



## **HEDA Public Hearing & Meeting – April 23, 2020**

Because attendance at the regular meeting location is not feasible due to the health pandemic, Hermantown's April 23, 2020 HEDA Public Hearing & Meeting will be conducted remotely.

The Public Hearing & Meeting will utilize the platform "Zoom" - which allows the public to view and/or hear the meeting from their phone or computer.

Beginning shortly before 5:00 p.m. the HEDA Public Hearing & Meeting will be available at:

<https://zoom.us/j/730085273?pwd=NkhtWmtzRDV6TjNnODFIL2lVU1VQZz09>

and/or by calling the number (312) 626-6799 and utilizing the meeting ID 730-085-773 and the password 003156.

A few important tips regarding the Zoom platform:

- If you do not have audio on your computer, but wish to see the meeting and speak at the meeting - you can log in both on your computer (to see) and call in on your phone (to speak)
- It is a new situation for all of us, so grace and understanding are appreciated

Be sure to reach out in advance if you have questions regarding this meeting or the technology being used to support this meeting. You can contact Hermantown's Communication and Community Engagement Manager, Joe Wicklund, at [jwicklund@hermantownmn.com](mailto:jwicklund@hermantownmn.com).

**HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY**

**AGENDA**

**Thursday, April 23, 2020 at 5:00 p.m. – Council Chambers  
Governmental Services Building**

- 1. ROLL CALL**
- 2. MINUTES – Approval or correction**
  - a. February 27, 2020 HEDA Minutes
- 3. PUBLIC HEARING**
  - A. PROPERTY CONVEYANCE – 5028 MILLER TRUNK HWY**
- 4. RESOLUTIONS**
  - A. 2020-02H**      Resolution Approving A Commercial Real Estate Purchase Agreement Between Hermantown Economic Development Authority And Nursing Values LLC For The Total Consideration Of \$556,935.00  
  
(motion, roll call)
- 5. RECESS**

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

February 27, 2020

5:00 p.m.

**ROLL CALL:** Commissioners Haapanen, Geissler, Peterson, Reno, Mayor Boucher

**CITY STAFF:** John Mulder, City Administrator; Eric Johnson, Community Development Director; Steve Overom, City Attorney

**ABSENT:** Commissioners Schmidt & Nelson

**VISITORS:** Greg Follmer

**MINUTES**

Motion made by Commissioner Haapanen, seconded by Commissioner Geissler to approve the January 9, 2020 Hermantown Economic Development Authority minutes. Motion carried.

**WORK SESSION**

John Mulder reviewed the schedule and approach to updating the strategic plan. Since a couple of commissioners will not be present in March, the first session would be on April 30, 2020. During March, the Commissioners would be e-mailed a survey about our current mission statement and values and their dreams going forward for HEDA.

Motion made by Commissioner Peterson, seconded by Commissioners Haapanen to close the meeting for a closed session at 5:20 p.m.

**CLOSED SESSION**

A discussion was held regarding the sale of 5028 Miller Trunk Highway. Greg Follmer, the City's real estate broker on the project, was present during the closed session.

Motion made by Commissioner Geissler, seconded by Commissioner Peterson to reconvene into open session. Motion carried.

Motion made by Commissioner Peterson, seconded by Commissioner Reno to direct staff to proceed with the offer that was presented and was discussed during the closed session. Roll Call: Commissioners Haapanen, Geissler, Peterson, Reno, Mayor Boucher, aye. Motion carried.

Motion made by Commissioner Reno, seconded by Commissioner Geissler to recess the meeting at 5:40 p.m. Motion carried.

Recorded by:

\_\_\_\_\_  
John Mulder, Executive Director

Transcribed by:

\_\_\_\_\_  
Bonnie Engseth, City Clerk

**EXHIBIT B**

**NOTICE OF PUBLIC HEARING  
ON PROPERTY CONVEYANCE  
HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY  
ST. LOUIS COUNTY, STATE OF MINNESOTA**

NOTICE OF HEREBY GIVEN that the Hermantown Economic Development Authority of the City of Hermantown, St. Louis County, State of Minnesota, will hold a public hearing on April 23, 2020, at approximately 5:00 p.m. at the City Council Chambers in City Hall, 5105 Maple Grove Road, Hermantown, Minnesota, relating to the conveyance of property located at 5028 Miller Trunk Highway and legally described on Exhibit A attached hereto in conjunction with the development of a child care center by Nursing Values LLC d/b/a Little Newtons pursuant to Minnesota Statutes Section 469.105. Copies of the information related to the terms of the conveyance are on file and available for public inspection at the office of the HEDA Administrator and the City Clerk at City Hall.

All interested persons may appear via Zoom using the information below at the hearing and present their views orally or prior to the meeting in writing.

Beginning shortly before 5:00 p.m. the HEDA Public Hearing & Meeting will be available at:

<https://zoom.us/j/730085273?pwd=NkhtWmtzRDV6TjNnODF1L2lVU1VQZz09>

and/or by calling the number (312) 626-6799 and utilizing the meeting ID 730-085-773 and the password 003156.

BY ORDER OF THE HERMANTOWN  
ECONOMIC DEVELOPMENT  
AUTHORITY, MINNESOTA

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Administrator

**EXHIBIT A**  
**Legal Description**

That part of the Northerly 429 feet of the Westerly 345 feet of the Northeast Quarter of Northwest Quarter (NE  $\frac{1}{4}$  of NW  $\frac{1}{4}$ ), Section Eleven (11), Township Fifty (50), Range Fifteen (15), lying South of Miller Trunk Highway, which Highway is otherwise known as United States Highway No. 53.

Reserving unto the public an easement for roadway and utility purposes over and across the Westerly 66 feet of said

This property is Abstract.

**Parcel No. 395-0010-02975**

**TO:** HEDA Members  
**FROM:** John Mulder, Executive Director

**Hermantown Economic  
Development Authority**

**DATE:** April 16, 2020

**Meeting Date:** 4/23/20

**SUBJECT:** Purchase offer  
5028 Miller Trunk Highway

**Agenda Item:** 4-A  
**Resolution** 2020-02H

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**STRATEGIC OBJECTIVE:**

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**REQUESTED ACTION**

**Approve purchase agreement for 5028 Miller Trunk Highway**

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**BACKGROUND**

Previously, the HEDA Board accepted the purchase price of \$556,935 from Little Newtons for the property at 5028 Miller Trunk Highway. We have a signed letter of intent from Little Newtons, and they have deposited \$15,000 in escrow for the purchase. A purchase agreement was prepared and sent to them. However, they have not signed the purchase agreement. They currently are waiting to get through the stay at home order before making any decision to move forward,

Since we have a number of steps that we must go through before the sale can be finalized, we want to continue to move forward.

**Public Hearing:** HEDA must have a public hearing on the proposed sale. We have published the legal notice and will hold the public hearing at the April 23<sup>rd</sup> meeting.

**Appraisal:** HEDA must have the building appraised (because of the state grant that was used to purchase the building). We met with Ann Heimbach of F.I. Salter and she has conducted the appraisal and provided the results. The property was appraised at \$570,000.

**Plans and Specifications:** Prior to closing, they will need to submit Plans and Specifications for the building.

**State Approval:** Following the approval of the purchase agreement, staff will pursue approval of the sale by the State of Minnesota.

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**SOURCE OF FUNDS (if applicable)**

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**ATTACHMENTS**

Resolution  
Purchase Agreement

**Hermantown Economic Development Authority**

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**HEDA's mission is to intentionally lead economic growth, creating a vibrant and prosperous community.**

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Hermantown Economic Development Authority  
**Resolution No. 2020-02H**

HEDA Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION APPROVING A COMMERCIAL REAL ESTATE  
PURCHASE AGREEMENT BETWEEN HERMANTOWN  
ECONOMIC DEVELOPMENT AUTHORITY AND NURSING VALUES LLC  
FOR THE TOTAL CONSIDERATION OF \$556,935.00**

WHEREAS, Hermantown Economic Development Authority (“HEDA”) is the owner of land and buildings located at 5028 Miller Trunk Highway in the City of Hermantown, Minnesota and described on Exhibit A attached hereto (“Property”); and

Whereas, Nursing Values LLC (“Developer”) desires to purchase the Property to develop a childcare center (“Project”); and

Whereas, HEDA is authorized by Minnesota Statutes, Sections 469.090 to 469.1082, inclusive, as amended (“EDA Act”) to sell the Property; and

WHEREAS, Developer agrees to purchase the Property pursuant to certain terms and conditions as set forth in the Commercial Real Estate Purchase (“Purchase Agreement”) attached hereto as Exhibit B; and

WHEREAS, the HEDA Commissioners have reviewed the Purchase Agreement and hereby believe that it is in the best interests of HEDA that the sale of the Property to Nursing Values LLC pursuant to the terms of the Purchase Agreement.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of HEDA as follows:

**FINDINGS OF FACT**

The Commissioners of HEDA hereby adopt the following Findings of Fact with respect to the proposed sale of the Property:

1. The Property is no longer usable or needed to carry out the governmental purpose for which it was originally acquired because the Hermantown School District is constructing a new facility to provide early childhood education activities that had been conducted by the School under a lease of the Property with the City and the City does not have the desire nor the capacity to continue to conduct such childcare education activities on the Property.

2. An appraisal of the Property has been made and the sales price authorized is supported by the appraisal and is acceptable to HEDA.

3. Developer has advised HEDA that it intends to use the Property for the development of a much-needed childcare facility in accordance with exhibit C to the Purchase Agreement.

4. The sale and conveyance of the Property to Developer for Developer to use the Property for the development of a childcare facility is in the best interests of the City and HEDA and furthers the general plan of economic development in the City by providing access to childcare for workers in businesses in the City.

5. The sale of the Property is subject to compliance with Minnesota Statutes § 469.105 and other terms and conditions as required by HEDA.

### **APPROVING RESOLUTION**

Based on the foregoing Recitals and Findings of Fact, which are hereby adopted, the Commissioners of HEDA are hereby as resolved as follows:

1. The Purchase Agreement substantially in the form of the one attached hereto as Exhibit B, subject to approval on any non-substantive changes as are approved by the HEDA, is hereby approved and authorizes the sale of the Property for a purchase price of \$556,935.00.

2. The President and Secretary of HEDA are hereby authorized and directed to execute and deliver the Purchase Agreement on behalf of HEDA and execute and deliver whatever documents are necessary to consummate the transactions contemplated by the Purchase Agreement.

3. The Executive Director is authorized to take such actions as are necessary or advisable to consummate the transactions contemplated by the Purchase Agreement including, without limitation, seeking approval from the State of Minnesota of the sale of the Property.

4. The City Clerk shall enter this Resolution in the records of HEDA immediately after the execution of this Resolution by the HEDA Administrator.



The motion for the adoption of the foregoing resolution was duly seconded by HEDA Commissioner \_\_\_\_\_ and, after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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HEDA Administrator

**EXHIBIT A**  
**Legal Description**

That part of the Northerly 429 feet of the Westerly 345 feet of the Northeast Quarter of Northwest Quarter (NE  $\frac{1}{4}$  of NW  $\frac{1}{4}$ ), Section Eleven (11), Township Fifty (50), Range Fifteen (15), lying South of Miller Trunk Highway, which Highway is otherwise known as United States Highway No. 53.

Reserving unto the public an easement for roadway and utility purposes over and across the Westerly 66 feet of said

This property is Abstract.

**Parcel No. 395-0010-02975**

## **EXHIBIT B**

### **COMMERCIAL REAL ESTATE PURCHASE AGREEMENT**

THIS COMMERCIAL REAL ESTATE PURCHASE AGREEMENT (this “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, between **Hermantown Economic Development Authority**, an economic development authority, under the laws of the State of Minnesota (“Seller”), and **Nursing Values LLC**, a Minnesota limited liability company, d/b/a Little Newtons (“Buyer”).

In consideration of the mutual covenants and agreements hereinafter contained and in consideration of the sum of Fifteen Thousand and No/100 Dollars and No/100 (\$15,000.00) (“Earnest Money”) in hand paid by Buyer to Seller, receipt of which is acknowledged by Seller, Seller and Buyer agree as follows:

#### **ARTICLE 1 SALE AND PURCHASE**

Seller shall sell to Buyer, and Buyer shall purchase from Seller, in the manner described in this Agreement, the real property located at 5028 Miller Trunk Highway, City of Hermantown, County of St. Louis, State of Minnesota, legally described on **Exhibit A** attached hereto and made a part of this Purchase Agreement; together with all buildings and other improvements constructed or located thereon, and together with and subject to any and all easements and rights benefiting and burdening the described real property (collectively referred to as the “Real Property” or “Property”).

#### **ARTICLE 2 PURCHASE PRICE**

2.1 Buyer shall pay to Seller for the Purchase Price of the Property, on the Closing Date as hereinafter defined, the sum of Five Hundred Fifty-six Thousand Nine Hundred Thirty-five and No/100 Dollars and No/100 (\$556,935.00) in the following manner:

2.1.1 Fifteen Thousand and No/100 Dollars and No/100 (\$15,000.00) as Earnest Money paid herewith by cashier’s or certified check, receipt of which is hereby acknowledged by Seller; and

2.1.2 Five Hundred Forty-one Thousand Nine Hundred Thirty-five and No/100 Dollars and No/100 (\$541,935.00) in cash (“Cash Purchase Price”) on the Closing Date.

2.2 Buyer shall deposit the Earnest Money in the Trust Account of Overom Law, PLLC.

## **ARTICLE 3 CLOSING**

3.1 **Closing Date.** Provided all the terms and conditions hereof have been met, the closing date shall be June 30, 2020 or such other date agreed to in writing by Buyer and Seller (“Closing Date”). Seller shall deliver possession of the Real Property on the Closing Date.

3.2 **Possession.** Seller shall deliver possession of the Real Property to Buyer free and clear of Seller’s debris and any personal property not being sold to Buyer pursuant to this Agreement.

3.3 **Place of Closing.** The delivery of all papers and monies to be made at the closing shall be at the office of Consolidated Abstract & Title Company, 332 W. Superior Street, Duluth, MN 55802, or such other place as is mutually agreed to by the parties.

### **3.4 Closing Documents.**

3.4.1 On the Closing Date, Seller shall execute and deliver to Buyer:

3.4.1.1 A limited warranty deed duly executed by Seller, in form reasonably satisfactory to Buyer, conveying marketable title to the Property to Buyer;

3.4.1.2 A standard form of Seller’s affidavit stating that there are no unsatisfied judgments of record, no actions pending in any state or federal courts, no tax liens and no bankruptcy proceedings filed against Seller; that no labor or materials have been furnished to the Real Property since one hundred twenty (120) days preceding the Closing Date for which payment has not been made; and that there are no unrecorded interests relating to the Property;

3.4.1.3 An affidavit stating that Seller is not a foreign person for purposes of the Internal Revenue Code, and stating Seller’s United States Taxpayer Identification Number as well as any other information required for this sale under the Internal Revenue Code and its regulations;

3.4.1.4 Original copies of all plans and specifications for the Property in Seller’s possession;

3.4.1.5 All other documents reasonably determined by Buyer to be necessary to transfer the Property to Buyer free and clear of all encumbrances; and

3.4.1.6 A signed Closing Statement.

3.4.2 On the Closing Date, Buyer shall execute and deliver to Seller the following:

3.4.2.2 The cash Purchase Price;

3.4.2.3 A signed Closing Statement;

3.4.2.4 All other documents reasonably determined by Seller to be necessary to closing the transaction; and

3.4.2.5 Plans and specifications with respect to the development of Buyer's Use as defined in Section 14.3 hereof that are in form and substance acceptable to Seller.

#### **ARTICLE 4 DEED/MARKETABLE TITLE**

4.1 **Examination of Title.** Within ten (10) business days after the date hereof, Seller shall furnish Buyer with a commitment for an ALTA Owner's Title Insurance Policy for the full amount of the purchase price. Buyer shall have ten (10) business days after receipt of the Commitment for Title Insurance to provide Seller with written objections thereto. Buyer shall be deemed to have waived any title objection not made within the ten (10)-day period.

4.2 **Title Corrections and Remedies.** Seller shall have 120 days from receipt of Buyer's written title objections to make title marketable. Upon receipt of Buyer's title objections, Seller shall, within ten (10) business days, notify Buyer of Seller's intention to make title marketable within the 120-day period. Liens or encumbrances for liquidated amounts which can be released by payment or escrow from proceeds of closing shall not delay the closing. Cure of the defects by Seller shall be reasonable, diligent, and prompt. Pending correction of title, all payments required herein and the closing shall be postponed.

4.2.1 If notice is given and Seller makes title marketable, then upon presentation to Buyer of documentation establishing that title has been made marketable, and if not objected to in the same time and manner as the original title objections, the closing shall take place within ten (10) business days or on the scheduled closing date, whichever is later.

4.2.2 If notice is given and Seller proceeds in good faith to make title marketable but the 120-day period expires without the title being made marketable, Buyer may declare this Agreement void by notice to Seller, neither party shall be liable for damages hereunder to the other, and earnest money shall be refunded to Buyer.

4.3 **Intent to Render Title Marketable.** If Seller does not give notice of intention to make title marketable, or if notice is given but the 120-day period expires without title being made marketable, Buyer may as permitted by law do one or more of the following:

4.3.1 Proceed to closing.

4.3.2 Terminate this Purchase Agreement by notice as provided herein, in which case this Purchase Agreement shall be void and all earnest money paid hereunder shall be refunded to Buyer.

4.4 **Default by Buyer.** If title is marketable, or is made marketable as provided herein, and Buyer defaults in any of the agreements herein, Seller may cancel this contract as provided by statute and retain the Earnest Money made hereunder as liquidated damages.

4.5 **Default by Seller.** If title is marketable, or is made marketable as provided herein, and Seller defaults in any of the agreements herein, Buyer may seek specific performance within six months after such right of action arises.

4.6 **Limited Warranty Deed.** Subject to performance by Buyer, Seller shall deliver a limited warranty deed agreement conveying marketable title subject only to: (a) building and zoning laws, ordinances, state and federal regulations; (b) reservation of any minerals or mineral rights; (c) building and zoning laws, ordinances, state and federal regulations; (d) restrictions relating to the use or improvement of the Property without effective forfeiture provisions whether of record or not; (e) reservation of any minerals or mineral rights; (f) other utility and drainage easements which do not interfere with present improvements; and (g) the conditions relating to the use of the Property contained in Minnesota Statutes §§ 469.090 to 469.108.

## **ARTICLE 5 REAL ESTATE TAXES; SPECIAL ASSESSMENTS**

5.1 **Real estate taxes.** Real estate taxes due and payable in the year of closing shall be prorated between Seller and Buyer on a calendar year basis to the actual Closing Date. Seller shall pay real estate taxes payable in the years prior to Closing Date. Buyer shall pay real estate taxes payable in the years subsequent to Closing Date. Seller shall pay no later than Closing any deferred real estate taxes or special assessments payment which is required as a result of the closing of this sale.

5.2 **Assessments.** Seller shall pay on the Closing Date all installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing. Seller shall pay on Closing Date all other special assessments levied as of the date of this Agreement.

## **ARTICLE 6 PRORATIONS, TITLE POLICY**

### **6.1 Prorations.**

6.1.1 All items customarily prorated and adjusted in connection with the closing of the sale of the Property, including but not limited to rents and operating expenses, shall be prorated as of the Closing Date. It shall be assumed that Buyer will own the Property for the

entire date of the closing. If at the Closing Date any tenant is delinquent in any payments required of it, then to the extent Buyer receives from such tenant amounts in excess of the payments due Buyer under this Agreement, Buyer will remit such amounts to Seller after Buyer is paid for such amounts.

6.1.2 Seller shall pay all costs in connection with obtaining the Title Insurance Commitment required to be provided under Section 4.1 hereof by Seller to Buyer. Buyer shall be responsible for paying the premiums for an Owner's Policy and/or Lender's Policy issued pursuant to such commitment.

6.1.3 Buyer and Seller shall each pay one-half (1/2) of the closing fee of any title company that closes this transaction. Seller shall pay the deed tax and costs of recording the deed. The parties shall each pay the usual and customary fees and charges related to the closing that are normally paid by Seller and/or Buyer, as the case may be.

## **ARTICLE 7 RISK OF LOSS**

7.1 **By Damage or Destruction.** Risk of loss by damage or destruction to all or any part of the Property prior to the Closing Date shall be borne by Seller. Seller shall immediately give notice to Buyer of such damage or destruction. In the event of such damage or destruction, Buyer at its option may by written notice terminate this transaction, whereupon this Agreement shall terminate, the earnest money shall be immediately refunded to Buyer, and Buyer and Seller agree to sign a cancellation of purchase agreement.

If Buyer elects to consummate this transaction, Seller shall either forthwith (1) repair, restore, and replace any such damage or destruction as promptly as possible, in a good and workmanlike manner, to at least the same condition as the Property was in prior to such damage or destruction, or (2) assign any insurance proceeds for such casualty loss to Buyer and pay any additional amount to Buyer which may be needed to restore the Property to the same condition in which it was prior to such damage or destruction, in which case Buyer shall forthwith repair, restore, and replace any such damage or destruction as promptly as possible, in a good and workmanlike manner, to at least the same condition as the Property was in prior to such damage or destruction. If the Property has not been restored and repaired by the Closing Date, Buyer at its option may terminate this transaction, whereupon this Agreement shall terminate, the earnest money shall be immediately refunded to Buyer, and Buyer and Seller agree to sign a cancellation of purchase agreement.

7.2 **By Condemnation.** Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened prior to Closing, and risk of loss to the Property due to any other cause, remains with Seller until Closing. If, prior to Closing, any actual or threatened condemnation occurs of all or any material portion of the Property, then Seller shall promptly notify Buyer of same and elect in writing to Buyer the option of either (i) terminating this Agreement by giving written notice to Buyer, whereupon this Agreement shall terminate, the earnest money shall be immediately refunded to Buyer, and Buyer and Seller agree to

sign a cancellation of purchase agreement, or (ii) completing the closing of the purchase of the Property, in which event all condemnation proceeds collected by Seller prior to Closing shall be credited against the Purchase Price and, at Closing, Seller shall assign to Buyer any and all condemnation proceeds which have not been paid to or collected by Seller at that time.

## ARTICLE 8

### **CONDITIONS, SELLER'S AGREEMENT**

Buyer shall have no obligation to purchase the Property unless by the Contingency Deadline:

8.1 Buyer shall have obtained all permits and approvals required to be obtained by or from any applicable governmental agency or authority for the operation of the business desired to be conducted by Buyer on the Property including, without limiting the foregoing, zoning approval.

8.2 Buyer shall have inspected and approved the physical condition of the Property, and obtained, at Buyer's option whatever environmental reports of the Property Buyer desires to obtain with regard to the Property at Buyer's expense. Buyer shall have until the Contingency Deadline to obtain, examine and approve any such report(s). If the report(s) is/are not acceptable to Buyer, in Buyer's sole discretion, this Agreement shall be voidable at Buyer's option by notice to Seller given prior to the Contingency Deadline. If this Agreement is so voided by Buyer's notice: (a) the Earnest Money shall be immediately refunded to Buyer, and (b) this Agreement shall then terminate, and Buyer and Seller will have no further liability to the other under this Purchase Agreement. Buyer shall not provide the results of any tests or reports to anyone other than Seller without Seller's prior written approval. If Buyer does give Seller such notice, Seller shall have the right, but not the obligation, for a period of sixty (60) days after receipt of such notice, to (i) commence the removal and/or cleanup of such Hazardous Material which is in violation of any Hazardous Material Law and, if necessary, to extend the Closing Date by sixty (60) days to allow for completion of such removal and/or cleanup and to obtain the Releases required by Article or (ii) reduce the Purchase Price in an amount to be agreed upon by Seller and Buyer. If Seller does not complete the required removal and/or cleanup within said period or agree to reduce the Purchase Price in an amount agreed to by Buyer, Buyer or Seller shall have the right to terminate this Agreement by giving written notice of such termination to the other party within five (5) business days after expiration of the removal/cleanup period, whereupon all earnest money paid hereunder shall be refunded to Buyer, this Agreement shall terminate and neither party shall have any further rights or responsibilities hereunder. If Buyer does not so terminate this Agreement, or if Seller does commence the required removal and/or cleanup or agree to reduce the Purchase Price as set forth above, then this Agreement shall continue in effect. Seller consents to the entry by Buyer and/or its agents, authorized representatives and contractors upon the Property at reasonable times and at Buyer's cost and expense for the purpose of making inspections, investigations, surveys, reviews and tests ("Tests") of and on the Property, and to obtain a report on the condition of the Property at Buyer's expense. Buyer shall hold Seller and the Property harmless from all costs and liabilities relating to the Buyer's activities. Buyer shall further repair and restore any damage to the Property caused by or occurring during Buyer's testing and shall return the property to substantially the same condition as existed prior to such entry and inspection. Buyer shall have the right at any time to



waive any objections to the condition of the Property that it may have made, thereby preserving this Agreement in effect.

8.3 Seller shall have performed all of the obligations required to be performed by Seller under this Agreement, as and when required by this Agreement.

8.4 Buyer shall have examined any survey obtained by Buyer in accordance with Article 11 and found it to be reasonably acceptable to Buyer.

## **ARTICLE 9 SELLER'S WARRANTIES**

9.1 As an inducement to Buyer to enter into this Agreement, and as part of the consideration therefor, Seller represents and warrants to and covenants with Buyer, its successors and assigns that:

9.1.1 Seller owns the Property or at the Closing will own the Property, free and clear of all encumbrances, and there shall be no liens or encumbrances against the Property as of the Closing Date (which approval will occur if Buyer does not object to any such lien or encumbrance pursuant to Article 4 herein, and such liens or encumbrances so approved by Buyer being referred to as "Permitted Encumbrances"), or liens or encumbrances which will be paid and satisfied with the sale proceeds or the items described in Section 4.6 hereof.

9.1.2 No condemnation proceedings are pending or threatened against the Property, and there are no applications, ordinances, petitions, resolutions, or other matters pending before any governmental agency in regard to access, curb cuts, median strips, or other contemplated actions of public agencies which in the exercise of Buyer's reasonable judgment might tend to diminish or curtail the full flow of traffic by the Property and access to it.

9.1.3 Seller has received no notice, and has no knowledge of any pending notice, or a violation of any statutes, ordinances, regulations, judicial decrees, or orders, or the pendency of any lawsuits, administrative or arbitration hearings, or governmental investigations or proceedings affecting the Property, and the use thereof.

9.1.4 Seller is not a "Foreign Person" as defined for purposes of Section 1445 of the Internal Revenue Code of 1954, as amended from time to time.

9.1.5 The individuals executing this Agreement and the documents referred to herein on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be executed by Seller are, and shall be, valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

9.1.6 To Seller's knowledge, the Property is not located in an area designated as a flood zone or special flood hazard area by state or federal authorities.

## **ARTICLE 10 SURVEY**

Buyer may at its expense obtain a survey of the Real Property (the "Survey") prepared by a Minnesota registered surveyor, certified to date to Buyer. Buyer shall have the same rights to make objection to the Survey as are provided it under Article 4 hereof with respect to Title.

## **ARTICLE 11 CONTINGENCY DEADLINE**

The Contingency Deadline shall be June 15, 2020. Buyer shall have until 4:00 PM Central Standard Time on that date either to waive, or to determine that the contingencies contained in Article 8 have been satisfied. The standards used by Buyer for such examination and approval shall be in Buyer's sole discretion, and Seller shall have no right to contest the same. If any of the items are not satisfied by Seller or not waived by Buyer by the Contingency Deadline, this Agreement may be terminated, at Buyer's option, by written notice from one party to another, whereupon this Agreement shall terminate, the earnest money shall be immediately refunded to Buyer, and Buyer and Seller will have no further liability to each other under this Agreement. All contingencies set forth in this Agreement are specifically stated and agreed to be for the sole and exclusive benefit of the Buyer, and the Buyer shall have the right to unilaterally waive any contingency by written notice to Seller.

## **ARTICLE 12 SURVIVAL OF PURCHASE AGREEMENT**

The terms, conditions, and warranties of this Agreement shall not be merged into the contract for deed or into the limited warranty deed provided for in the contract but shall, where applicable, survive the delivery of the warranty deed from Seller to Buyer.

## **ARTICLE 13 NOTICES**

All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be given when deposited in the United States mail in a sealed envelope with registered or certified postage prepaid thereon, addressed to the parties at the following addresses:

With respect to Seller:                      Hermantown Economic Development Authority  
5105 Maple Grove Rd.  
Hermantown, MN 55811

Attn: HEDA Administrator

With a copy to: Steven C. Overom  
Overom Law, PLLC  
11 E. Superior Street  
Suite 543  
Duluth, MN 55802

With respect to Buyer: Luke McGregor  
Little Newtons  
12325 Hwy 55  
Plymouth, MN 55441

With a copy to: James C. MacGillis  
Trepanier MacGillis Battina P.A.  
8000 Flour Exchange Building  
310 Fourth Avenue South  
Minneapolis, MN 55415

Such addresses may be changed by either party upon notice to the other party given as required above.

## **ARTICLE 14 EDA STATUTORY REQUIREMENTS**

14.1 **Economic Development Authority.** Seller is an economic development authority created under Chapter 469 of the Minnesota Statutes. The sale by Seller pursuant to this Agreement is subject to the provisions of Chapter 469 of the Minnesota Statutes, including the provisions of § 469.105, a copy of which is attached hereto as Exhibit B.

14.2 **Notice and Hearing.** Seller held a hearing on the sale of the Property and provided notice thereof as required by Minnesota Statutes § 469.105, Subd. 2.

14.3 **Buyer's Use of Property.** The Buyer hereby agrees to use the Property for a child care center as more fully described on Exhibit C attached hereto ("Buyer's Use"). Buyer recognizes that the Property is subject to Minnesota Statutes § 469.105, Subd. 7. Buyer covenants and agrees to submit to Seller a complete set of plans and specifications for the development of Buyer's Use and that the plans and specifications will comply with all material respects of Minnesota § 469.105, Subd. 7 prior to receiving the limited warranty deed from Seller.

### **14.4 Assignment and Transfer.**

14.4.1 **Representation as to Development.** Buyer represents and agrees that its undertakings pursuant to the Agreement, are, and will be, for the purpose of development of Buyer's Use of the Property and not for speculation in land holding. Buyer further

recognizes that, in view of (a) the importance of the development of the Property to the general welfare of the community; (b) the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of Buyer is of particular concern to the community and Seller. Buyer further recognizes that Seller is entering into the Agreement with Buyer, and, in so doing, is willing to accept and rely on the obligations of Buyer for the faithful performance of all undertakings and covenants hereby by them to be performed.

**14.4.2 Prohibition Against Transfer of Property and Assignment of Agreement.** For the foregoing reasons, Buyer represents and agrees that, prior to the completion of the development of Buyer's Use:

14.4.2.1 Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable Buyer or any successor in interest to the Property or any part thereof, to perform their obligations with respect to the development of Buyer's Use under the Agreement, any other purpose authorized by the Agreement, Buyer (except as so authorized) has not made or created, and that they will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or lease, or any trust or power, or transfer in any other mode or form of, or with respect to, the Agreement or the Property or any part thereof or any interest therein, or any contract or agreement to do any of the same without the prior written approval of the Seller.

14.4.2.2 Seller shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:

14.4.2.2.1 Any proposed transferee shall have the qualifications and financial responsibility, as determined by Seller, necessary and adequate to fulfill the obligations undertaken in the Agreement by Buyer (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part).

14.4.2.2.2 Any proposed transferee, by instrument in writing satisfactory to Seller and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of Seller, have expressly assumed all of the obligations of Buyer under the Agreement and agreed to be subject to all the conditions and restrictions to which Buyer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions and restrictions to the extent that they relate to such part).

14.4.2.2.3 The original Buyer remains obligated to perform the obligations hereunder unless Seller agrees otherwise in writing.

14.4.2.3 **Transfers without Substantive Change of Control.** Seller may, in its sole discretion, waive the requirements of Section 14.4.2 hereof with

respect to a specified transfer, assignment or lease, if it determines, in its sole discretion, that the specified transfer, assignment or lease does not, as a practical matter, result in or involve a significant change in the identity of the parties in control of Buyer or the parties responsible for the performance of the obligations of Buyer under this Agreement.

## **ARTICLE 15 REVESTING TITLE IN SELLER**

15.1 In the event that subsequent to the conveyance of the Property or any part thereof to Buyer, the development of Buyer's Use is not completed by June 30, 2021, Seller shall have the option to re-enter and take possession of the Property and to terminate (and re-vest in Seller) the estate conveyed by the limited warranty deed to Buyer, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the Property to Buyer shall be made upon a condition subsequent to the effect that if the development of Buyer's Use is not completed by June 30, 2021 that Seller at its option, may declare a termination in favor of Seller of the title, and of all the rights and interest in and to the Property conveyed to Buyer and that such title and all rights and interests of Buyer, and any assigns or successors in interest to and in the Property, shall revert to Seller.

15.2 **Mortgage Financing.** The option to revert title reserved to Seller under Article 15 of this Agreement shall be subordinate to any mortgage obtained by Buyer to finance the purchase of the Property and obtain financing for the development of Buyer's Use provided that the mortgagee assumes responsibility of Buyer to complete the development of Buyer's Use of the Property pursuant to the terms of this Agreement.

15.3 **Payment of Purchase Price; Other Payments.** Upon Seller becoming re-vested, pursuant to Section 15.1 hereof, with good and marketable title to the Property free and clear of all liens and encumbrances arising from any actions of Buyer, Buyer shall be relieved of any further obligations to Seller under this Agreement and Seller shall pay Buyer the purchase price paid by Buyer under this Agreement less any costs and expenses, including reasonable attorneys' fees incurred by Seller in connection with the re-vesting of the title. For purposes of this Section the determination that Seller has become re-vested with good and marketable title to the Property free and clear of all liens and encumbrances arising from any actions of Buyer shall be made by the Attorney for Seller.

15.4 **Certificate with Respect to Completion of Improvements.** Seller shall execute and deliver to Buyer an appropriate certificate in recordable form upon the completion of the development of Buyer's Use. Such certificate shall be in form of the one attached hereto as Exhibit 15.4.

**ARTICLE 16**  
**MISCELLANEOUS PROVISIONS**

16.1 **Time is of the Essence.** Time is of the essence for all provisions of this Agreement.

16.2 **Entire Agreement; Modification.** This Agreement, together with all Exhibits hereto, constitutes the complete agreement between the parties and supersedes any prior oral or written agreement between the parties regarding the Property. This Agreement merges and supersedes all prior negotiations, representations, and agreements. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties. This Agreement shall be binding upon and shall inure to the benefit of Seller and Buyer, and their respective successors and assigns.

16.3 **Brokerage Commissions.** Each party will indemnify and hold the other harmless from all claims, demands, actions and/or judgments for fees, commissions, or other compensation of any broker or agent with whom such indemnifying party has dealt in connection with the sale and purchase of the Property. Seller specifically represents and warrants to Buyer that it will be solely responsible for any commission payable to Greg Follmer Commercial Real Estate, 230 E. Superior Street, Duluth, MN 55802, with regard to this transaction.

16.4 **Legal Counsel.** Each of Buyer and Seller acknowledges and agrees that it has fully read, completely understands and voluntarily enters into and executes this Agreement. Each of Buyer and Seller acknowledges that he/it has been represented and advised by counsel of his/its choosing during the pendency of the negotiations that have resulted in the drafting and execution of this Agreement and the other Agreements contemplated or referenced in this Agreement. The terms of this Agreement and the other related Agreements should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained in this Agreement and the other related Agreements may be legally enforced.

16.5 **Waiver.** The failure of any party to exercise any right hereunder, or to insist upon strict compliance by the other party, shall not constitute a waiver of either party's right to demand strict compliance with the terms and conditions of this Agreement thereafter.

16.6 **“As Is” “Where Is” Purchase.** Seller is affording Buyer the right to make inspections of the Property prior to the Closing and allowing Buyer to terminate this Agreement for any reason related to the condition of the Property prior to the Contingency Deadline. Accordingly, Buyer agrees to purchase the Property on an “as is” “where is” basis without relying on any warranties or representations whatsoever by Seller with regard to the condition of the Property.

**[SIGNATURES APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, the Seller executed this Agreement as of the above date.

**THIS AGREEMENT IS A LEGALLY BINDING CONTRACT.**

**BEFORE SIGNING, CONSULT A LAWYER**

**SELLER:**

**Hermantown Economic Development Authority**

By \_\_\_\_\_  
Its \_\_\_\_\_

IN WITNESS WHEREOF, the Buyer executed this Agreement as of the above date.

**THIS AGREEMENT IS A LEGALLY BINDING CONTRACT.**

**BEFORE SIGNING, CONSULT A LAWYER**

**BUYER:**

**Nursing Values LLC  
d/b/a Little Newtons**

By \_\_\_\_\_  
Its \_\_\_\_\_

This instrument was drafted by:

Steven C. Overom  
Overom Law, PLLC  
11 E. Superior Street  
Suite 543  
Duluth, MN 55802  
(218) 625-8460



**EXHIBIT A**  
**Legal Description**

That part of the Northerly 429 feet of the Westerly 345 feet of the Northeast Quarter of Northwest Quarter (NE ¼ of NW ¼), Section Eleven (11), Township Fifty (50), Range Fifteen (15), lying South of Miller Trunk Highway, which Highway is otherwise known as United States Highway No. 53.

Reserving unto the public an easement for roadway and utility purposes over and across the Westerly 66 feet of said

This property is Abstract.

**Parcel No. 395-0010-02975**

## EXHIBIT B

### **469.105 SALE OF PROPERTY.**

#### Subdivision 1.Power.

An economic development authority may sell and convey property owned by it within the city or an economic development district if it determines that the sale and conveyance are in the best interests of the city or district and its people, and that the transaction furthers its general plan of economic development. This section is not limited by other law on powers of economic development authorities.

#### Subd. 2.Notice; hearing.

An authority shall hold a hearing on the sale. At the hearing a taxpayer may testify for or against the sale. At least ten, but not more than 20, days before the hearing the authority shall publish notice of the hearing on the proposed sale in a newspaper. The newspaper must be published and have general circulation in the authority's county and city. The notice must describe the property to be sold and state the time and place of the hearing. The notice must also state that the public may see the terms and conditions of the sale at the authority's office and that at the hearing the authority will meet to decide if the sale is advisable.

#### Subd. 3.Decision; appeal.

The authority shall make its findings and decision on whether the sale is advisable and enter its decision on its records within 30 days of the hearing. A taxpayer may appeal the decision by filing a notice of appeal with the district court in the city or economic development district's county and serving the notice on the secretary of the authority, within 20 days after the decision is entered. The only ground for appeal is that the action of the authority was arbitrary, capricious, or contrary to law.

#### Subd. 4.Terms.

The terms and conditions of sale of the property must include the use that the bidder will be allowed to make of it. The authority may require the purchaser to file security to assure that the property will be given that use. In deciding the sale terms and conditions the authority may consider the nature of the proposed use and the relation of the use to the improvement of the authority's city and the business and the facilities of the authority in general. The sale must be made on the authority's terms and conditions. The authority may publish an advertisement for bids on the property at the same time and in the same manner as the notice of hearing required in this section. The authority may award the sale to the bid considered by it to be most favorable considering the price and the specified intended use. The authority may also sell the property at private sale at a negotiated price if after its hearing the authority considers that sale to be in the public interest and to further the aims and purposes of sections [469.090](#) to [469.108](#).

Subd. 5. One-year deadline.

Within one year from the date of purchase, the purchaser shall devote the property to its intended use or begin work on the improvements to the property to devote it to that use. If the purchaser fails to do so, the authority may cancel the sale and title to the property shall return to it. The authority may extend the time to comply with a condition if the purchaser has good cause. The terms of sale may contain other provisions that the authority considers necessary and proper to protect the public interest. A purchaser must not transfer title to the property within one year of purchase without the consent of the authority.

Subd. 6. Covenant running with the land.

A sale made under this section must incorporate in the deed as a covenant running with the land the conditions of sections [469.090](#) to [469.108](#) relating to the use of the land. If the covenant is violated the authority may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the deed.

§

Subd. 7. Plans; specifications.

A conveyance must not be made until the purchaser gives the authority plans and specifications to develop the property sold. The authority must approve the plans and specifications in writing. The authority may require preparation of final plans and specifications before the hearing on the sale.

History:

[1987 c 291 s 106](#)

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**EXHIBIT C**  
**Use of Property**

Little Newtons is an exceptional childcare center where imagination, love and education combine and result in new adventures every day...Brilliance guaranteed! As Nelson Mandela once said "Education is the most powerful weapon you can use to change the world!"

Little Newtons have designed an innovative preschool and daycare program to suit the physical, emotional, intellectual, and social development of your child. We offer competitive weekly rates.

Little Newtons will have an Infant, Toddler and Preschool programs.

**EXHIBIT 15.4**

**CERTIFICATE OF COMPLETION**

The Hermantown Economic Development Authority (“HEDA”) hereby certifies and declares that the right of reverter granted to and retained by HEDA under Article 15 of that certain Commercial Real Estate Purchase Agreement between HEDA and Nursing Values LLC, a Minnesota limited liability company, d/b/a Little Newtons, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is hereby terminated and released with respect to the property located in St. Louis County Minnesota and legally described on Exhibit A attached hereto.

The purpose of this certificate is to release, discharge and make of no further force and effect the right of reverter described in the preceding paragraph and as such right of reverter is set forth in that certain Limited Warranty Deed made by HEDA, as Grantor, to Nursing Values LLC, a Minnesota limited liability company, d/b/a Little Newtons, as Grantee, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and filed for record on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ as Document No. \_\_\_\_\_ with respect to the property described herein with the St. Louis County Recorder.

Dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**Hermantown Economic Development Authority**

By \_\_\_\_\_  
Its \_\_\_\_\_

And By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF ST. LOUIS    )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_ of the Hermantown Economic Development Authority on behalf of the Authority.

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

**EXHIBIT A**  
**Legal Description**

That part of the Northerly 429 feet of the Westerly 345 feet of the Northeast Quarter of Northwest Quarter (NE  $\frac{1}{4}$  of NW  $\frac{1}{4}$ ), Section Eleven (11), Township Fifty (50), Range Fifteen (15), lying South of Miller Trunk Highway, which Highway is otherwise known as United States Highway No. 53.

Reserving unto the public an easement for roadway and utility purposes over and across the Westerly 66 feet of said

This property is Abstract.

**Parcel No. 395-0010-02975**