

COPY

DEVELOPMENT AGREEMENT
BY AND AMONG
CITY OF RED WING,
RED WING PORT AUTHORITY, A DEVELOPMENT AGENCY
AND
FAIRVIEW RED WING HEALTH SERVICES

This document was drafted by:

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received
3/1/99

Admin

EXECUTION 121498

TABLE OF CONTENTS

	Page
ARTICLE I	<u>Definitions</u> 2
Section 1.1.	<u>Definitions</u> 2
ARTICLE II	<u>Representations and Warranties</u> 4
Section 2.1.	<u>Representations by the City and the General Developer</u> 4
Section 2.2.	<u>Representations and Warranties by Medical Developer</u> 4
ARTICLE III	<u>Acquisition and Conveyance of Property</u> 6
Section 3.1.	<u>Status of the Property</u> 6
Section 3.2.	<u>Conditions of Conveyance of Property; Purchase Price; General Developer's Acquisition</u> 6
Section 3.3.	<u>Condition of Conveyance of Parcel 1; Purchase Price; Medical Developer's Acquisition</u> 9
Section 3.4.	<u>Title</u> 10
Section 3.5.	<u>Soil Conditions; Indemnity</u> 10
Section 3.6.	<u>Wage and Job Covenants</u> 12
ARTICLE IV	<u>Construction of Minimum Improvements</u> 14
Section 4.1.	<u>Construction of Minimum Improvements</u> 14
Section 4.2.	<u>Construction Plans</u> 14
Section 4.3.	<u>Commencement and Completion of Construction</u> 15
Section 4.4.	<u>Certificate of Completion</u> 16
ARTICLE V	<u>Insurance and Condemnation</u> 17
Section 5.1.	<u>Insurance</u> 17
ARTICLE VI	<u>Additional Assistance; Medical Developer Payments</u> 18
Section 6.1.	<u>City Assistance to General Developer</u> 18
Section 6.2.	<u>Special Assessments for Public Improvements</u> 18
Section 6.3.	<u>Platting</u> 18
Section 6.4.	<u>Comprehensive Plan</u> 18
Section 6.5.	<u>Zoning</u> 19
Section 6.6.	<u>Site Plan Review</u> 19
Section 6.7.	<u>Alternative Urban Areawide Review</u> 19
Section 6.8.	<u>Issuance of Bonds</u> 19
Section 6.9.	<u>Development of Parcel 2</u> 19
ARTICLE VII	<u>Financing</u> 20
Section 7.1.	<u>General Developer's Option to Cure Default on Mortgage</u> 20
Section 7.2.	<u>Holder's Option to Perform</u> 20
ARTICLE VIII	<u>Prohibitions Against Assignment and Transfer</u>
	<u>Indemnification</u> 21
Section 8.1.	<u>Representation as to Development</u> 21
Section 8.2.	<u>Prohibition Against Medical Developer's Transfer of Property and Assignment of Agreement</u> 21
Section 8.3.	<u>Release and Indemnification Covenants</u> 22
ARTICLE IX	<u>Events of Default</u> 25
Section 9.1.	<u>Events of Default Defined</u> 25

Section 9.2.	<u>Remedies on Default.</u>	25
Section 9.3.	<u>Revesting Title in General Developer Upon Happening of Event Subsequent to Conveyance to Medical Developer.</u>	25
Section 9.4.	<u>Resale of Reacquired Property; Disposition of Proceeds.</u>	26
Section 9.5.	<u>No Remedy Exclusive.</u>	27
Section 9.6.	<u>No Additional Waiver Implied by One Waiver.</u>	27
ARTICLE X	<u>Additional Provisions</u>	28
Section 10.1.	<u>Conflict of Interests; General Developer Representatives Not Individually Liable.</u>	28
Section 10.2.	<u>Equal Employment Opportunity.</u>	28
Section 10.3.	<u>Restrictions on Use.</u>	28
Section 10.4.	<u>Provisions Not Merged With Deeds.</u>	28
Section 10.5.	<u>Titles of Articles and Sections.</u>	28
Section 10.6.	<u>Notices and Demands.</u>	28
Section 10.7.	<u>Counterparts.</u>	29
Section 10.8.	<u>Recording.</u>	29
Section 10.9.	<u>Attorney Fees.</u>	29
Section 10.10.	<u>Choice of Law and Venue.</u>	29
Section 10.11.	<u>Deed Restrictions.</u>	29
Section 10.12.	<u>Architectural Covenants.</u>	31
Section 10.13	<u>Helipad.</u>	31
Section 10.14	<u>Antennae/Satellite Dishes.</u>	32
Section 10.15	<u>Signage.</u>	32
Section 10.16	<u>Bus Service.</u>	32
Section 10.17	<u>Collector Street.</u>	32
Section 10.18	<u>Streets and Utilities.</u>	34
Section 10.19	<u>Tax Exemption.</u>	34
Section 10.20	<u>Grading.</u>	34
Section 10.21	<u>SAC, WAC.</u>	35
Section 10.22	<u>Termination for Lack of Progress.</u>	35
Section 10.23	<u>Waste Incineration.</u>	35
Section 10.24	<u>Water Feature.</u>	35
Section 10.25	<u>Water Pressure/Volume System.</u>	35
Section 10.26.	<u>Estoppel Certificates.</u>	36
ARTICLE XI	<u>Termination of Agreement</u>	37
Section 11.1.	<u>Option to Terminate.</u>	37
Section 11.2.	<u>Action to Terminate.</u>	37
Section 11.3.	<u>Termination Date.</u>	37
Section 11.4.	<u>Effect of Termination.</u>	37
SIGNATURES		38

EXHIBIT A	CERTIFICATE OF COMPLETION
EXHIBIT B	PROPERTY DRAWING AND LEGAL DESCRIPTION
EXHIBIT C	MINNESOTA WELL DISCLOSURE STATEMENT
EXHIBIT D	PRIVATE SEWER SYSTEM DISCLOSURE STATEMENT
EXHIBIT E	WARRANTY DEED
EXHIBIT F	QUIT CLAIM DEED
EXHIBIT G	WATER RESERVOIR LOCATION
EXHIBIT H	SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS
EXHIBIT I	DECLARATION OF ARCHITECTURAL COVENANTS
EXHIBIT J	SIGNAGE
EXHIBIT K	COLLECTOR STREET AND UTILITIES
EXHIBIT L	CONSTRUCTION STANDARDS
EXHIBIT M	SCHEDULE OF INFRASTRUCTURE COMPLETION
EXHIBIT N	SCHEDULE OF SAC AND WAC CHARGES

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made as of the 14th day of December, 1998 by and among the CITY OF RED WING, a Minnesota municipal corporation (the "City"), the RED WING PORT AUTHORITY, A DEVELOPMENT AGENCY, a public body corporate and politic (the "General Developer"), established pursuant to Minnesota Statutes, Sections 469.048 to 469.068, and Minnesota Statutes, Section 469.081 (hereinafter collectively referred to as the "Act") and FAIRVIEW RED WING HEALTH SERVICES, a Minnesota nonprofit corporation ("Medical Developer").

WITNESSETH:

WHEREAS, the General Developer is authorized to transact business and exercise its powers by the General Developer's Enabling Resolution No. 2226, adopted by the City Council of the City; and

WHEREAS, the General Developer and the City have undertaken a program to promote the development of marginal real property and improve access to public hospitals and related facilities for City residents and thereby promote the public health, safety, and welfare, and in this connection intend to create a development district and a Development Plan for the development of a medical campus and technology park (hereinafter referred to as the "Project") in an area (hereinafter referred to as the "Project Area") located in the City; and

WHEREAS, the General Developer will administer the Project; and

WHEREAS, the General Developer is authorized to assist in the acquisition of real property, or interests therein, and to undertake certain activities to prepare such real property for development by private enterprise; and

WHEREAS, in order to achieve the objectives of the Development Plan which will be developed for the Project, the City and the General Developer are prepared to provide assistance to Medical Developer and each other in facilitating the acquisition and development of certain property within the Project Area; and

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

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

Definitions

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

"Act" means Minnesota Statutes, Sections 469.048 to 469.068, and Minnesota Statutes, Section 469.081, as amended.

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

"Certificate of Completion" means the certification provided to Medical Developer, substantially in the form attached as Exhibit A to this Agreement, pursuant to Section 4.4 of this Agreement.

"City" means the City of Red Wing, Minnesota.

"Concept Plan" means a written description setting forth a range of square feet for, a range of examination rooms for, a range of licensed beds for and the minimum uses to be made of the Minimum Improvements.

"Construction Plans" means the plans, specifications, drawings and related documents for the construction work to be performed on Parcel 1 with respect to the Minimum Improvements, which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following: (1) foundation plan; (2) basement plans; (3) floor plan for each floor; (4) cross sections of each (length and width); and (5) elevations (all sides).

"County" means the County of Goodhue, Minnesota.

"Development Plan" means the Development Plan for the Project to be adopted by the General Developer, as it may be amended.

"Event of Default" means an action by a party listed in Article IX of this Agreement.

"General Developer" means the Red Wing Port Authority, a Development Agency, Red Wing, Minnesota.

"Holder" means the owner of a Mortgage.

"Material" means any effect or change which significantly alters the intended use of Parcel 1, or increases or decreases the costs of any individual item of the Minimum

Improvements by more than \$1,000,000.

"Medical Developer" means Fairview Red Wing Health Services, or its permitted successors and assigns.

"Minimum Improvements" means approximately 100,000 square feet of medical and hospital facilities intended for Parcel 1 with a value of no less than \$15,000,000.00.

"Mortgage" means any mortgage made by Medical Developer which is secured, in whole or in part, with Parcel 1.

"Parcel 1" means the real property upon which the Minimum Improvements will be constructed, as depicted on the attached Exhibit B. After construction of the Minimum Improvements, the term means the property depicted as "Parcel 1" on Exhibit B, as improved.

"Parcel 2" means the real property acquired from Medical Developer and retained by the General Developer, which consists of the overall legal description for Parcels 1 and 2 set forth on Exhibit B, less Parcel 1.

"Project" means the "Project" as defined in the second Whereas paragraph above.

"Project Area" means the real property located within the boundaries of the Project.

"Property" means Parcel 1 and Parcel 2.

"State" means the State of Minnesota.

"Termination Date" means the date on which Medical Developer is entitled to receive a Certificate of Completion pursuant to the terms and conditions of this Agreement.

"Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, State or local governmental unit (other than the City or the General Developer in exercising their rights under this Agreement) which directly result in delays.

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the City and the General Developer. The City and the General Developer each makes the following representations as the basis for the undertaking on each of their parts herein contained:

(a) the City and the General Developer each has the power to enter into this Agreement and carry out its obligations hereunder; and

(b) the activities of the City and the General Developer pursuant to this Agreement are undertaken to implement the Project.

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

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

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

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

(d) Medical Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement and all local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(e) Medical Developer represents that there is one or more "Wells" within the

meaning of Minn. Stat. § 103I on the Property, and in connection therewith, delivers to the General Developer, and the General Developer acknowledges receipt of, the Minnesota Well Disclosure Statement attached hereto as Exhibit C.

(f) Solely for purposes of satisfying the requirements of Minn. Stat. § 115.55, Medical Developer represents there is one or more "individual sewage treatment system(s)" (within the meaning of that statute) on or serving the Property, and in connection therewith, Medical Developer delivers to the General Developer, and the General Developer acknowledges receipt, of a Private Sewer System Disclosure Statement attached hereto as Exhibit D.

ARTICLE III

Acquisition and Conveyance of Property

Section 3.1. Status of the Property. (a) As of the date of this Agreement, Medical Developer owns the Property.

(b) In order to assist Medical Developer in making development of the Minimum Improvements economically feasible, the General Developer will, subject to the terms and conditions of this Agreement:

- (i) acquire the Property from Medical Developer for \$1,500,000; and
- (ii) convey Parcel 1 to Medical Developer for \$1.00.

(c) In order to facilitate the General Developer's purchase of the Property, the City agrees to lend to the General Developer at closing, for the Medical Developer's benefit, the sum of \$1,500,000.00 to permit the General Developer to pay for the Property.

Section 3.2. Conditions of Conveyance of Property; Purchase Price; General Developer's Acquisition. (a) Medical Developer shall convey title to and possession of the Property to the General Developer by a deed substantially in the form of the deed attached as Exhibit E to this Agreement. Medical Developer's obligation to convey and the General Developer's obligation to acquire title to the Property are subject to satisfaction of the following terms and conditions:

(i) Medical Developer having submitted and the General Developer and the City having approved a Concept Plan for the Minimum Improvements.

(ii) the General Developer having reviewed and approved title to the Property as set forth in Section 3.4.

(iii) Medical Developer not being otherwise in default under this Agreement.

(iv) the City having amended the comprehensive plan, zoning code and zoning map and granted all zoning and subdivision approvals necessary for Medical Developer to proceed with the Minimum Improvements to be constructed on Parcel 1, all in a manner satisfactory to the Medical Developer (including, without limitation, obtaining approval of a conditional use permit for and rezoning of the medical campus portion of Parcel 1 as a "Planned Commercial Development," and creating as permitted uses within Parcel 1 (or off-site for the benefit of Parcel 1 as to certain signage): (i) antennae and satellite dishes, (ii) a helipad, (iii) on-site snow storage and (iv) signage per Section 10.15 below).

(v) Medical Developer having received adequate assurances that it will be able to obtain all approvals, licenses and permits necessary for the use and operation of the Minimum Improvements and the business to be conducted from the Minimum Improvements;

(vi) the City and the General Developer having complied with all statutory preconditions and hearings required for the acquisition of the Property from Medical Developer, the execution of this Agreement, and the conveyance of Parcel 1 to Medical Developer.

(vii) the General Developer having prepared preliminary and final plats of the Property, the final plat having been approved by the Medical Developer and the City, and Goodhue County having accepted the final plat for recording; the final plat shall create legal descriptions for Parcel 1 and Parcel 2.

(viii) the proper performance of any other City and General Developer obligations that are a necessary precondition to the General Developer's acquisition of the Property and conveyance of Parcel 1 pursuant to this Section 3.2.

(ix) Medical Developer having provided the City and the General Developer with the most recent audited financial statements as a precondition to the provision of assistance to Medical Developer pursuant to this Agreement.

(x) the Medical Developer having approved the City's and/or General Developer's road and utilities plans and specifications for the (i) collector road, (ii) the Water Pressure/Volume System (defined below), (iii) Parcel 1 and (iv) any portion of Parcel 2 that would impact Parcel 1.

(xi) the City, the General Developer, Goodhue County and Medical Developer having approved the recommendations of the the Highway 61 Corridor Study and addendum, the City and Goodhue County having approved the costs of implementing the recommendations and the Medical Developer having approved the timing of implementing the recommendations.

(xii) completion of the Alternative Urban Areawide Review (AUAR) referred to in Section 6.8 below and the City, the General Developer and Medical Developer having approved the requirements and recommendations of the review, including, without limitation, the cost and the timing thereof.

(xiii) Medical Developer shall have terminated the rights of any tenants or any leasehold interests with respect to Parcel 2 and shall have indemnified the City and the General Developer against any relocation claims by any persons or entities claiming any rights in Parcel 2 arising out of the General

Developer's acquisition of Parcel 2. Notwithstanding the foregoing, the General Developer shall lease back to the Medical Developer, at closing, a portion of the existing house and out buildings for \$1 per year until the completion of the Minimum Improvements, and subject to such other provisions as the General Developer and the Medical Developer shall agree, for the purpose of a construction headquarters and storage of construction materials.

(xiv) Medical Developer shall have determined, at Medical Developer's expense, that the geotechnical aspects of Parcel 1 permit construction of the Minimum Improvements and any other improvements desired by Medical Developer without extraordinary cost for soil correction, blasting rock, driving piles or otherwise.

Condition (ii) above are for the exclusive benefit of the General Developer and may be waived by the General Developer, in whole or in part. Conditions (i), (vi), (vii), (viii), (xi) and (xii) above are for the benefit of each of the General Developer, the City, and Medical Developer. Conditions (iv), (v), (x) and (xiv) above are for the exclusive benefit of the Medical Developer and may be waived by the Medical Developer, in whole or in part. Conditions (iii), (ix) and (xiii) above are for the benefit of each of the City and the General Developer. The City's provision of financial assistance to the General Developer pursuant to Section 3.1 of this Agreement, and Medical Developer's conveyance and the General Developer's acquisition of title to the Property pursuant to this Section 3.2 shall be conclusive determinations that each party is satisfied that the conditions in this Section 3.2(a) have been met. If all of the foregoing conditions have not been satisfied or waived on or before May 25, 1999, Medical Developer, the General Developer or the City may terminate this Agreement by written notice to the others on or before May 27, 1999, in which event no party shall have any further rights or obligations under this Agreement.

(b) The purchase price to be paid to Medical Developer by the General Developer in exchange for the conveyance of the Property shall be \$1,500,000, payable in cash at closing.

(c) The closing of the conveyance of the Property from Medical Developer to the General Developer shall occur on such date as the General Developer and Medical Developer agree in writing, but in no case later than May 27, 1999 (the "Closing Date").

(d) Unless otherwise mutually agreed by the General Developer and Medical Developer, the execution and delivery of all deeds, documents and the payment of any purchase price shall be made at the offices of the General Developer, or such other place as the parties may agree to.

(e) The deed for conveyance of the Property pursuant to this Agreement shall be in recordable form and shall be promptly recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property. Medical Developer shall pay at closing the State Deed Tax in connection with the conveyance of the Property from the General Developer to Medical Developer and all outstanding special assessments, if any, including any

amounts reassessed after forfeiture in accordance with Minnesota Statutes, Section 429.071, subd. 4. From and after the date hereof until and including the Closing Date, the City and the General Developer agree not to levy any special assessments against the Property for which the Medical Developer would be responsible pursuant to the preceding sentence. All property taxes payable in the year of closing shall be prorated as of the closing. The General Developer shall pay for any title commitment and premium fees, any title closing fees and the cost of recording the deed. The General Developer shall pay at closing the purchase price due Medical Developer for the Property.

Section 3.3. Condition of Conveyance of Parcel 1; Purchase Price; Medical Developer's Acquisition. (a) The General Developer shall convey title to and possession of Parcel 1 to Medical Developer by a deed substantially in the form of the deed attached as Exhibit F to this Agreement. The General Developer's obligation to convey title to Parcel 1 is subject to the General Developer having acquired title to the Property from Medical Developer pursuant to the terms and conditions of Section 3.2 of this Agreement. The condition set forth in the preceding sentence is for the exclusive benefit of the General Developer.

(b) The purchase price to be paid to the General Developer by Medical Developer in exchange for the conveyance of Parcel 1 shall be \$1.00 payable at closing.

(c) The closing of the conveyance of Parcel 1 from the General Developer to Medical Developer shall occur simultaneously with the conveyance of the Property from Medical Developer to the General Developer pursuant to Section 3.2 of this Agreement.

(d) Unless otherwise mutually agreed by the General Developer and Medical Developer, the execution and delivery of all deeds, documents and the payment of any purchase price shall be made at the offices of the General Developer, or such other place as the parties may agree to.

(e) The deed for conveyance of Parcel 1 pursuant to this Agreement shall be in recordable form and shall be promptly recorded in the proper office for the recordation of deeds and other instruments pertaining to Parcel 1. At closing, the General Developer and the Medical Developer shall also create reciprocal easements in favor of the other for storm water ponds over, under and upon the undevelopable portions of the parcels located on either side of the collector road as shown on the attached Exhibit B. Such easements shall be in form and substance reasonably acceptable to General Developer and Medical Developer and shall include easements from the City for culverts running beneath the collector road. Medical Developer shall pay at closing the purchase price due to General Developer for Parcel 1; all recording costs, including State Deed Tax in connection with the conveyance of Parcel 1 from the General Developer to Medical Developer; any title commitment and premium fees; any title closing fees; and all outstanding special assessments, including any amounts reassessed after forfeiture in accordance with Minnesota Statutes, Section 429.071, subd. 4. From and after the date hereof until and including the Closing Date, the City and the General Developer agree not to levy any special assessments against the Property for which the Medical Developer would be responsible pursuant to the preceding sentence. All property taxes payable in the year of closing shall be prorated as of the closing.

Section 3.4. Title. As soon as reasonably practical after the date of this Agreement, Medical Developer shall obtain and provide to the General Developer a commitment for the issuance of a policy of title insurance for the Property. The General Developer shall have ten (10) days from the date of its receipt of such commitment to review the state of title to the Property and to provide Medical Developer with a list of written objections to such title. Upon receipt of the General Developer's list of written objections, Medical Developer shall proceed in good faith and with all due diligence to attempt to cure the objections made by the General Developer. In the event that Medical Developer has failed to cure objections within sixty (60) days after its receipt of the General Developer's list of such objections, either Medical Developer or the General Developer may by the giving of written notice to the other, terminate this Agreement, upon the receipt of which this Agreement shall be null and void and neither party shall have any liability hereunder. Medical Developer shall have no obligation to take any action to clear defects in the title to the Property, other than the good faith efforts described above. In the alternative, Medical Developer may rescind the General Developer's termination of this Agreement and require the General Developer to purchase the Property if the title objections may be lawfully cured by the City or the General Developer using the power of eminent domain, in which event the General Developer or the City shall cure the title objections utilizing the power of eminent domain and Medical Developer shall reimburse the General Developer for all costs incurred by the General Developer or the City in connection with curing the title objections.

Section 3.5. Soil Conditions; Indemnity. (a) Medical Developer represents and warrants to the General Developer that to the best of Medical Developer's knowledge, except as disclosed in that certain Environmental Assessment - Phase I by Delta Environmental Consultants, Inc., dated February 12, 1993, and that certain Phase One Environmental Site Assessment: Mcrae-Asper Parcel by B.A. Liesch Associates, Inc., dated October 28, 1997, no toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. §§ 9601-9657, as amended), have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Property. Medical Developer further represents and warrants that to the best of Medical Developer's knowledge, except as disclosed in that certain Environmental Assessment - Phase I by Delta Environmental Consultants, Inc., dated February 12, 1993, and that certain Phase One Environmental Site Assessment: Mcrae-Asper Parcel by B.A. Liesch Associates, Inc., dated October 28, 1997, it has not undertaken, and is not aware of any other person having undertaken, any activity on the Property that would cause: (i) the Property to become a treatment, storage, or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq., or any similar State law or local ordinance; (ii) a release or threatened release of toxic or hazardous wastes or substances, pollutants, or contaminants from the Property within the meaning of, or otherwise bring the Property within the ambit of CERCLA, or any similar State law or local ordinance; or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters, or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., or the Clean Air Act, 42 U.S.C. § 7401 et seq.,

or any similar State law or local ordinance. To the best of Medical Developer's knowledge, except as disclosed in that certain Environmental Assessment - Phase I by Delta Environmental Consultants, Inc., dated February 12, 1993, and that certain Phase One Environmental Site Assessment: Mcrae-Asper Parcel by B.A. Liesch Associates, Inc., dated October 28, 1997, Medical Developer has not caused and is not aware of any substances or conditions in or on the Property that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State, or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements, including without limitation, the Minnesota Environmental Response and Liability Act, Minnesota Statutes, Chapter 115B ("MERLA") and the Minnesota Petroleum and Release Cleanup Act, Minnesota Statutes, Chapter 115C. To the best of Medical Developer's knowledge, except as disclosed in that certain Environmental Assessment - Phase I by Delta Environmental Consultants, Inc., dated February 12, 1993, and that certain Phase One Environmental Site Assessment: Mcrae-Asper Parcel by B.A. Liesch Associates, Inc., dated October 28, 1997, Medical Developer has not caused and is not aware that any other person has caused any above ground or underground tanks to be located in or about the Property or to have subsequently been removed or filled. The existence of any condition described in this Section 3.5(a) shall be referred to herein as "Environmental Contamination."

(b) Medical Developer has not caused and is not aware that any other person has caused any environmental inspections, tests, or reports to have been made or prepared in connection with the Property, except for that certain Environmental Assessment - Phase I by Delta Environmental Consultants, Inc., dated February 12, 1993, that certain Phase One Environmental Site Assessment: Mcrae-Asper Parcel by B.A. Liesch Associates, Inc., dated October 28, 1997, and the work in connection with the AUAR described above..

(c) Within thirty (30) days of the date of this Agreement, but prior to conveyance of the Property to the General Developer, the General Developer shall have the right, but not the obligation, to undertake, at its own expense, a Phase I environmental site assessment or other environmental testing of the Property.

(i) If the results of the Phase I assessment or other testing indicate actual or potential Environmental Contamination of or on the Property or any portion thereof, the General Developer may either: (1) terminate this Agreement upon written notice to Medical Developer, at which point neither party shall have any further obligation hereunder except as expressly provided to the contrary herein; or (2) proceed with the acquisition of the Property pursuant to the terms and conditions of this Agreement; or (3) undertake a Phase II environmental site assessment of the Property if, prior to the beginning of such Phase II assessment, Medical Developer and the General Developer enter into a written agreement concerning their respective responsibility for the costs of such assessment.

(ii) If the results of the Phase II assessment indicate actual or potential Environmental Contamination of or on the Property or any portion thereof, the General Developer may either: (1) terminate this Agreement upon written notice to Medical Developer, at which point neither party shall have any further obligation hereunder except

as expressly provided to the contrary herein; (2) proceed with the acquisition of the Property pursuant to the terms and conditions of this Agreement; or (3) negotiate with Medical Developer to acquire only those portions of the Property that are not affected by Environmental Contamination, contingent upon the General Developer and Medical Developer agreeing to terms and conditions of such an acquisition that are satisfactory in the sole discretion of each party.

(d) Medical Developer acknowledges that neither the City nor the General Developer makes any representations or warranties as to the condition of the soils on the Property or its fitness for construction of the Minimum Improvements or any other purpose for which Medical Developer may make use of Parcel 1 or any part thereof. Neither the City nor the General Developer shall have any obligation or liability to Medical Developer for any defect or unsuitability with respect to the soil conditions or the presence of any pollution, contamination or hazardous substances on the Property or any part thereof. Except to the extent due to the negligence or willful misconduct of the General Developer or the City or their officers, agents or employees, Medical Developer agrees to defend, protect, indemnify, and hold harmless the General Developer, the City, and their officers, agents, and employees, against any claims or actions from Medical Developer or any third party regarding the soils on Parcel 1 or the presence of any pollution, contamination, or hazardous substances on Parcel 1 or any part thereof, arising prior to or during Medical Developer's ownership thereof. This undertaking shall survive closing and termination of this Agreement.

Section 3.6. Wage and Job Covenants. (a) The City and the General Developer have found that the construction of the Minimum Improvements is for the purposes of development and redevelopment of marginal property and to promote the development of a public hospital and related facilities in furtherance of the public health, safety and welfare, and thereby represent that any assistance being provided to Medical Developer hereunder is not intended to constitute "assistance for economic development or job growth purposes" as those terms are used by Minnesota Statutes, Section 116J.991. Notwithstanding the foregoing, neither the City nor the General Developer make any representation or warranty concerning administrative or judicial interpretation of, or the applicability or lack thereof of, Minnesota Statutes, Section 116J.991 to any assistance to be provided to Medical Developer under this Agreement. Medical Developer hereby waives any claim for any damages or other relief against the City and the General Developer, and their officers, agents, and employees, arising from an action, whether successful or not, and regardless by whom initiated, brought regarding the applicability of Minnesota Statutes, Section 116J.991.

(b) To the extent that Minnesota Statutes, Section 116J.991 should be found to be applicable to the Minimum Improvements by the State or a court of competent jurisdiction, Medical Developer, the General Developer, and the City agree as follows:

(i) By no later than two years after the date required by Minnesota Statutes, Section 116J.911, Medical Developer shall create on Parcel 1 at least three new full-time equivalent jobs (such jobs may include contractors, subcontractors and other independent contractors as may be permitted by statute) with wages of at least \$8.00 per hour, exclusive of benefits, in addition to any jobs being filled by Medical Developer in the

State as of the date two years prior to such date. Medical Developer shall submit to the General Developer and the City a written report by April 1 of each year after completion of the Minimum Improvements describing employment and wages in sufficient detail to enable the General Developer and the City to determine compliance with this Section.

(ii) The City or the General Developer shall file the reports required by Minnesota Statutes, Section 116J.991, with the Minnesota Department of Trade and Economic Development. Medical Developer shall provide the City and the General Developer with all information necessary for the completion of such reports.

(iii) If Medical Developer fails to meet the Wage and Job Goals, Medical Developer, the City and the General Developer shall enter into an agreement providing for repayment to the City and the General Developer of their respective shares of any financial assistance provided by the City and the General Developer to Medical Developer pursuant to this Agreement.

(d) If Minnesota Statutes, Section 116J.991 is, pursuant to Section 3.6(b), found to be applicable to this Agreement and is subsequently amended to reduce Medical Developer's obligations hereunder or repealed, this Section 3.6 shall be amended to conform to it or deleted, respectively.

ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. (a) Medical Developer agrees that it will construct the Minimum Improvements on Parcel 1 in accordance with the approved Construction Plans, and at all times prior to the Termination Date will operate and maintain, preserve, and keep the Minimum Improvements, or cause the Minimum Improvements to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof, in good repair and condition. The City and the General Developer shall have no obligation to operate or maintain the Minimum Improvements.

(b) Medical Developer will construct the Minimum Improvements in accordance with all local, State, and federal energy-conservation laws or regulations.

(c) Medical Developer will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed, including, without limitation, the requirements of any necessary conditional use permits.

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

Section 4.2. Construction Plans. (a) Before beginning construction of the Minimum Improvements, Medical Developer shall submit to the General Developer Construction Plans. The Construction Plans shall provide for the construction of the Minimum Improvements, as applicable, and shall be in conformity with this Agreement and all applicable State and local laws and regulations. The General Developer will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations; (iii) the Construction Plans are adequate to provide for construction of the Minimum Improvements; and (iv) no Event of Default has occurred. Approval may be based upon a review by the City's building official of the Construction Plans. No approval by the General Developer shall relieve Medical Developer of the obligation to comply with the terms of this Agreement, applicable federal, State and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the General Developer shall constitute a waiver of an Event of Default. Such Construction Plans shall be deemed approved by the General Developer unless rejected in writing by the General Developer, in whole or in part. Such rejections shall set forth in detail the reasons therefor, and shall be made within 30 days after the date of their receipt by the General Developer. If the General Developer rejects any Construction Plans in whole or in part, Medical Developer shall submit new or corrected

Construction Plans within 30 days after written notification to Medical Developer of the rejection. The provisions of this Section 4.2 relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the General Developer. The General Developer's approval shall not be unreasonably withheld or delayed. Said approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the General Developer's satisfaction with the provisions of this Agreement relating thereto.

(b) If Medical Developer desires to make any Material change in the Construction Plans after their approval by the General Developer, Medical Developer shall submit the proposed change to the General Developer for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 of this Agreement with respect to such previously approved Construction Plans, the General Developer shall approve the proposed change and notify Medical Developer in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the General Developer unless rejected, in whole or in part, by written notice by the General Developer to Medical Developer, setting forth in detail the reasons therefor. Such rejection shall be made within ten (10) days after receipt of the notice of such change. The General Developer's approval of any such change in the Construction Plans will not be unreasonably withheld or delayed.

(c) The terms of this Section 4.2 shall apply only to the Construction Plans as herein defined. Except as provided otherwise in this Agreement, any site plan approval, variances, building permits and any other City permit or approval required for construction of the Minimum Improvements shall be applied for and processed in accordance with normal City procedures.

(d) The Minimum Improvements must comply with the architectural covenants described in Section 10.12 below.

(e) The General Developer and the City acknowledge that the State Department of Health has concurrent jurisdiction over approval of the Construction Plans. The General Developer and the City agree that in the event of a dispute between the City or the General Developer and the State Department of Health regarding the Construction Plans, the State Department of Health shall prevail, provided that no Material change in the Construction Plans results.

Section 4.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Medical Developer shall commence construction of the Minimum Improvements by October 1, 2001. The construction commencement date constitutes an extension for good cause of the time period provided in Minnesota Statutes, Section 469.065, Subd. 5 and is necessary in light of the scope of the Minimum Improvements and the planning and public infrastructure construction required prior to the commencement of construction thereof. Subject to Unavoidable Delays, Medical Developer shall substantially complete the construction of the Minimum Improvements by October 21, 2003. All work with respect to the Minimum Improvements to be constructed or provided by Medical Developer on Parcel 1 shall be in conformity with the Construction Plans as submitted by Medical Developer and approved by the

City, as amended by Medical Developer and approved by the City.

Medical Developer agrees for itself, its successors and assigns, and every successor in interest to Parcel 1, or any part thereof, that Medical Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion the development of Parcel 1 through the construction of the Minimum Improvements thereon, that such construction shall in any event be commenced and completed within the period specified in this Section 4.3 of this Agreement. Subsequent to Medical Developer's acquisition of title to Parcel 1, or any part thereof, and until construction of the Minimum Improvements has been completed, Medical Developer shall make reports, in such detail and at such times as may reasonably be requested by the General Developer, as to the actual progress of Medical Developer with respect to such construction.

Section 4.4. Certificate of Completion. (a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of this Agreement relating solely to the obligations of Medical Developer to construct the Minimum Improvements (including the dates for beginning and completion thereof), the City and the General Developer will furnish Medical Developer with a Certificate of Completion substantially in the form shown at Exhibit A. Such certification by the City and the General Developer shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of Medical Developer, and its successors and assigns, to construct the Minimum Improvements, as applicable, and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Medical Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) If the City and the General Developer shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4 of this Agreement, the City and the General Developer shall, within thirty (30) days after written request by Medical Developer, provide Medical Developer with a written statement, indicating in adequate detail in what respects Medical Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City and the General Developer for Medical Developer to take or perform in order to obtain such certification.

(c) The construction of the Minimum Improvements shall be deemed to be substantially completed when all facilities comprising the Minimum Improvements are entitled to be approved for use by the responsible inspecting authority.

ARTICLE V

Insurance and Condemnation

Section 5.1. Insurance. (a) Medical Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the General Developer, furnish the General Developer with proof of payment of premiums on policies covering the following:

(i) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements, as applicable, at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy;

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

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

(b) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by Medical Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, Medical Developer will deposit annually with the General Developer copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement, each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to Medical Developer and the General Developer at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, Medical Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event Medical Developer shall deposit with the General Developer a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(c) Medical Developer and the General Developer agree that all of the provisions set forth in this Article V shall terminate upon the Termination Date.

ARTICLE VI

Additional Assistance; Medical Developer Payments

6.1. City Assistance to General Developer. In order to facilitate the development contemplated hereunder, the General Developer will borrow \$ 1,500,000.00 from the City.

6.2. Special Assessments for Public Improvements. To reimburse the City for the benefit to Parcel 1 attributable to the public improvements to be constructed by the City pursuant to the terms of this Agreement, Medical Developer agrees that the City may specially assess Parcel 1 for an amount not to exceed one-third of the actual cost of (i) the Base Cost of the collector street and related water and sanitary sewer system and (ii) the cost of a water reservoir and related booster pumps, lines and equipment necessary to achieve the water pressure and volume required by Section 10.25 below (the "Water Pressure/Volume System"). The water reservoir shall be located within the area crosshatched on the attached Exhibit G. The City's good faith best estimate of the Medical Developer's share of the special assessment for the Base Cost of the collector street and related water and sanitary sewer system is \$840,000. The City's good faith best estimate of the Medical Developer's share of the special assessment for the Water pressure/Volume System is \$266,667. The City agrees to levy the special assessments described above in 1999 and 2000, as appropriate, and permit such special assessments to be repaid over a twenty year period with interest at the rates then charged by the City for special assessments in the City. The base cost (the "Base Cost") of the collector street and related water and sanitary sewer system is calculated based on the cost of a hypothetical two-lane street and standard size water and sanitary sewer system. The City agrees to absorb, without levying a special assessment, the cost of the upgrade in the collector street and related water and sanitary sewer system above the Base Cost. The City's estimates of the costs related to the public improvements described in this Section 6.2 are detailed on the attached Exhibit H, including the portion of various components that are assessable as part of the Base Cost. Medical Developer waives the right to a public hearing and waives any objections regarding the levy of the special assessments referred to in this Section 6.2 so long as the special assessments are levied in accordance with the terms of this Agreement. The special assessments described above shall be the sole special assessments to be levied against Parcel 1 for the projects contemplated by this Agreement and the development of Parcel 1 and Parcel 2 referred to herein. The Medical Developer shall pay the standard rates for water service, with no up charge based on the installation or use of the Water Pressure/Volume System. The City will use its normal assessment procedures in levying the special assessments described in this Section 6.2, except to the extent provided otherwise in this Agreement.

6.3. Platting. The General Developer shall prepare and obtain all approvals for a plat creating Parcel 1 and Parcel 2, which plat shall be subject to Medical Developer's prior written consent.

6.4. Comprehensive Plan. The City and the General Developer shall make good faith efforts to cooperate with Medical Developer in timely obtaining any amendments or other modifications to the City's comprehensive plan necessary for construction of the Minimum Improvements.

6.5. Zoning. The General Developer shall make good faith efforts to cooperate with Medical Developer in timely obtaining any amendments or other modifications to, or approvals required by, the City's zoning ordinance necessary for construction of the Minimum Improvements.

6.6. Site Plan Review. The General Developer shall make good faith efforts to cooperate with Medical Developer in gaining timely approval by the City of the site plan for the Minimum Improvements.

6.7. Alternative Urban Areawide Review. The General Developer shall make good faith efforts to cooperate with Medical Developer in completing an Alternative Urban Areawide Review (AUAR) that includes Parcel 1 and Parcel 2. Medical Developer's only obligation with respect thereto shall be its contribution to the cost of the AUAR as separately agreed to by the City and Medical Developer.

6.8. Issuance of Bonds. At the request of Medical Developer, the City and/or the General Developer shall negotiate in good faith with Medical Developer regarding the issuance of revenue bonds pursuant to Minnesota Statutes, Sections 469.152 to 469.165, or successor laws, to finance all or a portion of the costs of the Minimum Improvements and other improvements desired to be constructed on Parcel 1 by Medical Developer, to the extent that the issuance of such bonds is permitted under federal and State law and the parties to the financing approve the terms thereof, which approval shall not be unreasonably withheld or delayed.

6.9. Development of Parcel 2. The General Developer shall act as developer of Parcel 2 subsequent to acquiring Parcel 2 from Medical Developer. The General Developer agrees not to unreasonably interfere with the use of Parcel 1 or unreasonably impede access by Medical Developer and its employees, independent contractors, patients and invitees to and from Parcel 1 during development of Parcel 2 or otherwise.

ARTICLE VII

Financing

Section 7.1. General Developer's Option to Cure Default on Mortgage. In the event that there occurs a default under any Mortgage, Medical Developer shall cause the City and the General Developer to receive copies of any notice of default received by Medical Developer from the holder of such Mortgage. Thereafter, the City and the General Developer shall have the right, but not the obligation, to cure any such default on behalf of Medical Developer within such cure periods as are available to Medical Developer under the Mortgage documents.

Section 7.2. Holder's Option to Perform. Upon the occurrence and continuance of an event of default under any Mortgage, the Holder may at its option notify the City and the General Developer in writing that it has elected to assume the obligations of Medical Developer under this Agreement (such notice being referred to as the "Assumption Notice"). Following receipt of the Assumption Notice, the City and the General Developer agree that, notwithstanding anything to the contrary in Section 8.2 hereof, they will to the extent permitted by law treat the Holder as if it were Medical Developer under this Agreement, and will continue to perform their obligations under this Agreement for the benefit of the Holder so long as the Holder continues to perform the obligations of Medical Developer hereunder.

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development. Medical Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of development of Parcel 1.

Section 8.2. Prohibition Against Medical Developer's Transfer of Property and Assignment of Agreement. Medical Developer represents and agrees that prior to the Termination Date:

(a) Except only by way of security for, and only for the purpose of obtaining financing necessary to enable Medical Developer or any successor in interest to Parcel 1, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, Medical Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or Parcel 1 or any part thereof or any interest therein, or any contract or agreement to do any of the same, (such actions collectively referred to as a "Transfer") without the prior written approval of the General Developer, unless Medical Developer remains liable and bound by this Agreement, in which event the General Developer's approval is not required. Any such Transfer shall be subject to the provisions of this Agreement.

(b) In the event Medical Developer, upon Transfer of Parcel 1 or any portion thereof, seeks to be released from its obligations under this Agreement as to the portion of Parcel 1 that is transferred or assigned, the General Developer shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the General Developer, necessary and adequate to fulfill the obligations undertaken in this Agreement by Medical Developer as to the portion of Parcel 1 to be transferred;

(ii) Any proposed transferee, by instrument in writing satisfactory to the General Developer and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the General Developer, have expressly assumed all of the obligations of Medical Developer under this Agreement as to the portion of Parcel 1 to be transferred and agreed to be subject to all the conditions and restrictions to which Medical Developer is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, Parcel 1, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the General Developer) deprive the General Developer of any rights or remedies or controls with respect to Parcel 1 or any part

thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in Parcel 1 or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the General Developer of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the General Developer would have had, had there been no such transfer or change. In the absence of specific written agreement by the General Developer to the contrary, no such transfer or approval by the General Developer thereof shall be deemed to relieve Medical Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto; and

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or Parcel 1 governed by this Article VIII shall be in a form reasonably satisfactory to the General Developer.

In the event the foregoing conditions are satisfied, Medical Developer shall be released from its obligation under this Agreement, as to the portion of Parcel 1 that is transferred, assigned or otherwise conveyed.

(c) The General Developer acknowledges and agrees that Medical Developer may Transfer its interest in this Agreement and in Parcel 1 to Fairview Hospital and Healthcare Services, a Minnesota nonprofit corporation ("Fairview"), or an entity controlling, controlled by or under common control with Fairview, or to an entity in connection with any merger, consolidation or sale of substantially all of the assets of Medical Developer, provided that such transferee complies with the terms and conditions of Sections 8.2(b)(ii) and (iii) in assuming Medical Developer's obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants. (a) Except for any negligence or willful misconduct of the following named parties, Medical Developer releases from and covenants and agrees that the City and the General Developer, and their governing body members, officers, agents, servants, and employees shall not be liable for, and agrees to indemnify, defend and hold harmless the City and the General Developer, and their governing body members, officers, agents, servants, and employees against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any cause of action related to Parcel 1 or the Minimum Improvements arising during the ownership by the Medical Developer of the portion of Parcel 1 which was allegedly involved in the loss or damage.

(b) Except for any willful misrepresentation or any negligence or willful or wanton misconduct of the following named parties, Medical Developer agrees to protect and defend the City and the General Developer, and their governing body members, officers, agents, servants, and employees, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising

or purportedly arising from Medical Developer's defaults under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of Parcel 1 or the Minimum Improvement arising during the ownership by the Medical Developer of the portion of Parcel 1 which was allegedly involved in the loss or damage.

(c) Except for any negligence or willful misconduct of the following named parties, the City and the General Developer, and their governing body members, officers, agents, servants, and employees shall not be liable for any damage or injury to the persons or property of Medical Developer or its partners, officers, agents, servants or employees or any other person who may be about Parcel 1 or the Minimum Improvements.

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

(e) Except for any negligence or willful misconduct of the following named parties, the City and the General Developer release from and covenant and agree that Medical Developer, and its governing body members, officers, agents, servants, and employees shall not be liable for, and agree to indemnify, defend and hold harmless Medical Developer, and its governing body members, officers, agents, servants, and employees against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any cause of action related to Parcel 2 or any improvements constructed on Parcel 2, arising during the ownership by the General Developer or the City of the portion of Parcel 2 which was allegedly involved in the loss or damage.

(f) Except for any willful misrepresentation or any negligence or willful or wanton misconduct of the following named parties, the City and the General Developer agree to protect and defend Medical Developer, and its governing body members, officers, agents, servants, and employees, now or forever, and further agree to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the City's or the General Developer's defaults under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of Parcel 2 or the improvements constructed on Parcel 2, arising during the ownership by the General Developer or the City of the portion of Parcel 2 which was allegedly involved in the loss or damage.

(g) Except for any negligence or willful misconduct of the following named parties, Medical Developer, and its governing body members, officers, agents, servants, and employees shall not be liable for any damage or injury to the persons or property of the City and the General Developer or their partners, officers, agents, servants or employees or any other person who may be about Parcel 2 or the improvements constructed on Parcel 2, arising during the ownership by the General Developer or the City of the portion of Parcel 2 which was allegedly involved in the loss or damage.

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

ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any failure by any party to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder, but only if such failure has not been cured within thirty days after receipt by the defaulting party of written notice of such failure or, if the failure is by its nature incurable within thirty days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party within such thirty-day period that the failure will be cured and will be cured as soon as reasonably possible. Subject to the foregoing notice and cure periods, nothing in this Article IX shall limit a party's rights to exercise any remedy to which it is entitled under any other provision of this Agreement, provided that if such default is not timely cured the non-defaulting party may terminate this Agreement. For purposes of Article IX, the City and the General Developer shall be collectively deemed one party and Medical Developer shall be deemed the other party.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs, the City and the General Developer upon an Event of Default by Medical Developer, or Medical Developer, upon an Event of Default by the City or the General Developer, may:

- (a) Suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement.
- (b) In the case of an Event of Default by a party, the non-defaulting party may demand reimbursement by the defaulting party in the amount of any costs paid by the non-defaulting party pursuant to this Agreement.
- (c) Take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. Revesting Title in General Developer Upon Happening of Event Subsequent to Conveyance to Medical Developer. In the event that, subsequent to conveyance of Parcel 1 to Medical Developer and prior to the date Medical Developer is entitled to issuance of the Certificate of Completion:

- (a) subject to Unavoidable Delays, Medical Developer fails to carry out its obligations with respect to the construction of the Minimum Improvements (including the nature and the date for the completion thereof), or abandons or substantially suspends construction work, and any such failure, abandonment, or suspension shall not be cured, ended, or remedied

within thirty (30) days after written demand from the General Developer to Medical Developer to do so or if such failure, abandonment or suspension is not reasonably curable within such 30-day period, such longer period as may be reasonably necessary; or

(b) subject to Unavoidable Delays, Medical Developer fails to cure any default under this Agreement within 30 days after receipt of notice of Event of Default; or

(c) there is, in violation of this Agreement, any transfer of Parcel 1;

then the General Developer shall have the right to re-enter and take possession of Parcel 1 and to terminate and re-vest in the General Developer the estate conveyed pursuant to the deed to Medical Developer, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of Parcel 1 to Medical Developer shall be made upon, and that any instrument conveying title from the General Developer to Medical Developer of Parcel 1 shall contain, a condition subsequent to the effect that in the event of any default on the part of Medical Developer and failure on the part of Medical Developer to remedy, end, or abrogate such default within the period and in the manner stated in this Agreement, the General Developer at its option may declare a termination in favor of the General Developer of the title, and of all the rights and interests in and to Parcel 1 conveyed to Medical Developer, and that such title and all rights and interests of Medical Developer, and any assigns or successors in interest to and in Parcel 1, shall revert to the General Developer.

Section 9.4. Resale of Reacquired Property; Disposition of Proceeds. Upon the re-vesting in the General Developer of title to and/or possession of Parcel 1 as provided in Section 9.3, the General Developer shall, pursuant to its responsibilities under law, use its best efforts to sell Parcel 1 or part thereof as soon and in such manner as the General Developer shall find feasible and consistent with the objectives of such law and of the Development Plan to a qualified and responsible party or parties (as determined by the General Developer) who will assume the obligation of making or completing the Minimum Improvements or such other improvements in their stead as shall be satisfactory to the General Developer and in accordance with the uses specified for Parcel 1. Upon such resale of Parcel 1, the proceeds thereof shall be applied:

(a) First, to reimburse the General Developer for all costs and expenses incurred by the General Developer, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of Parcel 1 or part thereof (but less any income derived by the General Developer from the property or part thereof in connection with such management); all assessments, and water and sewer charges with respect to Parcel 1 (or, in the event Parcel 1 is exempt from assessment or such charge during the period of ownership thereof by the General Developer, an amount, if paid, equal to such assessments or charges (as determined by the City's assessing official) as would have been payable if Parcel 1 were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on Parcel 1 or part thereof at the time of re-vesting of title thereto in the General Developer or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Medical Developer, its successors or transferees; any expenditures made or obligations incurred by the General Developer with respect to the making or completion of the Minimum Improvements or any part thereof on Parcel 1; financial assistance made by the General

Developer and the City to Medical Developer (less any portion thereof previously repaid by Medical Developer); and any amounts otherwise owing the General Developer and they City by Medical Developer and its successor or transferee; and

(b) Any balance remaining after such reimbursements which is directly attributable to that parcel shall be returned to Medical Developer.

Section 9.5. No Remedy Exclusive. No remedy herein conferred upon or reserved to any party in this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the General Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.6. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; General Developer Representatives Not Individually Liable. The City, the General Developer and Medical Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the General Developer or the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official, or employee of the City or the General Developer shall be personally liable to Medical Developer, or any successor in interest, in the event of any default or breach by the City or the General Developer, or for any amount which may become due to Medical Developer or such successor on any obligations under the terms of this Agreement.

Section 10.2. Equal Employment Opportunity. Medical Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, State, and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. Medical Developer agrees that prior to the Termination Date, Medical Developer, and its successors and assigns: (a) shall not discriminate upon the basis of race, color, creed, sex, national origin, or any other classification prohibited by law in the sale, lease, rental, or use or occupancy of Parcel 1 or any improvements erected or to be erected thereon, or any part thereof; and (b) shall devote the Minimum Improvements to use for medical and hospital facilities.

Section 10.4. Provisions Not Merged With Deeds. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of Medical Developer, is addressed to or delivered personally to Medical Developer at Fairview Red Wing Health Services, 1407 West Fourth Street, Red Wing, Minnesota 55066-2198, Attention: Administrator;

(b) in the case of the City, is addressed to or delivered personally to the City at 315 West 4th Street, P.O. Box 34, Red Wing, Minnesota 55066, Attention: City Administrator; and.

(c) in the case of the General Developer, is addressed to or delivered personally to the General Developer at 433 West Third Street, Suite 200, P.O. Box 244, Red Wing, Minnesota 55066, Attn: Executive Director;

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the others as provided in this Section 10.6.

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The General Developer may record this Agreement and any amendments thereto with the Goodhue County Recorder. Medical Developer shall pay all costs of recording.

Section 10.9. Attorney Fees. Whenever any Event of Default occurs and if a party shall employ attorneys or incur other expenses for the collection of payments due or to become due, or for the enforcement of performance or observance of any obligation or agreement on the part of any other party under this Agreement, the non-prevailing party agrees that it shall, within ten days of written demand by the prevailing party, pay to the prevailing party the reasonable fees of such attorneys and such other expenses so incurred by the prevailing party.

Section 10.10. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the State or Federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 10.11. Deed Restrictions. The City, the General Developer and the Medical Developer agree to develop Parcel 1 and Parcel 2 with complementary uses, as more fully set forth in the attached Exhibit I. As provided in the Warranty Deed attached as Exhibit E, the General Developer agrees that Parcel 2 will be subject to a deed restriction such that Parcel 2 may not be used for Health Care Uses.

The General Developer and the City also agree, for the benefit of Medical Developer, to impose identical restrictive covenants to those contained in the Warranty Deed attached as Exhibit E on any property now or hereafter acquired by the General Developer or the City which is contiguous to Parcel 1 or Parcel 2 or contiguous to other parcels containing such restrictive covenants in favor of Medical Developer. For purposes of the previous sentence, "contiguous" includes property that is separated by streets, roads, alleys, rights-of-way, ponds, public property or conservation easements. The preceding two sentences shall survive the termination of this Agreement and remain in effect so long as the deed restriction regarding Health Care Uses remains in effect with respect to Parcel 2.

"Health Care Uses," as used herein and in such Warranty Deed, means the provision or sale of medical or medically-related services or products including, but not limited to, acute care or hospital inpatient or outpatient or emergency services; general medical, specialty medical or physician care, clinics, services, products or programs; medical surgery, behavioral health or chemical dependency services, laboratory services, diagnostic services, infusion services, dialysis, imaging, urgent care, sanatoriums, skilled nursing care, board and care facilities, wellness programs, family planning services, medical education, medical research, assisted living, pharmacy, optical or ophthalmology, home healthcare, durable medical equipment, physical therapy, physical rehabilitation, sports medicine, medical offices, chiropractic services, dentistry, orthodontial services, so-called "alternative medicine" including, without limitation, acupuncture and acupressure; and administration or support services related to any of the above, but **excluding** the manufacture, assembly, distribution, warehousing or sale at wholesale of, or research and development with respect to, drugs, medicines or medical devices regulated by the United States Food and Drug Administration or wellness programs provided by employers exclusively for their employees.

Upon written request by the General Developer, Medical Developer may, at its option, waive any of the exclusive uses (on a one time or permanent basis) set forth above to permit such uses on Parcel 2, which waiver shall be in writing and in recordable form.

With respect to wellness programs, optical services, chiropractic services, dentistry, orthodontial services and so-called "alternative medicine," Medical Developer, upon written request of the General Developer, shall waive its exclusive (on a one time basis only) for any of such uses the General Developer desires to locate on Parcel 2, if Medical Developer is not then engaging in such uses on Parcel 1 and does not intend to initiate any such requested uses on Parcel 1 within the next two (2) years (or within two (2) years after the completion of the Minimum Improvements, if the General Developer makes a written request prior to completion of the Minimum Improvements), provided Medical Developer determines that such uses proposed by the General Developer will not be detrimental to Medical Developer's operations on Parcel 1, which determination shall be made reasonably. Medical Developer shall demonstrate its intention to initiate any requested use (except assisted living requested more than two (2) years after completion of the Minimum Improvements, which is addressed below) by delivering to the General Developer any of the following: (i) an excerpt from Medical Developer's strategic plan mentioning the initiation of such use; (ii) an excerpt from Medical Developer's internal memoranda mentioning the initiation of such use; (iii) architectural sketches, plans or renderings relating to such use; or (iv) any other documentation or evidence that reasonably demonstrates Medical Developer's intention to initiate such use within the applicable period.

With respect to assisted living only, Medical Developer, upon written request of the General Developer, shall waive its exclusive on a one time basis for a bona fide assisted living development (which shall be evidenced by an executed letter of intent or purchase agreement between the General Developer and a recognized assisted living developer calling for the development of assisted living on Parcel 2) the General Developer desires to locate on Parcel 2, if Medical Developer is not then engaging in such use on Parcel 1 and does not intend to initiate such use on Parcel 1 within the next two (2) years (or within two (2) years after the completion of the Minimum Improvements, if the General Developer makes a written request

prior to completion of the Minimum Improvements). If the General Developer requests a waiver for assisted living more than two (2) years after completion of the Minimum Improvements, Medical Developer shall demonstrate its intention to initiate any requested use by delivering to the General Developer either of the following: (i) evidence that Medical Developer has budgeted for such use; or (ii) evidence that Medical Developer has engaged an architect to work on an assisted living project for Parcel 1. If Medical Developer does not initiate a requested use within the applicable period provided above, Parcel 2 shall be released from the deed restriction regarding such use. For purposes of this Agreement, "assisted living" shall mean a facility licensed by the Minnesota Department of Health or successor agency where individualized home care aid services or home management services are provided to residents either by the management or by providers under contract with the management. "Assisted living" shall not include "congregate housing" or "housing for the elderly," as defined below. "Congregate housing" shall mean a residential facility for four or more elderly persons (age 60 or older) within which are provided living and sleeping facilities, meal preparation, laundry services and room cleaning. "Congregate housing" facilities may also provide other services such as transportation for routine social and medical appointments, and counseling. "Housing for the elderly" shall mean a building or group of buildings containing dwellings where the occupancy of the dwellings is restricted to persons 55 years of age or older or couples where one partner is 55 years of age or older. "Housing for the elderly" does not include developments that contain convalescent or nursing facilities.

If Medical Developer does not notify the General Developer that it has rejected a request for a waiver of a given use by the General Developer within 60 days after receipt of such written request, Medical Developer shall be deemed to have waived the exclusive one time only with respect to such requested use.

After the completion of the Minimum Improvements, if more than 75,000 square feet of the Minimum Improvements cease to be used for any Health Care Uses for more than three consecutive years, unless due to Unavoidable Delays, Parcel 2 shall forever be released from the deed restriction regarding Health Care Uses set forth in this Section 10.11.

Section 10.12. Architectural Covenants. At closing, Medical Developer will record, prior to the conveyance of Parcel 1 and Parcel 2, the Declaration of Architectural Covenants in the form of the attached Exhibit I, which shall control all future development of Parcel 1 and Parcel 2.

Section 10.13 Helipad. The City and the General Developer acknowledge that the Medical Developer needs to construct a helipad to service its medical campus on Parcel 1. The City and the General Developer agree to cooperate with the Medical Developer in obtaining any necessary permits for a helipad from the Federal Aviation Administration ("FAA") or other governmental authorities having jurisdiction with respect thereto. At the Medical Developer's request, the General Developer agrees to subject those platted lots created out of Parcel 2 abutting Parcel 1 (whether or not separated by a street), which are capable of containing a building, antennae, tower or other above grade improvement under applicable zoning ordinances, to flight path easements as reasonably necessary for Parcel 1; provided, however, in no event shall the flight path easements burden any air space beneath 50 feet above ground level. The

General Developer agrees not to convey any interest in any platted lot created out of Parcel 2 abutting Parcel 1 (whether or not separated by a street) until the Medical Developer shall have had a reasonable opportunity to request that the General Developer subject Parcel 2 to flight path easements as described in the preceding sentence.

Section 10.14 Antennae/Satellite Dishes. The City and the General Developer acknowledge that the Medical Developer needs to construct antennae and/or satellite dishes to service its medical campus on Parcel 1. The General Developer agrees to cooperate with the Medical Developer in obtaining any necessary permits or approvals from the Federal Communications Commission, FAA or other governmental authorities having jurisdiction with respect thereto, including any approvals required from the City under the City's zoning ordinance. The General Developer agrees to grant to Medical Developer an easement to permit Medical Developer to locate antennae on the top of the bluff above Parcel 2 if such location is reasonably determined by Medical Developer to be the most appropriate location for such antennae. Any easement area associated with such an easement shall be large enough to permit construction, repair, maintenance, reconstruction and replacement, as well as ingress to and egress from the antennae/satellite dishes by construction and maintenance vehicles and personnel.

Section 10.15 Signage. The City and the General Developer acknowledge that signage is critical to the operation of the medical campus to be constructed on Parcel 1. The City agrees, at its expense, to install informational and directional signage within street rights-of-way over which the City has jurisdiction in the vicinity of Parcel 1, as described and depicted as "City rights-of-way signage" on Exhibit J. The City and the General Developer agree to cooperate with Medical Developer to obtain approval for all informational and directional signage that Medical Developer desires to be located within Minnesota Department of Transportation and/or Goodhue County rights-of-way, including at a minimum the signage described and depicted as "MnDot rights-of-way signage" and "Goodhue County rights-of-way signage" on Exhibit J. The General Developer hereby agrees that the signage for Parcel 1 shall be acceptable if the signage conforms to the descriptions and depictions for "on-site signage" on the attached Exhibit J. Medical Developer agrees to pay for all signage located within Parcel 1. The General Developer and Medical Developer shall share the cost of any signs for the mutual benefit of Parcel 1 and Parcel 2 which may be agreed upon by the General Developer and Medical Developer, which signs shall conform to the City's zoning ordinance. Any off-site signage on private property shall be the responsibility of the party desiring such signage and shall conform to the City's zoning ordinance.

Section 10.16 Bus Service. The City agrees to provide scheduled municipal bus service to the Minimum Improvements located on Parcel 1.

Section 10.17 Collector Street. Parcel 1 and Parcel 2 will be served by the collector street shown on the attached Exhibit K. The collector street shall provide access between Highway 61 (at the present Tyler intersection) and Bench Street. The collector street shall have a single name for the segment from the intersection with Highway 61 (at the present Tyler intersection) to the intersection with Bench Street. The name of the collector street shall be subject to the approval of Medical Developer, which approval shall not be unreasonably

withheld. Neither the City nor the General Developer may change the configuration or alignment of such collector street without the Medical Developer's prior written consent. The City agrees to acquire (by purchase or condemnation) the approximately 120 foot wide right of way necessary to provide two lanes of traffic in each direction with at least a landscaped boulevard separating the two directions of traffic running from the intersection with Bench Street to at least the western edge of Parcel 1. The City agrees to acquire (by purchase or condemnation) the approximately 120 foot wide right of way necessary to provide one lane of traffic in each direction with at least a landscaped boulevard separating the two directions of traffic running from within 800 feet of the intersection with Highway 61 (at the present Tyler intersection) to the western edge of Parcel 1. In addition, turn lanes shall be installed at all intersections for the full length of the collector street. Detailed plans for the collector street and related utilities and amenities (e.g. boulevards, berms, landscaping of the boulevard, lighting, sidewalks, trails, transit shelters) shall be subject to the prior written consent of Medical Developer. The City agrees to cooperate with Medical Developer in working with Goodhue County to obtain the installation of semaphores at the intersection of Bench Street and the collector street. Medical Developer agrees that no utilities or street improvements are necessary to allow site grading on Parcel 1. The City agrees to complete a graded class 5 gravel base access road to Parcel 1 adequate for construction traffic on or before October 1, 1999 and the utilities necessary for Parcel 1 (i.e. water, sanitary sewer, electric, natural gas and telephone) on or before November 1, 1999, provided Medical Developer has notified the City in writing on or before May 4, 1999 that Medical Developer intends to commence construction of the Minimum Improvements on or before May 1, 2000. If Medical Developer notifies the City in writing after May 4, 1999 of Medical Developer's intention to commence construction of the Minimum Improvements or notifies the City on or before May 4, 1999 but projects a construction commencement date after May 1, 2000, the City agrees to complete the utilities necessary for Parcel 1 (i.e. water, sanitary sewer, electric, natural gas and telephone) and a graded class 5 gravel base access road to Parcel 1 adequate for construction traffic on or before the later of (i) the date 30 days before the date stated by Medical Developer in such notice as the intended construction commencement date for the Minimum Improvements or (ii) the date nine (9) months after the date the City receives such notice of intended construction commencement from Medical Developer. If the utilities and construction road are not completed to the required levels within the time limits set forth in the previous two sentences, the Medical Developer may postpone the opening of the Minimum Improvements by one day for each day of delay in addition to pursuing its other rights and remedies available at law or in equity for the breach of this provision by the City. If the Medical Developer does not begin construction of the Minimum Improvements within one year of notifying the City of Medical Developer's intention to begin construction (or such later date stated in such notice), the City may postpone completion of the final wear course of the collector street by one day for each day of delay in addition to pursuing its other rights and remedies available at law or in equity for the breach of this provision by the Medical Developer. The City shall finally complete the collector street and all utilities and amenities required by this Section 10.17 and Section 10.18 below and install the final wear course of asphalt for the collector street and cause the collector street to be open and ready for traffic on or before the date 30 days prior to the date Medical Developer is ready to open the Minimum Improvements for the conduct of its business. Notwithstanding the foregoing, the Medical Developer acknowledges that the City cannot guarantee the installation of utility services by NSP, US West and the cable television provider (the "Utility Companies") on the schedule specified in this Agreement. Accordingly,

the City's obligation with respect to the installation of the utility services that will be provided by the Utility Companies shall be to use its best efforts to cause the Utility Companies to install such utility services on the schedule specified in this Agreement.

The City agrees to include a project in its five year Capital Improvement Program to widen the two-lane portion of the collector road to four lanes (divided by a landscaped median) in the first budget cycle after that portion of the collector road achieves a traffic flow equal to or in excess of 10,000 average daily trips.

Section 10.18 Streets and Utilities. The City agrees to install or cause the applicable utility company to install all utilities required for the Property, as depicted on the attached Exhibit K (which includes utilities adjacent to Bench Street). The General Developer shall have the right to construct streets and utilities within that portion of Parcel 2 that does not show streets and utilities on Exhibit K as market requirements should dictate. The construction standards for the construction of streets and utilities (including the collector street) for Parcel 1 and Parcel 2 are detailed on Exhibit L. The utilities serving Parcel 1 shall include electrical, street lighting, water, sanitary sewer, storm sewer, telephone, storm water ponds, cable television, fiber optics and natural gas. All utilities (except storm water ponds) for the Property shall be located underground. The utilities serving Parcel 1 shall be stubbed adjacent to the boundary of Parcel 1 in the locations shown on Exhibit K. Except as provided otherwise in Section 10.17 above, those streets and utilities so designated on Exhibit K shall be completed and fully available to Parcel 1 based on the schedule attached as Exhibit M. If such streets and utilities are not completed and fully available to Parcel 1 as required by Exhibit M, Medical Developer may postpone the opening of the Minimum Improvements by one day for each day of delay in addition to pursuing its other rights and remedies available at law or in equity for the breach of this provision by the City. The City and the General Developer agree not to specially assess or otherwise charge Medical Developer or Parcel 1 for any costs related to the installation of the streets, utilities and amenities (including those described in Sections 10.17), except for Medical Developer's obligation under Section 6.2 of this Agreement. The City agrees to maintain the streets, curb and gutters, street lighting, water, sanitary sewer, storm sewer, storm water ponds, boulevards, berms, landscaping of the rights of way, sidewalks, trails and transit shelters without cost to Medical Developer, except for special assessments related to future capital projects after the initial installation which, under customary City policy, are levied against benefitted properties in an amount equal to the benefit. Notwithstanding the foregoing, the Medical Developer acknowledges that the City cannot guarantee the installation of utility services by NSP, US West and the cable television provider (the "Utility Companies") on the schedule specified in this Agreement. Accordingly, the City's obligation with respect to the installation of the utility services that will be provided by the Utility Companies shall be to use its best efforts to cause the Utility Companies to install such utility services on the schedule specified in this Agreement.

Section 10.19 Tax Exemption. The City acknowledges that Medical Developer's intended use of the Minimum Improvements is intended to cause Parcel 1 to be exempt from real estate taxes. The City agrees to cooperate with Medical Developer in obtaining tax exempt status for the Minimum Improvements. The City's cooperation will include, without limitation, meeting with the county assessor, as necessary, to attempt to achieve tax exempt status.

Section 10.20 Grading. In connection with the construction of the Minimum Improvements, Medical Developer shall have the right to grade Parcel 1 together with the adjacent Parcel 2 for the purpose of balancing Parcel 1, without cost for import or export of fill. Medical Developer agrees that such grading shall not have an adverse effect on the developability of Parcel 2 and that the City shall give prior approval of the grading plan prior to implementation.

Section 10.21 SAC, WAC. Medical Developer agrees to pay SAC and WAC charges to the City in accordance with the schedule attached as Exhibit N. The City agrees that no STAC will be imposed against the development of the Minimum Improvements.

Section 10.22 Termination for Lack of Progress. Without limiting Medical Developer's rights and remedies if the Medical Developer does not elect to terminate this Agreement pursuant to this Section 10.22, Medical Developer may terminate this Agreement if any of the following milestones are not achieved:

(a) if Goodhue County has not adopted a resolution, on or before April 15, 1999, acceptable to the Medical Developer, agreeing (i) to widen Bench Street to four lanes from the intersection with Highway 61 to the intersection with the collector road, with appropriate turn lanes in both directions on Bench Street at such intersection with the collector road, on or before the opening of the Minimum Improvements, (ii) to install semaphores at the intersection of the collector road and Bench Street on or before the opening of the Minimum Improvements (subject to the regulatory limitations of MnDOT), and (iii) to the location of the intersection of the new collector street and Bench Street. The City agrees to cooperate with the Medical Developer in obtaining the above-described resolution from Goodhue County;

(b) if the City has not caused its engineers to begin the design for the collector street and related utilities on or before February 1, 1999;

(c) if the City has not acquired all of the rights of way necessary for the collector street and related utilities between Highway 61 (at the present Tyler intersection) and Bench Street on or before July 31, 1999;

(d) if the City has not completed the class 5 construction access road and related utilities, as described in Section 10.17, on or before the date required by Section 10.17.

The date referred to above in Section 10.22 (d) shall be postponed one day for each day that Medical Developer postpones Medical Developer's construction start date, as provided in Section 10.17.

Section 10.23 Waste Incineration. Medical Developer may incinerate the waste generated from Parcel 1 if Medical Developer obtains all federal, State and City licenses, approvals and permits required in connection therewith.

Section 10.24 Water Feature. The design of any exterior water feature for Parcel 1 visible from any public street will be subject to the approval of the General Developer, which approval

shall not be unreasonably withheld or delayed. Medical Developer may use any portion of Parcel 1 for storm water drainage purposes.

Section 10.25 Water Pressure/Volume System. The City agrees to construct the Water Pressure/Volume System as described in Section 6.2 above. The Water Pressure/Volume System shall create sufficient pressure and volume to provide water for fire fighting purposes at a minimum pressure of 40 pounds per square inch with a flow of 1,750 gallons per minute at an elevation of 865 feet above mean sea level N.G.V.D. and for domestic purposes at a minimum of 68 pounds per square inch with a flow of 750 gallons per minute at an elevation of 865 feet above mean sea level N.G.V.D..

Section 10.26. Estoppel Certificates. Within 20 days after written request from the Medical Developer, the City and the General Developer will execute, acknowledge and deliver an estoppel certificate furnished by the Medical Developer, which estoppel certificate may be relied upon by the Medical Developer and third parties, certifying: (a) whether this Agreement is unmodified and in full force and effect (or if modified and in full force and effect, that this Agreement is in full force and effect as modified and stating the modifications) or has expired; (b) whether or not the Minimum Improvements have been substantially completed; and (c) that neither the City, the General Developer nor the Medical Developer is in default under this Agreement, or specifying any such default;

ARTICLE XI

Termination of Agreement

Section 11.1. Option to Terminate. This Agreement may be terminated by either the General Developer or Medical Developer if closing of the conveyance of the Property from Medical Developer to the General Developer does not occur on or before May 27, 1999.

Section 11.2. Action to Terminate. Termination of this Agreement pursuant to Section 11.1 must be accomplished by the giving of ten (10) days written notification of a party's intent to terminate.

Section 11.3. Termination Date. If not sooner terminated, this Agreement shall terminate on the Termination Date.

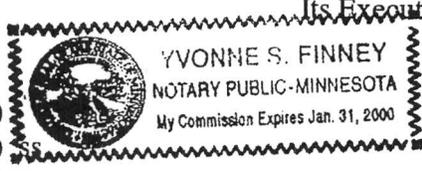
Section 11.4. Effect of Termination. Following the termination or expiration of this Agreement, no action, claim, or demand may be based on any term or provision of this Agreement, except as expressly provided to the contrary herein.

RED WING PORT AUTHORITY,
A DEVELOPMENT AGENCY

By: Len Kiecker
Its President

By: Myron White
Its Executive Director

STATE OF MINNESOTA)
)
COUNTY OF GOODHUE)



The foregoing instrument was acknowledged before me this 26th day of FEBRUARY 1999 by LEN KIECKER and MYRON WHITE, the President and Executive Director of the Red Wing Port Authority, a Development Agency, a public body politic and corporate under the laws of Minnesota, on behalf of the Authority.

Y. S. Finney
Notary Public

EXHIBIT A

CERTIFICATE OF COMPLETION

The undersigned hereby certify that Fairview Red Wing Health Services ("FRW") has fully complied with its obligations under Articles III, IV and V and Sections 8.2, 10.2 and 10.3 of that document titled "Development Agreement" dated _____, 199____ among the City of Red Wing, the Red Wing Port Authority and FRW, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that FRW is released and forever discharged from its obligations under Articles III, IV and V and Sections 8.2, 10.2 and 10.3 of the Development Agreement. In addition, the undersigned hereby certify that the provisions of Section 9.3 and 9.4 of the Development Agreement and the provisions of the Quitclaim Deed from the Red Wing Port Authority to FRW providing for the forfeiture to the Red Wing Port Authority and resale, are hereby released absolutely and forever, and the Goodhue County Recorder is hereby authorized to accept for recording the filing of this instrument, to be a conclusive determination of the satisfaction and termination of the covenants and conditions of the Articles and Sections of the Development Agreement and the Quitclaim Deed described above.

CITY OF RED WING

By: _____

Its: _____

By: _____

Its: _____

RED WING PORT AUTHORITY, A
DEVELOPMENT AGENCY

By: _____

Its: _____

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this ____ day of _____,
199____ by _____ and _____, the
_____ and _____ of the City of Red Wing, a Minnesota
municipal corporation, on behalf of said municipal corporation:

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

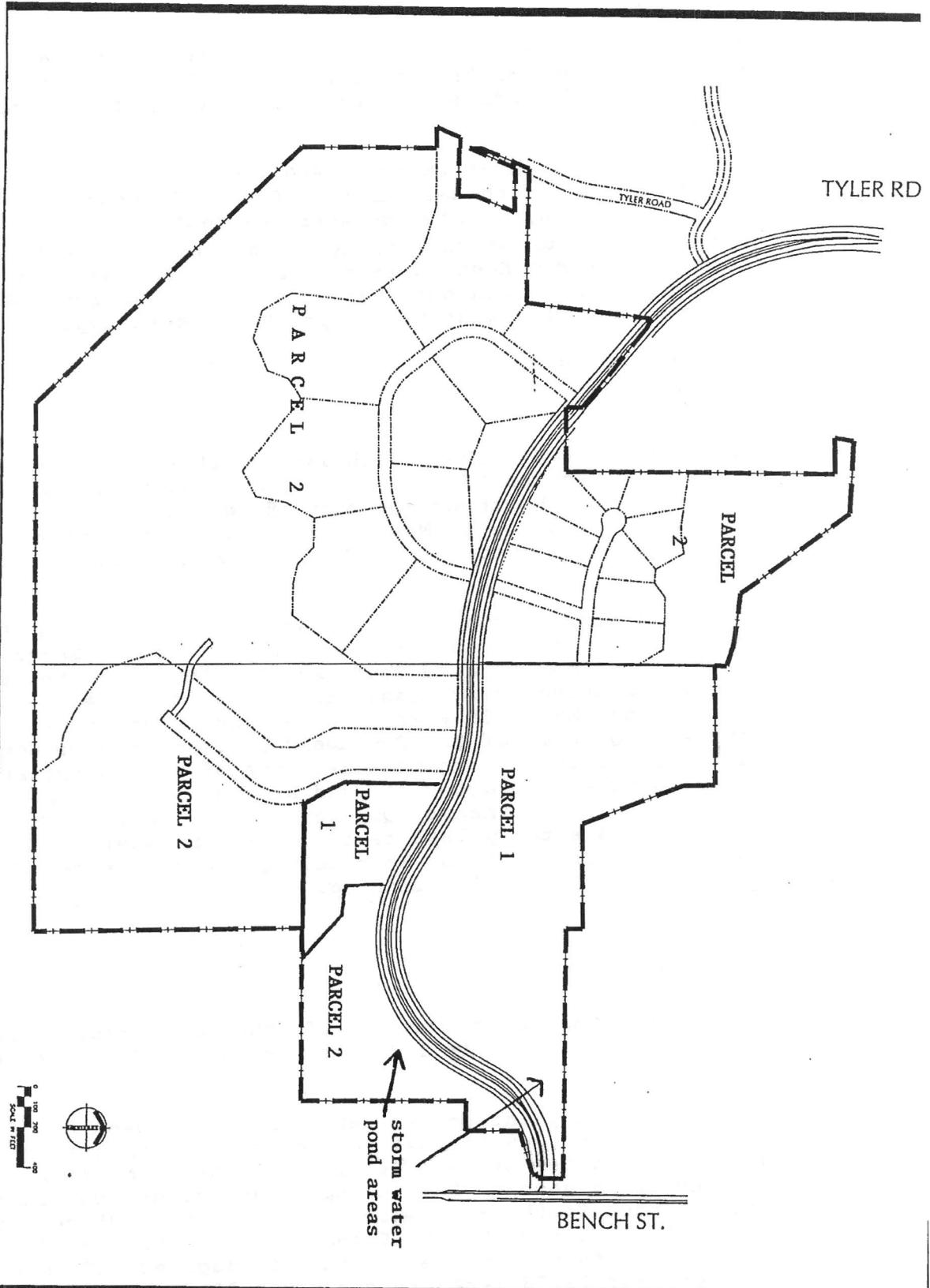
The foregoing instrument was acknowledged before me this ____ day of _____,
199____ by _____ and _____, the President and Executive
Director of the Red Wing Port Authority, a Development Agency, a public body politic and
corporate under the laws of Minnesota, on behalf of the Authority.

Notary Public

This document drafted by:

Dorsey & Whitney LLP
220 S. 6th Street
Minneapolis, MN 55402

EXHIBIT B



RED WING PORT AUTHORITY
RED WING, MINNESOTA

BOUNDARY MAP

ENGINEERING • ARCHITECTURE
PLANNING • LANDSCAPE ARCHITECTURE
THE FIRM HAS BEEN LICENSED IN THE STATES OF
MINNESOTA, ILLINOIS, MISSOURI, AND WISCONSIN.
RED WING, MINNESOTA



PROJECT NO.	2014-001
DATE	02/10/15
STANDARD DATE	02/10/15
SCALE	AS SHOWN
DATE	02/10/15
BY	ML
CHECKED BY	ML
DATE	02/10/15
SCALE	AS SHOWN
DATE	02/10/15

EXHIBIT B CONTINUED

Parcel 1:

All that part of the Southwest Quarter of the Southwest Quarter of Section 26, in Township 113 North, Range 15 West in the County of Goodhue and State of Minnesota, described as follows:

Beginning at a point which is 660 feet North of the Southeast corner of the Southwest Quarter of the Southwest Quarter of said Section 26, thence run West 114 feet to center of town road, thence run Northeasterly along center of town road 125 feet, thence run East 55 feet to East line of the Southwest Quarter of the Southwest Quarter of said Section 26, thence run due South 108 feet to the point of beginning.

Abstract Property.

Parcel 2:

All that part of the Southeast Quarter of the Southwest Quarter of Section 26, and all that part of the Northeast Quarter of the Northwest Quarter of Section 35, in Township 113 North, of Range 15 West of the Fifth Principle Meridian, in the County of Goodhue and State of Minnesota, described as follows:

Beginning at an iron on the West line of said Southeast Quarter of the Southwest Quarter 768 feet North of the Southwest corner of said Southeast Quarter of the Southwest Quarter, running thence East 1134.4 feet, thence South 768 feet, thence East 185.6 feet to the Southeast corner of said Southeast Quarter of the Southwest Quarter, thence South 1320 feet more or less along the East line of the Northeast Quarter of the Northwest Quarter of said Section 35 to the Southeast corner of said Northeast Quarter of the Northwest Quarter, thence Northwesterly 1865 feet to the Northwest corner of said Northeast Quarter of the Northwest Quarter, thence North 768 feet to the place of beginning.

Abstract Property.

Parcel 3:

Part of the Southeast Quarter of the Southwest Quarter of Section 26, in Township 113 North, Range 15 West, described as follows:

Beginning at a point on the centerline of Town Road 1036.08 feet North and 3769.95 feet West of the Southeast corner of Southeast Quarter of said Section 26; thence North 21 degrees 36 minutes 25 seconds East on said centerline town road 35.31 feet; thence South 89 degrees 15 minutes 05 seconds East 674.42 feet; thence North 60 degrees 30 minutes 48 seconds East 204.62 feet; thence North 75 degrees 07 minutes 38 seconds East 69.78 feet; thence South 00 degrees 44 minutes 55 seconds West 435.16 feet; thence North 89 degrees 15 minutes

05 seconds West 763.69 feet; thence North 00 degrees 44 minutes 55 seconds East 93.45 feet; thence North 89 degrees 15 minutes 05 seconds West 53.20 feet; thence North 21 degrees 36 minutes 25 seconds East 200 feet; thence North 89 degrees 15 minutes 05 seconds West 185.31 feet to the point of beginning, EXCEPT

That part of the Southeast Quarter of the Southwest Quarter of Section 26, Township 113 North, Range 15 West in Goodhue County and State of Minnesota, described as follows:

From an iron pipe on the West line of said Southeast Quarter of Southwest Quarter distant 768 feet North of the Southwest corner thereof; run due East 150 feet to an iron pipe; thence North 22 1/2 degrees East 100 feet to the place of beginning of tract here to be conveyed; thence continue North 22 1/2 degrees East 200 feet; thence due East 53.2 feet; thence South 22 1/2 degrees West 200 feet to the intersection with a line bearing due East from the place of beginning; thence due West 53.2 feet to place of beginning.

Abstract Property.

Parcel 4:

The Southwest Quarter of the Southeast Quarter of Section 26, in Township 113 North, Range 15 West.

The Southeast Quarter of the Southwest Quarter of Section 26, in Township 113 North, Range 15 West, except the following described tracts:

(1) Beginning at the center of said Southwest Quarter of said Section 26; running thence South 422 feet; thence North 23 degrees east 460 feet; thence West 185 feet to the point of beginning.

(2) Beginning at an iron pipe on the West line of said Southeast Quarter of the Southwest Quarter distant 768 feet North of the Southwest corner thereof; thence due East 150 feet; thence North 22 1/2 degrees East for 100 feet; thence due West 150 feet, more or less to the Southeasterly right of way line of Township Road; thence Southwesterly along the Southeasterly line of said Road 71 feet to its intersection with the West line of said Southeast Quarter of the Southwest Quarter; thence due South 29 feet to the place of beginning.

(3) From an iron pipe on the West line of said Southeast Quarter of the Southwest Quarter, distant 768 feet North of the Southwest corner thereof, run due East 150 feet; thence North 22 1/2 degrees East 100 feet to the place of beginning of tract to be excepted; thence continue North 22 1/2 degrees East for 100 feet; thence due West 150 feet, more or less to

the Southeasterly right of way line of Township Road; thence Southwesterly along the Southeasterly line of said Road 100 feet to a point due West of the place of beginning; thence due East 150 feet, more or less to the place of beginning.

(4) From an iron pipe on the West line of said Southeast Quarter of the Southwest Quarter distant 768 feet North of the Southwest corner thereof, run due East 150 feet to a point; thence North 22 1/2 degrees East 200 to the place of beginning of tract to be excepted; thence continue North 22 1/2 degrees East 100 feet; thence due West 150 feet, more or less, to the Southeasterly line of Township Road; thence Southwesterly along the Southeasterly line of said Township Road 100 feet to a point due West of the place of beginning; thence East 150 feet, more or less, to the place of beginning.

(5) Beginning at an iron pipe on the West line of said Southeast Quarter of the Southwest Quarter, 768 feet North of the Southwest corner thereof; thence East 1134.4 feet; thence South 768 feet to the South line of said Southeast Quarter of the Southwest Quarter; thence West along said South line, 1134.4 feet to the Southwest corner of said Southeast Quarter of the Southwest Quarter; thence North along the West line of said Southeast Quarter of the Southwest Quarter, 768 feet to the place of beginning.

(6) Beginning at a point 768 feet north and 150 feet East of the Southwest corner of said Southeast Quarter of the Southwest Quarter; thence North 22 1/2 degrees East 100 feet; thence East 53.2 feet; thence South 93 1/2 feet to a point 90 1/2 feet East of the place of beginning; thence West 90 1/2 feet to the place of beginning.

(7) Part of the Southeast Quarter of the Southwest Quarter of Section 26, in Township 113 North, Range 15 West, described as follows: Beginning at a point on the centerline of Town Road 1036.08 feet North and 3769.95 feet West of the Southeast corner of the Southeast Quarter of said Section 26; thence North 21 degrees 36 minutes 25 seconds East on said centerline town road 35.31 feet; thence South 89 degrees 15 minutes 05 seconds East 674.42 feet; thence North 60 degrees 30 minutes 48 seconds East 204.62 feet; thence North 75 degrees 07 minutes 38 seconds East 69.78 feet; thence South 00 degrees 44 minutes 55 seconds West 435.16 feet; thence North 89 degrees 15 minutes 05 seconds West 763.69 feet; thence North 00 degrees 44 minutes 55 seconds East 93.45 feet; thence North 89 degrees 15 minutes 05 seconds West 53.20 feet; thence North 21 degrees 36 minutes 25 seconds East 200 feet; thence North 89 degrees 15 minutes 05 seconds West 185.31 feet to the point

of beginning.

(8) That part of the Southeast Quarter of the Southwest Quarter of Section 26, Township 113 North, Range 15 West, described as follows: Beginning at a point 1303.55 feet North and 3052.44 feet West of the Southeast corner of the Southeast Quarter of said Section 26, thence South 07 degrees 13 minutes 11 seconds West 212.17 feet, thence North 89 degrees 15 minutes 05 seconds West 664.87 feet to the center line of Town Road, thence North 21 degrees 36 minutes 25 seconds East on said centerline Town Road 213.04 feet, thence North 89 degrees 39 minutes 05 seconds East 613.04 feet on ancient fence line to point of beginning.

That part of the Northeast Quarter of the Southwest Quarter of Section 26, Township 113 North, Range 15 West, described as follows: beginning at a point 1303.55 feet North and 3052.44 feet West of the Southeast corner of the Southeast Quarter of said Section 26, thence North 89 degrees 39 minutes 05 seconds East, 579.00 feet on projection of ancient fence, thence North 51 degrees 50 minutes 05 seconds West 610 feet, thence North 61 degrees 50 minutes 05 seconds West 54.38 feet, thence South 7 degrees 13 minutes 11 seconds West 409.38 feet to point of beginning.

The Northwest Quarter of the Northeast Quarter of Section 35, in Township 113 North, Range 15 West.

Abstract Property.

Parcel 5:

The East Three-Fourths of the Northwest Quarter of the Southeast Quarter of Section 26, Township 113 North, Range 15 West, Goodhue County, Minnesota; Also,

That part of the Northeast Quarter of Section 26, Township 113 North, Range 15 West, Goodhue County, Minnesota, described as follows:

Commencing at the Southwest corner of the Southeast Quarter of the Northeast Quarter of said Section 26; thence South 88 degrees 39 minutes 47 seconds West, assumed bearing, along the South line of the Northeast Quarter of said Section 26, a distance of 83.61 feet to the point of beginning of the land to be described; thence North 01 degree 20 minutes 13 seconds West, a distance of 36.89 feet to the point of intersection of the South line of State Street with the East line of Park Avenue, as said street and avenue are surveyed and established

in the plat of HOMELAND ADDITION, filed in the Goodhue County Recorders Office; thence Westerly, along said South line of State Street, a distance of 1035.8 feet, more or less, to a point 20.2 feet Easterly of the Southwest corner of said HOMELAND ADDITION; thence Southerly, parallel with the Westerly line of said HOMELAND ADDITION, to the East-West Quarter line of said Section 26; thence North 88 degrees 39 minutes 47 seconds East, along said East-West Quarter line, to the point of beginning.

EXCEPT THE FOLLOWING DESCRIBED PREMISES:

A strip of land two rods wide, the center line of which is described as follows: Commencing 495 feet South of the Northwest corner of the Northeast Quarter of the Southeast Quarter of said Section 26 for the place of beginning; thence running North 71 degrees West 100 feet; thence North 84 degrees West 260 feet; thence North 38 degrees West 640 feet to a point on the South line of State Street on the East line of Red Wing Avenue produced Southerly;

ALSO EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

That part of the Northwest Quarter of the Southeast Quarter and that part of the Southwest Quarter of the Northeast Quarter all in Section 26, Township 113 North, Range 15 West, Goodhue County, Minnesota, described as follows:

Beginning at the Northeast corner of the Northwest Quarter of the Southeast Quarter of said Section 26; thence South 0 degrees 54 minutes 34 seconds East, (based on the assumption that the East-West Quarter line of said Section 26 has a bearing of north 88 degrees 39 minutes 47 seconds East) along the East line of said Northwest Quarter of the Southeast Quarter, a distance of 477.55 feet to the Northerly line of a 2 rod wide strip owned by Russell E. Asper as described in Book 96 of Miscellaneous Records, page 230 on file in the Goodhue County Recorders Office; thence North 71 degrees 54 minutes 24 seconds West, along said Northerly line, a distance of 96.20 feet; thence North 84 degrees 54 minutes 34 seconds West, along said Northerly line, a distance of 254.88 feet; thence North 38 degrees 54 minutes 34 seconds West, along said Northerly line, a distance of 612.52 feet to the Southerly line of State Street as originally surveyed and monumented according to the plat of Homeland Addition as filed in the Goodhue County Recorders Office; thence South 88 degrees 30 minutes 04 seconds East, along said Southerly line of State Street, a distance of 638.22 feet to the East line of Park Avenue in said Homeland Addition; thence South 1 degree 20

minutes 15 seconds East, a distance of 36.89 feet to the North line of the Northwest Quarter of the Southeast Quarter of said Section 26; thence North 88 degrees 39 minutes 47 seconds East, along the North line of said Northwest Quarter of the Southeast Quarter, a distance of 83.61 feet to the point of beginning.

Abstract Property.

Parcel 6:

That part of the Southwest Quarter of the Southwest Quarter of Section 25, Township 113 North, Range 15 West, Goodhue County, Minnesota, described as follows:

Beginning at the Southwest corner of the Southwest Quarter of the Southwest Quarter; thence North 89 degrees 28 minutes 15 seconds East, assumed bearing, along the South line of said Southwest Quarter of the Southwest Quarter, a distance of 862.03 feet to a point distant 442.00 feet West of the Southeast corner of said Southwest Quarter of the Southwest Quarter; thence North 01 degrees 06 minutes 31 seconds West, parallel to the East line of said Southwest Quarter of the Southwest Quarter, a distance of 812.30 feet to the intersection with the Westerly extension of the Northerly line of that certain property as described in Book P. 8, Page 284 on file in the Goodhue County Recorder's Office, as monumented; thence North 89 degrees 28 minutes 15 seconds East, along said Westerly extension and said Northerly line, a distance of 147.50 feet; thence North 01 degrees 06 minutes 31 seconds West, parallel to the East line of said Southwest Quarter of the Southwest Quarter, a distance of 265.12 feet to the intersection with the Southwesterly extension of the Northwesterly line of that certain property as described in Book Y. 8, Page 23 on file in the Goodhue County Recorder's Office, as monumented; thence North 72 degrees 23 minutes 34 seconds East, along said Southwesterly extension and said Northwesterly line, a distance of 224.46 feet to the Westerly right of way line of GOODHUE COUNTY HIGHWAY RIGHT OF WAY PLAT NUMBER 1; thence North 01 degrees 07 minutes 41 seconds West, along said right of way line, a distance of 30.00 feet; thence North 89 degrees 22 minutes 15 seconds East, along said right of way line, a distance of 20.00 feet; thence North 01 degrees 07 minutes 41 seconds West, along said right of way line, a distance of 124.82 feet to the North line of said Southwest Quarter of the Southwest Quarter; thence South 89 degrees 39 minutes 29 seconds West, along said North line, a distance of 1241.43 feet to the Northwest corner of said Southwest Quarter of the Southwest Quarter; thence South 00 degrees 57 minutes

45 seconds East, along the West line of said Southwest Quarter of the Southwest Quarter, a distance of 1302.22 feet to the point of beginning.

Together with the East Half (E1/2) of the Southeast Quarter (SE1/4) of Section 26, Township 113 North, Range 15 West, except

That part of the Northeast Quarter of the Southeast Quarter of Section 26, Township 113 North, Range 15 West, Goodhue County, Minnesota, described as follows:

Beginning at the East Quarter corner of said Section 26; thence South 88 degrees 39 minutes 47 seconds West, assumed bearing, along the North line of said Northeast Quarter of the Southeast Quarter, a distance of 1279.12 feet to the Northwest corner of said Northeast Quarter of the Southeast Quarter; thence South 0 degrees 54 minutes 34 seconds East, along the West line of said Northeast Quarter of the Southeast Quarter, a distance of 571.19 feet; thence North 88 degrees 39 minutes 47 seconds East, a distance of 577.86 feet; thence South 2 degrees 49 minutes 26 seconds East, a distance of 156.09 feet; thence South 21 degrees 34 minutes 03 seconds East, a distance of 526.56 feet; thence North 88 degrees 39 minutes 47 seconds East, a distance of 511.41 feet to the East line of said Northeast Quarter of the Southeast Quarter; thence North 0 degrees 57 minutes 45 seconds West, along said East line a distance of 1221.31 feet to the point of beginning.

Also together with the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section 35, Township 113 North, Range 15 West.

Also a strip of land 2 rods wide, the center line of which is described as follows: Commencing 495 feet South of the Northwest corner of the Northeast Quarter (NE1/4) of Southeast Quarter (SE1/4) of said Section 26, Township 113 North, Range 15 West, for the Place of Beginning: thence running North 71 degrees West 100 feet; thence North 84 degrees West 260 feet; thence North 38 degrees West 640 feet to a point of the South line of State Street on the East line of Red Wing Avenue produced Southerly.

Abstract Property.

MINNESOTA WELL DISCLOSURE STATEMENT

Minnesota Law requires that before signing an agreement to sell or transfer real property after June 30, 1990, the seller must disclose information in writing to the buyer about the status and location of all known wells on the property. This requirement is satisfied by delivering to the buyer either a statement by the seller that the seller does not know of any wells on the property, or a disclosure statement indicating the legal description and county and a map showing the location of each well. In the disclosure statement the seller must indicate, for each well, whether the well is in use, not in use or sealed.

A seller who fails to disclose the existence of a well at the time of sale and knew of, or had reason to know of, the existence of a well is liable to the buyer for costs relating to the sealing of the well and reasonable attorney fees for collection of costs from the seller, if the action is commenced within six years after the date the buyer closed the purchase of the real property where the well is located.

Instructions for completion of this form are on the reverse side.

1. PROPERTY DESCRIPTION

Street address: 655 Tyler Rd. S. Red Wing Goodhue
City County

2. LEGAL DESCRIPTION

see attached exhibit A

3. WELL DISCLOSURE STATEMENT

(Check the appropriate box.)

- The seller certifies that the seller does not know of any wells on the above described real property. If this option is checked, then skip to the last line and sign and date this statement.
The seller certifies that the following wells are located on the above described real property.

Table with columns: Well No., MN. Unique Well No., Well Depth, Year of Const., Well Type, IN USE, NOT IN USE, SEALED USE. Rows for Well 1, Well 2, Well 3.

4. SEALED WELL INFORMATION

For each well designated as sealed above, complete this section.
When was the well sealed?
Who sealed the well?
Was a Sealed Well Report filed with the Minnesota Department of Health? Yes No

5. MAP

Complete the attached map showing the location of each well on the real property.

6. CERTIFICATION BY SELLER

I certify that the information provided above is accurate and complete to the best of my knowledge.

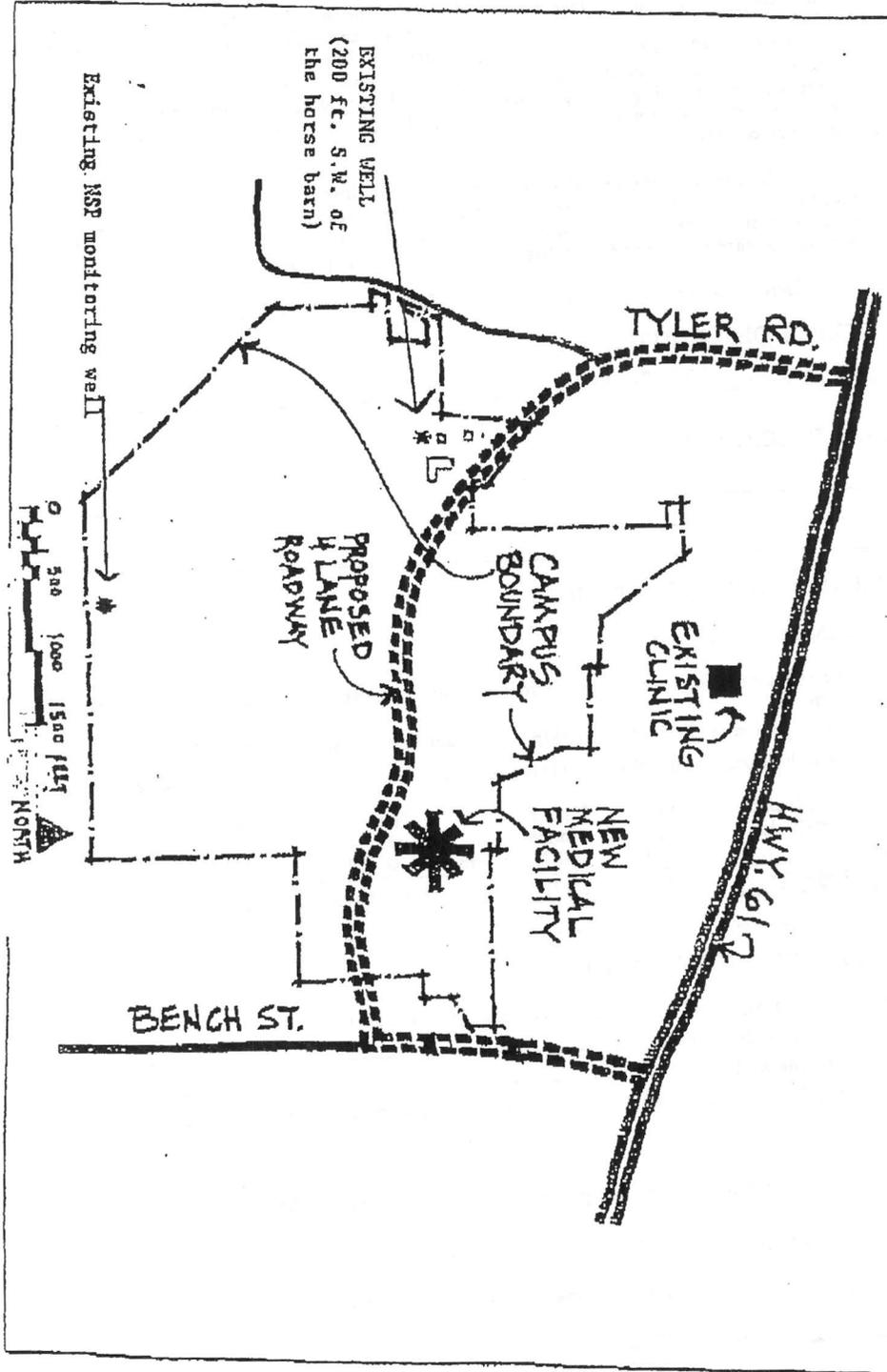
Handwritten signature and date: 12-5-95

Seller or Designated Representative Date

MAP

EXHIBIT A

Please use the space below to sketch the real property being sold and the location of EACH well on the property. Include distances from fixed reference points such as streets and buildings.



USE ADDITIONAL SPACE ON BACK IF NEEDED