 Default.

(a) If Buyer defaults in the performance of Buyer's obligations under this Agreement due to no fault of Seller, then Seller may, after at least thirty (30) days prior written notice to Buyer and Buyer's failure to cure the default within said notice period, either (i) declare this Agreement terminated, or (ii) Seller may elect to seek specific performance under this Agreement. Termination and specific performance pursuant to this Section are the sole and exclusive remedies afforded to Seller and in no event shall Buyer be liable for any actual, general, specific, punitive, incidental, speculative, consequential or other damages of any kind or nature.

(b) If Seller defaults in the performance of Seller's obligations under this Agreement due to no fault of Buyer, then Buyer may, after at least thirty (30) days prior written notice to Seller and Seller's failure to cure the default within said notice period, either (i) declare this Agreement terminated, or (ii) Buyer may elect to seek specific performance of this Agreement. Termination and specific performance pursuant to this Section are the sole and exclusive remedies afforded to Buyer and in no event shall Seller be liable for any actual, general, specific, punitive, incidental, speculative, consequential or other damages of any kind or nature.

(c) Notwithstanding anything in this Section 16 to the contrary, any action by Buyer or Seller for specific performance must be commenced no later than 180 days after the date of discovery of the default.

(d) The limitation set forth in the preceding sentence shall not apply to claims for indemnification or contribution specifically provided for in this Agreement.

(e) The provisions in this Section 16.0 shall survive any termination or cancellation of this Agreement and shall survive the Closing.

17.0 Assignment. Neither Seller or Buyer may assign its interest in this Agreement.

18.0 Time of Essence. Time is of the essence of this Agreement.

19.0 Governing Law. This Agreement is made and executed under and in all respect to be

governed by the laws of the State of Minnesota. Any dispute that may arise between the parties arising out of this Agreement shall be adjudicated before a court located in St. Louis County, Minnesota and the parties irrevocably submit to the exclusive jurisdiction of the federal and state courts of the State of Minnesota located in St. Louis County with respect to any action or legal proceeding commenced by any party.

20.0 Notices. The mailing addresses for notice purposes of Seller and Buyer are as follows (or to such other respective addresses as may be designated by notice given in accordance with provisions of this Section):

If to Seller: Duluth Economic Development Authority
Attn: Executive Director
411 W. First Street
Duluth, MN 55802

If to Buyer: Twin Ports Testing II, Inc.
Attn: Brett Carlson, President
1301 N. Third Street
Superior, WI 54880

copy to: Hanft Fride, A Professional Association
Attn: William Burns
130 W. Superior Street, Suite 1000
Duluth, MN 55802

Any notice, request, demand or other communication permitted or required under this Agreement shall be in writing and shall be deemed duly delivered when delivered personally or when deposited in the United States mails, First Class, postage prepaid or delivered to a reputable courier addressed to the party for whom it is intended at the address specified above or at such other address as either party shall notify the other of in writing as provided above.

21.0 Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof.

22.0 Invalidity. If for any reason any portion or paragraph of this Agreement shall be declared void or unenforceable by any court of law at equity, it shall only affect such particular portion or paragraph of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

23.0 Counterparts/Facsimile/E-Mail Signatures. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement. Facsimile and e-

mail signatures shall be binding on the transmitting party and shall have the same force and effect as if the original signature had been delivered.

- 24.0 Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- 25.0 No Rights or Benefits to Third Parties. The parties do not intend to create rights in, or to grant remedies to, any third-party as a beneficiary of this Agreement or to create any duty to, or standard of care on behalf of, any third-party by any covenant, obligation or undertaking established in this Agreement. There are no incidental third-party beneficiaries to this Agreement.
- 26.0 Construction of Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring a party by virtue of the authorship of any of the provisions of this Agreement.
- 27.0 Entire Agreement and Amendment. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. No modification, amendment or waiver may be made to the terms of this Agreement without the written consent of both parties.

[Remainder of this page is intentionally left blank.]

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

**DULUTH ECONOMIC DEVELOPMENT
AUTHORITY**

By: _____
Name: _____
Its: President
Dated: _____

TWIN PORTS TESTING II, INC

By: _____
Name: _____
Title: _____
Dated: _____

JBJ ATLAS PROPERTIES, LLC

By: _____
Name: _____
Its: Secretary
Dated: _____

By: _____
Name: _____
Its: _____
Dated: _____

EXHIBIT A TO PURCHASE AGREEMENT
Legal Description

Lot 2, Block 2, Atlas Industrial Park

St. Louis County, Minnesota
Torrens Property

EXHIBIT B TO PURCHASE AGREEMENT

QUIT CLAIM DEED

eCRV Number: _____

Deed Tax Due: \$ _____

Date: _____, 2024

FOR VALUABLE CONSIDERATION, the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and political subdivision under the laws of the State of Minnesota, “Grantor,” hereby conveys and quitclaims to JBJ ATLAS PROPERTIES, LLC, a Minnesota limited liability company, “Grantee,” real property in St. Louis County, Minnesota, described as follows (the “Property”):

Lot 2, Block 2, Atlas Industrial Park

together with all hereditaments and appurtenances belonging thereto, and subject to all existing easements, restrictions and reservations of record.

This deed contains as a covenant running with the land the conditions of Minnesota Statutes §§ 469.090 to 469.108 relating to the use of the Property. If said covenant is violated, Grantor may declare a breach of the covenant and seek a judicial decree from the District Court declaring a forfeiture and a cancellation of this deed.

Check here if all or part of the described real property is Registered (Torrens)

Grantor certifies that the Grantor does not know of any wells on the Property.

[Remainder of this page is intentionally left blank.]

**EXHIBIT C TO PURCHASE AGREEMENT
FORM OF MEMORANDUM OF
DEVELOPMENT AGREEMENT**

MEMORANDUM OF DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT (this “Memorandum”) is dated for reference purposes as of _____, 2024, and is made and executed pursuant to that certain Purchase and Development Agreement (the “Agreement”) dated as of _____, 2024, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and political subdivision under the laws of the State of Minnesota (“DEDA”), and TWIN PORTS TESTING II, INC, a Wisconsin corporation and JBJ ATLAS PROPERTIES, LLC, a Minnesota limited liability company (collectively referred to as (“Developer”), each Developer being jointly and severally liable for obligations under this Agreement, relating to that certain real property located in St. Louis County, State of Minnesota bearing PID _____, and more particularly described in Exhibit A attached hereto and made a part hereof (the “Property”).

RECITALS

WHEREAS, DEDA and Developer have entered into the Agreement for the sale and purchase of the Property, containing terms and conditions that the Developer will be allowed to make use of it which DEDA considers necessary and proper to protect the public interest; and

WHEREAS, Developer proposes to construct an approximately ten thousand (10,000) square foot building in which to conduct its materials testing business (the hereinafter-described “Project”) on the Property; and

WHEREAS, DEDA has determined that the conveyance of the property to Developer for the Project is in the best interest of the City of Duluth (“City”) and its people, and that the transaction furthers its general plan of economic development.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth in the Agreement, DEDA and Developer agree on the terms, and subject to the conditions set forth in the Agreement, among which are the following:

1. Incorporation of Purchase and Development Agreement. The Agreement is hereby incorporated into and made a part of this Memorandum by reference and all terms with initial capitalization used but not defined in this Memorandum shall have the meanings given to them in the Agreement.
2. Developer Investment Commitment. To fulfill the economic development purposes of the sale of the Property, Developer agrees: (i) to develop the Project and (ii) create 17 new FTE jobs.

3. Conformance with Plans. Developer agrees that its development of the Property shall be constructed and installed only in conformance with approved plans and must conform to all applicable building, zoning, or other codes or ordinances. Developer will acquire any and all necessary permits for the construction on the Property.

4. One-year Deadline. Pursuant to Minnesota Statutes Section 469.105, subd. 5, within one (1) year of the date of conveyance of the Property, Developer shall devote the Property to the intended use as set forth in the Agreement, or begin improvements to the Property to devote it to that use.

If Developer fails to commence work on time or devote the Property to its intended use on time, DEDA may cancel the sale and title to the Property shall revert to DEDA, at DEDA's election, and in that event, Developer shall promptly offer a deed to the Property legally described herein, to DEDA, who will then refund Developer the amount of the Purchase Price paid by Developer to DEDA, without interest, less any taxes or other encumbrances affecting the marketability of title. Notwithstanding the foregoing, the DEDA Executive Director may, at their discretion, consider an extension of time for good cause shown by Developer, and upon conditions to protect the public interest. In the event an extension is granted, such extension shall be to a date certain.

Developer shall not transfer title to the Property within one (1) year of purchase without the consent of DEDA.

5. Completion Deadline. Developer hereby agrees that no later than two (2) years from the date of conveyance, Developer will have completed the construction of the Project as defined in the Agreement on the Property and will have created the number of jobs as stated herein.

6. Release of right to receive reconveyance. Upon the determination by DEDA's Executive Director that construction of the Project has been completed and upon Developer's request therefore, DEDA will furnish to the Developer a Release of Right to Receive Reconveyance ("Release") certifying the completion of the Project. The Release shall satisfy and terminate the agreements of the Developer in the Agreement. The Developer may cause the Release to be recorded in the proper office for recordation of deeds and other instruments pertaining to the Property.

7. Assignment. Developer agrees that it shall not assign this Agreement or any interest herein without the prior written approval of DEDA.

8. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

9. Recording. Developer agrees to record this Memorandum of Development Agreement in the office of the St. Louis County Recorder and/or Registrar of Title against the Property and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA evidence of recording showing the date and document numbers of record.

10. Controlling. In the event of any conflict between the provisions of this Memorandum of Development Agreement and the Agreement itself, executed by the parties, the terms and provisions of the Agreement shall prevail. A complete counterpart of the Agreement, together with any amendments thereto, is in the possession of DEDA and may be examined at the office of the DEDA Executive Director, City Hall, 411 East 1st Street, Duluth, MN.

(Signature page to follow)

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed as of the date first above written.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

TWIN PORTS TESTING II, INC

By: _____
_____, Its Executive Director

By: _____
Name: _____
Its: _____

JBJ ATLAS PROPERTIES, LLC,

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the Executive Director of the Duluth Economic Development Authority, an economic development authority under Minnesota Statutes Chapter 459, on behalf of the authority.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the _____ of the TWIN PORTS TESTING II, INC, a Wisconsin corporation on behalf of the corporation.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the _____ of the JBJ ATLAS PROPERTIES, LLC a Minnesota limited liability company on behalf of the company.

Notary Public

Drafted by:
Amanda M. Mangan
Assistant City Attorney
Attorney for the Duluth Economic Development Authority
411 West First Street, Room 410
Duluth, MN 55802

Exhibit A
Legal Description of Property

Real property in St. Louis County, Minnesota legally described as follows:

Lot 2, Block 2, Atlas Industrial Park