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## AGENDA

**DATE:** June 11, 2020

**TIME:** 4:00 P.M.

**PLACE:** Via Zoom

1. **CALL TO ORDER - APPROVAL OF MINUTES**  
Approval of the minutes from the May 14, 2020 Meeting
2. **REMARKS BY PRESIDENT**
3. **NEW BUSINESS**
  - A. **Presentation of the 2019 Annual Financial Report for the Port Authority of Winona (Document will be hand delivered on June 10, 2020)**  
At this meeting, a representative of Deloitte & Touché LLP will present the Port Authority's Annual Financial Report as of and for the Year Ended December 31, 2019, and Independent Accountants' Review Report.  
  
The Port Authority Commissioners are requested to accept their Annual Financial Report.
  - B. **Hemker – Assignment and Assumption – Resolution**  
The Port Authority has a lease and option agreement with the Hemker's for three lots in Technology Park. They have an interested party that would like to purchase the property. If Commissioners concur, a motion to approve the attached resolution would be appropriate.
  - C. **Riverview Park Subdivision Outlot D – Proposed Sale of Land**  
The Port Authority staff has been working with Fastenal on land assembly for their downtown expansion project. A parcel known as Lot D is owned by the Port Authority and a portion of the lot could provide an area for parking, snow removal, landscaping or another accessory use. Staff will present information on the site and if Commissioners concur with selling a portion of the lot, a motion to direct staff to set a public hearing and present the proposed sale at a future meeting, would be appropriate.
4. **FINANCIAL REPORTS**
5. **ADJOURNMENT**

**Zoom Procedures for Port Authority Meeting**  
**Thursday, June 11, 2020 at 4:00 pm**  
**Council Chambers, Winona City Hall**

All interested parties are invited to participate via electronic means. This meeting is open to the public via web or phone. This meeting begins at 4:00 pm; please log in prior to the start of the meeting. You may exit the meeting at any time.

**Port Authority Commissioners and Staff:**

- To join the Zoom Meeting via web, go to: <https://zoom.us/j/252527617>  
and enter Meeting ID: 252 527 617
- To join via phone, dial phone number:

+1 312 626 6799 US (Chicago)

When prompted, enter the following Meeting ID: 252 527 617  
Then enter your participant ID if you have one; if not, enter #

**For participants:**

- Only use one audio source; audio from computer is preferred if available.
- Be aware of background noise from your location.
- If using phone, do not use the speaker function.
- If using a web cam, be aware of what is in your background.
- If you have headphones, please use them as that will limit background noise
- Please mute your audio until you wish to speak. Then unmute your audio, and ask the Chairman for permission to talk.
- If using web access, note the options for you to view the meeting (gallery shows all participants same size)

**Other notes:**

- Staff will "host" the meeting on a city computer and will manage when participants' audio is muted / unmuted.
- The public hearing notices included the Zoom meeting information, and also indicated that written comments could be submitted to staff by a set date prior to the Port Authority meeting. These written comments will be provided to the Commissioners either in advance or at the public hearing.

## **PORT AUTHORITY AGENDA ITEM**

**AGENDA ITEM: 1. Approval of Minutes**

**DATE: June 11, 2020**

Following are the minutes from the May 14, 2020 meetings for Commission's review and approval.

# PORT AUTHORITY OF WINONA MINUTES

**DATE:** May 14, 2020

**PRESENT:** Commissioners: Cichanowski, Johnson, Thurley, Borzyskowski, Gorman, Lucas, Hansen and Executive Secretary Sarvi

**ABSENT:** None

**STAFF PRESENT:** Director of Community Development Lucy McMartin, Finance Director Mary Burrichter, & Development Coordinator Myron White

## 1. CALL TO ORDER – APPROVAL OF MINUTES

The meeting was called to order at 4:00 pm by President Cichanowski.

A motion was made by Commissioner Borzyskowski and seconded by Commissioner Thurley to approve the April 9, 2020 minutes. Roll call votes carried with all Commissioners present voting aye.

A motion was made by Commissioner Borzyskowski and seconded by Commissioner Thurley to approve the April 27, 2020 special meeting minutes. Roll call votes carried with all Commissioners present voting aye.

## 2. REMARKS BY PRESIDENT

President Cichanowski gave an update on the Emergency Loan Fund created for businesses directly impacted by the Governor's Order during the COVID-19 pandemic. To date 13 Tier 1 loans have been made totaling \$63,100 and 5 Tier 2 loans totaling \$67,000. Interest in the loan program remains strong.

## 3. NEW BUSINESS

### A. Hemker – Assignment and Assumption

This item was tabled until the June 11<sup>th</sup> Port meeting.

### B. 890 Riverview Drive Stormwater Completion

Development Coordinator White reported that the Stormwater Project at 890 Riverview Drive was completed for the agreed upon contract price of \$677,900. Mr. White and City Engineer Brian DeFrang had visited the project several times during construction and Mr. DeFrang concluded that the project was complete as per plans and specifications.

Commissioner Thurley made a motion to approve Resolution #760 acknowledging the completion of the project and accepting the work of Zenke, Inc. The motion was seconded by Commissioner Lucas with roll call votes of all Commissioners present voting aye.

**RESOLUTION # 760**

**Resolution Accepting the Work of Zenke, Inc .for the Construction of Stormwater Improvements at the Winona Commercial Dock Located at 890 Riverview Drive, Winona, Minnesota**

**WHEREAS**, a contract was awarded for the construction of stormwater improvements at the Port Authority owned commercial dock located at 890 Riverview Drive; and

**WHEREAS**, the original contract price for the construction of the improvements as was \$677,900; and

**WHEREAS**, the contract has been completed according to the plans and specifications, and

**WHEREAS**, the final priced for the project is \$677,900; and

**WHEREAS**, THE Port Authority of Winona is responsible for \$677,900 paid for with Port Authority Funds and State of Minnesota Port Development Assistance Grant Fund (MnDOT Contract Number: 1030957).

**NOW, THEREFORE, BE IT RESOLVED** by the Port Authority of Winona, Minnesota:

1. The Port Authority of Winona hereby accepts the stormwater improvement work completed by Zenke, Inc.
2. The Port Authority hereby authorizes the final estimate and work product in the amount of \$677,900.

**C. BCS Automotive Loan**

Development Coordinator White gave an overview of the proposed \$100,000 BCS Automotive Port Loan. Mr. White explained that the loan was structured similar to previous loans made to Cytec/Solvay and Gypsoil. These loans were done in connection with the Department of Employment and Economic Development financing with a portion (\$50,000) of the loan forgivable should the company attain job and wage goals.

Commissioner Borzyskowski made a motion to approve Resolution #761 approving the proposed loan to BCS Automotive Interface Solutions and authorizing President Cichanowski and Executive Secretary Sarvi to execute loan documents. The motion was seconded by Commissioner Thurley with roll call votes of all Commissioners present voting aye.

**RESOLUTION # 761**

**Approving BCS Automotive Loan and Authorizing the President and Executive Secretary to Execute Loan Documents**

**WHEREAS**, the Authority administers a Revolving Loan Fund (the "Loan Program") for the purpose of encouraging business growth and/or expansion projects for local companies; and

**WHEREAS**, Recipient operates BCS Automotive Interface Solutions US, LLC, a tier one supplier to the automotive industry, and has applied to the Authority for a Revolving Loan in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Loan") to assist with an expansion program into new market sectors (the "Project"); and

**WHEREAS**, Recipient is the owner of the subject property upon which the Project will occur located at 5752 Industrial Park Road, Winona, MN 55987, PID No. 32.320.0360, (the "Property"); and

**WHEREAS**, the Port Authority has determined that the Recipient's loan application is consistent with the intent of its Loan Program and has agreed to make a loan in the principal amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00); and

**WHEREAS**, a portion of the above-mentioned loan amount, Fifty Thousand and 00/100 Dollars (\$50,000.00), may be forgivable if certain job and wage goals are met.

**NOW, THEREFORE, BE IT RESOLVED** by the Port Authority of Winona, Minnesota:

1. The Port Authority of Winona approves a Port Revolving Loan as outlined above to BCS Automotive Interface Solutions US, LLC.
2. The Port Authorizes President Mike Cichanowski and Executive Secretary Stephen T. Sarvi to execute of the General Obligation Bond Grant Agreement with the State of Minnesota to enable the receipt of the awarded funding.

Commissioner Johnson expressed his appreciation to Port staff for their expertise and ongoing efforts to work to retain and expand local business.

PORT AUTHORITY MINUTES

MAY 14, 2020

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4. **FINANCIAL REPORT**

Finance Director Burrichter noted that Port Emergency Loans were not reflected in the April financial report, they would be appear in the May report.

5. **ADJOURNMENT**

The meeting was adjourned at 4:20 pm.

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Myron White  
Development Coordinator

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Mike Cichanowski  
President

## PORT AUTHORITY AGENDA ITEM

**AGENDA ITEM: 3. A. Presentation of the 2019 Annual Financial Report for the Port Authority of Winona**

**DATE: June 11, 2020**

At this meeting, a representative of Deloitte & Touché LLP will present the Port Authority's *Annual Financial Report as of and for the Year Ended December 31, 2019, and Independent Accountants' Review Report*.

This report is not an audit of the Port Authority. It is a Financial Report of the Port Authority for 2019. The audit reports, of the City of Winona for 2019, are included in the City's Comprehensive Annual Financial Report (CAFR) which presents the Port Authority in the column called "Component Unit." (The City of Winona's CAFR is a separate book and is available, upon request, by a Commissioner.)

The Port Authority Commissioners are requested to accept their Annual Financial Report.

## PORT AUTHORITY AGENDA ITEM

**AGENDA ITEM:** 3. B. Hemker – Assignment and Assumption – Resolution

**DATE:** June 11, 2020

**ATTACHMENTS:** 1) Map of Technology Park Lots 1, 2, and 3  
2) Resolution #762

In October of 2011 the Port entered into an agreement with Robert Hemker for the use of lots 1, 2, and 3 in the Technology Park. That lease agreement also included an option to purchase the property with 25% of the lease revenue being credited towards the purchase price. The purchase price of the property was to be \$192,000 for the 4.4 acres of property. With the 25% rent credits, the purchase price today would be \$148,785.20.

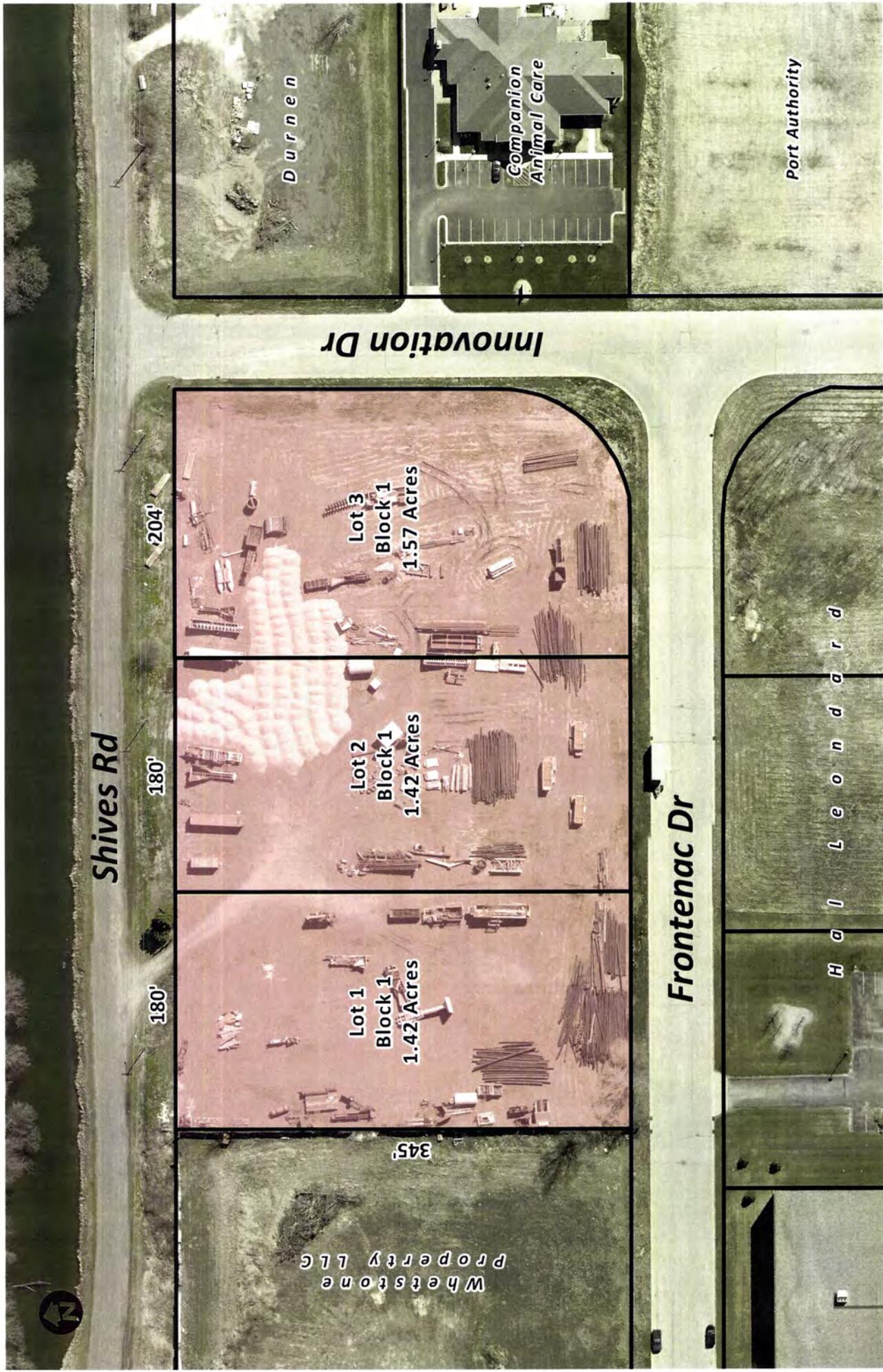
McLean Benson and Ed Becker of Winona Nursery approached the Hemkers about purchasing Lots 1, 2, and 3 for their professional landscaping business. The site has soil conditions and a business such as Winona Nursery, would be a good fit for the property. The Port Authority Attorney has reviewed the documents related to this transaction. In order to comply with the State Statute related to land sales, an Assignment and Assumption of the Lease and Option is the form to facilitate the real estate transaction. The steps below outline the process and components of the resolution in order for the sale to occur.

- 1) Approve the Assignment and Assumption of Lease and Option Agreements by and between Nancy Hemker and MBEB Properties LLC.
- 2) Accept the Notice of Exercise of Option from MBED Properties LLC, to purchase the properties.
- 3) Find that the sale need not be reviewed by the Planning Commission since it has no relationship to the Comprehensive Plan.
- 4) Find that, it is in the best interest of the Port district to sell the Property to MBEB Properties LLC for the project pursuant to the plans and specification, attached hereto as Exhibit G, for the project on the Property.
- 5) Sell the property as outlined in the Option for \$192,535.20 less 25% of the lease payments received pursuant to the Lease Agreement. From October 20, 2011 to May 14, 2020, the amount of \$175,000.00 was received as lease payments; therefore the amount due at closing is \$148,785.20.
- 6) Approve the Deed attached hereto as Exhibit H to accomplish the sale of that certain Property.
- 7) Authorize the President and Executive Secretary to execute the documents related to the sale of the property.
- 8) Consider allowing MBEB Properties, LLC to utilize sand in Technology Park at no cost for development of the site.

If Commissioners concur, a motion to approve the resolution would be appropriate.

# TECHNOLOGY PARK

May 2020



## **RESOLUTION # 762**

**WHEREAS**, Robert Hemker and the Port Authority of Winona ("Port") entered into a Lease Agreement (the "Lease Agreement") dated October 20, 2011 relating to certain real property located in the City of Winona, Winona County, Minnesota, described in Exhibit A attached to this Resolution (the "Property"); and

**WHEREAS**, Robert Hemker and the Port also entered into an Option Agreement (the "Option Agreement") dated February 9, 2012 relating to the Property and authorizing the purchase thereof from the Port pursuant to those terms and conditions contained in the Option Agreement; and

**WHEREAS**, copies of the above-referenced Lease Agreement and Option Agreement are respectively attached hereto as Exhibits B and C; and

**WHEREAS**, pursuant to Resolution #684, dated September 11, 2011, the Port held a public hearing on the sale of the Property and found that it is in the best interest of the Port district and the people thereof and in furtherance of the general plan to sell said Property pursuant to the Option Agreement; and

**WHEREAS**, Nancy A. Hemker is the personal representative of the Estate of Robert Hemker and in that capacity has properly previously extended the Lease Agreement and the Option Agreement in accordance with their respective terms, and the same remain in full force and effect; and

**WHEREAS**, both the Lease Agreement and Option Agreement allow the assignment of the respective rights, duties and obligations therein; and

**WHEREAS**, Nancy A. Hemker, as the sole successor in interest and assignee to the Estate of Robert Hemker, now desires to assign, subject to the above-mentioned consent of the Port, her interest in the above-referenced agreements to MBEB Properties LLC, and requests that the Port consent to the same in order that MBEB Properties LLC may assume the rights, duties and obligations of the Lease Agreement and Option Agreement and perform under the same to the same extent as Robert Hemker and additionally releasing Nancy A. Hemker therefrom; and

**WHEREAS**, a copy of the above-referenced Assignment and Assumption of Lease and Option Agreements by and between Nancy A. Hemker ("Assignor") and MBEB Properties LLC ("Assignee") is attached hereto as Exhibit D; and

**WHEREAS**, MBEB Properties LLC, subject to the above-mentioned consent, and subject to approval of the Port, also now seeks to exercise the option to purchase the Property from the Port pursuant to the terms and conditions contained in the Option Agreement and to thereafter, following closing upon the same, develop such Property in accordance with Port approved plans and specifications; and

**WHEREAS**, MBEB Properties LLC, proposes to develop the Property for commercial use consisting of a new office and yard layout for Winona Nursery (the "project"); and

**WHEREAS**, pursuant to Minnesota Statutes, Section 469.065, subd. 7, a conveyance of the Property must not be made until MBEB Properties LLC gives the Port plans and specifications for the project to develop the Property sold by the Port to MBEB Properties LLC, and the Port must approve the plans and specifications in writing; and

**WHEREAS**, copies of the above-referenced Notice of Exercise of Option to purchase the Property from the Port by MBEB Properties LLC along with the preliminary plans and specifications for development of the same are respectively attached hereto as Exhibits E and F; and

**WHEREAS**, Minnesota Statutes, Section 462.356 provides that no publicly owned interest in real property within the municipality shall be disposed of until after the planning agency has reviewed the proposed disposition and reported in writing to the Port its findings as to compliance with the comprehensive plan; and

**WHEREAS**, the same statute further states, however, that the Port may, by resolution adopted by two-thirds vote, dispense with the requirements of this subdivision when in its judgment it finds that the acquisition or disposal of real property has no relationship to the comprehensive plan; and

**WHEREAS**, the Port has investigated the facts of the proposed sale of said Property, the terms and conditions of said sale, received and reviewed the preliminary project plans and specifications, the proposed use of said Property, and the relation of the project use to the improvement of business in the City of Winona and the Port district in general; and

**WHEREAS**, the proposed conveyance of the Property, presented by MBEB Properties LLC meets the terms and conditions set forth by the Port as its guide in determining if such proposals are in the best interest of the Port Authority district and the public.

**NOW, THEREFORE, BE IT RESOLVED** by the Port Authority of Winona that:

1. The Board of Commissioners hereby approve the Consent and Release of Port Authority of Winona to Assignment and Assumption of Lease and Option Agreements by and between Nancy A. Hemker ("Assignor") and MBEB Properties LLC ("Assignee"), attached hereto as Exhibit D, and authorizes and directs the President and Executive Secretary to execute the same substantially in the form hereby approved, allowing for minor or technical changes as determined by the City Attorney.

2. The Board of Commissioners hereby accepts the Notice of Exercise of Option from MBEB Properties LLC attached hereto as Exhibit E, to purchase the

Property legally described in Exhibit A pursuant to the Option Agreement attached hereto as Exhibit C.

3. The Board of Commissioners finds that the sale need not be reviewed by the planning commission as the proposed sale has no relationship to the comprehensive municipal plan and therefore review of the proposed sale by the Winona Planning Commission is not required under Minn. Stat. § 462.356, Subd. 2, and is hereby dispensed with as allowed by that statute.

4. The Board of Commissioners hereby finds, determines, and declares that it is in the best interest of the Port district and the people thereof and in furtherance of the general Port plan to sell the Property to MBEB Properties LLC for the project pursuant to the plans and specification, attached hereto as Exhibit F, for the project on the Property.

5. Pursuant to the terms of the Option Agreement, the purchase price of the Property is \$192,535.20 less 25% of the lease payments received pursuant to the Lease Agreement. From October 20, 2011 to May 14, 2020, the amount of \$175,000.00 was received as lease payments, therefore the amount due at closing is \$148,785.20.

6. The Board of Commissioners hereby approves the Deed attached hereto as Exhibit G to accomplish the sale of that certain Property described therein and authorizes and directs the President and Executive Secretary to execute the same upon Closing and such other documents as are necessary to effect the conveyance of the Property by the Port to MBEB Properties LLC. MBEB Properties LLC shall record the requisite instruments of sale, as applicable, in the Office of the Winona County

7. The Board of Commissioners hereby approves the Estoppel Certificate attached hereto as Exhibit H and authorizes and directs the President and Executive Secretary to execute the same.

PASSED by the Board of Commissioners of the Port Authority of Winona, Minnesota, on this \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Executive Secretary

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lot One (1), Lot Two (2) and Lot Three (3), Block One (1), Technology Park, City of Winona, Winona County, Minnesota.

EXHIBIT B  
LEASE AGREEMENT

(Top 3 inches reserved for recording data)

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LEASE AGREEMENT

THIS AGREEMENT made this 20<sup>th</sup> day of October, 2011, by and between the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota, 207 Lafayette Street, Winona MN 55987, (hereinafter "Authority"), and Robert Hemker, 32588 County Road 12, Winona MN 55987, (hereinafter "Hemker") ), (collectively the "parties").

RECITALS

A. The Authority owns real property situated in the City of Winona, Winona County, Minnesota, and legally described as:

Lot One (1), Lot Two (2) and Lot Three (3), Block One (1),  
Technology Park, City of Winona Winona County,  
Minnesota

B. Hemker desires to lease said real property for an industrial use consistent with applicable zoning ordinances of the City of Winona and under the terms, covenants, and conditions stated herein.

NOW, THEREFORE, for valuable consideration, it is hereby agreed by and between the parties as follows:

**1. DEMISE AND DESCRIPTION OF LEASED PREMISES.** The Authority, for and in consideration of the payments to be made and the covenants and conditions of Hemker to be kept and performed, does hereby lease unto Hemker the following described real property (the Leased Premises) situated in the City of Winona, County of Winona, and State of Minnesota:

Lot One (1), Lot Two (2) and Lot Three (3), Block One (1),  
Technology Park, City of Winona Winona County,  
Minnesota.

Hemker acknowledges that he has inspected the Leased Premises and accepts the Leased Premises in an "as is" condition.

During the term of this Lease Agreement, Hemker shall keep the Leased Premises in a sanitary condition, remove all trash from the Leased Premises and keep the Leased Premises free from refuse or other debris. Hemker shall be responsible for the repair of any damages to the Leased Premises resulting from his use thereof pursuant to this Lease Agreement. Hemker agrees to pay the Authority for any physical damage to the Leased Premises during this Lease Agreement, which are not otherwise repaired by Hemker at Hemker's expense.

**2. USE OF THE LEASED PREMISES.** The Leased Premises shall be used for an industrial use consistent with applicable zoning ordinances of the City of Winona and the services ancillary and incidental thereto. Hemker shall have the right to establish and use auxiliary equipment on the Leased Premises. Upon termination of this Lease Agreement, all auxiliary equipment shall be removed by Hemker unless the parties mutually agree otherwise.

**3. TERM.** The term of this lease shall be for Five (5) years, commencing on October 11, 2011, and ending on September 30, 2016, unless sooner terminated as hereinafter provided. This lease may be renewed for an additional term of Five (5) years upon Hemker giving Authority written notice of his election to renew at least 60 days prior to the expiration of the initial lease term.

**4. RENT.**

(a) The basic annual rent (Basic Annual Rent) to be paid to the Authority by Hemker, in addition to all other rental amounts required to be made by Hemker pursuant to this Lease Agreement, shall be the annual sum of \$20,000.00. The Basic Annual Rent shall be paid in quarterly installments of \$5,000.00 with the first quarterly payment due on or before October 1, 2011 and each subsequent installment paid on or before January 1, April 1, July 1, and October 1 of each year thereafter.

(b) Unless otherwise expressly and implicitly stated herein to the contrary, it is the intention and the agreement of the parties that all costs and expenses of any nature or kind whatsoever, attributable to the Leased Premises shall be borne and immediately payable by Hemker in full who shall have the total responsibility for such costs and expenses and the Authority shall not have any responsibility or liability therefor.

(c) All arrearages in the payment of rent or such other amounts to be paid by Hemker to the Authority shall bear interest at the rate of 12% per annum from the date when due until the delinquent amount has been paid in full.

(d) In the event that Hemker undertakes permanent soil correction improvement as outlined in Section 8 of this Lease Agreement and independent testing results verify a successful outcome to the satisfaction of Authority, the Authority may thereafter credit all or a portion of the cost of such permanent soil correction towards the lease payments required hereunder in the discretion of Authority.

## 5. PAYMENT OF TAXES AND ASSESSMENTS.

(a) Taxes as Additional Rent. As additional rent hereunder, Hemker shall pay and discharge as they become due, promptly and before delinquency, all real estate taxes due and payable in the year 2012 and in all subsequent years of the lease term, all other taxes of every kind and nature, assessments, rates, charges, license fees, levies, excises, or imposts, whether general or special or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, and kind, which shall be levied, assessed, charged, or imposed, or which may become a lien or charge on or against the Leased Premises or any part thereof or against any improvements placed on the Leased Premises by Hemker, during the term hereof, or against the leasehold interest of Hemker herein or against any other improvements now or hereafter placed on the Leased Premises or against Hemker's estate hereby created if determined to be a subject of taxation or against the Authority by reason of its ownership of the fee underlying this Lease, during the entire term hereof.

(b) Contesting Taxes. If Hemker shall in good faith desire to contest the validity or amount of any real estate tax agreed to be paid by Hemker, Hemker shall be permitted to do so and to defer payment of such tax, the validity or amount of which Hemker is so contesting, until final determination of the contest, on giving to Authority written notice thereof prior to the commencement of any such contest, which notice shall be given at least 60 days prior to delinquency, and on protecting Authority, on Authority's demand, by a good and sufficient surety bond in the amount of 125% of the amount of any such tax and from any costs, liability, or damage arising out of any such contest.

(c) Disposition of Rebates. All rebates on account of any such taxes required to be paid and paid by Hemker under the provisions hereof shall belong to Hemker and the Authority shall, on the request of Hemker, execute any receipts, assignments, or other acquittances that may be necessary on the Leased Premises in order to secure rebates that may be received by Hemker.

**6. PAYMENT OF UTILITIES.** As additional rent, Hemker shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the Leased Premises throughout the term hereof and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the Leased Premises and all activities conducted thereon and the Authority shall have no responsibility of any kind for such costs or expenses.

**7. COMPLIANCE WITH LAWS AND REGULATIONS.** Hemker's use of the Leased Premises including, without limitation, all storage of materials thereon, shall be in accordance with the requirements of all applicable federal, state, and local laws, regulations, and ordinances.

**8. IMPROVEMENTS TO AND CARE OF LEASED PREMISES.**

(a) Hemker shall make no improvements to the Leased Premises, including but not limited to permanent soil correction, without the prior written consent of the Authority, which consent shall not be unreasonably withheld. Hemker shall submit to the Authority plans and specifications for the improvement(s) contemplated. The plans and specifications shall have been approved by the Authority, in writing, prior to commencement of work.

(b) In the event that the improvement involves permanent soil correction, Hemker shall also submit to Authority independent testing results verifying the outcome of the permanent soil correction. The addition of roads, pads or fill shall not be considered to be part of the soil correction work.

(c) All improvements placed or constructed on the Leased Premises shall be used and maintained in compliance with all federal, state, and local laws and ordinances at Hemker's sole expense.

**9. MECHANIC'S LIENS AND OTHER LIENS.** Hemker hereby covenants and agrees that it will not permit or allow any mechanic's or materialman's liens or any other lien whatsoever to be placed on the Authority's interest in the Leased Premises during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the Authority's interest, Hemker shall take all steps necessary to see that it is removed within 30 days of its being filed; provided, however, Hemker may contest any such lien provided Hemker first posts a surety bond, in favor of the Authority, in an amount equal to 125% of the amount of any such lien.

**10. PERMITS, CERTIFICATES, AND LICENSES.** Hemker shall acquire and provide at his own cost and keep enforced during the term of this Lease Agreement, all necessary permits, governmental certificates, and licenses, state or

federal, required for the operation of his business on the Leased Premises. If requested by Hemker, the Authority shall assist in any application for such permits, certificates, or licenses. Prior to construction of any improvements on the Leased Premises, Hemker shall provide to the Authority copies of all permits, certificates, and/or licenses required by law.

**11. COVENANTS TO HOLD HARMLESS.** Hemker shall defend, indemnify, and hold harmless the Authority and the City of Winona, Minnesota, their agents and employees, from and against any and all claims, damages, losses, required remedial action, and expenses, including attorney's fees, arising out of or resulting from Hemker's use of the Leased Premises, including, without limitation, any such claim, damage, loss, required remedial action, or expense, is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, or to the wrongful discharge of any contaminant or pollutant onto the Leased Premises or into any navigable waters.

**WAIVER AND ASSUMPTION OF RISK.** Hemker knows, understands and acknowledges the risks and hazards associated with using the Leased Premises for the purposes stated herein and hereby assumes any and all risks and hazards associated therewith. Hemker hereby irrevocably waives any and all claims against the Authority, the City of Winona, or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by Hemker as a result of using the Leased Premises and hereby irrevocably releases and discharges the Authority and the City of Winona and any of its officials, employees or agents from any and all claims of liability.

**HAZARDOUS MATERIALS.** Hemker agrees that it shall indemnify, defend and hold the other party harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims and cost of cleanups) or loss including attorney's fees, consultant fees and expert fees that arise during or after the term of this Lease Agreement from or in connection with the presence or suspected presence of toxic or hazardous substances in the soil, groundwater, or soil vapor on or under the Leased Premises, which are present as a result of the operations, acts, defaults, omissions, negligence or willful misconduct of Hemker, its officers, employees or agents. Hemker shall not use or engage in the manufacture of hazardous chemicals on the Leased Premises.

Notwithstanding the foregoing, the Authority agrees to indemnify, defend and hold Hemker harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims and cost of cleanups) or loss including attorney's fees, consultant fees and expert fees that arise during the term of this Lease Agreement from or in connection with the presence of toxic or hazardous substances claimed or alleged to have been deposited, stored, disposed of,

placed or otherwise located in, on or about the Leased Premises prior to the date of this Lease Agreement, or which are present as a result of the operations, acts, defaults, omissions, negligence or willful misconduct of the Authority, its officers, employees or agents prior to the date of this Lease Agreement.

**12. INSURANCE.** Prior to the commencement of this Lease Agreement, Hemker shall provide to the Authority certificates of insurance showing that Hemker (a) has in effect bodily injury and property damage insurance in an amount not less than the maximum liability amount for a municipality as provided in Minnesota Statutes, Section 466.04; and (b) has in effect statutory workmen's compensation insurance. Said liability insurance policy shall have the City of Winona and Port Authority of Winona as additional insureds. Hemker's insurance policies and certificates shall not be cancelled or their conditions altered in any manner without 10 days prior written notice to the Authority. The insuring company or companies shall deliver to the Executive Secretary of the Authority, or his designated representative, certificates of all insurance required, signed by an authorized representative and stating that provisions of the specified requirements are satisfied.

**13. SURRENDER OF POSSESSION.** At the end of the lease term, Hemker covenants to surrender and deliver up possession of the Leased Premises to the Authority. The parties agree that any improvements to which the Authority has consented for their construction by Hemker on the Leased Premises shall be considered personal property of Hemker and shall not become part of the realty. All personal property improvements situated on the Leased Premises, to which the Authority has consented for their construction, shall be removed by Hemker from the Leased Premises within Thirty (30) days of the end of the lease term. If the Lease is terminated for any reason prior to its stated term, all personal property improvements situated on the Leased Premises, to which the Authority has consented for their construction, shall be the property of Hemker and Hemker shall remove such improvements from the Leased Premises within Thirty (30) days after termination, provided Hemker has made a financial settlement with the Authority, and provided that any damage caused by the removal of personal property shall be repaired by Hemker at Hemker's expense. If said personal property is not removed as provided herein, it shall become and remain the property of the Authority, at the Authority's option.

**14. DEFAULT/RIGHT TO TERMINATE LEASE.** Hemker's failure to pay any amount due hereunder within Thirty (30) days of its due date or Hemker's failure to comply with or perform any other obligation, term, covenant, or condition contained in this Agreement shall be construed as a default and shall give the Authority the right to immediately terminate this Lease Agreement upon Thirty (30) days written notice to Hemker and Hemker's failure to cure the default within 30 days from the date of receipt of the notice. Termination of the lease by the Authority shall not be construed as relieving Hemker of his obligations to pay all amounts due hereunder. In addition to the

rights granted to the Authority herein, the Authority shall have all other rights and/or remedies provided to the Authority by law.

**15. OPTION TO PURCHASE.** The parties hereto agree to execute an Option to Purchase simultaneously with the execution of this Lease Agreement.

**16. INSPECTION.** The Authority shall have the right to enter the Leased Premises during business hours for any purpose necessary, incidental, or connected with the performance of the Lease, or in the exercise of its governmental functions, or in order to determine whether or not Hemker is performing its covenants and agreements under this Lease Agreement.

**17. GENERAL TERMS.**

**a. Voluntary and Knowing Action.** The parties, by executing this Lease Agreement, state that they have carefully read this Lease Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

**b. Authorized Signatories.** The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

**c. Notices.** The parties' representatives for notification for all purposes are:

**AUTHORITY:**  
Larry J. Thompson  
Executive Secretary  
207 Lafayette Street  
Winona MN 55987  
Phone: 507-457-8234  
Email: lthompson@ci.winona.mn.us

**HEMKER:**

Name: Robert Hemker  
Address: 32588 County Road 12  
Winona, MN 55987  
Phone: (507) 312-0606  
Email: brannt@live.com

All approvals, communications, demands, notices, or objections permitted or required to be given or served under this Lease shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its duly authorized agent or if deposited in the United States mail, postage prepaid, by mailing by certified or registered mail, return receipt requested, and addressed to the other party to this Lease, to the address set forth next to that party's signature at the end of this Lease, or if to a person not a party to this Lease, to the address designated by a party to this Lease in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the tenth (10th) day after the giving of notice, the newly designated address shall be that party's address for the purposes of all approvals, communications, demands, notices, or objections permitted or required to be given or served under this Lease Agreement.

**d. Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the Authority and Hemker.

**e. No Partnership, Joint Venture, or Fiduciary Relationship.** Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Authority and Hemker it being understood that the sole relationship created hereby is one of landlord and tenant.

**f. Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, Hemker agrees that the Authority, the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Hemker and involve transactions relating to this Agreement. Hemker agrees to maintain these records for a period of six years from the date of termination of this Agreement.

**g. Force Majeure.** The parties shall each be excused from performance under this Agreement while and to the extent that either of them are

unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.

**h. Compliance with Laws.** Hemker shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which Hemker is responsible.

**i. Interest by City Officials.** No elected official, officer, or employee of the Authority or the City shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**j. Governing Law.** This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

**k. Data Practices.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

**l. No Waiver.** Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

**m. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

n. **Entire Agreement.** These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.

o. **Headings and Captions.** Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.

p. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of Authority and Hemker arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

q. **Cumulative Rights.** No right or remedy herein conferred on or reserved to Hemker or the Authority is intended to be exclusive of any other right or remedy provided by law, but each shall be cumulative in and in addition to every other right or remedy given herein or elsewhere or hereafter existing at law or in equity or by statute.

r. **Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.

s. **Execution.** This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement the day and year first above written.

ADDRESS:

City Hall  
207 Lafayette Street  
P.O. Box 378  
Winona, MN 55987-0378

PORT AUTHORITY OF WINONA

By:   
Michael Cichanowski  
Its: President

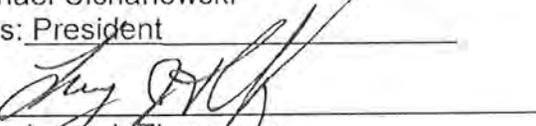
By:   
Larry J. Thompson  
Its: Executive Secretary



EXHIBIT C  
OPTION AGREEMENT

(Top 3 inches reserved for recording data)

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OPTION AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of February, 2012, by and between the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota (the "Authority" or "Grantor"), and Robert Hemker ("Hemker" or "Grantee"), (collectively the "parties").

WITNESSETH, that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration in hand paid by the Corporation to the Authority as more fully set forth below, the receipt and sufficiency of which is hereby acknowledged by the Authority, it is hereby agreed as follows:

1. PROPERTY OPTIONED. The Authority hereby grants to Hemker the exclusive right and option (Option) to be exercised on or before the end of the option term (defined below) to purchase the following property (Optioned Property):

Lot One (1), Lot Two (2) and Lot Three (3), Block One (1),  
Technology Park, City of Winona Winona County, Minnesota.

2. OPTION PAYMENT(S). The Authority hereby acknowledges the receipt of the sum of \$1,925.35 (First Option Payment). The First Option Payment shall continue the Option until the end of the first option term (defined below). If Hemker elects to extend the Option Term, Hemker shall pay to Authority the sum of \$3,850.70 (Second Option Payment) on or before December 30, 2016. Payment of the Second Option Payment shall continue the Option until the end of the second option term (defined below).

The Option Payment(s) shall not be considered part of the purchase price (defined below) if the Option granted herein is exercised. The Option Payment(s) shall not be refundable.

3. PURCHASE PRICE. If the Option is exercised during either of the option terms, Hemker shall pay as and for the purchase price (Purchase Price) for the Optioned Property the sum of \$192,535.20 which shall be paid as follows:

(a) 25% of the lease payments received pursuant to a Lease Agreement executed by the Authority and Hemker shall be applied toward payment of the Purchase Price; and

(b) The balance of the Purchase Price shall be paid in cash on the date of closing.

4. EXERCISE OF OPTION. Written notice of election to purchase the Optioned Property shall be given by Hemker to the Authority by depositing the notice in the United States mail, certified mail, return receipt requested, addressed to the Authority at the address set forth next to the Authority's signature at the end of this Agreement, with postage prepaid, at least Ninety (90) days prior to the expiration of the option term (defined below) or by personal delivery of the written notice to the Authority at the address set forth next to the Authority's signature at the end of this Agreement at least Ninety (90) days prior to the expiration of the option term. Notice shall be effective when either deposited in the United States mail as herein described or upon its personal delivery to the Authority.

5. CONDITIONS PRECEDENT. The Authority's obligation to sell the Optioned Property to Hemker shall be conditioned on the following:

(a) A determination by the Authority of the advisability of making a sale after a public hearing required by Minnesota Statutes, Section 469.065. Provided, however, following said public hearing, if the Authority will not or cannot sell the Optioned Property to Hemker, any Option Payments made pursuant to this agreement shall be immediately returned to Hemker.

(b) Prior to the transfer of title, Hemker's plans and specifications for the real property shall have been approved in writing by the Authority. The plans and specifications shall be such as will enable the Authority to determine with reasonable certainty that the project is or will be in compliance with the law and will, if carried out, provide for the intended use.

6. SALE SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS. The sale of the Optioned Property shall be subject to the following covenants, conditions, and restrictions which shall be incorporated in any quit claim deed delivered by the Authority to Hemker in fulfillment of the Authority's obligations under this Option Agreement:

(a) The property herein transferred shall be devoted to the following use: Industrial.

(b) The property shall be devoted to such use by the grantee in accordance with the provisions of the quit claim deed.

(c) The grantee shall, within 1 year from the date of the quit claim deed, devote the property to its intended use, or shall commence work on the improvements to devote it to such use (but shall complete such improvements no later than 2 years from the date of the quit claim deed); if the grantee fails to commence work on time or fails to devote the real estate to its intended use or fails to devote the real estate to its intended use on time, title to the real estate shall revert to Grantor, and, in that event, Grantee shall promptly offer a deed to the real estate to Grantor, who will then, if the deed is accepted by Grantor, refund to Grantee the purchase price without interest less any taxes and other encumbrances affecting marketability of title. Notwithstanding the foregoing, Grantor may, at its option, consider an extension of time for good cause shown by Grantee. In the event an extension is granted, it (a) shall be to a date certain, (b) may be conditioned by Grantor to protect the public interest, and (c) during the period Grantee shall not transfer title to the real estate without the express written consent of Grantor.

After the Grantee has devoted the property to its intended use in accordance with the plans and specifications for the development of the real estate submitted to the Grantor, the Grantor shall provide the Grantee with a certificate of compliance/completion in recordable form within 30 days from the determination thereof by the Grantor.

(d) Except as otherwise provided in the quit claim deed, the Grantee shall not transfer title to the real estate within 5 years after the date of the quit claim deed without the express written consent of the Grantor.

(e) Incorporated herein by reference are all of the conditions of Minnesota Statutes, Sections 469.048 to 469.068, and all of said conditions and the conditions stated herein relating to the use of the land are covenants running with the land.

7. DATE OF CLOSING. The notice of election to exercise this Option shall set a proposed date for the closing (Closing) of the sale herein contemplated, which date shall be on a business day, and which date shall be not sooner than 15 business days nor longer than 60 business days after the service of the notice of election, unless otherwise agreed upon by the parties in writing.

8. OPTION TERM(S). The first option term (First Option Term) shall commence as of the date hereof and shall terminate December 30, 2016. The second

option term (Second Option Term) shall commence on December 31, 2016, and shall terminate on December 31, 2021.

Notwithstanding the foregoing or anything to the contrary in this Agreement, in the event that the Lease Agreement between the Authority and Hemker on the above-described property is under an event of default that is not cured to the satisfaction of the Authority or is otherwise canceled, terminated or not renewed as provided therein for any reason, this Option Agreement shall be automatically terminated at the same time as the Lease Agreement and be null and void and of no force and effect. The option to purchase may not be exercised during any period of notice of default and cure or termination as provided in the Lease Agreement between the parties hereto.

9. PLACE OF CLOSING. The place of Closing shall be at the office of the Authority, Winona, Minnesota, or such other location, which may be necessary or on which the parties can mutually agree in writing.

10. TITLES AND REMEDIES. Within 30 days after the Authority has received Hemker's notice of election to exercise Hemker's option to purchase the Optioned Property, the Authority shall furnish to Hemker an abstract of title to the Optioned Property which abstract of title shall be certified to date to include proper searches covering bankruptcies and state and federal judgments and liens. Hemker shall reimburse the Authority for the cost of the Abstract. Hemker shall be allowed 15 days after receipt thereof for examination of said title and the making of any objections thereto, said objections to be made in writing or deemed to be waived. If upon examination title is deemed not to be marketable and cannot be made marketable within 60 days, Hemker shall be entitled:

(a) to the return of all monies paid at the time the Option was exercised, or

(b) to the right to accept title in its then condition with no diminution of the Purchase Price as provided herein.

If there are no title objections or if Hemker elects to waive the objections and Hemker thereafter defaults on paying the balance of the Purchase Price or any other terms and conditions as provided herein, then the Authority may specifically enforce or may terminate this Agreement, and if terminated, all payments made by Hemker shall be retained by the Authority as liquidated and agreed damages, time being of the essence.

11. REAL ESTATE TAXES AND ASSESSMENTS. Hemker shall pay all real estate taxes which become due and payable in the year of Closing and all subsequent years.

12. CLOSING DOCUMENTS. On the date of any Closing which may be held pursuant to this Agreement, the Authority agrees to fully execute and deliver to Hemker the following:

(a) A quit claim deed conveying title to the Optioned Property being sold to Hemker containing the covenants, conditions, and restrictions described hereinabove and all other terms, covenants, and conditions described in this Agreement or required by law at the time the option is exercised; and

(b) All other documents affecting the right to the possession of the Optioned Property and necessary to transfer or assign the same to Hemker.

13. GENERAL TERMS.

**a. Voluntary and Knowing Action.** The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

**b. Authorized Signatories.** The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

**c. Notices.** The parties' representatives for notification for all purposes are:

**AUTHORITY:**

Judith R. Bodway  
Executive Secretary  
207 Lafayette Street  
Winona MN 55987  
Phone: 507-457-8234  
Email: jbodway@ci.winona.mn.us

**HEMKER:**

Name: Robert Hemker  
Position: Owner  
Address: 32388 County Road 12; Winona, MN 55987  
Phone: (507) 312-0606  
Email: brant@live.com

**d. Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the Authority and Hemker.

**e. No Partnership, Joint Venture, or Fiduciary Relationship.** Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Authority and Hemker it being understood that the sole relationship created hereby is one of landlord and tenant.

**f. Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, Hemker agrees that the Port, the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Hemker and involve transactions relating to this Agreement. Hemker agrees to maintain these records for a period of six years from the date of termination of this Agreement.

**g. Force Majeure.** The parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.

**h. Compliance with Laws.** Hemker shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which Hemker is responsible.

**i. Interest by City Officials.** No elected official, officer, or employee of the Authority or the City shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**j. Governing Law.** This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

**k. Data Practices.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

**l. No Waiver.** Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

**m. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

**n. Entire Agreement.** These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.

**o. Headings and Captions.** Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.

**p. Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of Authority and Hemker arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

**q. Cumulative Rights.** No right or remedy herein conferred on or reserved to Hemker or the Authority is intended to be exclusive of any other right or remedy provided by law, but each shall be cumulative in and in addition to every other right or remedy given herein or elsewhere or hereafter existing at law or in equity or by statute.

**r. Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.

**s. Execution.** This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and





EXHIBIT D

ASSIGNMENT AND ASSUMPTION OF LEASE AND OPTION AGREEMENTS  
by and between Nancy A. Hemker ("Assignor") and MBEB Properties LLC  
("Assignee")

## ASSIGNMENT AND ASSUMPTION OF LEASE AND OPTION AGREEMENTS

This Assignment and Assumption of Lease Agreement and Option Agreement (“Assignment”) is entered into effective as of \_\_\_\_\_, 2020, by and between Nancy A. Hemker (“Assignor”) and MBEB Properties LLC, a Minnesota limited liability company (“Assignee”) whose address is 1504 Homer Road, Winona, Minnesota 55987.

### RECITALS

A. Robert Hemker and the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota (“Authority”) entered into a Lease Agreement (the “Lease Agreement”) dated October 20, 2011, relating to real property located in the City of Winona, Winona County, Minnesota, described in Exhibit A attached to this Assignment (the “Real Property”).

B. Robert Hemker and the Authority entered into an Option Agreement (the “Option Agreement”) dated February 9, 2012, relating to the Real Property.

C. Assignor is the successor in interest to Robert Hemker as to the Lease Agreement and Option Agreement.

D. Assignor desires to assign and Assignee desires to accept and assume all of the rights, duties and obligations of Assignor under the Lease Agreement and under the Option Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Assignor and Assignee agree as follows:

1. Assignor assigns to Assignee all of Assignor’s rights, duties, obligations, title and interest in, to and under the Lease Agreement.

2. Assignee accepts the foregoing assignment and agrees to be bound by all of the terms, covenants, and conditions of the Lease Agreement and assume and perform the duties, obligations and liabilities of Assignor under the Lease Agreement.

3. Assignor assigns to Assignee all of Assignor’s rights, duties, obligations, title and interest in, to and under the Option Agreement.

4. Assignee accepts the foregoing assignment and agrees to be bound by all of the terms, covenants, and conditions of the Option Agreement and assume and perform the duties, obligations and liabilities of Assignor under the Option Agreement.

5. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.





CONSENT AND RELEASE OF PORT AUTHORITY OF WINONA

The Port Authority of Winona hereby; (i) consents to and approves this Assignment as set forth above, (ii) agrees to accept the performance of the rights, duties, obligations and liabilities of Assignor under the Lease Agreement and the Option Agreement from Assignee, and (iii) releases the Estate of Robert Hemker and Nancy A. Hemker from all obligations under the Lease Agreement and the Option Agreement.

PORT AUTHORITY OF WINONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

-and-

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF WINONA    )

This foregoing instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2020, by Michael Cichanowski, the President, and by Stephen T. Sarvi, the Executive Secretary of the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota.

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

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.  
525 Park Street, Suite 470  
St. Paul, MN 55103  
(651) 225-8840

**EXHIBIT A**

Lot One (1), Lot Two (2) and Lot Three (3), Block One (1), Technology Park, City of Winona,  
Winona County, Minnesota.

EXHIBIT E  
NOTICE OF EXERCISE OF OPTION

**EXERCISE OF OPTION TO PURCHASE**

To: Port Authority of Winona  
207 Lafayette Street  
Winona MN 55987

MBEB Properties LLC hereby exercises the option to purchase the following described real estate from the Port Authority of Winona:

Lot One (1), Lot Two (2) and Lot Three (3), Block One (1), Technology Park,  
City of Winona, Winona County, Minnesota.

MBEB Properties LLC is the assignee of an original Lease Agreement and Option Agreement, which were originally between Robert Hemker and the Port Authority of Winona, dated October 20, 2011, and February 9, 2012, respectively. Such Lease Agreement and Option Agreement were assigned to Nancy A. Hemker by the Estate of Robert Hemker and subsequently assigned to MBEB Properties LLC, a Minnesota limited liability company.

The Closing will take place on or before June 17, 2020.

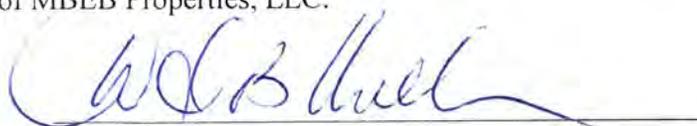
MBEB PROPERTIES, LLC



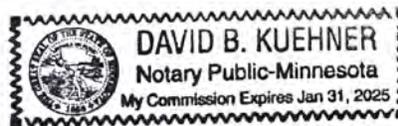
By: McLean Benson  
Its: Managing Member

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF WINONA    )

The foregoing instrument was acknowledged before me this 29th day of May, 2020, by McLean Benson, the managing member of MBEB Properties, LLC.



Notary Public



**EXHIBIT A**

Lot One (1), Lot Two (2) and Lot Three (3), Block One (1), Technology Park, City of Winona,  
Winona County, Minnesota.

EXHIBIT F

PRELIMINARY PLANS AND SPECIFICATIONS FOR PROJECT



EXHIBIT G

DEED

(Top 3 inches reserved for recording data)

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**QUIT CLAIM DEED**

**eCRV number:** \_\_\_\_\_

DEED TAX DUE: \$ \_\_\_\_\_

DATE: \_\_\_\_\_, 2020

FOR VALUABLE CONSIDERATION, the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota (“**Grantor**”), hereby conveys and quitclaims to MBEB Properties LLC, a Minnesota limited liability company (“**Grantee**”), real property in Winona County, Minnesota, legally described as:

Lot One (1), Lot Two (2) and Lot Three (3), Block One (1), Technology Park, City of Winona;

Subject to the following restrictions, covenants, and conditions:

1. The real property herein conveyed shall be devoted to the following use: commercial/industrial.
2. The real property shall be devoted to such intended use by the Grantee in accordance with the provisions of this Deed.
3. The Grantee shall (a) commence work on the improvements on or before April 1, 2021, and (b) shall devote the real property to its intended use, and (c) shall devote the real property to its intended use by January 1, 2022. If the Grantee fails to commence work on time or fails to devote the real property to its intended use or fails to devote the real property to its intended use on time, title to the real property shall revert to Grantor, at Grantor's election, and, in that event, Grantee shall promptly offer a deed to the real property to Grantor, who will then refund to Grantee the amount of the Purchase Price paid by Grantee to Grantor, without interest, less any taxes and other encumbrances affecting marketability of title. Notwithstanding the foregoing, Grantor may, at its option, consider an extension of time for good cause shown by Grantee. In the event an extension is granted, such extension (a) shall be to a date certain, (b) may be conditioned by Grantor to protect the public interest, and (c) during the period Grantee shall not transfer title to the real property without the express written consent of Grantor.

After the Grantee has devoted the real property to its intended use in accordance with the approved plans and specifications for the development of the real property submitted to the Grantor, the Grantor shall provide to Grantee a certificate of compliance/completion in recordable form within 30 days from the determination thereof by Grantor.

4. Incorporated herein by reference are all of the conditions of Minnesota Statutes, Sections 469.048 to 469.068, and all of said conditions and the conditions stated herein relative to the use of the real property are covenants running with the land.
5. The Grantee shall not transfer title to the real property within five (5) years after the date of this Deed without the express written consent of the Grantor.
6. Any transfer of title to the real property made pursuant to the provisions of paragraphs 3 and 5 hereof shall be made only to a party who demonstrates to the satisfaction of Grantor that such party has the ability to perform in place of Grantee.

The Grantor certifies that the Grantor does not know of any wells on the described real property.

Grantor

**Port Authority of Winona**

By: \_\_\_\_\_  
Its: President

By: \_\_\_\_\_  
Its: Executive Secretary

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF WINONA )

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by Michael Cichanowski, the President, and by Stephen T. Sarvi, the Executive Secretary of the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota, Grantor.

(Notary Seal)

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

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.  
525 Park Street, Suite 470  
St. Paul, MN 55103  
(651) 225-8840

TAX STATEMENTS FOR THE REAL  
PROPERTY DESCRIBED IN THIS  
INSTRUMENT SHOULD BE SENT TO:

MBEB Properties LLC  
1504 Homer Road  
Winona, MN 55987

EXHIBIT H  
ESTOPPEL CERTIFICATE

## ESTOPPEL CERTIFICATE

THIS ESTOPPEL CERTIFICATE is given as of the \_\_\_\_ day of June, 2020, by the Port Authority of Winona, a body politic and corporate under the laws of Minnesota ("Authority") at the request of Nancy Hemker, ("Assignor"), for the benefit of MBEB Properties, LLC, a Minnesota limited liability company ("Assignee").

### RECITALS:

A. Robert Hemker and the Authority entered into a Lease Agreement (the "Lease Agreement") dated October 20, 2011, relating to real property located in the City of Winona, Winona County, Minnesota, described in **Exhibit A** attached to this Assignment (the "Real Property").

B. Robert Hemker and the Authority entered into an Option Agreement (the "Option Agreement") dated February 9, 2012, relating to the Real Property.

C. Assignor is the successor in interest to Robert Hemker as to the Lease Agreement and Option Agreement.

D. Assignor desires to assign and Assignee desires to accept and assume all of the rights, duties and obligations of Assignor under the Lease Agreement and under the Option Agreement.

### STATEMENT

The Authority hereby confirms and represents that:

1. Assignor is in full compliance of the Lease Agreement, the Option Agreement, and the laws and regulations relating thereto, including payment of Real/Personal Property taxes due and payable in 2019 and prior years.
2. Neither the Lease Agreement, nor the Option Agreement, have been modified, altered or amended in any respect.
3. The five-year primary term of the Lease commenced on October 20, 2011. The lease was renewed for an additional five-year term, which is scheduled to expire on September 30, 2021.
4. The Authority acknowledges receipt of the First and Second Option payments required pursuant to the terms of the Option Agreement.
5. Assignor has not deposited any security deposit with the Authority, and Assignor is not entitled to credit for any other sums on deposit with the Authority.

6. All rent, charges or other payments due the Authority under the terms of the Lease Agreement have been paid through April 1, 2020. Assignor has not prepaid any rent or other charges. No additional rent payments will be required prior to the sale of this to MBEB Properties, LLC, on or before June 17, 2020.

7. The Authority knows of no claims, counterclaims, credits, defenses or set-offs that it currently has against Assignor in connection with the Lease Agreement or the Option Agreement.

8. Assignor is not in material default in respect of any of its obligations and no event has occurred, and no condition exists, that would permit the Authority to terminate the Lease Agreement or the Option Agreement with the passage of time, the giving of notice or both.

This Certificate shall inure to the benefit of and may be relied upon by Assignee.

IN WITNESS WHEREOF, the Authority has executed this Estoppel Certificate on the \_\_\_\_ day of June, 2020.

**PORT AUTHORITY OF WINONA**, a  
body politic and corporate under the laws of  
the State of Minnesota

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## PORT AUTHORITY AGENDA ITEM

**AGENDA ITEM:** 3. C. Riverview Park Subdivision Outlot D-Proposed Sale of Land

**DATE:** June 11, 2020

**ATTACHMENT:** Map of Part of Outlot D

The Port Authority staff has been working with Fastenal with regard to land assembly related to their expansion project in Downtown Winona. Fastenal is interested in a portion of Parcel D which is part of the Riverview Park Subdivision developed by the Port Authority in the 1980's. Parcel D is north of the Fastenal property. The portion of Lot D that if of interest for the development lies south of the railroad tracks runs from Washington Street west to the park area under the Hwy 43 Bridge. This could provide an area for parking, snow removal, landscaping or another accessory use. The parcel is approximately 5,500 s.f.

Fastenal is interested in purchasing the land area for purposes noted above. Port Authority staff is presenting this to Commissioners for discussion and formal action could take place at a future Port Authority meeting where a public hearing would be held to determine if it is in the best interest of the Port Authority.

If Commissioners concur a motion to direct staff to set a public hearing and present the proposed sale at a future meeting, would be appropriate.

# Part of Outlot D



This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted and any assumptions of the legal status of this map is hereby disclaimed. Imagery from 2016

0 30 60 120 Feet

June 2020

Community Development  
 Winona, MN 55987  
 MONTH OF MAY

**2020**  
**COMMERCIAL HARBOR ACTIVITY**  
 (REPORTED BY ARTCO)

	TOTAL	TRANSIT	NET
MONTH	BARGES	BARGES	BARGES
January	0	0	0
February	0	0	0
March	0	0	0
April	39	5	34
May	110	24	86
June			0
July			0
August			0
September			0
October			0
November			0
December			0
<b>TOTAL</b>	<b>149</b>	<b>29</b>	<b>120</b>
<i>Month-to-Date Last Year</i>	<b>6</b>	<b>0</b>	<b>6</b>

**MONTH COMPARISON**

	TOTAL	TRANSIT	NET
MONTH/YEAR	BARGES	BARGES	BARGES
May-18	172	13	159
May-19	6	0	6
May-20	110	24	86