

**REAL PROPERTY ACQUISITION AGREEMENT
FOR PARKING LOT ADJACENT TO MIDWAY
PEACE PARK**

THIS REAL PROPERTY ACQUISITION AGREEMENT (“Agreement”) is made and entered into as of the _____ day of _____, 2023 and shall be effective as of the date of the last signature to this Agreement (“Effective Date”), by and among the City of Saint Paul, a Minnesota municipal corporation and home rule charter city (“City”), the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota (“HRA”), and DNZ LLC, a Minnesota limited liability company (“Buyer”).

RECITALS

- A. The City owns real property in Ramsey County, Minnesota, described as the south half of the alley in Block 8, Brunson’s Addition to St. Paul, subject to Payne Avenue as widened, and legally described on Exhibit A attached hereto (“Sale Property”).
- B. The Sale Property was vacated and discontinued as public property, subject to certain conditions, through City Council Resolution RES PH 22-320.
- C. Buyer proposed purchasing the Sale Property and City has agreed to sell the Sale Property to Buyer through the HRA.
- D. The City, by Resolution RES PH 22-320, has authorized the conveyance of the Sale Property to the HRA for subsequent conveyance to Buyer, the execution of an Acquisition Agreement, and to accept from Buyer just compensation in the form of cash and all fees required by the City to complete this sale.
- E. To facilitate the conveyance, the City has asked and the HRA has agreed to act as a conduit of the Sale Property in accordance with the terms and conditions contained in this Agreement and shall acquire and subsequently convey the Sale Property to Buyer.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of and in reliance on the foregoing Recitals, the covenants, restrictions, contingencies, and agreements contained herein, the parties hereby agree as follows:

1. **Acquisition and Conveyance of Sale Property.** Subject to, and upon the terms and conditions as set forth in this Agreement, the HRA agrees to: (i) acquire the Sale Property from the City, and (ii) convey the Sale Property to Buyer. The HRA shall close the conveyance of the Sale Property from the City as soon as practicable following the execution and HRA Board approval of this Agreement. During such time as the HRA holds title to the Sale Property, it shall not undertake nor suffer any acts which could impair the title to the Sale Property. Buyer is purchasing the Sale Property based upon its own investigation and inquiry and is not relying on any representation or warranty of the City or HRA or other person and is agreeing to accept and purchase the Sale Property “as-is, and where is and with all faults.”

2. **Purchase Price and Manner of Payment.** The total purchase price ("Purchase Price") to be paid by Buyer for the Sale Property shall be ten thousand and 00/100 Dollars (\$10,000.00). The Purchase Price shall be payable to the City and paid as follows:

- a. **Earnest Money.** Zero Dollars (\$0.00) as earnest money paid within three (3) business days after full execution of this Agreement (the "Earnest Money").
- b. **Balance.** The balance of the Purchase Price (the difference between the Purchase Price minus the Earnest Money), plus or minus any prorations and other adjustments required hereunder, in immediately available funds by certified check or wire transfer on or before the Closing Date (as defined below).

3. **Deed Restrictions and Use of Property.** Buyer agrees to hold, use, occupy, and convey the Sale Property subject to the restrictions as set forth in Exhibit B attached hereto ("Deed Restrictions"). The Deed Restrictions shall be included in the HRA deed of the Sale Property to Buyer as restrictive covenants, which deed is attached hereto as Exhibit C. Buyer may use the Sale Property in any manner as long as it is a permitted use that complies with any and all applicable local, state and federal regulations and the use does not violate any of the Deed Restrictions.

4. **Available Surveys, Tests and Reports.** Buyer acknowledges that the City has provided Buyer with (a) copies of any property surveys; (b) copies of any title commitments or policies; and (c) copies of any agreements in place on the Sale Property (hereinafter collectively referred to as the "Due Diligence Materials"), that are in City's possession. The City and HRA make no representations or warranties regarding the accuracy or completeness of the Due Diligence Materials, if any. Buyer acknowledges that pursuant to Section 6, the sale of the Sale Property is "AS-IS," "WHERE IS," and "WITH ALL FAULTS," and that it is the obligation of Buyer to conduct and complete its due diligence and investigations relating to the Sale Property.

5. **Buyer's Investigations/Due Diligence Period.** For a period of fourteen (14) calendar days following the Effective Date of this Agreement (the "Due Diligence Period"), or until the day before the Closing Date, whichever comes first, Buyer shall have the right to enter upon the Sale Property for the purpose of performing, at Buyer's sole cost and expense, investigations of the Sale Property as Buyer deems desirable, including, a title examination of the Sale Property, surveys, and other physical investigations and inspections of the Sale Property (collectively, "Studies"), provided that Buyer shall not perform soil borings or other invasive testing of the Sale Property. In conducting such Studies, Buyer agrees not to (i) disrupt the City's ongoing activities on the Sale Property, (ii) unreasonably interrupt the City's business activities, or (iii) interfere with the rights of any tenants under their leases at the Sale Property if any. Buyer shall promptly pay all costs and expenses of such investigation and shall not suffer or permit the filing of any lien against the Sale Property. Buyer will indemnify, defend and hold the City and HRA harmless from and against any injury to persons or damage to property arising from its or its agents' entry on the Sale Property or such investigation activities, and agrees to restore the Sale Property at its sole cost to its condition prior to Buyer's entry thereon. In the event that Buyer is for any reason whatsoever dissatisfied, in its sole discretion, with the results of the condition of the Sale Property, then Buyer may terminate the Agreement by giving written notice to the City and HRA prior to the expiration of the Due Diligence Period, and thereupon the Earnest Money, if any, shall promptly be returned to Buyer and the City, HRA and Buyer shall have no further obligations or liabilities to each other hereunder, except for Buyer's indemnity obligations under this Section 5, and covenants set forth in Section 11.c., Section 17, Section 18 and Section 19, all of which shall survive termination of this Agreement whether such termination is affected by the City, HRA or Buyer (the "Surviving Covenants").

6. **“As-is” Conveyance.** THE PARTIES AGREE THAT: (1) BUYER IS ACCEPTING POSSESSION OF THE SALE PROPERTY ON THE CLOSING DATE **“AS-IS, WHERE IS, WITH ALL FAULTS”**, AND THAT SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED; AND (2) BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY, HRA OR OTHER PERSON, AS TO ANY MATTER CONCERNING THE SALE PROPERTY OR ANY IMPROVEMENTS LOCATED THEREON AND THAT BUYER IS RELYING ENTIRELY ON ITS OWN INSPECTIONS, TESTING, EXISTING KNOWLEDGE OF THE SALE PROPERTY AND ANY IMPROVEMENTS LOCATED THEREON, AND OTHER DUE DILIGENCE ACTIVITY, WITHOUT ANY OTHER PHYSICAL OR ENVIRONMENTAL REPRESENTATIONS OR WARRANTIES OF ANY KIND BY THE CITY OR HRA.

7. **Conditions to Buyer’s Obligations.** The obligations of Buyer to purchase the Sale Property under this Agreement are contingent upon satisfaction or waiver by Buyer of each of the following by the respective dates indicated:

- a. **Title.** Title shall have been found acceptable by Buyer, or been made acceptable, in accordance with the requirements and terms of Section 12 below.
- b. **Due Diligence.** Buyer shall have determined, on or before the expiration of the Due Diligence Period, that Buyer is satisfied, in its sole discretion, with the results of such investigation.
- c. **Approvals.** The approvals stated in Section 8.a., 8.b., 9.a. and 9.b. have been granted by HRA’s Board of Commissioners and the City, respectively.
- d. **Performance.** The City and HRA shall have performed or caused the performance, in all material respects, of all of the City’s and HRA’s covenants, agreements and obligations required by this Agreement to be performed at or prior to Closing.

If any condition set forth in this Section 7 has not been satisfied or waived by Buyer before the earlier occurrence of: (i) expiration of the time period specified therein; or (ii) the Closing Date, if no such period is specified, then Buyer may, at Buyer’s option, terminate this Agreement at any time on or before the applicable period by written notice to the City and HRA. Following such termination, the parties shall sign a Cancellation of Purchase Agreement confirming the cancellation of this Agreement and directing staff to refund the Earnest Money to Buyer. Upon the execution of a Cancellation of Purchase Agreement and refund of the Earnest Money, none of the parties hereto shall have any further rights or obligations under this Agreement except for the Surviving Covenants. The contingencies described in this Section 7 hereof are specifically for the benefit of Buyer, and Buyer shall have the right to waive any such contingency by written notice to the City and HRA or by proceeding with Closing.

8. **Conditions to the HRA’s Obligations.** The obligation of the HRA to close the transaction contemplated under this Agreement is conditioned upon the following:

- a. **HRA Board Approval and Acquisition of Property.** Approval of the acquisition of the Sale Property by the HRA’s Board of Commissioners and closing of the acquisition of the Sale Property by the HRA.

- b. **City Council and Additional Approvals.** Approvals as set forth in Sections 9.a. and 9.b. below.
 - c. **City Sale.** Sale of the Sale Property from the City to the HRA.
 - d. **Storm Sewer Plan.** Buyer shall prepare and obtain approval from the City of Saint Paul Department of Public Works for a storm sewer drainage utility plan as set forth in City Council Resolution RES PH 22-320 approved on November 9th, 2022.
 - e. **Resolution.** Buyer shall comply with all other terms, conditions and easements as outlined in City Council Resolution RES PH 22-320, approved on November 9th, 2022.
 - f. **Buyer's Obligations.** Buyer shall have performed all of the obligations required to be performed prior to Closing by Buyer under this Agreement.
9. **Conditions to the City's Obligations.** The obligation of the City to close the transaction contemplated under this Agreement is conditioned upon the following:
- a. **City Council Approval and Conveyance of Property to HRA.** Approval of the sale of the Sale Property to Buyer by the City Council and closing of the conveyance of the Sale Property to the HRA, as outlined in City Council Resolution RES PH 22-320.
 - b. **Buyer's Obligations.** Buyer shall have performed all of the obligations required to be performed prior to Closing by Buyer under this Agreement.
10. **Closing.** Upon the HRA's acquiring title to the Sale Property, the closing of the purchase and sale of the Sale Property contemplated between the HRA and Buyer by this Agreement (the "Closing") shall occur on or before _____, unless postponed or extended in writing by the parties (the "Closing Date"). The HRA agrees to deliver possession of the Sale Property to Buyer on the Closing Date. Notwithstanding the foregoing, if the HRA is unable to complete the closing of the Sale Property for any reason, this Agreement and the rights of the parties hereunder shall terminate. Following such termination, the parties shall sign a Cancellation of Purchase Agreement confirming the cancellation of this Agreement and directing staff to refund the Earnest Money to Buyer. Upon the execution of a Cancellation of Purchase Agreement and refund of the Earnest Money, none of the parties hereto shall have any further rights or obligations under this Agreement except for the Surviving Covenants. In addition, the HRA will convey the Sale Property back to the City (if necessary) and the City and HRA are entitled to retain all costs and fees paid to them under Section 11.a. below.
- a. **City's Closing Documents.** On the Closing Date, City shall execute and/or deliver to the HRA the following (collectively, "City's Closing Documents"), all in form and content reasonably satisfactory to the HRA:
 - i. Deed. A Quit Claim Deed in the form attached as Exhibit C conveying the Sale Property to the HRA subject to the permitted easements and other rights described on the attached Exhibit D (the "Permitted Encumbrances) (as such term is defined in Section 12b. below).

- ii. Well Certificate. A certificate signed by the City warranting that there are no wells on the Sale Property within the meaning of Minn. Stat. § 1031, or if there are any such wells, a well certificate in the form required by law. Notwithstanding the foregoing, if the City does not know of any wells on or serving the Sale Property within the meaning of Minn. Stat. § 1031, a separate certificate signed by the City need not be provided as long as the deed contains the statement: "The Seller certifies that the Seller does not know of any wells on the described real property."
 - iii. Resolution. A current resolution of the City Council, authorizing the transaction contemplated by this Agreement, certifying the authorization of the City's designated representative(s) to enter into this Agreement and to execute and deliver the City's Closing Documents.
 - iv. Other Documents. All other documents as may be reasonably required in order to convey the Sale Property to the HRA as contemplated herein.
- b. **HRA's Closing Documents.** On the Closing Date, HRA shall execute and/or deliver to Buyer the following (collectively, "HRA's Closing Documents"), all in form and content reasonably satisfactory to Buyer:
- i. Deed. A Quit Claim Deed in the form attached as Exhibit C conveying the Sale Property to Buyer subject to the permitted easements and other rights described on the attached Exhibit D (the "Permitted Encumbrances") and including the Deed Restrictions attached as Exhibit B.
 - ii. FIRPTA Affidavit. A non-foreign affidavit, properly executed, containing such information as is required by Internal Revenue Code Section 1445(b)(2) and its regulations.
 - iii. Well Certificate. A certificate signed by the HRA warranting that there are no wells on the Sale Property within the meaning of Minn. Stat. § 1031, or if there are any such wells, a well certificate in the form required by law. Notwithstanding the foregoing, if the HRA does not know of any wells on or serving the Sale Property within the meaning of Minn. Stat. § 1031, a separate certificate signed by the HRA need not be provided as long as the deed or other instrument of conveyance contains the statement: "The Seller certifies that the Seller does not know of any wells on the described real property."
 - iv. Seller's Affidavit. An Affidavit by the HRA indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against or involving the HRA or the Sale Property; that there has been no skill, labor or material furnished to the Sale Property by direct request of the HRA for which payment has not been made or for which mechanics' liens could be filed; and there are no other unrecorded interests in the Sale Property.
 - v. Resolution. A current resolution of the HRA, authorizing the transaction contemplated by this Agreement, certifying the authorization of the HRA's

designated representative(s) to enter into this Agreement and to execute and deliver HRA's Closing Documents.

- vi. Closing Statement. A duly-executed closing statement.
- vii. Other Documents. All other documents as may be reasonably required in order to convey the Sale Property to Buyer as contemplated herein.

c. **Buyer's Closing Documents.** On the Closing Date, Buyer will execute and/or deliver to the HRA the following (collectively the "Buyer's Closing Documents"), all in form and content reasonably satisfactory to the City and HRA:

- i. Purchase Price. The balance of the Purchase Price plus or minus any prorations, costs, and fees as provided for herein.
- ii. Storm Sewer Plan. The approved storm sewer plan set forth in paragraph 8 above.
- iii. Closing Statement. A duly-executed closing statement.
- iv. Other Documents. All other documents as may be reasonably required in order to convey the Sale Property to Buyer as contemplated herein.

11. **Costs and Expenses; Prorations.**

a. **Buyer Closing Costs and Other Expenses.** The Buyer shall pay all costs and expenses related to and associated with the sale of the Sale Property to Buyer:

- i. HRA closing fee in the amount of \$1,000.00
- ii. HRA publication costs as set forth on the closing statement
- iii. State deed and transfer taxes for the deeds from City to HRA and HRA to Buyer
- iv. Conservation fees for the deeds from City to HRA and HRA to Buyer
- v. Recording fees (including those associated with recording the City's and HRA's documents)
- vi. Any other closing fees
- vii. Title insurance commitment fee (unless waived in writing by the City Attorney's Office)
- viii. Special assessment search, if required
- ix. Title insurance policy premiums, at Buyer's option to purchase said policy
- x. Survey and appraisal fees

b. **Real Estate Taxes and Special Assessments.** All real estate taxes and assessments imposed by any governmental agency, shall be prorated between the City and the HRA, on the one hand, and Buyer on the other hand. All real estate taxes accruing before and special assessments certified prior to the Closing Date shall be the obligation of the City/HRA and all real estate taxes accruing and any special assessments pending or certified on and after the Closing Date shall be the obligation of Buyer.

c. **Attorney Fees.** The parties hereto shall each pay its own attorneys' fees in connection with the preparation and negotiation of this Agreement and the Closing.

12. **Title Examination.** Title Examination will be conducted as follows:

- a. **Title Evidence.** As soon hereafter as reasonably possible but no later than _____, and at Buyer's sole cost, Buyer shall request and diligently seek to obtain, to the extent Buyer deems it necessary, the following items (collectively the "Title Evidence"):
 - i. Title Insurance Commitment. A commitment ("Title Commitment") from a title insurer (the "Title Company") to issue to Buyer a standard ALTA Owner's Policy of Title Insurance committing to insure title to the Sale Property in the name of the Buyer with the so-called standard exceptions deleted, in the amount of the Purchase Price. The Title Commitment will include copies of all recorded documents referred to in "Schedule B" of such Title Commitment (the "Exception Instruments").
 - ii. Survey. Buyer may obtain a survey of the Sale Property (the "Survey").
- b. **Buyer's Objections.** Within five (5) days (excluding Saturdays, Sundays and national holidays) after receiving the last of the Title Evidence (the "Title Review Period"), or until the day before Closing Date, whichever comes first, Buyer will make written objections ("Objections") to any exception or condition contained in the Title Commitment or any of the Exception Instruments or shown on the Survey. If Buyer does not give written notice of any objections to the City and HRA within the Title Review Period, this shall constitute a waiver of any Objections and Buyer shall be deemed to have approved the title as shown in the Title Commitment, Exception Instruments and Survey and in relation to matters that would be disclosed on an updated survey of the Sale Property. Any such exceptions or matters not timely objected to during the Title Review Period shall be deemed "Permitted Encumbrances" under the terms of this Agreement. If Buyer provides written notice of objections during the Title Review Period, the City and/or HRA may, but is not obligated to, cure the Objections. The City and/or HRA will have sixty (60) days, or until the day before the Closing Date, whichever comes first, after receipt of any Objections to cure the Objections ("Title Cure Period"), during which period the Closing will be postponed as necessary. If all of the Objections are not cured within the Title Cure Period (or agreed to be cured by the City and HRA on or prior to Closing) or if the City and HRA elect in writing not to cure the Objections, Buyer will have the option to do any of the following:
 - i. Terminate this Agreement by giving a written termination notice to City and HRA not later than ten (10) days after the end of the Title Cure Period (but in no event later than the Closing Date). Following such written notice of termination, the parties shall sign a Cancellation of Purchase Agreement confirming the cancellation of this Agreement and directing staff to refund the Earnest Money to Buyer. Upon the execution of a Cancellation of Purchase Agreement and refund of the Earnest Money, none of the parties to this Agreement shall have any further rights or obligations under this Agreement except for the Surviving Covenants; or
 - ii. In the absence of such timely written notice, conclusively be deemed to have waived the uncured Objections, and any such uncured Objections shall become one of the Permitted Encumbrances on the Sale Property thereby requiring the Buyer to proceed with Closing.

If, after the Title Review Period but on or before the Closing Date, Buyer first receives an update of the Title Commitment or the Survey that takes exception for matters that are not disclosed in the Title Commitment or Survey, as applicable, and do not constitute Permitted Exceptions or Buyer did not have actual prior knowledge or information about such matters, Buyer shall have the right to give to the City and HRA a written notice (a "Buyer Intervening Title Objection Notice") that sets forth such matters in reasonable detail (the "Intervening Objections"); provided, however, that any Buyer Intervening Title Objection Notice (together with copies of the applicable updated Title Commitment or Survey and the applicable underlying exception documents referenced therein) must be provided to the City and HRA within five (5) days after Buyer receives the same (but in no event later than the Closing Date). If Buyer fails to include an objection to any intervening title or survey matter affecting the Sale Property disclosed in the update of the Title Commitment or Survey as of the effective date of the updated Title Commitment or Survey, as applicable in a Buyer Intervening Title Objection Notice, or if Buyer fails to timely to give the City and HRA a Buyer Intervening Title Objection Notice, any such matters shall be Permitted Exceptions and Buyer shall have no further right to object to such matters. The City and HRA shall have five (5) days, or until the day before the Closing Date, whichever comes first, from its receipt of a Buyer Intervening Title Objection Notice (but in no event later than the Closing Date) ("Additional Response Period") to give Buyer a written notice ("Intervening Response Notice") that identifies the Intervening Objections, if any, that the City and HRA elects to use reasonable efforts to remove by the Closing Date. If the City and/or HRA does not give an Additional Response Notice by the end of the Additional Response Period, the City and/or HRA shall be deemed to have elected not to remove any matters set forth in the applicable Buyer Intervening Title Objection Notice, in which event, Buyer shall have the option to do either of the following set forth in subsection 12.b.i. and ii. above.

- c. **Title Policy.** On or before the Closing, Buyer may obtain, at Buyer's sole cost and expense, an ALTA Owner's Title Insurance Policy (the "Title Policy") issued pursuant to the Title Commitment, or a suitably marked up Title Commitment initialed by the Title Company undertaking to issue such Title Policy in the form required by the Title Commitment.

13. **Executory Period.** During the period from the Effective Date to the Closing Date (the "Executory Period"), neither the City or HRA shall (i) execute any contracts, leases, or other agreements regarding the Sale Property that are not terminable on or before the Closing Date or perform any act that would impair or encumber the title to the Sale Property, without the prior written consent of Buyer, which consent may not be unreasonably withheld, condition or delayed, or (ii) place any fixtures, equipment or other personal property on the Property that the City does not intend to remove prior to the Closing Date. The City shall bear the risk of loss or damage to the Sale Property through the Executory Period, except to the extent set forth in Sections 5 and 7.b. of this Agreement.

14. **Statements and Disclosures by City.** City states and discloses as of the date hereof and on the Closing Date as follows:

- a. **Organization; Authority.** City is a public body duly formed and in good standing under the laws of the State of Minnesota and is duly qualified to transact business in the State of Minnesota. City has the requisite power and authority to enter into and perform this Agreement and those City's Closing Documents to be signed by it; such documents have been (or will be prior to Closing) duly authorized by all necessary entity action on the part of City and at the Closing shall have been duly executed and delivered; the execution, delivery,

and performance by City of such documents does not conflict with or result in a violation of City's organizational documents, any judgment, order, or decree of any court or arbiter to which City is a party or any agreement by which City is bound; and such documents are and shall be valid and binding obligations of City, enforceable in accordance with their terms.

- b. **Wells.** City does not know of any "wells" on or serving the Sale Property within the meaning of Minn. Stat. § 103I.
- c. **Storage Tanks.** To the best of City's knowledge, no above ground or underground tanks are located in or about the Sale Property.
- d. **Individual Sewage Treatment Systems.** To the actual knowledge of City, there is no "individual sewage treatment system" within the meaning of Minn. Stat. § 155.55 on or serving the Sale Property.
- e. **Methamphetamine.** City is not aware of any methamphetamine production that has occurred at the Sale Property.
- f. **Easements.** The Sale Property is subject to the easements reserved to Xcel Energy, Comcast dba Xfinity, CenturyLink dba Lumen, and Saint Paul Regional Water Services for their existing facilities as set forth in City Council Resolution RES PH 22-320 approved on November 9th, 2022.

15. **Statements and Disclosures by HRA.** HRA states and discloses as of the date hereof and on the Closing Date as follows:

- a. **Organization; Authority.** HRA is a public body duly formed and in good standing under the laws of the State of Minnesota and is duly qualified to transact business in the State of Minnesota. HRA has the requisite power and authority to enter into and perform this Agreement and those HRA's Closing Documents to be signed by it; such documents have been (or will be prior to Closing) duly authorized by all necessary entity action on the part of HRA and at the Closing shall have been duly executed and delivered; the execution, delivery, and performance by HRA of such documents does not conflict with or result in a violation of HRA's organizational documents, any judgment, order, or decree of any court or arbiter to which HRA is a party or any agreement by which HRA is bound; and such documents are and shall be valid and binding obligations of HRA, enforceable in accordance with their terms.
- b. **Wells.** To the best of the HRA's knowledge, it does not know of any "wells" on or serving the Sale Property within the meaning of Minn. Stat. § 103I.
- c. **Storage Tanks.** To the best of HRA's knowledge, no above ground or underground tanks are located in or about the Sale Property.
- d. **Individual Sewage Treatment Systems.** To the actual knowledge of HRA, there is no "individual sewage treatment system" within the meaning of Minn. Stat. § 155.55 on or serving the Sale Property.

- e. **Methamphetamine.** HRA is not aware of any methamphetamine production that has occurred at the Sale Property.

Easements. The Sale Property is subject to the easements reserved to Xcel Energy, Comcast dba Xfinity, CenturyLink dba Lumen, and Saint Paul Regional Water Services for their existing facilities as set forth in City Council Resolution RES PH 22-320 approved on November 9th, 2022.

16. **Representations and Warranties by Buyer.**

- a. Buyer represents and warrants to City and HRA that Buyer is willing and able to enter into and perform this Agreement and those Buyer's Closing Documents to be signed by it; such documents have been duly authorized by Buyer and have been or will be duly executed and delivered; that the execution, delivery and performance by Buyer of such documents do not conflict with or result in violation of any judgment, order or decree of any court or arbiter to which Buyer is a party; such documents are and will be valid and binding obligations of Buyer, and are and will be enforceable in accordance with their terms. Buyer will indemnify City and HRA, its successors, legal representatives, and assigns, against and will hold City and HRA, its successors, legal representatives, and assigns, harmless from any expenses or damages, including reasonable attorneys' fees, that City or HRA incurs because of the breach of any of the above representations and warranties, whether such breach is discovered before or after Closing. Consummation of this Agreement by City or HRA with knowledge of any such breach by Buyer will not constitute a waiver or release by City or HRA of any claims due to such breach. Buyer's indemnification obligations in this Section shall survive Closing and the transfer of title to the Sale Property to Buyer.
- b. Buyer represents to City and HRA that Buyer has conducted, or will have had the opportunity to conduct prior to Closing, such investigations of the Sale Property as Buyer deems necessary to satisfy itself of the condition of the Sale Property and will rely solely upon same and not upon any information provided by or on behalf of City or HRA or its agents, officers, directors, shareholders or employees with respect thereto.

17. **Indemnity Clause.** Buyer shall indemnify, defend, and hold harmless the City and HRA from and against any and all claims, demands, actions, suits, judgments, losses, actual damages, expenses, penalties, fines, sanctions, court costs, litigation costs, and reasonable attorney's fees asserted against or incurred by the City or HRA for (i) Buyer's failure to perform its obligations pursuant to the terms of this Agreement; (ii) injuries to persons and/or entities (including without limitation, loss of life), for damages destruction or theft of property, or from or after Closing, for any other losses or liabilities that may be sustained directly or indirectly due to the physical condition of the Sale Property, including without limitation hazardous materials or substances and other pollutants and contaminants; and/or (iii) the activities, operations or use of the Sale Property by Buyer, its successors, heirs, representatives, agents, and assigns, and all those claiming by and through them. This Section shall survive Closing and transfer and conveyance of title to the Sale Property to Buyer.

18. **Default and Remedies.**

- a. **City and HRA Remedies.** The following shall be an event of default by Buyer: 1) Buyer fails to observe or perform, in all material respects, any covenant, obligation or agreement on its

part under this Agreement that survives Closing and transfer and conveyance of title to the Sale Property to Buyer; or 2) Buyer shall fail to observe or perform, in all material respects, any other covenant, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after the HRA provides written notice of such failure to Buyer (each individually and collectively referred to as "Buyer Default").

- i Whenever any Buyer Default occurs, the HRA or City or both may take any one or more of the following actions:
 - 1) Suspend performance under this Agreement until it receives assurances from Buyer, deemed adequate by the City and HRA in their reasonable discretion, that the Buyer will cure its default and continue its performance under this Agreement.
 - 2) Cancel and terminate this Agreement, and receive the Earnest Money, if any.
 - 3) Take whatever action at law or in equity may appear necessary or desirable to the City or HRA to collect any payments due under this Agreement, or to enforce performance and observation of any obligation, agreement, restriction, or covenant of Buyer under this Agreement.

The City's and HRA's Buyer Default remedies shall survive Closing and transfer and conveyance of title to the Sale Property to Buyer.

No remedy herein conferred upon or reserved to the City or HRA is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or HRA to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in Section 18 and Section 22.

- b. **Buyer's Remedies.** If the City or HRA defaults under this Agreement, and such default continues for more than fifteen (15) days after Buyer gives written notice of such default to the City and HRA, Buyer's sole remedy is to terminate this Agreement by giving written notice to the City and HRA on or before Closing. Following such termination, the parties shall sign a Cancellation of Purchase Agreement confirming the cancellation of this Agreement and directing Escrow Agent to refund the Earnest Money to Buyer. Upon the execution of a Cancellation of Purchase Agreement and refund of the Earnest Money, none of the parties hereto shall have any further rights or obligations under this Agreement except for the Surviving Covenants. In no event shall Buyer be entitled to recover any incidental or consequential damages or other damages of any kind from the City or HRA.

- 19. **Broker's Commission.** Buyer represents to the City and HRA that it has not engaged a broker in

connection with the transaction contemplated by this Agreement. Buyer agrees to indemnify and hold the City and HRA harmless from and against any and all liability to which the City and HRA may be subjected by reason of any actual or alleged broker's, finder's or similar fee with respect to the transaction contemplated by this Agreement to the extent such fee is attributable to any action undertaken by or on behalf of Buyer or any agent, employee, representative or affiliate of Buyer. Buyer's indemnification obligations in this Section shall survive Closing and the transfer of title of the Sale Property to Buyer.

20. **Assignment.** Buyer may not assign any of its rights and obligations under this Agreement without the prior written consent of the City and HRA. Buyer shall provide to the City and HRA a true and complete copy of the instrument of assignment pursuant to which the assignee assumes the obligations of Buyer under this Agreement. The City and HRA shall not be bound by the assignment of this Agreement by Buyer until the City and HRA have received a copy of the executed instrument of assignment and consented to such assignment in writing. Any assignment without the express written consent of the City and HRA shall be null and void and confer no rights upon any third party.

21. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

22. **Notices.** Any notice required or permitted hereunder shall be given by either (i) personal delivery upon an authorized representative of a party hereto, or (ii) United States registered or certified mail, return receipt requested, postage prepaid, or (iii) facsimile or electronic mail copy followed by mailed notice, or (iv) a nationally recognized, reputable overnight courier, in each case properly addressed as follows:

If to City: City of Saint Paul
 Attn: Real Estate Manager
 1000 City Hall Annex
 25 West 4th Street
 St. Paul, Minnesota 55102

If to HRA: Housing and Redevelopment Authority
 of the City of Saint Paul, Minnesota
 Attn: Executive Director
 1300 City Hall Annex
 25 West 4th Street
 St. Paul, Minnesota 55102

With a copy to: Office of the City Attorney
 City of St. Paul
 Attn: Asst. City Attorney (HRA/PED)
 400 City Hall and Courthouse
 15 W. Kellogg Boulevard
 Saint Paul, Minnesota 55102

If to Buyer:

With a copy to:

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit, as aforesaid; provided, however, that if notice is given by deposit, the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the service of notice by giving written notice of such change ten (10) days prior to the effective date of such change.

23. **Captions; Exhibits.** The section and paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. All schedules, exhibits, addenda or attachments referred to herein are hereby incorporated in and constitute a part of this Agreement.

24. **Entire Agreement; Modification.** This written Agreement constitutes the complete agreement between the City, HRA and Buyer and supersedes any prior oral or written agreements between them regarding the Sale Property. There are no oral agreements that change this Agreement, and no amendment of any of its terms will be effective unless in writing and executed by all parties to this Agreement.

25. **Waiver.** No waiver of the provisions of this Agreement shall be effective unless in writing, executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of similar or different nature, unless expressly stated in writing.

26. **Governing Law; Jurisdiction and Venue.** This Agreement is to be construed and enforced according to and governed by the laws of the State of Minnesota. Any dispute arising out of this Agreement shall be venued in Ramsey County District Court, Second Judicial District, State of Minnesota. The parties hereby consent to personal jurisdiction and venue in the foregoing court and agree that any dispute shall not be removed therefrom to any other federal or state court.

27. **Counterparts.** The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

28. **Electronic Signatures.** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

29. **Severability.** If any provision of this Agreement is invalid or unenforceable, such provision shall be deemed to be modified to be within the limits of enforceability or validity, if feasible; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

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

**SEPARATE SIGNATURE PAGE OF
CITY OF SAINT PAUL
FOR REAL PROPERTY ACQUISITION AGREEMENT**

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be made as of the day and year first above written.

CITY OF SAINT PAUL, MINNESOTA
a Minnesota municipal corporation and home rule
charter city

By: _____
Its Deputy Mayor

By: _____
Its Director or Designee, Office of Financial
Services

By: _____
Its City Clerk

Approved as to form:

Assistant City Attorney

**SEPARATE SIGNATURE PAGE OF
HOUSING AND REDEVELOPMENT AUTHORITY
OF THE CITY OF SAINT PAUL, MINNESOTA
FOR REAL PROPERTY ACQUISITION AGREEMENT**

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be made as of the day and year first above written.

**HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF SAINT PAUL,
MINNESOTA**

a body corporate and politic organized and existing under the laws of the State of Minnesota

By: _____
Its Chair

By: _____
Its Executive Director

By: _____
Its Director or Designee, Office of Financial Services of the City of Saint Paul

Approved as to form:

Assistant City Attorney

**SEPARATE SIGNATURE PAGE OF
CONCORDIA UNIVERSITY FOR REAL PROPERTY
ACQUISITION AGREEMENT**

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be made as of the day and year first above written.

BUYER

DNZ LLC, a Minnesota limited liability company

By: _____

Name: Czi Sarah Yang

Its: _____

EXHIBIT A
Legal Description of the Sale
Property

The southerly half of the alley in Block 8, Brunson's Addition to St. Paul, in Ramsey County, MN.; Subject to an easement for right of way purposes over and across the East 20 feet thereof.

EXHIBIT B

Deed Restrictions

1. Buyer shall not discriminate upon the basis of race, color, creed, religion, sex, or sexual or affectional orientation, national origin, age, or disability, marital status, or status with regard to public assistance, in the sale, rental, or advertising of the property, or any dwelling therein, and in its use or occupancy.
2. No part of the Property shall be used for the storage or disposal of garbage, refuse, or debris, except to the extent that such storage or disposal is an "accessory use" to the Property, as defined and provided for in the Code.
3. No billboards or advertising signs shall be erected or maintained on the land or any building exterior of the Property; provided, however, that this restriction shall not prohibit the erection of business signs on the land or any building exterior of the Property, the purpose of which are to identify the business as a tenant or occupant in the Property to the extent such signs are not prohibited by any federal, state, or local law, regulation or ordinance.
4. No cyclone or chain link-type fencing is allowed in the front of any structure on the Property. Any such fencing must not extend any farther forward than the front corners of the structure. Other types of decorative fencing (wood or ornamental iron) are allowed so long as it is no higher than four feet and complies with Section 33.07 of the Saint Paul Legislative Code - Fences – Requirements.
5. If the Buyer, its successors and assigns, tenants or any occupant of the Property violates any covenant or restrictive use in this Declaration, then the HRA may enforce the covenants and restrictive uses against the Property by bringing an action seeking injunctive relief and decree to compel performance of any term, covenant or condition in this Declaration, it being agreed that the remedy at law for such breach is not adequate, and/or damages. The HRA is entitled to recover its costs, disbursements, and reasonable attorney's fees in connection with any such legal proceeding or action. All remedies available to the HRA are cumulative.

EXHIBIT C
Quit Claim Deed for Sale Property
(City to HRA and HRA to Buyer)

[FORM TO BE ATTACHED]

Exhibit D

Permitted Encumbrances

1. The easements reserved to Xcel Energy, Comcast dba Xfinity, CenturyLink dba Lumen, and Saint Paul Regional Water Services for their existing facilities as set forth in City Council Resolution RES PH 22-320 approved on November 9th, 2022.
2. Those items listed on the Title Commitment and not objected to by the Buyer.
3. Minerals and mineral rights reserved to the State of Minnesota.
4. Real estate taxes due and payable in 2023, and all assessments, levied, pending or assessed.
5. Easements, covenants, conditions, and restrictions and other instruments of record or shown on the plat, if any.
6. Applicable building and zoning laws, ordinances, and all other local, state, regional and federal laws and regulations.