

**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: 6/18/12  
Item No.: 12.b

Department Approval



City Manager Approval



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Item Description: Approve Settlement Agreement for purchase of land from PIK

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2 **BACKGROUND**

10 In the spring of 2009, the City commenced land acquisition in order to undertake Phase 1 utility  
11 and roadway improvements in the Twin Lakes Redevelopment Area. As the City's funding was  
12 required to be expended by the end of 2009, the City used its power of eminent domain to initiate  
13 quick-take condemnation on several properties within the area, including those parcels owned by  
14 PIK, to complete the project within the required timeframe. In summer 2009, the City received  
15 title to the needed land for the project. The only unresolved issue associated with the  
16 condemnation process for the PIK properties was to resolve the final settlement. Eminent domain  
17 commissioners have been appointed by the Courts, but no further action has taken place.

11  
14 The City offered the property owner of the PIK parcels a total of \$243,200 to acquire the needed  
15 right of way and temporary construction easements. This offer was based upon an appraisal  
16 completed by Dwyer and Dahlen in spring 2009.

15  
20 As part of a final settlement on the purchase of land for right-of-way, staff and the property owner  
21 have the discussed the teardown of the existing buildings on the PIK property. Under the  
22 proposed settlement agreement, the property owner would agree to the appraised value of the  
23 land and the City would agree to demolish the structures on the PIK parcels and assess the cost  
24 back to the property owner. Below are the specifics of the proposed settlement:

21  
22 **Proposed Terms of Settlement**

23 The following are the proposed terms of settlement between the City and PIK.

- 24  
26 1. PIK would accept the appraised value of \$243,200 as the purchase price for its land and  
27 temporary easements.
- 29 2. The City would undertake the demolition the existing structures on the PIK parcels and PIK  
30 would be assessed all costs associated with the demolition (e.g. engineering reports, city staff  
31 time, building removal, etc).
- 30 3. The terms of the assessment would include:
- 32 a. A twelve-year assessment with a two-year repayment deferral with no interest  
33 accruing and a ten-year repayment schedule;
- 33 b. An interest rate of six percent.
- 34 c. Full repayment of the assessment is due upon sale of the PIK property.

34 If the settlement agreement is approved, staff will begin working on creating an RFP for the  
35 demolition of the PIK buildings so that they will taken down in at some point this summer.

36 **POLICY OBJECTIVE**

37 The final settlement agreement will allow for the City to complete the purchase of the land  
38 needed for roads and utilities in Twin Lakes (already constructed) for the appraised value. In  
39 addition, as an added benefit, the settlement agreement will lead to the demolition of blighted  
40 and abandoned buildings on the PIK site.

41 **BUDGET IMPLICATIONS**

42 It is estimated that the cost of demolition of the PIK buildings will be approximately \$160,000.  
43 The City will pay for the intial demolition through TIF District 17 funds. The TIF District will  
44 be paid back over a period of 12 years per the assessment agreement.

45 **STAFF RECOMMENDATION**

46 Staff recomneds that the City Council enter into the agreement with PIK

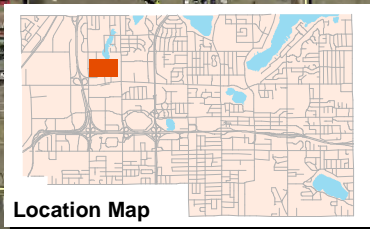
47 **REQUESTED COUNCIL ACTION**

48 Motion to **APPROVE** the Settlement Agreement between the City of Roseville and PIK Terminal  
49 Company and Pikovsky Management LLC regarding the the purchase of land for roads and  
50 utilities in the Twin Lakes Redevelopment Area.

Prepared by: Patrick Trudgeon, Community Development Director (651) 792-7071

Attachments: A: Aerial of PIK Property  
B: Property Purchased for Right-of-way and Utility Purposes  
C: Propopsed Settlement and Assessment Agreement

# Attachment A: Pik Terminal



Location Map



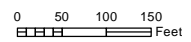
Prepared by:  
Community Development Department  
Printed: May 30, 2012



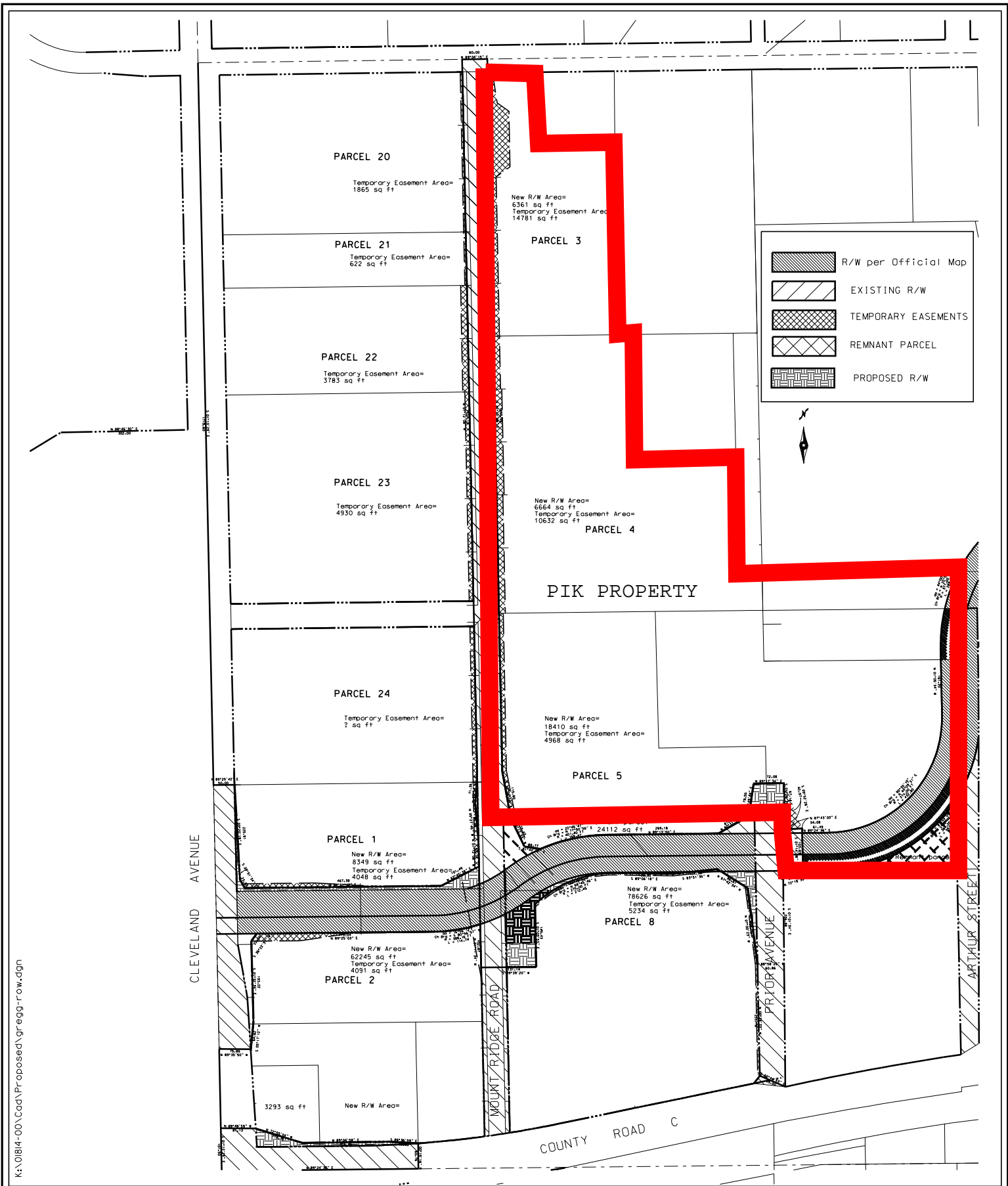
Site Location

**Data Sources**  
 \* Ramsey County GIS Base Map (5/1/2012)  
 \* Aerial Data: Pictometry (4/2011)  
 For further information regarding the contents of this map contact:  
 City of Roseville, Community Development Department,  
 2660 Civic Center Drive, Roseville MN

**Disclaimer**  
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**WSB & Associates, Inc.**  
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 www.wsbeng.com  
 783-541-4800 - Fax 783-541-1700  
 INFRASTRUCTURE ENGINEERING PLANNING CONSTRUCTION

**Twin Lakes West**  
**Roadway Improvements**  
**Roseville, Minnesota**

WSB Project No. 1814-00      Date: 2/26/09  
**Phase I Overview**

**SETTLEMENT AGREEMENT**

1  
2  
3 The City of Roseville (“City”), Pikovsky Management, LLC (“Pikovsky”), and  
4 PIK Terminal Co. Limited Partnership (“PIK”) hereby enter into this Settlement  
5 Agreement on the latest date of the signatures set forth below. Pikovsky and PIK shall  
6 collectively be referred to as the “Owners.”  
7

8 WHEREAS, the City sought to obtain fee title for road construction purposes on  
9 property (“Property”) owned by the Owners; and  
10

11 WHEREAS, the City and the Owners could not agree on compensation for the  
12 Property to be acquired; and  
13

14 WHEREAS, the City commenced an eminent domain action against the Owners,  
15 as well as other Respondents, in order to obtain the Property, and said action is Court File  
16 No. 62-CV-09-5151, which is captioned as City of Roseville v. XTRA Lease, Inc., et al.;  
17 and  
18

19 WHEREAS, the City and the Owners wish to settle all claims between them in  
20 order to avoid further costly litigation; and  
21

22 WHEREAS, as part of the settlement of this matter, the City and the Owners wish  
23 to provide for the City’s demolition of certain buildings on the Owners’ remaining  
24 property (“Owners’ Remaining Property”) to be paid for by assessments against the  
25 Owners’ Remaining Property.  
26

27 NOW, THEREFORE, in consideration of the mutual promises contained herein,  
28 the sufficiency of which is hereby acknowledged by all parties, the City and the Owners  
29 agree as follows:  
30

31 1. The legal description of the land acquired by the City by eminent domain  
32 (“Pikovsky Property”), in accordance with the Ramsey County District Court’s July 30,  
33 2009 Order in the above-referenced matter, is:  
34

35 That part of the following described tract of land in the City of Roseville:

36 (Parcel 3)  
37 Lots 1, 2, 3 and 4, Block D, Twin View, according to the recorded plat thereof,  
38 Ramsey County, Minnesota.  
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40 Which lies within the following fee acquisition areas:  
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42 The west 10.00 feet of (Parcel 3).  
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2. The legal description of the land acquired by the City by eminent domain (“PIK Property”), in accordance with the Ramsey County District Court’s July 30, 2009 Order in the above-referenced matter, is:

That part of the following described tracts of land in the City of Roseville:

(Parcel 4)

Lots 5, 6, 7, 8 and 9, except the East 57 feet thereof which lies North of the South 89.32 feet of said Lot 9, Block D, Twin View, according to the recorded plat thereof, and situate in Ramsey County, Minnesota.

Except therefrom the West 240 feet of the East 297 feet of said Lots 5 and 6 and except the West 240 feet of the East 297 feet of said Lot 7 lying North of the South 78.15 feet of said Lot 7.

Which lies within the following fee acquisition areas:

The west 10.00 feet of (Parcel 4).

AND

That part of the following described tracts of land in the City of Roseville:

(Parcel 5)

That part of the Northeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 4, Township 29, Range 23, lying North of the South 833 feet of the East Half of the Southwest Quarter of the Southwest Quarter of said Section, Ramsey County, Minnesota, except that part of the East 255 feet of the Northeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 4, Township 29, Range 23, which lies North of the South 1000 feet of the East Half of the Southwest Quarter of the Southwest Quarter of said Section 4, Township 29, Range 23, according to the United States Government Survey thereof and situate in Ramsey County, Minnesota.

Which lies within the following fee acquisition areas:

That part of (Parcel 5), which lies westerly of the following described line: Commencing at the northwest corner of the Northeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North 89 degrees 20 minutes 16 seconds East, assumed bearing along the north line of said Northeast Quarter of the Southwest Quarter of the Southwest Quarter, 30.10 feet, to the point of beginning of said line to be hereinafter described; thence South 01 degrees 12

87 minutes 08 seconds East, 375.16 feet; thence South 10 degrees 06 minutes 34  
88 seconds East, 113.17 feet, to the north line of the south 833.00 feet of the East  
89 Half of said Southwest Quarter of the Southwest Quarter, and said line there  
90 terminating.  
91

92 And also that part of (Parcel 5), described as follows: Beginning at the  
93 intersection of the east line of said Northeast Quarter of the Southwest Quarter  
94 of the Southwest Quarter, and said north line of the south 833.00 feet of the  
95 East Half of the Southwest Quarter of the Southwest Quarter; thence South 89  
96 degrees 24 minutes 36 seconds West, assumed bearing along said north line of  
97 the south 833.00 feet of the East Half the Southwest Quarter of the Southwest  
98 Quarter, 43.38 feet; thence North 08 degrees 49 minutes 44 seconds East,  
99 76.87 feet; thence North 89 degrees 17 minutes 34 seconds East, 30.00 feet to  
100 said east line of the Northeast Quarter of the Southwest Quarter of the  
101 Southwest Quarter; thence South 01 degrees 10 minutes 50 seconds East, along  
102 said east line of the Northeast Quarter of the Southwest Quarter of the  
103 Southwest Quarter, 75.90 feet, to the point of beginning.  
104

105 3. In consideration for the taking of the Pikovsky Property and all related  
106 costs incurred by Pikovsky, the City has paid Pikovsky \$61,000.00, which includes  
107 compensation for the Pikovsky Property and the temporary construction easement  
108 necessary for the City's work. Pikovsky acknowledges that the City already deposited  
109 \$61,000.00 with the Court, which has disbursed the \$61,000 plus interest to Pikovsky.  
110 The City shall not be obligated to pay any additional compensation for the Pikovsky  
111 Property.  
112

113 4. In consideration for the taking of the PIK Property and all related costs  
114 incurred by PIK, the City has paid PIK \$182,200.00, which includes compensation for  
115 the PIK Property and the temporary construction easement necessary for the City's work.  
116 PIK acknowledges that the City already deposited \$182,200.00 with the Court, which has  
117 disbursed the \$182,200 plus interest to PIK. The City shall not be obligated to pay any  
118 additional compensation for the PIK Property.  
119

120 5. The Owners acknowledge that the payments specified in Paragraphs 3 and  
121 4 above are the full and final payments for the Property and all related costs incurred by  
122 the Owners. The Owners hereby waive and release the City from any and all claims for  
123 additional compensation for the taking of the Property and for any costs and fees incurred  
124 in this eminent domain proceeding, including but not limited to legal fees, appraisal fees,  
125 expert witness fees, filing fees and costs.  
126

127 6. In further consideration for the taking of the Property, the City agrees to  
128 demolish the existing buildings ("Buildings") located on the Owners' Remaining

129 Property upon the terms and conditions set forth in the Assessment Agreement, which is  
130 attached hereto as Exhibit A.

131  
132 7. The Owners warrant that they are the fee owners of the Owners' Remaining  
133 Property containing the Buildings and have the right, title, and capacity to grant the right  
134 to demolish the Buildings. The Owners further warrant that no party, other than Ramsey  
135 County, holds any interest in the property containing the Buildings.

136  
137 8. The City shall not be obligated to undertake the demolition of the Buildings  
138 until the Owners are in good standing with respect to the property taxes, existing  
139 assessments, and utility bills related to the Property.

140  
141 9. The City and the Owners, and their respective officers, agents and assigns,  
142 hereby release each other from any and all claims arising out of or related to the  
143 condemnation of the Property.

144  
145 10. The City and the Owners agree to execute a Stipulation of Dismissal with  
146 Prejudice and without costs to any party, and to use their best efforts to obtain signatures  
147 from all other Respondents having an interest in Parcels 3, 4, and 5 who are not party to  
148 this Settlement Agreement. Said Stipulation shall be filed with the Court, and the City  
149 shall file any and all other documents necessary to dismiss the pending eminent domain  
150 action and to revoke any recorded Notice of Lis Pendens.

151  
152 11. The City and the Owners acknowledge that there are no covenants,  
153 promises, representations or undertakings outside of this Settlement Agreement, except  
154 for the attached Assessment Agreement.

155  
156 12. To the extent permitted by Minnesota law, the City hereby indemnifies, and  
157 shall protect and hold the Owners harmless from and against all liabilities, losses, claims,  
158 demands, costs, expenses, and judgments of any nature arising, or alleged to arise from or  
159 in connection with this Agreement or the attached Assessment Agreement.

160  
161 13. In the event of litigation between the parties related to this Agreement or its  
162 breach, the prevailing party will be entitled to recover from the other party, in addition to  
163 other relief as may be granted, a reasonable sum as and for its attorney's fees and other  
164 costs incurred as may be determined by a court of competent jurisdiction.

165  
166 14. This Settlement Agreement, and the attached Assessment Agreement,  
167 constitute the entire agreement reached between the parties. This Settlement Agreement  
168 shall be construed and interpreted pursuant to the laws of the State of Minnesota.

169  
170 15. By signing this Settlement Agreement, each signatory warrants that he or  
171 she has authority to sign this agreement, and they acknowledge that they have read the



172 agreement, that they understand and agree to the terms, and that each party has been  
173 represented by legal counsel and/or has had an opportunity to obtain such legal advice as  
174 necessary.

175  
176 **PIKOVSKY MANAGEMENT, LLC**

177  
178  
179 Dated: \_\_\_\_\_

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

181  
182  
183 **PIK TERMINAL CO. LIMITED**  
184 **PARTNERSHIP**

185  
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187 Dated: \_\_\_\_\_

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

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191 **CITY OF ROSEVILLE**

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195 Dated: \_\_\_\_\_

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

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200 Dated: \_\_\_\_\_

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EXHIBIT A

ASSESSMENT AGREEMENT

This Assessment Agreement (“Agreement”) is entered into by and between the City of Roseville (“City”), Pikovsky Management, LLC (“Pikovsky”), and PIK Terminal Co. Limited Partnership (“PIK”) on the latest date of the signatures set forth below. Pikovsky and PIK shall collectively be referred to as the “Owners.”

WHEREAS, in settlement of an eminent domain action in Ramsey County District Court, which is Court File No. 62-CV-09-5151, captioned as City of Roseville v. XTRA Lease, Inc., et al., the parties agreed to provide for the demolition of the buildings on the Owners’ property (“Buildings”); and

WHEREAS, all costs associated with the demolition of the Buildings shall be levied against the Owners’ property as assessments.

NOW, THEREFORE, IN CONSIDERATION OF the promises and covenants contained in this Agreement, including the relinquishment of certain legal rights, the City and Owners hereby agree as follows:

1. **Demolition of Buildings.** The City agrees to undertake the demolition of the Buildings currently existing on the Owners’ property (PID #'s 04-29-23-32-0007, 04-29-23-32-0012, and 04-29-23-33-0007, collectively referred to as the “Property”). The Owners hereby grant the right to the City, its contractors, agents, and employees to enter the Property at all reasonable times for building demolition purposes, and all purposes ancillary thereto, as well as the right to deposit earthen materials within the easement area and to move, store, and remove equipment and supplies, and to perform any other work necessary and incident to the project.

2. **Voluntary Assessment.** The Owners voluntarily agree to an assessment of all of the costs associated with the demolition of the Buildings, which may include, but are not limited to pre-demolition building surveys, engineering reports, bidding package preparation, associated city staff time, and actual demolition costs (“Assessment Amount”) against the Property. The Assessment Amount shall be assessed against the Property without the necessity of any public hearings or other applicable assessment proceedings under Minnesota Statutes Chapter 429. The Owners expressly waive objection to any irregularity with regard to the said assessments and any claim that the amount thereof levied against the Property is excessive, together with all rights to any proceedings or hearings under Minnesota Statutes Chapter 429, and all rights to appeal in the courts. Should the Assessment Amount exceed \$160,000 by fifteen percent (15%), demolition of the Buildings shall not proceed without written approval of the excess costs by the Owners.

250

251 3. **Payments.** The voluntary assessments will be spread over twelve (12) years with  
252 a two-year repayment deferral with no interest accruing and ten (10) year repayment  
253 schedule beginning in 2014. Interest shall accrue starting in 2014 at the rate of six  
254 percent (6%) per year on the unpaid balance of the Assessment Amount. If the Owners  
255 fail to make any payment of the Assessment Amount when due, the City may take all  
256 necessary enforcement action, including the right to impose penalties and interest and to  
257 commence judicial action to collect the payment.

258

259 4. **Assessment Process.** The parties shall cooperate with the Ramsey County  
260 Assessor's office and other County officials as necessary to effectuate the terms of this  
261 Agreement.

262

263 5. **Sale of Property.** In the event the Property is sold, the entire remaining balance  
264 of the Assessment Amount shall be due and owing to the City upon closing of the  
265 transaction. In the event a portion of the Property is sold, a prorated portion of the  
266 remaining balance of the Assessment Amount proportionate to the percentage of the  
267 Property being sold shall be due and owing to the City upon closing of the transaction.  
268 The Owners shall make this a condition of any purchase agreement concerning the sale of  
269 the Property.

270

271 6. **Priority of Assessment.** Pursuant to Minnesota Statutes section 514.67, the  
272 voluntary assessment against the Property shall constitute and be a first and prior lien on  
273 the Property.

274

275 7. **Indemnification for Environmental Matters.** The Owners hereby indemnify,  
276 and shall protect and hold the City harmless from and against all liabilities, losses,  
277 claims, demands, costs, expenses, obligations, including penalties and reasonable  
278 attorney's fees, or losses resulting from any claims, actions, suits or proceedings of any  
279 nature arising, or alleged to arise from or in connection with a release or threat of release  
280 of any hazardous substances, pollutants, or contaminants which may have existed on, or  
281 which relate to, the Property and the City's actions in furtherance of this Agreement.

282

283 8. **Rights of Public.** The Owners do not intend that the public should have any  
284 interest in the above described land by virtue of this Assessment Agreement. It is  
285 expressly agreed by and between the parties hereto that the Owners retain ownership of  
286 the Property and all incidents of ownership. Owners do not intend that the public should  
287 have any interest in the land or right to trespass thereon by virtue of this Assessment  
288 Agreement or otherwise, except as herein set forth.

289

290 9. **Indemnification.** To the extent permitted by Minnesota law, the City hereby  
291 indemnifies, and shall protect and hold the Owners harmless from and against all  
292 liabilities, losses, claims, demands, costs, expenses, and judgments of any nature arising,

293 or alleged to arise from or in connection with this Agreement. The City shall require any  
294 contractor or subcontractor performing work on the Property in accordance with this  
295 Agreement to maintain sufficient insurance coverage for the project and to name the  
296 Owners as additional insureds on such coverage.  
297

298 10. **Attorney’s Fees.** In the event of litigation between the parties related to this  
299 Agreement or its breach, the prevailing party will be entitled to recover from the other  
300 party, in addition to other relief as may be granted, a reasonable sum as and for its  
301 attorney’s fees and other costs incurred as may be determined by a court of competent  
302 jurisdiction.  
303

304 11. **Equal Drafting.** This Agreement must be construed to have been drafted equally  
305 by the parties.  
306

307 12. **Complete Agreement.** This Agreement, and the Settlement Agreement,  
308 constitute the entire agreement between the parties related to the demolition of the  
309 Buildings and assessment of the costs of said demolition and expressly supersedes and  
310 terminates any and all agreements, promises, representations, or understandings between  
311 the parties. This Agreement is executed without any reliance upon any statement or  
312 representation by either party, or its representatives or agents.  
313

314 13. **Binding Effect.** All provisions herein shall run with the land and shall extend to  
315 and bind the heirs, successors, representatives, and assigns of Owners. This Assessment  
316 Agreement may not be assigned by the Owners without the prior written consent of the  
317 City.  
318

319 14. **Severability.** If any provision of this Agreement is held unenforceable by a court  
320 of law, the remainder of the Agreement shall remain in full force and effect.  
321

322 IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and  
323 year first above written.  
324

325

326

327 **GRANTORS:**

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331 Dated: \_\_\_\_\_

332

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**PIKOVSKY MANAGEMENT, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**PIK TERMINAL CO. LIMITED  
PARTNERSHIP**

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Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**GRANTEE:**

**CITY OF ROSEVILLE**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_