

## LAND SALE AGREEMENT

THIS LAND SALE AGREEMENT ("**Agreement**") entered into as of the Effective Date (defined below) by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469, ("**DEDA**"), and SAIA MOTOR FREIGHT LINE, LLC, a Louisiana limited liability company ("**Developer**").

WHEREAS, DEDA is the owner of fee simple title to that certain property situated in the City of Duluth ("**City**"), County of St. Louis, State of Minnesota ("**State**"), consisting of: (a) the approximately 3.40 acres of land described as **Lot 2 , Block 3 , Atlas Industrial Park, a subdivision in the City of Duluth, County of St. Louis, State of Minnesota, according to the recorded plat thereof** (the "**Land**"), together with any and all rights, benefits, privileges, easements, hereditaments and appurtenances thereunto belonging or appertaining thereto, and all after acquired interests of every kind and nature therein, (b) any water or mineral rights owned by, or leased to, DEDA, and all recapture rights and entitlements benefiting the Land under any planned development ordinance or other laws or otherwise; and (c) and any and all improvements located thereon, if any, and fixtures thereon (collectively, the "**Property**"); and

WHEREAS, Developer desires to acquire the Property at the Atlas Industrial Park for purpose of constructing on the Property a building consisting of a motor freight trucking terminal with not less than ten (10) dock doors (the "**Project**") and it is anticipated that Developer will create jobs in Minnesota through the hiring of ten (10) FTEs for at least two (2) years following development of the Property by Developer and commencement of operations thereon; and

WHEREAS, DEDA is desirous of assisting and cooperating with Developer in fostering its project and finds that the conveyance of the Property to Developer is in the best interests of the City and its people and that the transaction furthers DEDA's general plan for development in the area.

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

1. Developer Application Fee.

Pursuant to DEDA's fee schedule, Developer has paid a non-refundable application fee of \$1,000.00, the receipt of which is hereby acknowledged by DEDA.

2. Sale of the Property.

DEDA agrees to sell and convey to Developer, and Developer agrees to purchase from DEDA, on the terms and conditions herein set forth, the Property for the amount of Seventeen Thousand Six Hundred Eighty Dollars (\$17,680.00) payable at closing into DEDA Fund 860-860-8640-4640.

### 3. Earnest Money Earnest Money.

In addition to the Application Fee provided for in Paragraph 1 above, within five (5) business days after the Effective Date, Developer agrees to pay to DEDA an earnest money deposit (the "**Earnest Money**") in the amount of Five Hundred Dollars (\$500.00). The Earnest Money shall be applicable to the sale price of the Property as set forth in Paragraph 2 above if Developer closes on its purchase of the Property on or before the Closing Date as set forth hereinbelow. If the Developer chooses to terminate this Agreement in accordance with the provisions of this Agreement, DEDA shall repay the Earnest Money to the Developer within five (5) business days following such termination.

### 4. Inspections.

1. At all times prior to Closing, including times following the Inspection Period (which "**Inspection Period**" is defined to be the period from and after the Effective Date through and including the date that is ninety (90) days after the Effective Date), Developer, its agents, employees and representatives will be entitled to (i) enter upon the Property in order to perform inspections and tests of the Property, including, without limitation, (A) inspecting the physical condition of the Property, including the condition of the soil in terms of topography, compaction, composition and potability; (B) investigating all relevant wetlands, flood plain and other issues related to site conditions of the Property; and (C) conducting environmental and feasibility audits, tests and studies, including a Phase I and Phase II environmental study as Developer deems necessary; (ii) review status, condition, capacity and utilization requirements of all utility connections and facilities; (iii) review and verify all accounting records relating to the Property since inception of DEDA's ownership and review any other information and documents pertaining to DEDA's ownership of the Property; and (iv) determine the legal and economic feasibility of obtaining all of the various governmental approvals, development incentives and related financing, permits and entitlements (collectively, "**Entitlements**") that are or will be necessary in order to obtain a final building permit for the commencement of development of the Property with one or more industrial/warehouse/distribution facilities (collectively, the "**Improvements**"). DEDA agrees to promptly cooperate and respond to all commercially reasonable requests and inquiries by Developer and its agents, employees and representatives with respect to such inspections, including, but not limited to completion of an ASTM E1527-13 User Questionnaire or similar document for use by Developer's environmental assessment consultant. Developer agrees that, if at the end of the Inspection Period, it determines not to purchase the Property and to terminate this Agreement, it will restore the Property to the condition it was in as of the effective date of this Agreement. If, on or prior to the expiration of the Inspection Period, Developer, in its sole discretion, determines that the results of any inspection, test or examination is inconclusive or the Property does not otherwise meet Developer's criteria for the purchase and

development of the Property in the manner contemplated by Developer, Developer may, in its sole discretion, terminate this Agreement by delivery of a written notice to DEDA, with a copy to the Title Company, given on or before the last day of the Inspection Period, whereupon the Earnest Money will be returned immediately to Developer and neither party will have any further liability to the other hereunder, except as hereinafter specifically provided in this Agreement.

5. Title Commitment; Survey.

Developer, may obtain, at Developer's expense, a commitment for title insurance ("**Title Commitment**") issued by First American Title Insurance Company (the "**Title Company**"), with an address of Attention: Wayne Bennett, 1201 Walnut, Suite 700, Kansas City, MO 64106, wbennett@firstam.com for the Title Policy (defined below). Developer may order, at Developer's expense, a currently dated survey of the Property (the "**Survey**"). Developer may object to matters disclosed by the Title Commitment and/or the Survey (such objected to matters, the "**Defects**") by specifying Developer's objections in writing to DEDA within prior to expiration of the Inspection Period (each such notice, a "**Defects Notice**"). At DEDA's election, DEDA may elect to cure any Defects, or DEDA may elect to decline to cure any Defects by delivering written notice to Developer within ten (10) days of receipt of Defects Notice (each such notice, a "**Cure Notice**"). If DEDA elects to cure the Defects, DEDA shall have until the Closing Date to cure the title defects after which the parties shall proceed to Closing subject to the terms and conditions of this Agreement. If DEDA delivers the Cure Notice identifying Defects which it has elected not to cure, or if DEDA fails to cause all Defects to be cured or insured over by the Title Company at or prior to Closing, then Developer may elect either of the following: (i) to terminate this Agreement by written notice to the DEDA not later than the Closing Date, in which event all Earnest Money will be immediately be returned to Developer and neither party will have any further rights or obligations hereunder except as otherwise specifically provided in this Agreement; or (ii) to proceed to close subject to such uncured Defects. If Developer terminates this Agreement pursuant to this Section, the Earnest Money shall be refunded to Developer and the parties shall have no further obligations to one another pursuant to this Agreement except as may survive termination of this Agreement according to its express terms. If Developer fails to terminate this Agreement pursuant to this Section, the parties shall proceed to the Closing as contemplated by this Agreement, subject to the other terms and conditions in this Agreement.

6. Closing; Closing Conditions.

(a) The closing on the conveyance of the Property from DEDA to Developer pursuant to this Agreement (the "**Closing**") shall occur at the office of the Title Company (which may be via delivery thereto of funds and documents) on a date mutually acceptable to both parties (the "**Closing Date**") within thirty (30) days after the expiration of the Inspection Period. DEDA shall deliver exclusive possession of the Property on the Closing Date. If (a) this Agreement is not terminated by Developer pursuant to the terms of this Agreement, (b) Developer fails to close on the Property on or before the Closing Date, and (c) DEDA is not in default under this Agreement, then (i) DEDA shall be entitled

to retain the Earnest Money as its sole remedy and as liquidated damages, it being further understood that DEDA's actual damages in the event of such default are difficult to ascertain and that such proceeds represent the parties' best current estimate of such damage; (ii) this Agreement shall automatically terminate; (iii) upon request of either party, both parties shall promptly sign a cancellation of this Agreement evidencing the cancellation of this Agreement; and (iv) except as expressly set forth in this Agreement, the parties shall have no further obligation to one another pursuant to this Agreement. Notwithstanding the above, the Closing Date may be extended if DEDA's Executive Director (the "**Executive Director**") and Developer mutually agree to do so in writing prior to the Closing Date.

(b) In addition to the other conditions precedent enumerated in this Agreement, the following will be additional "Conditions Precedent" to Developer's obligations to close hereunder:

i. Availability of Entitlements/Permits. As of the Closing Date, any Entitlements that were available as of the expiration of the Inspection Period will be and remain available, in full force and effect, and in good standing. Further, as of the Closing Date, any additional consents, approvals and permits necessary to commence (i) the development (including, without limitation, grading and foundation development) of the Property, and (ii) the construction and installation of the Improvements on the Property will be in full force and effect.

ii. DEDA's Compliance. DEDA will have complied with all of the terms and conditions set forth in this Agreement.

iii. Pending Actions. As of Closing, there will be no governmental requirement or governmental proceeding of any kind, pending or threatened, that, after Closing, would adversely affect the development or completion of the Property.

iv. Title Policy. At Closing, the Title Company will issue an ALTA current form commercial owner's policy of title insurance (or a "marked-up" Title Commitment) ("**Title Policy**"), dated as of the Closing Date, insuring Developer's interest as the fee owner of the Property and in the amount of the Purchase Price, and otherwise in accordance with the requirements of **Section 5** hereof, with all exceptions other than Permitted Exceptions (as defined below) deleted, which title policy will provide full "extended form" coverage. At Developer's option and expense, the Title Policy will include the following endorsements: (i) a zoning endorsement; (ii) an owner's comprehensive endorsement; (iii) a tax parcel endorsement; (iv) a survey endorsement; (v) an access endorsement; (vi) a contiguity endorsement (to the extent applicable); and (vii) an endorsement to increase coverage to an amount satisfactory to Developer as Developer constructs improvements on the Property. For purposes of this Agreement, the term "**Permitted Exceptions**", will mean both (i) all restrictions, covenants, conditions, matters or exceptions to title (other than Mandatory Cure Items) that are set forth in the Title Evidence (excluding therefrom any liens, claims, encumbrances impairing the marketability of title to the Property), but not objected to by Developer in a Defects Notice; and (ii) any other Defects to which Developer objects by delivery of a Defects

Notice, but DEDA fails to so cure, or if DEDA fails to cause all such other Defects to be insured over by the Title Company (collectively, "**Other Defects**"), and Developer nevertheless elects to close, accepting title to the Property subject to such Other Defects.

v. Representations and Warranties. All representations and warranties made by DEDA in this Agreement will be substantially true, accurate and complete and with respect to all of the Property at the time of the Closing.

vi. Condition of the Property. The Property will be in substantially the same condition as exists on the Effective Date.

In the event that any of the Conditions Precedent or other conditions precedent set forth herein are not satisfied prior to the Closing, Developer, in its sole discretion, may terminate this Agreement by written notice to DEDA, in which event the Earnest Money and all earnings thereon will be promptly returned to Developer and neither party will have any further liability to the other except as specifically set forth in this Agreement.

## 7. Closing Documents.

At Closing, DEDA shall deliver to the Title Company in escrow for the benefit of Developer, the following original documents:

(a) a special warranty deed ("**Deed**") to Developer conveying marketable fee simple title in the Property to Developer in recordable form and otherwise in form reasonably acceptable to DEDA, the Title Company (for purposes of issuing the Title Policy) and Developer and agreed to prior to expiration of the Inspection Period, conveying the Property to Developer or its assignee, free and clear of all liens, claims and encumbrances except for matters of public record which are Permitted Exceptions and shall include the Deed Covenant (defined below);

(b) A Minnesota Certificate of Real Estate Value form duly completed and executed by DEDA (unless the Deed is exempt from the requirements therefor).

(c) A Minnesota Well Disclosure Certificate duly completed and executed by DEDA (unless the Deed is exempt from the requirements therefor).

(d) If applicable, an Owner's Affidavit or comparable "no lien" statement, in form and substance acceptable to the Title Company as may be required to enable the Title Company to issue ALTA extended coverage for the Title Policy, executed by DEDA (it being understood that DEDA will provide any certificates or undertakings required in order to induce the Title Company to insure over any "gap" period resulting from any delay in the recording of documents or the later-dating of the title insurance file).

(e) A joint Closing statement between DEDA and

Developer, conforming to the proration and other relevant provisions of this Agreement.

(f) An "Entity Transferor" certification (as required under Section 1445 of the Internal Revenue Code), confirming DEDA's representation that it is a "United States Person" in form reasonably acceptable to DEDA and Developer and agreed to prior to expiration of the Inspection Period.

(g) Such other documents and instruments as the Title Company reasonably requires to evidence the due organization and valid existence of DEDA and its authority to enter into and perform its obligations under this Agreement.

#### 8. Deed Covenant

The Deed shall contain, as a covenant running with the Land, the following covenant pursuant to Minnesota Statutes, Sections 469.090 to 469.108 relating to the use of the Property, including 469.091 and 469.105:

[§Subd. 5. Contracts. The economic development authority may make contracts for the purpose of economic development within the powers given it in sections 469.090 to 469.108. The authority may contract or arrange with the federal government, or any of its departments, with persons, public corporations, the state, or any of its political subdivisions, commissions, or agencies, for separate or joint action, on any matter related to using the authority's powers or performing its duties. The authority may contract to purchase and sell real and personal property. An obligation or expense must not be incurred unless existing appropriations together with the reasonably expected revenue of the authority from other sources are sufficient to discharge the obligation or pay the expense when due. The state and its municipal subdivisions are not liable on the obligations.

#### 469.105 SALE OF PROPERTY.

§Subd. 1. Power. An economic development authority may sell and convey property owned by it within the city or an economic development district if it determines that the sale and conveyance are in the best interests of the city or district and its people, and that the transaction furthers its general plan of economic development. This section is not limited by other law on powers of economic development authorities.

Subd. 2. Notice; hearing. An authority shall hold a hearing on the sale. At the hearing a taxpayer may testify for or against the sale. At least ten, but not more than 20, days before the hearing the authority shall publish notice of the hearing on the proposed sale in a newspaper. The newspaper must be published and have general circulation in the authority's county and city. The notice must describe the property to be sold and state the time and place of the hearing. The notice must also state that the public may see the terms and conditions of the sale at the authority's office and that at the hearing the authority will meet to decide if the sale is advisable.

Subd. 3. Decision; appeal. The authority shall make its findings and decision on whether the sale is advisable and enter its decision on its records within 30 days of the hearing. A taxpayer may appeal the decision by filing a notice of appeal with the district court in the city or economic development district's county and serving the notice on the secretary of the authority, within 20 days after the decision is entered. The only ground for appeal is that the action of the authority was arbitrary, capricious, or contrary to law.

Subd. 4. Terms. The terms and conditions of sale of the property must include the use that the bidder will be allowed to make of it. The authority may require the purchaser to file security to assure that the property will be given that use. In deciding the sale terms and conditions the authority may consider the nature of the proposed use and the relation of the use to the improvement of the authority's city and the business and the facilities of the authority in general. The sale must be made on the authority's terms and conditions. The authority may publish an advertisement for bids on the property at the same time and in the same manner as the notice of hearing required in this section. The authority may award the sale to the bid considered by it to be most favorable considering the price and the specified intended use. The authority may also sell the property at private sale at a negotiated price if after its hearing the authority considers that sale to be in the public interest and to further the aims and purposes of sections 469.090 to 469.108.

Subd. 5. One-year deadline. Within one year from the date of purchase, the purchaser shall devote the property to its intended use or begin work on the improvements to the property to devote it to that use. If the purchaser fails to do so, the authority may cancel the sale and title to the property shall return to it. The authority may extend the time to comply with a condition if the purchaser has good cause. The terms of sale may contain other provisions that the authority considers necessary and proper to protect the public interest. A purchaser must not transfer title to the property within one year of purchase without the consent of the authority.

Subd. 6. Covenant running with the land. A sale made under this section must incorporate in the deed as a covenant running with the land the conditions of sections 469.090 to 469.108 relating to the use of the land. If the covenant is violated the authority may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the deed.

Subd. 7. Plans; specifications. A conveyance must not be made until the purchaser gives the authority plans and specifications to develop the property sold. The authority must approve the plans and specifications in writing. The authority may require preparation of final plans and specifications before the hearing on the sale.

DEDA will file an appropriate release or satisfaction of such covenants upon completion of construction of the Project described below in accordance with the approved plans and specifications as evidenced by the issuance of a certificate of

occupancy by the City's Construction Services and Inspections Division ("**Certificate of Occupancy**").

9. The Project.

Developer hereby agrees to construct the Project on the Property with a total construction cost of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) and its use of the Property shall be for purposes of the Project. Developer further agrees that the Project shall conform to the City of Duluth's Engineering Guidelines and Unified Development Chapter, including but not limited to, storm water policies and requirements, driveway entrance requirements, and parking lot design standards.

10. Plans and Specifications.

Prior to the commencement of any construction work on the Project, Developer shall have presented to DEDA plans and specifications for the Project. Such plans shall be subject to DEDA's approval in the form of approval of the Executive Director in writing, which approval shall not be unreasonably withheld, delayed, or denied. In the event of any proposed change in the plans and specifications after the initial approval by the Executive Director, said proposed change shall be likewise subject to the approval of the Executive Director.

11. Project Deadlines.

A. Completion of Project

On or before the last day of the eighteenth (18<sup>th</sup>) full calendar month following the Closing Date (the "**Completion Target Date**"), Developer shall have completed construction of the Project as evidenced by Developer's submittal to the Executive Director of a Certificate of Occupancy issued by the City of Duluth's Construction Services and Inspections Division. If Developer fails to complete construction of the Project by the Completion Target Date, provided, that such failure is not the result of any Event Force Majeure (defined below), unreasonable delay, withholding, or denial in the issuance of a Certificate of Occupancy or any other permit or authorization by the City or any other governmental authority (in which case the Completion Target Date shall be extended on a day for day basis upon notice to DEDA by Developer of the fact of such delay), DEDA may declare Developer to be in default under this Agreement, and upon written notice from DEDA, Developer agrees to reconvey to DEDA by deed title to the Property, subject only to the Permitted Exceptions.

B. Completion Covenant

In addition to the foregoing, within one (1) year of the Closing Date, Developer shall have commenced construction of the Project; provided, however, such date shall be extended on a day for day basis upon notice to DEDA by Developer of the fact of such delay due to any Event Force Majeure (defined below), unreasonable delay, withholding, or denial in the issuance of a Certificate of Occupancy or any other permit or authorization



by the City or any other governmental authority. The commencement of construction shall be demonstrated by the issuance of a building permit evidence of the actual physical work on the Property and, upon written request therefore by DEDA, the filing of an affidavit with the Executive Director, executed by Developer, to which are attached pictures of commenced construction.

12. Statutory Disclosures

DEDA staff handling the sale of the Property on behalf of DEDA 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; or (2) methamphetamine production on the Property.

13. Recordation.

At Closing, Developer agrees to direct the Title Company to submit for recording this Agreement and the Deed in the office of the St. Louis County Registrar of Titles and to pay all costs associated therewith. Upon recordation, Developer shall, as soon thereafter as is reasonably practicable in the circumstances, submit to DEDA a copy of the recorded Agreement and a copy of the recorded Deed showing the date and document numbers of record. DEDA will file an appropriate release or satisfaction of this Agreement upon completion of construction of the Project described below in accordance with the approved plans and specifications as evidenced by the issuance of a Certificate of Occupancy.

14. Employment Covenant

Developer agrees and commits that, within thirty (30) days of the issuance of the Certificate of Occupancy referenced in Subparagraph A of Paragraph 10 above, Developer shall be employing no less than ten (10) full-time employees and that such employees shall continue to be employed on the Property for not less than two (2) calendar years after the date of the issuance of the Certificate of Occupancy. For the purposes of this Agreement full-time equivalent employment shall mean two thousand eighty (2,080) working hours per employee per year.

15. Environmental Indemnification.

Developer hereby agrees that for itself, its successors and assigns, it will indemnify and save DEDA and its officers, agents, servants and employees harmless from and against all liabilities, losses, damages, costs, expenses, including attorney's fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing on the Property, as a result of Developer's gross negligence or willful misconduct, which constitutes a violation of any federal, state or local environmental laws, rules or regulations with regard to pollutants or hazardous or dangerous substances or arising out of the presence on the Property of any element, compound, pollutant, contaminant or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to person(s) or damage to property. Indemnification granted hereby shall include all the costs of clean up; remediation; costs

incurred in proceedings before a court of law or an administrative agency including reasonably attorney's fees, expenses, and the fees; the cost of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies if DEDA chooses to require indemnification of the same. Provided, however, that the indemnity provided by Developer to DEDA pursuant to this Section is intended to run only to the benefit of DEDA and is not intended to, nor shall it, inure to the benefit of any third party.

16. Assumption of Risk

Developer agrees that it is experienced in and knowledgeable about the development of real estate and has exclusively relied on its own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the Property, its condition, value and potential. The conveyance of the Property to Developer shall constitute Developer's acknowledgment that it has independently inspected and investigated the Property. Upon conveyance, Developer shall assume the risk that adverse matters, including but not limited to adverse physical and environmental conditions and the suitability or unsuitability of the Property for Developer's intended use, may not have been revealed by Developer's investigations.

17. No Representations by DEDA

Without limitation, Developer acknowledges that DEDA has made no representations or warranties (whether express or implied, oral or written) regarding the Property or the Project, including but not limited to the value, quality or condition of the Property or the Project; the status of title to the Property; the suitability of the Property or the Project for any activity or use which Developer may conduct; the compliance of the Property or the Project with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the Property or the Project for a particular purpose; and compliance by the Property or the Project with any and all environmental rules, regulations, orders or laws. Developer acknowledges and agrees that DEDA has no obligation to remove any personal property or debris from the Property. Developer acknowledges and agrees that, to the maximum extent permitted by law, Developer is purchasing the Property in its "AS-IS" condition. This Section 17 shall survive the Closing, cancellation or termination of this Agreement for any reason.

18. Taxes and Costs

DEDA represents and warrants to Developer that there are no property taxes due or special assessments assessed against the Property as of the Effective Date of this Agreement.. In the event that any outstanding property taxes or special assessments become assessed against the Property, DEDA shall pay all real estate taxes and installments of special assessments assessed against the Property before and up to the Closing Date, and Developer shall pay all real estate taxes and installments of special assessments assessed against the Property on and after the Closing Date. At Closing Developer shall pay: (a) one-half (1/2) of any Closing costs, (b) the costs of any title

commitment and title insurance policy premiums, and (c) its own attorneys' fees and costs. At Closing DEDA shall pay (a) one-half (1/2) of any Closing costs, (b) recording fees for recordation of the Deed, and (c) any real estate transfer tax or conveyance fees.

19. Default and Remedies.

In the event that Developer fails to perform or to comply with any of the terms, covenants or conditions of this Agreement, and said failure to so perform or comply shall continue for a term of thirty (30) days after notice from DEDA to Developer of such nonperformance or noncompliance, Developer shall be in default of its obligations hereunder and DEDA may, at its option, and in addition to the remedies set forth in Sections 6 or 11, exercise any one or more of the following rights and remedies. The remedies provided for under this Section shall be deemed to be cumulative and nonexclusive and the election of one remedy shall not be deemed to be a waiver of any other remedy with regard to any occasion of default hereunder. Further, the waiver by DEDA of any default on the part of Developer hereunder or the failure of DEDA to declare default on the part of Developer of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Developer of the same or any other obligation of Developer hereunder and, to be effective, any waiver of any Developer default hereunder shall be in writing by DEDA.

a. For a default by Developer under Section 11.A of this Agreement, DEDA may seek and be entitled to receive reconveyance of the Property from Developer, free and clear of all liens and encumbrances created by Developer.

b. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of Section 6 and Section 11.A of this Agreement.

If, prior to or as of the Closing, DEDA will have failed to perform any of the covenants and agreements contained herein to be performed by DEDA within the time for performance as specified herein (including DEDA's obligation to close), Developer may elect either to (i) terminate this Agreement by written notice to DEDA with a copy to the Title Company, in which event the Earnest Money, together with all interest thereon, will be returned immediately to Developer, and neither party will have any further rights or obligations hereunder except as otherwise expressly provided below or elsewhere in this Agreement; or (ii) proceed to close hereunder, in which event Developer may file an action for specific performance of this Agreement to compel DEDA to close pursuant to this Agreement and cure such default without the requirement to post a bond or other security in such specific performance action; provided that in the event Developer terminates this Agreement pursuant to clause (i) above, Developer will be entitled to sue DEDA for all actual damages suffered by Developer on account of DEDA's failure, non-performance or breach hereunder. Except as provided above, the remedies of Developer hereunder are cumulative and not exclusive, and the exercise of any one remedy will not be in limitation or derogation of any other remedy herein enumerated or otherwise available at law or in equity.

20. Notices.

Any notice, demand or request which may be permitted, required or desired to be given in connection therewith will be given in writing and directed to DEDA and Developer as follows:

In the case of DEDA: Duluth Economic Development Authority  
411 West First Street Room 160  
Duluth, Minnesota, 55802  
Attn: Executive Director  
Email: cfleege@duluthmn.gov

In the case of Developer: Saia Motor Freight Line, LLC  
11465 Johns Creek Parkway, Suite 330  
Johns Creek, GA 30097  
Attention: Real Estate Department  
Email: realestate@saia.com

With a copy to: Bryan Cave Leighton Paisner LLP  
1200 Main Street  
Suite 3800  
Kansas City, Missouri 64105  
Attn: Michael Humphrey  
Email: mrhumphrey@bclplaw.com

Notices will be either (a) personally delivered (including delivery by Federal Express or other courier service) to the offices set forth above, in which case they will be deemed delivered on the date of delivery to said offices; or (b) sent by certified or registered mail, return receipt requested, in which case they will be deemed delivered on the date that is three (3) business days after the date shown on the receipt, unless delivery is refused or delayed by the addressee, in which event they will be deemed delivered on the date of deposit in the U.S. Mail or (c) by confirmed facsimile or by email, in which case they will be deemed delivered on the date sent if sent by 5:00 p.m. (Chicago time). Notices may be delivered on behalf of the parties by their respective attorneys.

21. Subordination

The Executive Director may, in his sole discretion, decide to subordinate this Agreement to liens of other parties. Said consent of the Executive Director will be deemed valid only when reduced to writing

22. Assignment

The parties acknowledge that DEDA is relying upon the qualifications and identity of Developer to complete the Project. Therefore, Developer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create

or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Project, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder (each of the above, an "**Assignment**"). Notwithstanding the above, the Executive Director may, in his sole discretion, consent in writing to an Assignment by the Developer. If any assignment of Developer's obligations under this Agreement is approved by the Executive Director, any such assignee shall explicitly assume the obligations of Developer under this Agreement and Developer remains principally liable for the performance of Developer's obligations under this Agreement.

23. Real Estate Brokers

DEDA and Developer each represent and warrant to the other that this Agreement is made and entered into as a result of direct negotiations between parties without the aid or assistance of any broker or other agent except for Developer's broker, Fischer & Company, and each of the parties hereby represent and warrants to the other that they have entered into no agreement or made any undertaking of any kind whatsoever as a result of which any claim could properly be brought against the other for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction.

24. Construction

Both parties have contributed to the drafting of this Agreement. In the event of a dispute, this Agreement shall be construed without reference to any rule of construction based on the identity of the drafters of this Agreement.

25. Applicable Law.

This Agreement, together with all of its paragraphs, terms and conditions, is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the state of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

26. No Third-Party Claims.

This Agreement is to be construed and understood solely as an Agreement between DEDA and Developer and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third-party beneficiary of this Agreement or of any of its terms and conditions, which, as between DEDA and Developer, may be waived at any time by mutual agreement between DEDA and Developer.

27. Severability.

In the event any provision of this Agreement shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

28. Amendments.

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

29. Entire Agreement.

This Agreement constitutes the entire agreement between parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

30. Counterparts

This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

31. Force Majeure.

Neither party is responsible for any failure to perform its obligations under this Agreement, if it is prevented or delayed in performing those obligations by an Event of Force Majeure. Where there is an Event of Force Majeure, the party prevented from or delayed in performing its obligations under this Agreement must immediately notify the other party giving full particulars of the Event of Force Majeure and the reasons for the Event of Force Majeure preventing that party from, or delaying that party in performing its obligations under this Agreement and that party must use its reasonable efforts to mitigate the effect of the Event of Force Majeure upon its or their performance of this Agreement and to fulfill its or their obligations under this Agreement. Upon completion of the Event of Force Majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement. An Event of Force Majeure does not relieve party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event. An **"Event of Force Majeure"** is an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following: (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority; (b) ionizing radiation or contamination, radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component; (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; (d)

32. Effective Date.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date shown below.

By \_\_\_\_\_  
President

By Cris A. Burgum, VP Maintenance & Properties

Dated: \_\_\_\_\_, 2022

By \_\_\_\_\_  
Secretary

Dated: \_\_\_\_\_, 2022

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Matt Cartier the President of Duluth Economic Development Authority, an economic development authority under Minnesota Statutes Chapter 469, on behalf of said authority.

Notary Public

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Ellie Just, the Secretary of Duluth Economic Development Authority, an economic development authority under Minnesota Statutes Chapter 469, on behalf of said authority.

## Notary Public



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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of Saia Motor Freight Line, LLC, a Louisiana limited liability company, on behalf of the company.

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

This Instrument Drafted By:  
This Instrument Drafted By:  
Bryan Cave Leighton Paisner LLP  
1200 Main Street  
Suite 3800  
Kansas City, Missouri 64105  
Attn: Michael Humphrey  
Email: mrhumphrey@bclplaw.com