



ECONOMIC DEVELOPMENT AUTHORITY AGENDA

Wednesday, November 7, 2018

Immediately Following Regular City Council Meeting

Call to Order

Roll Call

Approval of Minutes of Previous Meeting

1. Approve Minutes of March 20, 2018

New Business

2. Consider Subrogation Agreement, 8500 Evergreen Blvd.

Other Business

Adjourn



EDA Regular

1.

Meeting Date: 11/07/2018

SUBJECT: Approve Minutes of March 20, 2018

Attachments

March 20, 2018

ECONOMIC DEVELOPMENT AUTHORITY MEETING OF MARCH 20, 2018

A meeting of the Coon Rapids Economic Development Authority was called to order by President Jerry Koch at 7:38 p.m. on March 20, 2018 in the Council Chambers.

Members Present: President Jerry Koch, Commissioners Brad Greskowiak, Bill Kiecker, Wade Demmer, Jennifer Geisler, Brad Johnson and Steve Wells

Members Absent: None

CALL TO ORDER

President Koch called the meeting to order at 7:38 p.m.

ROLL CALL

All members present.

MINUTES OF PREVIOUS MEETING

1. Approve Minutes of the February 7, 2018 EDA Meeting

MOTION BY COMMISSIONER WELLS, SECONDED BY COMMISSIONER KIECKER TO APPROVE MINUTES OF FEBRUARY 7, 2018. THE MOTION PASSED UNANIMOUSLY.

NEW BUSINESS

2. Consider Resolution EDA 18-2 Approving Development Agreement, Riverdale Station Apartments

Staff provided an overview of the proposed Development Agreement.

Demmer thanked staff for the work on this development proposal. Demmer should be an exciting development.

Koch asked if there is any risk of work force mixed income housing. Brown indicated that there is not really a risk.

Will Anderson from the developer explained they are generating TIF from both projects and shifting it to the affordable units.

Greskowiak noted the City is purchasing the land from the County but there is a delay with Sherman on the closing. Brown explained that the closing occurs simultaneously and the EDA is only on the hood for about \$800,000. Brown is paying the \$1.5 million cash up front for the land and financing the construction.

MOTION BY COMMISSIONER DEMMER, SECONDED BY COMMISSIONER GEISLER TO ADOPT RESOLUTION EDA 18-2 APPROVING DEVELOPMENT AGREEMENT, RIVERDALE STATION APARTMENTS. THE MOTION PASSED UNANIMOUSLY.

March 20, 2018

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OTHER BUSINESS

None.

ADJOURN

MOTION BY COMMISSIONER DEMMER, SECONDED BY COMMISSIONER GEISLER, TO ADJOURN THE MARCH 20, 2018 EDA MEETING AT 7:45 P.M. THE MOTION PASSED UNANIMOUSLY.

Approval Attestation:

Joan Lenzmeier, City Clerk



EDA Regular

2.

Meeting Date: 11/07/2018

Subject: Consider Subrogation Agreement, 8500 Evergreen Blvd.

From: Matt Brown, Economic Development Coordinator

INTRODUCTION

The EDA is asked to consider a Subrogation Agreement with JMS Holdings, LLC related to economic development loans for a project at 8500 Evergreen Boulevard.

DISCUSSION

In 2010, the EDA and City Council approved an economic development assistance package for Biovest International, LLC, located at 8500 Evergreen Boulevard. Biovest, now known as The Cell Culture Company, completed a \$1.1 million project that included an interior remodel and equipment purchase. The City received a Minnesota Investment Fund award from the State of Minnesota in the amount of \$250,000. These funds were loaned to Biovest on a ten-year term with a variable interest rate and balloon payment. In addition, the EDA provided a \$103,000 loan using funds from TIF District 1-29 with a matching term. The building's owner, JMS Holdings, LLC, which is affiliated with Shamrock Development, funded the remaining improvements. The loan documents required that Biovest create at least 14 new jobs and retain at least 24 jobs in Coon Rapids within two years of completing the project. The loans are secured by both mortgages on the real estate and a security in the equipment. Biovest previously met the job creation requirements of the project and is current on loan repayments. Both loans will be due in full in 2021.

JMS intends to sell the property to Cretex Properties, Inc. and Biovest will remain a tenant in the building. Rather than assign the mortgages to the buyer, JMS proposes entering into Subrogation Agreements with the City and EDA. These agreements establish that in the event of Biovest's default, the City and EDA can access an escrow account to repay the loans. An Escrow Agreement between Cretex and JMS establishes the account, in which JMS will deposit a sum of \$297,395.18, which corresponds to the current loan balances, plus \$50,000. JMS must provide satisfactions from both the City and EDA of each loan in order to have the escrowed funds released back to JMS. The Subrogation Agreement will allow, if necessary, JMS to seek from Biovest any monies paid from the escrow agreement to the City or Cretex. City Staff believes that the proposed escrow arrangement minimizes risks to the City and EDA and is a preferred form of security.

RECOMMENDATION

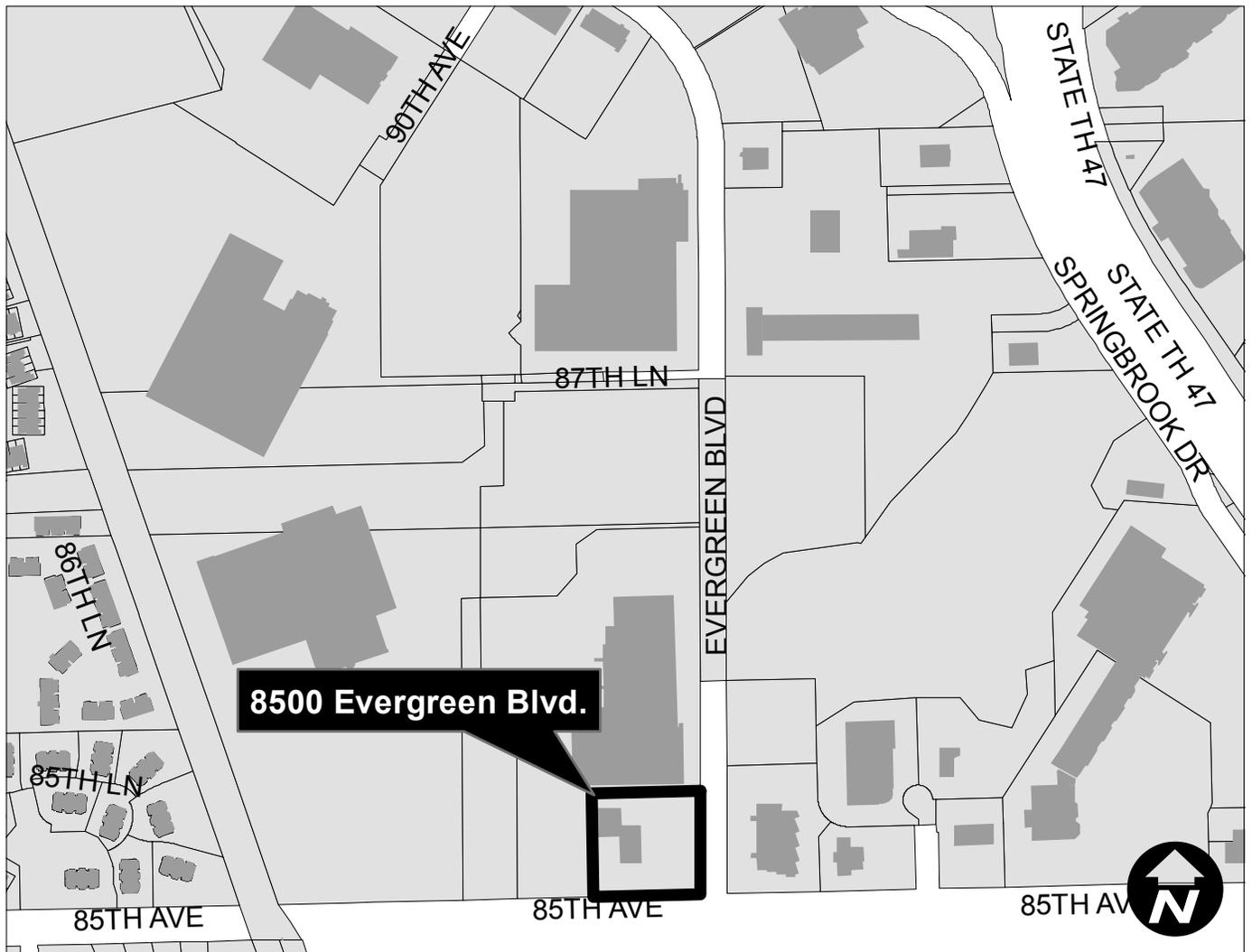
Staff recommends that the EDA approve the Subrogation Agreement with JMS Holdings, LLC.

Attachments

Location Map

Subrogation Agreement

Exhibit A



**SUBROGATION AGREEMENT
("EDA")**

THIS SUBROGATION AGREEMENT (the "**Agreement**") is made and entered into this ____ day of _____, 2018, by and between the **ECONOMIC DEVELOPMENT AUTHORITY in and for the City of Coon Rapids** (the "**EDA**") and **JMS HOLDINGS, LLC**, a Minnesota limited liability company (the "**JMS**").

RECITALS

WHEREAS, up until the date of this Agreement, JMS was owner of certain real property located at 8500 Evergreen Boulevard NW, Coon Rapids, Minnesota and all improvements located thereon (the "**Property**"); and

WHEREAS, JMS leased the Property to Biovest International, Inc., a Delaware corporation ("**Tenant**") pursuant to a Lease Agreement dated December 2, 2010, as amended ("**Lease**"); and

WHEREAS, the EDA entered a Loan Agreement with Tenant dated December 7, 2010 (the "**EDA Loan Agreement**") to provide Tenant with a loan in the original principal amount of \$103,000.00; and

WHEREAS as a requirement of the EDA Loan Agreement, JMS provided to the EDA a Mortgage dated December 7, 2010 (the "**EDA Mortgage**"); and

WHEREAS, pursuant to the Lease, the Tenant is obligated to pay all sums due under the EDA Loan Agreement; and

WHEREAS, JMS has conveyed the Property to Cretex Properties, Inc., a Minnesota corporation ("**Cretex**"); and

WHEREAS, as a condition of the sale to Cretex, JMS and Cretex as well as Chicago Title Insurance Company (the "**Escrow Agent**"), have entered into an Escrow Agreement ("**Escrow Agreement**") whereby JMS is depositing with Escrow Agent the sum of \$297,395.18 (the "**Escrowed Funds**") to assure payments to the EDA under the terms of the EDA Loan Agreement in the event Tenant defaults in making such payments. A copy of said Escrow Agreement is attached hereto as Exhibit A; and

WHEREAS, JMS and the EDA desire to provide for a subrogation of rights under the terms of the EDA Loan Agreement in the event Tenant fails to make payments required thereunder, and such payments are paid by way of release of all or portion of the Escrowed Funds.

NOW, THEREFORE, in consideration of One Dollar and the mutual covenants and obligations of the parties hereto, it is agreed as follows:

1. Recitals. The above recitals constitute an integral part of this Agreement.

2. Subrogation and Assignment. The EDA agrees that upon Tenant's default in payment of the amounts due under the EDA Loan Agreement, the EDA shall assign to JMS all of the EDA's rights to payments due and owing from the Tenant which are paid from the Escrowed Funds. After payment in full of the obligations under the EDA Loan Agreement, all rights of the EDA under the EDA Loan Agreement shall be assigned to JMS to the extent of the payments made from the Escrowed Funds. It is the intent of the parties hereto that any obligation of Tenant to make payment under the EDA Loan Agreement are actually made from the Escrowed Funds, that all right to pursue such claims for failure to pay by Tenant shall be assigned and transferred to JMS for purposes of seeking collection thereof from the Tenant. Nothing contained in this Agreement is intended to impair or diminish the rights of the EDA to pursue its rights against Tenant under the terms of the EDA Loan Agreement. Only upon the occurrence of payments received by the EDA sufficient to satisfy in full the obligations under the EDA Loan Agreement, shall JMS's subrogation of claim become effective so as to permit JMS to pursue remedies against the Tenant.

3. Notices. All notices and notifications required or permitted under this Agreement to be sent from one party to the other must be in writing and personally delivered, sent by a nationally recognized private carrier of overnight mail (e.g., Federal Express) or by United States certified mail, return receipt requested and postage prepaid, to either party as set forth below, or at such other addresses as the parties may designate by written notice from time to time given at least ten (10) days in advance of the effective date of such change.

If to JMS: Lynn Leegard
JMS Holdings, LLC
c/o Shamrock Development, Inc.
3200 Main Street #300
Coon Rapids, Minnesota 55448

Mike Kraling
JMS Holdings, LLC
c/o Shamrock Development, Inc.
3200 Main Street NW, Suite 300
Coon Rapids, Minnesota 55448

If to EDA: **ECONOMIC DEVELOPMENT AUTHORITY IN
AND FOR THE CITY OF COON RAPIDS**
Attention: City Manager
11155 Robinson Drive
Coon Rapids, Minnesota 55433

Notices shall be deemed properly delivered and received when and if either (i) the same day when personally delivered prior to 5:00 p.m. (Minneapolis time) or (ii) one (1) business day after deposit with Federal Express or other overnight courier.

4. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota. In the event that any provisions hereof will deemed illegal or unenforceable, said provision will be severed herefrom and the remainder of this Agreement will be enforced in accordance with the intentions of the parties as herein expressed.

5. This Agreement may not be amended or altered except by an instrument in writing executed by all the parties hereto.

6. This agreement may be executed in one or more counterparts, each of which will constitute an original, and all of which together shall constitute one and the same agreement. Executed copies hereof may be delivered by PDF or email, and, upon receipt, shall be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by PDF or email, the parties will use their best efforts to deliver originals as promptly as possible after execution.

JMS HOLDINGS, LLC

**ECONOMIC DEVELOPMENT
AUTHORITY in and for the City
of Coon Rapids**

By: _____
Lynn Leegard

Its: _____

By: _____

Its: _____

By: _____
Mike Kraling

Its: _____

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “**Agreement**”) is made as of _____, 2018, by and among JMS HOLDINGS LLC, a Minnesota limited liability company (“**Seller**”), and CRETEX PROPERTIES, INC., a Minnesota corporation (“**Buyer**”), and CHICAGO TITLE INSURANCE COMPANY (the “**Escrow Agent**”), as escrow agent.

RECITALS:

A. By that certain Purchase Agreement dated as of September 14, 2018, between Buyer and Seller (the “**Purchase Agreement**”), Seller agreed to sell to Buyer and Buyer agreed to buy from Seller all of Seller’s right, title and interest in and to that certain real property located at 8500 Evergreen Boulevard NW, Coon Rapids, Minnesota and the improvements located thereon (the “**Property**”), upon the terms and provisions set forth in the Purchase Agreement.

B. In connection with Seller’s leasing of the Property to Biovest International, Inc., a Delaware corporation (“**Tenant**”), pursuant to that certain Lease Agreement dated December 2, 2010 (“**Lease**”), Tenant pays all amounts due under the City of Coon Rapids Loans. The City of Coon Rapids Loans consist of a loan in the original principal amount of \$250,000 (the “**City Loan**”) from the City of Coon Rapids (the “**City**”) and a loan in the original principal amount of \$103,000 (the “**EDA Loan**”) from the Economic Development Authority in and for the City of Coon Rapids (the “**EDA**”).

C. In connection with the City Loan, Seller delivered to the City that certain unrecorded Mortgage dated November 16, 2010 (the “**City Mortgage**”) to secure that certain Promissory Note dated November 16, 2010 from Tenant in favor of the City.

D. In connection with the EDA Loan, Seller delivered to the EDA that certain unrecorded Mortgage dated December 7, 2010 (the “**EDA Mortgage**”; and with the City Mortgage, collectively, the “**Mortgages**”) to secure that certain Promissory Note dated December 7, 2010 from Tenant in favor of the EDA.

E. Since Tenant is obligated to pay all amounts due under the City of Coon Rapids Loans until May 1, 2021 (the “**Maturity Date**”), Seller is unwilling to request (i) a release of the City Mortgage from the City and (ii) a release of the EDA Mortgage from the EDA.

F. Buyer agreed to consummate the purchase and sale contemplated by the Purchase Agreement only if Seller agreed to deposit into an escrow account with Escrow Agent certain amounts to protect Buyer in the event Tenant defaults in its obligations to pay all amounts due for the City of Coon Rapids Loans, or to perform, under the City of Coon Rapids Loans in accordance with the Lease, which amounts shall be held and disbursed by Escrow Agent as required by this Agreement.

G. Buyer and Seller desire that Escrow Agent act as escrowee to receive, hold and disburse funds in the manner hereinafter set forth.

H. Unless otherwise defined herein, all capitalized words and terms used herein will have the same meanings ascribed to such words and terms as in the Lease.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT:

1. Deposit. Seller will deposit with Escrow Agent the sum of \$297,395.18 (the “**Escrowed Funds**”) simultaneously with the execution of this Agreement. The Escrowed Funds represent the current unpaid balance of the City of Coon Rapids Loans (“**Total Loan Balance**”) plus \$50,000. The Escrowed Funds will, upon receipt by Escrow Agent, be invested by Escrow Agent in a federally-insured interest-bearing account (“**Escrow Account**”). Escrow Agent will hold the Escrowed Funds in accordance with the terms of this Agreement and disburse the same strictly in accordance with such terms.

2. Disbursement Demand. In the event that Buyer receives any notice (written or oral) or otherwise becomes aware that (i) Tenant has not timely paid any amount due, or has not performed, under the City Loan and/or EDA Loan, (ii) the City has or will enforce any of its rights under the City Loan, including enforcement of the City Mortgage; or (iii) the EDA has or will enforce any of its rights under the EDA Loan, including enforcement of the EDA Mortgage, Buyer may deliver to Escrow Agent documentation demanding all or a portion of the Escrowed Funds in order to (i) permit Escrow Agent to pay directly any amounts due under the City Loan and/or the EDA Loan, (ii) permit Buyer to perform any obligations under the City Loan and/or the EDA Loan and pay any costs incurred by Buyer in connection with the City Loan and/or EDA Loan, including, without limitation to enforce Tenant’s obligations under the Lease with respect thereto, and/or (iii) to satisfy other obligations of Tenant under the City Loan and/or EDA Loan (the “**Disbursement Demand**”). Escrow Agent shall, within five (5) days after receipt of such Disbursement Demand, disburse such amounts set forth in the Disbursement Demand, subject to Section 3 below.

3. Manner of Disbursement. In the event Escrow Agent receives a Disbursement Demand, Escrow Agent is immediately to give written notice to Seller of such Disbursement Demand. In the event Seller fails to dispute or object to such Disbursement Demand within five (5) business days from the date of Escrow Agent's written notice, Escrow Agent is authorized to deliver to Buyer the portion of the Escrowed Funds set forth in the Disbursement Demand. In the event Seller disputes or objects to such Disbursement Demand within the 5-business day period prescribed herein, Escrow Agent is not to deliver any portion of the Escrowed Funds deposited hereunder without receipt of a mutual agreement of the parties, in writing, or appropriate court order.

4. Waiver. Escrow Agent will not be responsible for any penalties or any delays in withdrawing funds which may be incurred upon withdrawal of funds deposited hereunder in

accordance with instructions given hereunder except to the extent attributable to Escrow Agent's negligence or intentional acts or omissions.

5. Acknowledgment of Unrecorded Mortgages. Escrow Agent hereby acknowledges the City Mortgage and the EDA Mortgage affect and encumber the Property. Neither the existence of, or the encumbrance of, the City Mortgage and/or the EDA Mortgage shall affect, limit or modify the coverage provided Buyer pursuant to that certain Owner's Policy of Title Insurance issued from Escrow Agent, as title insurer, to Buyer for the Property, having Policy Number _____ (the "**Title Policy**"). Specifically, Escrow Agent, as title insurer under the Title Policy, agrees that the City of Coons Rapids Loans, including the City Mortgage and the EDA Mortgage, shall not be considered matters excluded from coverage of the Title Policy.

6. Release of Escrowed Funds.

a. Provided that (i) Tenant is not in default under the Lease regarding the payment of the City of Coon Rapids Loans, (ii) the City has not alleged a default by Tenant under the City Loan, (iii) the City is not enforcing the City Loan against Tenant, Buyer or Seller, (iv) the EDA has not alleged a default by Tenant under the EDA Loan, and (v) the EDA is not enforcing the EDA Loan against Tenant, Buyer or Seller, then Seller may request a reduction in the amount of the Escrowed Funds from time to time in accordance with Section 6(b) (each, a "**Reduction Payment**") so long as the amount of the Escrowed Funds in the Escrow Account at all times contains an amount equal to the then current Total Loan Balance plus \$50,000.

b. In order to receive a Reduction Payment, Seller shall submit to Buyer and Escrow Agent a certification, in form and substance acceptable to Buyer and Escrow Agent, from the Chief Financial Officer of Seller, certifying and representing to the current amount of the Total Loan Balance, which certification shall be accompanied by all correspondence received from the City and/or the EDA regarding the City of Coon Rapids Loans to the extent not previously delivered to Buyer. In the event Buyer fails to dispute or object to such certification within five (5) business days from the date of receipt from Seller, Escrow Agent is authorized to deliver the applicable Reduction Payment to Seller. In the event Buyer disputes or objects to the aforesaid certification within the 5-business day period prescribed herein, Escrow Agent is not to deliver any portion of the applicable Reduction Payment without receipt of a mutual agreement of the parties, in writing, or appropriate court order.

c. Following the Maturity Date, any Escrowed Funds remaining in the Escrow Account after any Reduction Payments, including any accrued interest, shall be released to Seller when the following conditions have been met:

c.i. Buyer has received an original, executed and notarized satisfaction of the City Mortgage from the City, in form and substance reasonably acceptable to Buyer with a copy provided to Escrow Agent;

c.ii. Buyer has received an original, executed and notarized satisfaction of the EDA Mortgage from the EDA, in form and substance reasonably acceptable to Buyer with a copy provided to Escrow Agent; and

7. Escrow Costs. Seller will be responsible for any costs charged by Escrow Agent to hold the Escrowed Funds in an escrow account.

8. Seller Agreements. Seller shall promptly provide Buyer with any and all documents and/or correspondence received regarding the City of Coon Rapids Loans. Seller may not dissolve, liquidate, terminate, convert or otherwise modify the entity comprising Seller until the termination of this Agreement.

9. Notices. All notices and notifications required or permitted under this Agreement to be sent from one party to the other must be in writing and sent by a nationally recognized private carrier of overnight mail (e.g., Federal Express) or by United States certified mail, return receipt requested and postage prepaid, to either party as set forth below, or at such other addresses as the parties may designate by written notice from time to time given at least ten (10) days in advance of the effective date of such change.

If to Buyer: Cretex Properties, Inc.
311 Lowell Avenue
Elk River, MN 55330
Attn: Lynn Schuler

If to Seller: JMS Holdings LLC
3200 Main Street NW, Suite 300
Coon Rapids, MN 55448
Attn: Mike Kraling

If to Escrow
Agent: Chicago Title Insurance Company
222 South Ninth Street, Suite 3060
Minneapolis, Minnesota 55402
Attention: Pam Bobendrier

All notices will be deemed given (i) on the third business day after deposit in the United States mail, certified or registered, or (ii) on the next business day after deposit with an overnight courier guaranteeing next day delivery or (iii) on the same day if sent by personal delivery. Attorneys for each party will be authorized to give notices for each such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

10. This Agreement will be binding upon and inure to the benefit of the parties hereto and shall not be assigned by either party.

11. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota. In the event that any provision hereof will be deemed illegal or unenforceable, said provision will be severed herefrom and the remainder of this Agreement will be enforced in accordance with the intentions of the parties as herein expressed.

12. This Agreement may not be amended or altered except by an instrument in writing executed by all the parties hereto.

13. This Agreement may be executed in any number of counterparts, all of which are considered one and the same Agreement notwithstanding that all parties hereto have not signed the same counterpart. Signatures of this Agreement which are transmitted by facsimile or electronic mail are valid for all purposes. Any party shall, however, deliver an original signature of this Agreement to the other party upon request.

[Remainder of page intentionally left blank; signature pages follow]

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

BUYER:

CRETEX PROPERTIES, INC.

By: _____

Name: Lynn Schuler

Title: President

183947v3

SELLER:

JMS HOLDINGS, LLC

By: _____

Name: Michael J. Kraling

Title: Chief Financial Manager/Treasurer/Secretary

183947v3

[Signature Page to Escrow Agreement]

ESCROW AGENT:

CHICAGO TITLE INSURANCE COMPANY

By: _____

Name: _____

Title: _____

183947v3

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1:

Tract B, [Registered Land Survey No. 86](#), files of the Registrar of Titles of Anoka County, Minnesota.

Torrens Property

[Certificate of Title No. 118476](#)

Parcel 2:

Together with the easements as set forth in that certain Reciprocal Easement Agreement, dated May 11, 1992, recorded April 20, 1993 as Document No. [233605](#).