

City of South St. Paul Housing and Redevelopment Authority Agenda Special Meeting

Monday, May 7, 2018

7:15 P.M.



1. CALL TO ORDER:

2. ROLL CALL:

3. AGENDA:

A. Approval of Agenda

Action – Motion to Approve

Action – Motion to Approve as Amended

4. PUBLIC HEARINGS:

A. Approval to Sell Property at 411 Farwell Avenue – Resolution 18-3320

5. CONSENT AGENDA:

All items listed on the Consent Agenda are items, which are considered to be routine by the Economic Development Authority and will be approved by one motion. There will be no separate discussion of these items unless a Commissioner or citizen so requests, in which event the item will be removed from the consent agenda and considered at the end of the Consent Agenda.

6. GENERAL BUSINESS:

7. ADJOURNMENT:

Respectfully Submitted,

Stephen P. King, Acting Executive Director



HRA Agenda Report

Date: May 7, 2018

HRA Acting Executive Director: _____

4A.

Agenda Item: Approval to Sell Property at 411 Farwell Avenue – Resolution 18-3320

Action to be considered: Following a public hearing, motion to adopt Resolution No. 18-3320 approving the sale of 411 Farwell Avenue to Advent Farwell, LLC.

Overview:

The occupants of the building at 411 Farwell Avenue (Sportsman’s Guide) have utilized a portion of public property (the remnant right-of-way for the former alignment of private Armour Avenue) for surface parking, truck loading and docking, and building infrastructure for a number of years. Research has failed to indicate that the HRA/City and the occupant or owner ever had a formal agreement to do so.

Staff has negotiated for the transfer of this undevelopable property to the owner of the property (Advent Farwell LLC) through a quit-claim sale of the property at a price of \$125,000 (just under \$2/square foot). The buyer is comfortable with recording restrictions that would essentially limit the use and improvement to the property to parking, access, and loading (consistent with what’s been occurring there for the past 25 years). Staff does not envision a scenario where this parcel of land will be needed for future public infrastructure or roadway improvements, thus its future “public purpose” is limited.

Since the property is owned by the HRA, state statutes require the HRA to hold a public hearing on the sale of the property to the buyer. All required notices of the hearing were posted and published and we received not comments or concerns prior to the hearing, thus we suggest approving the purchase agreement and authorizing the appropriate HRA officials to execute documents as necessary to complete the transaction.

Source of Funds: N/A

HOUSING & REDEVELOPMENT AUTHORITY OF THE CITY OF SOUTH ST. PAUL

RESOLUTION NO. 2018-3320

**RESOLUTION AUTHORIZING THE SALE AND CONVEYANCE OF REAL
PROPERTY**

WHEREAS, the Housing & Redevelopment Authority of the City of South St. Paul (HRA) owns real property (Property) located in the City of South St. Paul, County of Dakota, State of Minnesota legally described as follows:

Parcel No. 11 as shown on that certain South St. Paul Right of Way Map No. 1, recorded September 11, 1991, as Document No. 1004890, in the office of the County Recorder for Dakota County, Minnesota.

WHEREAS, pursuant to Minnesota Statutes, Section 469.029, the HRA has the authority to sell any of its lands following a public hearing and published notice at least once not less than ten days nor more than thirty days prior to the date of the hearing upon the proposed sale; and

WHEREAS, the HRA has published notice of a public hearing for the sale of the Property pursuant to Minnesota Statutes, Sections 469.029 and such notice was published on April 22, 2018 in the South-West Review, a local newspaper of general circulation; and

WHEREAS, the HRA held a public hearing on May 7, 2018 pursuant to Minnesota Statutes, Section 469.105 regarding the sale of the Property to Advent Farwell, LLC (Purchaser) at which all interested persons were given an opportunity to be heard; and

WHEREAS, the HRA has determined that the sale and conveyance of the Property to the Purchaser on the terms and conditions outlined in the Purchase Agreement attached hereto as Exhibit A are in the best interests of the City of South St. Paul (City) and its people and the HRA, that the purchase price of the Property takes into consideration the fair market value of the of the Property, and that the sale of the Property will promote economic development within the City.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Housing & Redevelopment Authority of the City of South St. Paul:

1. The HRA hereby approves the sale and conveyance of the Property to the Purchaser pursuant to the terms of the Purchase Agreement.
2. The purchase price and all other terms and conditions of the Purchase Agreement are hereby approved and the required officers of the HRA, staff, and consultants are hereby authorized to execute the necessary documents to sell and convey the Property to the Purchaser pursuant to the terms of the Purchase Agreement.

Adopted this 7th day of May, 2018.

Lori Hansen, Chair

Todd Podgorski, Secretary

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“**Agreement**”) is entered into as of _____, 2018, by and between **ADVENT FARWELL, LLC** a Delaware Limited Liability Company (“**Buyer**”), and the **Housing & Redevelopment Authority of the City of South St. Paul**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (“**Seller**”).

RECITALS

A. Seller is the owner of certain real property located in South St. Paul, Dakota County, Minnesota legally described on Exhibit A attached hereto (“**Property**”).

B. Buyer desires to purchase the Property from Seller, and Seller desires to sell the same to Buyer, all on the terms and conditions of this Agreement.

NOW, THEREFORE, Buyer and Seller agree as follows:

1. **Sale.**

1.1 **Sale.** Subject to the terms and provisions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property.

1.2 **Effective Date.** The effective date of this Purchase Agreement shall be May 7, 2018 (the “**Effective Date**”).

1.3 **Purchase Price.** The purchase price to be paid by Buyer to Seller for the Property shall be One Hundred Twenty-Five Thousand Dollars (**\$125,000.00**) (the “**Purchase Price**”), payable on the Closing Date (as defined in Section 6) in cash or certified funds or by wire transfer pursuant to instructions from Seller.

2. **[Intentionally Omitted].**

3. **Buyer's Investigations.** At any time following the Effective Date, Seller shall allow Buyer and Buyer's agents access to the Property without charge and at all times for the purpose of Buyer's investigation and testing of the Property, including surveying and testing of soil and groundwater (“**Buyer's Investigations**”). Buyer shall provide to Seller copies of all written test results and reports conducted as part of Buyer's Investigations. Buyer agrees to pay all of the costs and expenses associated with Buyer's Investigations, to cause to be released any lien on the Property arising as a result of Buyer's Investigations, and to repair and restore, at Buyer's expense, the Property to the condition that existed prior to the Buyer's Investigations.

4. **Insurance; Risk of Loss.** Seller assumes all risk of destruction, loss, or damage to the Property prior to the Closing Date. If, prior to the Closing Date, all or any portion of the Property or access thereto is condemned, taken by eminent domain, or damaged by cause of any nature, or the Property is rendered untenable, Seller shall immediately give Buyer notice of such condemnation, taking, or damage. After receipt of notice of such condemnation, taking or damage (from Seller or otherwise), Buyer shall have the option (to be exercised within thirty (30) days after Seller's written notice) either (a) to require Seller to (i) convey the Property at Closing (as defined in Section 6) to Buyer in its damaged condition, upon and subject to all of the other terms and conditions of this Agreement without reduction of the Purchase Price, (ii) assign to Buyer at Closing all of Seller's right, title and interest in and to any claims Seller may have to insurance proceeds, condemnation awards and/or any causes of action with respect to such condemnation or taking of or damage to the Property or access thereto, and (iii) pay to Buyer at Closing by certified or official bank check all payments made prior to the Closing Date under such insurance policies or by such condemning authorities, or (b) to terminate this Agreement by giving notice of such termination to Seller, whereupon this Agreement shall be terminated, any amount previously paid by Buyer to Seller shall be refunded to Buyer and thereafter neither party shall have any further obligations or liabilities to the other. If the right to terminate this Agreement is not exercised within such thirty (30) day period, such right shall be deemed to have been waived. Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Buyer's prior written consent, which consent shall not be unreasonably withheld. Seller agrees that it shall take no action (directly or indirectly) to cause any eminent domain with respect to the Property.

5. **Contingencies.**

5.1 **Buyer's Contingencies.**

5.1.1 Unless waived by Buyer in writing, Buyer's obligation to proceed to Closing shall be subject to (a) performance by Seller of its obligations hereunder, (b) the continued accuracy of Seller's representations and warranties provided in Section 9.1, and (c) Buyer's satisfaction, in Buyer's sole discretion, as to the contingencies described in this Section 5.1:

5.1.1.1 **Inspection.** On or before the Contingency Date (defined below), Buyer shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by Buyer's Investigations, physical inspection, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property, and all other inspections and due diligence regarding the Property, including any association rules or regulations applicable to any of the Property. Notwithstanding the foregoing, any acceptance by Buyer pursuant to this Section 5.1.1.1 shall be subject to Section 11.2.

5.1.1.2 **Governmental Approvals.** On or before the Contingency Date, Buyer shall have obtained on terms reasonably satisfactory to Buyer:

any rezoning, permits or other governmental approvals necessary at the Property.

5.1.1.3 Access. On or before the Contingency Date, Buyer shall have satisfied itself, in Buyer's sole discretion, that access to and from roads and the Property is adequate for Buyer's Intended Use of the Property, including without limitation, access to the Property from median cuts and curb cuts.

5.1.1.4 Utilities. On or before the Contingency Date, Buyer shall have satisfied itself, in Buyer's sole discretion, that water and gas mains, electric power lines, sanitary and storm sewers and other utilities are available to the Property.

5.1.1.5 Title Insurance. On or before the Closing Date, Buyer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to Buyer in Buyer's sole discretion, not disclosing any encumbrance not acceptable to Buyer in Buyer's sole discretion.

The foregoing contingencies are for Buyer's sole and exclusive benefit and one (1) or more may be waived in writing by Buyer in its sole discretion. Seller shall reasonably cooperate with Buyer's efforts to satisfy such contingencies. Unless otherwise expressly stated herein, Buyer shall bear all cost and expense of satisfying Buyer's contingencies. If any of the foregoing contingencies have not been satisfied on or before the applicable contingency date, then this Agreement may be terminated, at Buyer's option, by written notice from Buyer to Seller. Such written notice must be given on or before the applicable contingency date, or, Buyer's right to terminate this Agreement pursuant to this Section shall be waived. If Buyer terminates this Agreement pursuant to this Section, then any amount previously paid by Buyer to Seller shall immediately be refunded to Buyer. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property.

5.1.2 If Buyer elects not to exercise any of the contingencies set out herein, such election may not be construed as limiting any representations or obligations of Seller set out in this Agreement, including without limitation any indemnity or representations with respect to environmental matters. Further, Buyer shall not be deemed to have waived any of the foregoing contingencies on account of its execution of this Agreement.

5.1.3 As used in this Agreement, the "**Contingency Date**" shall mean the first (1st) business day occurring five (5) calendar days after, and not including, the Effective Date.

5.1.4 The Closing shall have occurred no later than May 9, 2018.

5.2 **Seller's Contingencies.** Seller's obligation to proceed to Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions:

5.2.1 **Buyer Performance.** Buyer shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by or prior to the Closing Date.

5.2.2 **Buyer Representations.** All representations and warranties of Buyer contained in this Agreement shall be accurate as of the Closing Date.

5.2.4 **No Default.** There shall be no uncured default by Buyer of any of its obligations under this Agreement as of the Closing Date, not otherwise waived by Seller.

If any contingency contained in this Section 5.2 has not been satisfied on or before the date described herein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from Seller to Buyer. If termination occurs all documents deposited by Buyer shall be immediately returned to Buyer, and all documents deposited by Seller shall be immediately returned to Seller and neither party will have any further rights or obligations with respect to this Agreement or the Property. All the contingencies in this Section 5.2 are specifically for the benefit of Seller, and Seller shall have the right to waive any contingency in this Section 5.2 by written notice to Buyer.

6. **Closing.** The Closing of the purchase and sale contemplated by this Agreement (the "**Closing**") shall occur not later than May 9, 2018 (the "**Closing Date**"). Seller agrees to deliver legal and actual possession of the Property to Buyer on the Closing Date.

6.1 **Seller's Closing Documents and Deliveries.** On the Closing Date, Seller shall execute and/or deliver, as applicable, to Buyer the following:

6.1.1 **Quit Claim Deed.** A quit claim deed, with state deed tax paid, conveying title to the Property to Buyer, free and clear of all encumbrances, except the Permitted Encumbrances and the exceptions listed on the attached **Exhibit B** (respectively, the "**Deed**" and the "**Exceptions**") in the form attached hereto as **Exhibit C.**

6.1.2 **FIRPTA Affidavit.** An affidavit of Seller certifying that Seller is not a "foreign person", "foreign partnership", foreign trust", "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

6.1.3 **Seller's Affidavit.** A standard owner's affidavit (ALTA form) from Seller which may be reasonably required by Title to issue an owner's policy of title insurance with respect to the Property with the so-called "standard exceptions" deleted.

6.1.4 **Bring-Down Certificate**. A certificate dated as of the Closing Date, signed by an authorized officer of Seller, certifying that the representations and warranties of Seller contained in this Agreement are true as of the Closing Date (“Bring-Down Certificate”).

6.1.5 **Settlement Statement**. A settlement statement with respect to this transaction.

6.1.7 **General Deliveries**. All other documents reasonably determined by Title to be necessary to transfer the Property to Buyer and to evidence that Seller (a) has satisfied all indebtedness with respect thereto, (b) has provided such other documents as are reasonably determined by Title to be necessary to issue policies of title insurance to Buyer with respect to the Property with the so-called “standard exceptions” deleted, and (c) has duly authorized the transactions contemplated hereby.

6.2. **Buyer Closing Documents and Deliveries**. On the Closing Date, Buyer shall execute and/or deliver, as applicable, to Seller the following:

6.2.1 **Payment of Purchase Price and Costs**. The Purchase Price, in accordance with the terms of Section 1.3, and such other closing costs and fees for which Buyer has expressly agreed to pay hereunder.

6.2.2 **FIRPTA Affidavit**. An affidavit of Buyer certifying that Buyer is not a “foreign person”, “foreign partnership”, foreign trust”, “foreign estate” nor a “disregarded entity” as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

6.2.3 **Buyer’s Affidavit**. A standard owner's affidavit (ALTA form) from Buyer which may be reasonably required by Title to issue an owner's policy of title insurance with respect to the Property with the so-called “standard exceptions” deleted.

6.2.4 **Settlement Statement**. A settlement statement with respect to this transaction.

6.2.6 **Bring-Down Certificate**. A certificate dated as of the Closing Date, signed by an authorized officer of Buyer, certifying that the representations and warranties of Buyer contained in this Agreement are true as of the Closing Date (“Bring-Down Certificate”).

6.2.7 **General Deliveries**. All other documents reasonably determined by Title to be necessary to evidence that Buyer has duly authorized the transactions contemplated hereby and evidence the authority of Buyer to enter into and perform this Agreement and the documents and instruments required to be executed and

delivered by Buyer pursuant to this Agreement, or may be required of Buyer under applicable law, including any purchaser's affidavits or revenue or tax certificates or statements.

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

7.1 **Title Evidence and Closing Fee.** Buyer will pay all costs of the Title Commitment with respect to the Property. Buyer will pay all costs of the Survey, if any, and all premiums for any title insurance policy it desires with respect to the Property. Buyer and Seller will each pay one-half of any and all reasonable closing fees or charges imposed by Title.

7.2 **Transfer Taxes; Sales Taxes.** Seller shall pay all state deed tax and conservation fee regarding the Deed. Seller shall pay all sales tax due, if any, regarding this transaction.

7.3 **Recording Costs.** Seller will pay the cost of recording all documents necessary to place record title to the Property in Seller including, but not limited to, costs of recording any documents necessary to cure any Objections, as hereinafter defined. Buyer will pay all recording costs with respect to the recording of the Deed.

7.4 **Real Estate Taxes and Special Assessments.** General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between Seller and Buyer on a daily basis as of 12:00 a.m. CST on the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable to the Closing Date and subsequent thereto. Seller shall pay all real estate taxes that exist against the Property for any year prior to Closing. At Closing, Seller shall pay in full all special assessments levied as of the Effective Date with respect to any of the Property. At Closing, Seller shall pay all special assessments that are pending against the Property as of the Date of Closing. Buyer shall be responsible for the payment of any special assessments that are levied after the Closing Date.

7.5 **Intentionally Omitted.**

7.6 **Intentionally Omitted.**

7.7 **Attorneys' Fees.** Buyer and Seller shall each pay their own attorneys' fees incurred in connection with this transaction.

7.8 **Survival.** The obligations set forth in this Section 7 survive the Closing.

8. **Title Examination.** Within a reasonable time following the Effective Date, Buyer shall obtain the following: (i) a commitment for an owner's title insurance policy (ALTA Form 2006) issued by Title for the Property, and copies of all encumbrances described in the

commitment (“**Commitment**”); and, if it desires, (ii) an ALTA-certified survey bearing the legal description of the Property, and showing the area, dimensions and location of the Property (“**Survey**”) (the **Survey** together with the **Commitment** shall be known as the “**Title Evidence**”).

8.1 **Buyer's Objections.** Within five (5) calendar days after Buyer’s receipt of the last of the Title Evidence, Buyer may make written objections (“**Objections**”) to the form or content of the Title Evidence. The Objections may include without limitation, any easements, restrictions or other matters which may interfere with Buyer’s Intended Use of the Property or matters which may be revealed by the Survey. Any matters reflected on the Commitment which are not objected to by Buyer within such time period shall be deemed to be permitted encumbrances (“**Permitted Encumbrances**”). Buyer shall have the renewed right to object to the Commitment as the same may be revised or endorsed from time to time.

8.2 **Seller’s Cure.** Seller shall be allowed twenty (20) calendar days after the receipt of Buyer’s Objections to cure the same but shall have no obligation to do so. If such cure is not completed within said period, or if Seller elects not to cure such Objections, Buyer shall have the option to do any of the following:

8.2.1 Terminate this Agreement with respect to all of the Property.

8.2.2 Waive one (1) or more of its Objections and proceed to Closing.

If Buyer so terminates this Agreement, neither Seller nor Buyer shall be liable to the other for any further obligations under this Agreement and any amount previously paid by Buyer to Seller shall be refunded to Buyer.

9. **Warranties and Representations.**

9.1 **By Seller.** Seller warrants and represents the following to Buyer, and acknowledges that Buyer has relied on such representations and warranties in agreeing to enter into this Agreement:

9.1.1 Seller is a public body corporate and politic under the laws of the State of Minnesota and has all requisite corporate power and authority to carry on its business as now conducted, to enter into this Agreement and to perform all of its obligations under this Agreement. Seller acknowledges that it has authority of its governing board to perform all of its obligations and agreements under this Agreement.

9.1.2 The execution, delivery and performance by Seller of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Seller, or (b) result in a breach of or constitute a default under any indenture, loan

or credit agreement or any other agreement, lease or instrument to which Seller is a party or by which it or any of its properties may be bound.

9.1.3 There are no actions, suits or proceedings pending or threatened against or affecting Seller or any of its properties, before any court or arbitrator, or any governmental department, board, agency or other instrumentality which (a) challenges the legality, validity or enforceability of this Agreement, or (b) if determined adversely to Seller, would have a material adverse effect on the ability of Seller to perform its obligations under this Agreement. There is no pending Environmental Remediation (as defined below) with respect to the Property.

9.1.4 Seller has not received written notice, and has no knowledge, of (a) any pending or contemplated annexation or condemnation proceedings, or purchase in lieu of the same, affecting or which may affect all or any part of the Property, (b) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property, (c) any proposed changes in any road patterns or grades which would adversely and materially affect access to the roads providing a means of ingress or egress to or from all or any part of the Property, (d) any uncured violation of any legal requirement, restriction, condition, covenant or agreement affecting all or any part of the Property or the use, operation, maintenance or management of all or any part of the Property, or (e) any uncured violation relating to any Environmental Law, Environmental Condition or any law regulating Hazardous Substances, in each case, which affects all or any part of the Property.

9.1.5 There are no development agreements or other agreements or understandings with respect to public or private improvements regarding the Property.

9.1.6 There are no wells or sewage treatment systems located on any portion of the Property. There has been no methamphetamine production on or about any portion of the Property. The sewage generated by the Property, if any, goes to a facility permitted by the Minnesota Pollution Control Agency and there is no "individual sewage treatment system" (as defined in Minnesota Statutes § 115.55, Subd. 1(g)) located on the Property.

9.1.7 Seller is not a "foreign person", "foreign corporation", "foreign trust", "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code.

9.1.8 There are no leases or tenancies with respect to the Property. There are no agreements or other contracts of any nature or type relating to, affecting or serving the Property and there shall be none as of the Closing Date other than an unrecorded right to use the Property in favor of Buyer and its tenants for parking, ingress and egress.

9.1.9 There will be no indebtedness attributable to the Property which will remain unpaid after the Closing Date.

9.1.10 The representations, warranties, and other provisions of Sections 9.1 – 9.1.9 shall survive closing.

Buyer acknowledges and agrees that, except as expressly specified in this Section 9 of this Agreement, Seller has not made, and Seller hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or rising by operation of law, with respect to the Property, including but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or Environmental Conditions (as the same is defined in Section 11 hereof), utilities, valuation, governmental approvals, the compliance of the Property with governmental laws, the truth, accuracy or completeness of any information provided by or on behalf of Seller to Buyer, or any other matter or item regarding the Property. Subject to the Environmental Investigation or Study and the Environmental Mitigation or Remediation as stated in Sections 11.2.1 and 11.2.2 respectively, Buyer agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by Seller on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. Buyer is an experienced purchaser of property such as the Property and Buyer has made or will make its own independent investigation of the Property. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the Deed.

9.2 **By Buyer.** Buyer warrants and represents the following to Seller, and acknowledges that Seller has relied on such representations and warranties in agreeing to enter into this Agreement:

9.2.1 This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms. Buyer has been duly formed under the laws of the State of Delaware and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant hereto have each been duly authorized by all necessary action on the part of Buyer and such execution, delivery and performance does and will not conflict with or result in a violation of Buyer's organizational agreement or any judgment or order.

9.2.2 The execution, delivery and performance by Buyer of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any

court, governmental agency or arbitrator presently in effect having applicability to Buyer, (b) violate or contravene any provision of the articles of incorporation or bylaws of Buyer, or (c) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Buyer is a party or by which it or any of its properties may be bound.

The representations, warranties and other provisions of this Section 9.2 shall survive Closing.

10. **Additional Obligations of Seller.**

10.1 **Licenses and Permits.** Seller shall transfer to Buyer all transferable rights, if any, in any permits or licenses held by Seller with respect to the Property.

10.2 **Condition of Property at Closing.** On the Closing Date, Seller shall deliver to Buyer exclusive possession of the Property, subject to the Exceptions.

10.3 **Further Assurances.** From and after the Closing Date, Seller agrees to execute, acknowledge and deliver to Buyer such other documents or instruments of transfer or conveyance as may be reasonably required to carry out its obligations pursuant to this Agreement.

10.4 **Non-Assumption of Contracts or Other Obligations.** The parties understand and agree that Buyer is only acquiring certain of Seller's real property assets and that this Agreement and any related agreements shall not be construed to be in any manner whatsoever an assumption by Buyer of any agreements, indebtedness, obligations or liabilities of Seller which are owing with respect to the operation of the Property prior to the Closing Date.

11. **Environmental Matters.**

11.1 **Definitions.** For purposes of this Agreement,

11.1.1 **"Hazardous Substances"** shall include, without limitation, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, and shall include, without limitation, substances defined as "hazardous substances", "toxic substances", "hazardous waste", "pollutants or contaminants" or similar substances under any Environmental Law, as hereinafter defined.

11.1.2 **"Environmental Law"** shall mean (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance, (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (c)

the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401, et seq., (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq., (g) any law or regulation governing aboveground or underground storage tanks, (h) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation, including, without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01, et seq., (i) all rules or regulations promulgated under any of the foregoing, and (j) any amendments of the foregoing.

11.1.3 **“Environmental Conditions”** shall mean any release or threatened release of any Hazardous Substances into the drainage systems, soils, groundwater, waters or atmosphere, which release is the result of the control, use, occupancy and/or operation of the Property prior to the Closing Date.

11.1.4 **“Environmental Remediation”** shall mean any State of Minnesota mandated environmental mitigation and/or remediation of the Property.

Buyer acknowledges and agrees that, except as set forth in Article 9 hereof, Seller has not made, and Seller hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or rising by operation of law, with respect to the Environmental Conditions of the Property. Subject to the Environmental Investigation or Study and the Environmental Mitigation or Remediation, as stated in Sections 11.2.1 and 11.2.2 respectively, Buyer agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by Seller on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. Buyer is an experienced purchaser of property such as the Property and Buyer has made or will make its own independent investigation of the Property. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the Deed.

11.2 **Environmental Cost and Buyer Indemnification Obligation.**

11.2.1 **Environmental Investigation or Study.** Any environmental investigation and/or study of the Property shall be pre-approved by a representative of the Seller and then completed by Buyer at the Buyer’s sole cost and expense.

11.2.2 **Buyer Indemnification Obligation.** **Subject to Section 12.1 hereof,** Buyer agrees to protect, indemnify and release Seller from and hold Seller harmless against any and all loss, liability, damage, cost, expense (including attorneys’ fees and expenses), cause of action, regulatory proceeding, suit, claim, demand or judgment, against Seller or the Property arising in connection with or in relation to Environmental Conditions, or any clean-up thereof, including, specifically, claims by adjacent property owners for damages resulting from the contamination of adjacent properties due to the migration of any Environmental Conditions. Notwithstanding anything else set forth in this Agreement, Buyer’s indemnification

agreement set forth in this Section shall survive the Closing or any termination of this Agreement. This indemnification shall not be limited as a result of any investigations conducted by Seller or Buyer.

11.3 **Reporting Requirements.** Seller and Buyer agree to comply with all reporting requirements set out in any Environmental Law.

12. **General Indemnification.**

12.1 **Indemnity by Seller.** Seller agrees to indemnify Buyer and to hold Buyer harmless from and against any and all loss, liability, damage, cost, expense (including attorneys' fees and expenses), cause of action, regulatory proceeding, suit, claim, demand or judgment arising out of or relating to the inaccuracy of any of the warranties and representations made by Seller pursuant to this Agreement. Seller's obligations hereunder shall survive the Closing or any termination of this Agreement. Consummation of this Agreement and any related agreements by Buyer with knowledge of any of the foregoing shall not constitute a waiver or release by Buyer of any claims with respect thereto.

12.2 **Indemnity by Buyer.** In addition to the Buyer's indemnification obligation set forth in Section 11.2.2, Buyer agrees to indemnify Seller and to hold Seller harmless from and against any and all loss, liability, damage, cost, expense (including attorneys' fees and expenses), cause of action, regulatory proceeding, suit, claim, demand or judgment arising out of or relating to (a) subject to Section 3, any Buyer's Investigations, or (b) the inaccuracy of any of the warranties and representations made by Buyer pursuant to this Agreement and any related agreements which accrue prior to the Closing Date. Buyer's obligations hereunder shall survive the Closing or any termination of this Agreement. Consummation of this Agreement and any related agreements by Seller with knowledge of any of the foregoing shall not constitute a waiver or release by Seller of any claims with respect thereto.

13. **Commissions.** Each party represents that all negotiations on its behalf relative to this Agreement and the transactions contemplated by this Agreement have been carried on directly between the parties, without the intervention of any party as broker, finder or otherwise. Each party hereby indemnifies the other from and against all losses, damages, costs, expenses (including reasonable fees and expenses of attorneys), causes of action, suits or judgments of any nature arising out of any claim, demand or liability to or asserted by any broker, agent or finder, claiming to have acted on behalf of the indemnifying party in connection with this transaction.

14. **Notice.** Any notice to be given by one party hereto shall be personally delivered (including messenger delivery) or be sent by registered or certified mail, or by a nationally recognized overnight courier which issues a receipt, in each case postage prepaid, to the other party at the addresses in this Section (or to such other address as may be designated by notice given pursuant to this Section), and shall be deemed given upon personal delivery, three (3) days after the date postmarked or one (1) business day after delivery to such overnight courier.

If to Buyer:

ADVENT FARWELL, LLC
c/o Maritime Management, LLC
One Maritime Plaza, Suite 2100
San Francisco, CA 94111

If to Seller:

Housing & Redevelopment Authority of South St. Paul
125 Third Avenue North
South St. Paul, Minnesota 55075
Attn: Executive Director

15. **Default; Remedies.** If either Seller or Buyer fails to perform any of their respective obligations under this Agreement in accordance with its terms, and such failing party does not cure such failure within thirty (30) days after written notice thereof from the other party (provided that no notice or cure period shall be required for obligations to be performed at Closing), then the other party shall have the right to terminate this Agreement by giving the failing party written notice of such election. In the case of any default by Buyer, Seller's sole and exclusive remedy shall be termination of this Agreement as provided above. Buyer shall also have the right to specifically enforce this Agreement. In any action or proceeding to enforce this Agreement or any term hereof, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

16. **Cumulative Rights.** No right or remedy conferred or reserved to Seller or Buyer is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative in and in addition to every other right or remedy existing at law, in equity or by statute, now or hereafter.

17. **Entire Agreement; Modification.** This written Agreement constitutes the complete agreement between the parties with respect to this transaction and supersedes any prior oral or written agreements between the parties regarding this transaction. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.

18. **Binding Effect; Survival.** This Agreement binds and benefits the parties and their respective successors and assigns. Buyer may not assign this Agreement without the prior written consent of the Seller, including, without limitation, to any franchisee of Buyer. All representations and warranties, and indemnification obligations of the parties hereto shall survive the Closing.

19. **Governing Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any legal action related to this Agreement shall be venued in Dakota County District Court.

20. **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, and all of the signatures to this Agreement taken together shall constitute one and the

same agreement, and any of the parties hereto may execute such agreement by signing any such counterpart. Facsimile or “PDF” signatures on this Agreement shall be treated as originals.

21. **Time of the Essence.** Time is of the essence of this Agreement.

[remainder of page intentionally left blank]

IN AGREEMENT, the parties hereto have hereunto set their hands as of the date hereinbefore first written.

SELLER:

**HOUSING & REDEVELOPMENT
AUTHORITY OF THE CITY OF
SOUTH ST. PAUL**

By _____
Lori Hansen
Its: Chair

By _____
Todd Podgorski
Its: Secretary

STATE OF MINNESOTA)
) ss
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Lori Hansen and Todd Podgorski, respectively the Chair and the Secretary of the Housing & Redevelopment Authority of the City of South St. Paul, a public body corporate and politic organized and existing under the laws of the State of Minnesota, on behalf of said Authority.

Notary Public

[Signature page for Purchase Agreement]

BUYER:

ADVENT FARWELL, LLC
a Delaware Limited Liability Company

By: Maritime Management, LLC, its Manager

By: _____

Name: _____

Title: _____

[California Notary Page to Follow]

EXHIBIT A
TO PURCHASE AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY
(South St. Paul, MN)

Real property located in Dakota County Minnesota legally described as follows:

Parcel No. 11 as shown on that certain South St. Paul Right of Way Map No. 1, recorded September 11, 1991, as Document No. 1004890, in the office of the County Recorder for Dakota County, Minnesota.

Abstract Property

EXHIBIT B
TO PURCHASE AGREEMENT

EXCEPTIONS

- a. Reservations of any mineral rights as to the State of Minnesota;
- b. Zoning regulations and ordinances which do not prevent Grantee's intended use and development of such real property;
- c. Easements, covenants and restrictions of record as of the date hereof;
- d. Easement for gas main or pipe purposes, including any incidental rights, granted to South St. Paul Gas & Electric Company by an unrecorded instrument dated June 26, 1919, over those portions of Lots 15 and 16, Auditor's Subdivision No. 8 sometimes known as Armour Avenue, as evidenced by the Quit Claim Deed dated October 30, 1964, recorded December 31, 1964 as Document No. 315780 in Book 291 of Deeds, Page 189; and
- e. Right of way for Armour Avenue as shown on South St. Paul Right of Way Map No. 1 recorded September 11, 1991 as Document No. 1004890;
- f. Easement for ingress and egress and for the installation and maintenance of utilities, together with any incidental rights, as granted in the Warranty Deed dated January 13, 1971, recorded as Document No. 380692 and amended by Quit Claim Deed dated July 15, 1971, recorded as Document No. 386671, for the benefit of the parcel described therein; and
- g. A perpetual and exclusive easement in favor of the Benefitted Parcel (as defined below) for purposes of vehicular and pedestrian ingress and egress, parking, loading, and as a construction staging area.

“Benefitted Parcel” means that part of the Northeast Quarter of Section 27, Township 28 North, Range 22 West, described as follows: Commencing at the Southeast corner of said Northeast Quarter; thence South 89 degrees, 26 minutes, 30 seconds West, along the South line of said Northeast Quarter, 50 feet to the West right-of-way line of the Chicago & North Western Railway; thence North 0 degrees, 00 minutes East, along said right-of-way line 177.43 feet to the point of beginning of the property to be described; thence South 63 degrees, 25 minutes West, 356.37 feet; thence North 26 degrees, 35 minutes West, 490.08 feet; thence South 63 degrees, 25 minutes West, 387.0 feet to the Northeasterly right-of-way line of the Stockyards Road (a public road with a right-of-way 25 feet on each side of the centerline); thence North 26 degrees, 35 minutes West, along said right-of-way line 549.31 feet to the Southeasterly right-of-way line of Armour Avenue (a private road 66 feet wide); thence North 63 degrees, 25 minutes East, along said right-of-way line 983.32 feet to the Westerly right-of-way line of the Chicago & North Western Railway; thence

South 26 degrees, 31 minutes East, along said right-of-way line 345.57 feet; thence Southerly along said right-of-way line on a tangent curve concave to the West, central angle 22 degrees, 46 minutes, 55 seconds, radius of 933.4 feet, arc distance 371.14 feet to a point 50 feet West of the East line of said Northeast Quarter; thence South 0 degrees, 00 minutes West, along said right-of-way line 372.12 feet to the point of beginning.

(Top 3 inches reserved for recording data)

QUIT CLAIM DEED

Business Entity to Business Entity

eCRV number: _____

DEED TAX DUE: \$[...]

DATE: [month/day/year]

FOR VALUABLE CONSIDERATION, the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SOUTH ST. PAUL**, a municipal corporation under the laws of the State of Minnesota ("Grantor"), hereby conveys and quitclaims to ADVENT FARWELL, LLC, a Delaware limited liability company, the real property in Dakota County, Minnesota, legally described as follows:

Parcel No. 11 as shown on that certain South St. Paul Right of Way Map No. 1, as more particularly described on Exhibit A attached hereto.

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

together with all hereditaments and appurtenances belonging thereto , subject to the following exceptions:

SEE EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SOUTH ST. PAUL

By: _____
[printed name of authorized signer]
Its: [insert type of authority]

By: _____
[printed name of authorized signer]
Its: [insert type of authority]

State of Minnesota, County of Dakota

This instrument was acknowledged before me on [month/day/year], by [name of authorized signer] as [type of authority] and by [name of authorized signer] as [type of authority] of [name of Grantor].

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

<p>THIS INSTRUMENT WAS DRAFTED BY: [insert name and address]</p>	<p>TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:</p> <p>Advent Farwell, LLC c/o Maritime Management, LLC One Maritime Plaza, Suite 2100 San Francisco, CA 94111</p>
--	--

EXHIBIT A

Parcel No. 11 as shown on that certain South St. Paul Right of Way Map No. 1 recorded September 11, 1991, as Document No. 1004890, in the office of the County Recorder for Dakota County, Minnesota.

EXHIBIT B

- a. Reservations of any mineral rights as to the State of Minnesota;
- b. Zoning regulations and ordinances which do not prevent Grantee's intended use and development of such real property; and
- c. Easements, covenants and restrictions of record as of the date hereof.
- d. Easement for ingress and egress and for the installation and maintenance of utilities, together with any incidental rights, as granted in the Warranty Deed dated January 13, 1971, recorded as Document No. 380692 and amended by Quit Claim Deed dated July 15, 1971, recorded as Document No. 386671, for the benefit of the parcel described therein.
- e. A perpetual and exclusive easement in favor of the Benefitted Parcel (as defined below) for purposes of vehicular and pedestrian ingress and egress, parking, loading, and as a construction staging area.

“Benefitted Parcel” means that part of the Northeast Quarter of Section 27, Township 28 North, Range 22 West, described as follows: Commencing at the Southeast corner of said Northeast Quarter; thence South 89 degrees, 26 minutes, 30 seconds West, along the South line of said Northeast Quarter, 50 feet to the West right-of-way line of the Chicago & North Western Railway; thence North 0 degrees, 00 minutes East, along said right-of-way line 177.43 feet to the point of beginning of the property to be described; thence South 63 degrees, 25 minutes West, 356.37 feet; thence North 26 degrees, 35 minutes West, 490.08 feet; thence South 63 degrees, 25 minutes West, 387.0 feet to the Northeasterly right-of-way line of the Stockyards Road (a public road with a right-of-way 25 feet on each side of the centerline); thence North 26 degrees, 35 minutes West, along said right-of-way line 549.31 feet to the Southeasterly right-of-way line of Armour Avenue (a private road 66 feet wide); thence North 63 degrees, 25 minutes East, along said right-of-way line 983.32 feet to the Westerly right-of-way line of the Chicago & North Western Railway; thence South 26 degrees, 31 minutes East, along said right-of-way line 345.57 feet; thence Southerly along said right-of-way line on a tangent curve concave to the West, central angle 22 degrees, 46 minutes, 55 seconds, radius of 933.4 feet, arc distance 371.14 feet to a point 50 feet West of the East line of said Northeast Quarter; thence South 0 degrees, 00 minutes West, along said right-of-way line 372.12 feet to the point of beginning.

4-A: Proposed Sale to Advent Farwell LLC

