



Economic Development Authority

Special Meeting Agenda

Monday, November 4, 2024
6:10 PM or immediately following
the closed EDA meeting
Elk River City Hall

- Special meeting in Council Chambers
-

I. CALL MEETING TO ORDER

I.1 Special EDA Meeting Notice for November 4, 2024

2. PLEDGE OF ALLEGIANCE

3. GENERAL BUSINESS

3.1 Resolution Amending Purchase Agreement of the Fox Haven Site to Java Companies

4. MOTION TO ADJOURN



**Special Meeting Notice
Elk River Economic Development Authority**

Monday, November 4, 2024

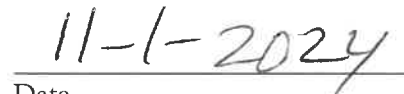
6:10 p.m.

**Elk River City Hall
13065 Orono Parkway
Elk River, Minnesota**

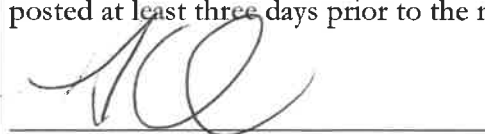
The purpose of the meeting is as follows:

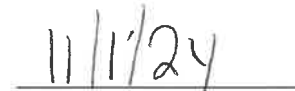
- Resolution Amending Purchase Agreement of the Fox Haven Site to Java Companies


Dan Tveite, EDA President


Date

I HEREBY CERTIFY, that this notice has been posted and that I have served this notice upon the members of the Economic Development Authority by mail at least one day prior to the above-called special meeting. In accordance with State Statute, this notice will be posted at least three days prior to the meeting date.


Tina Allard, City Clerk


Date





Request for Action

To
Economic Development Authority

Item Number
3.1

Meeting Date
November 4, 2024

Prepared By
Brent O'Neil, Economic Development Director

Item Description
Resolution Amending Purchase Agreement of the
Fox Haven Site to Java Companies

Reviewed by
Cal Portner

Action Requested

Approve, by motion, a resolution amending terms of the purchase agreement at 13566 and 13530 185th Street NW to Java Companies.

Background/Discussion

Java Companies expects to close on its purchase of the Fox Haven property in early November. The EDA is being asked to address two items to facilitate the property transfer and project on the site.

First, Java is requesting to take possession through an affiliated company—Java Elk River Retail, LLC. This request requires consent by the EDA and is in line with industry practice for property owners to separate tracts of property under individual holding companies.

Second, the agreement contains a reversion clause in which the buyer is obligated to develop the property as agreed upon, or the property title may revert to the EDA. The present terms state that "construction of the footings and foundation for a...5,800 square foot gas station/convenience store must commence on the property within one year" of closing. Kwik Trip has indicated the project is most likely to commence in early Spring 2026 with an opening later that year. Java has requested a modification to this provision such that site work, including clearing vegetation within one year, would satisfy the commencement requirement, and that more flexibility be given by making 4,500 square feet the minimum facility size requirement. Additionally, to ensure the project still moves forward as the EDA desires, the proposed modification to the reverter will also require the project, as stated above, to be completed within two years of closing.

Financial Impact

For consideration of this modification and to offset EDA costs associated with this amendment, Java will compensate the EDA \$10,000 to be added to the purchase price.

Mission/Policy/Goal

Support commercial development.

Attachments

- I. First Amendment to Purchase Agreement
The Elk River Vision

A welcoming community with revolutionary and spirited resourcefulness, exceptional service, and community engagement that encourages and inspires prosperity



2. EDA Res 24-08 Approving the First Amendment of the Purchase Agreement
3. Assignment of Purchase Agreement

FIRST AMENDMENT TO PURCHASE AGREEMENT

This First Amendment to Purchase Agreement (this “First Amendment”) is made this ____ day of November, 2024 by and between the Economic Development Authority in and for the City of Elk River, a public body corporate and politic (the “EDA”) and Java Companies LLC, a Minnesota limited liability company and its permitted assigns (the “Buyer”).

WHEREAS, the EDA and the Buyer entered into that certain Purchase Agreement dated April 15, 2024 (the “Agreement”) providing for the conveyance by the EDA to the Buyer of certain property located at 13530 and 13566 185th Avenue NW in the City of Elk River, Sherburne County, Minnesota and legally described as follows:

Lot 1, Block 1 and Lot 2, Block 1, Fox Haven Commercial, according to the recorded plat thereof, County of Sherburne, State of Minnesota.

Parcel ID 75-00597-0110 and 75-005970105

(the “Property”); and

WHEREAS, due to unanticipated delays, the EDA and the Buyer desire to change the covenant in the deed to redefine the minimum improvements that must be completed by the Buyer on the Property during a one year and a two year timeframe; and

WHEREAS, in exchange for the change in timeline for the minimum improvements, the Buyer is willing to provide an additional \$10,000 in compensation for the Property; and

WHEREAS, the Buyer requested the minimum structure size be set at 4,500 square feet; and

WHEREAS, the Buyer also desires to assign the Agreement to its subsidiary, Java Elk River Retail, LLC; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

1. Amendment to Paragraph 15 of the Agreement. Paragraph 15 of the Agreement is amended to read as follows:

15. ASSIGNMENT. The Buyer may not assign the Buyer's rights under this Purchase Agreement without prior consent of the EDA, which shall not unreasonably be withheld. Notwithstanding the foregoing, the Buyer hereby assigns this Purchase Agreement and the Buyer's rights to Java Elk River Retail LLC, a Minnesota limited liability company ("Assignee"). Assignee hereby accepts the foregoing assignment and agrees to assume and perform all of the Buyer's obligations under the Purchase Agreement which arise on or after the effective date of the Purchase Agreement. Assignee shall be the Buyer under the Purchase Agreement for all purposes on and after the Effective Date. The EDA hereby consents to such assignment of the Purchase Agreement from the Buyer to Assignee and to such assumption by Assignee, all as provided in this First Amendment and in the Purchase Agreement. The EDA releases and discharges Java Companies LLC from all obligations under the Purchase Agreement arising or accruing on or after the Effective Date.

2. Amendment to Paragraph 3. Paragraph 3 of the Agreement is amended to read as follows:

3. PURCHASE PRICE AND MANNER OF PAYMENT. The Buyer shall pay the EDA Three Hundred and Seventy Thousand and no/100ths Dollars (\$370,000.00) for the Property (the "Purchase Price"). Upon approval and execution of this Agreement by the Buyer and the EDA, the Buyer shall deposit \$20,000.00 in initial earnest money (the "Earnest Money") to be held in escrow by Servion Commercial Title (the "Title Company"). The Earnest Money shall be credited against the Purchase Price at Closing.

3. Amendment to Paragraph 6.1.1. Paragraph 6.1.1. of the Agreement is amended to read as follows:

6.1.1. Deed. A quit claim deed (the "Deed") conveying the Property to the Buyer. The Deed shall contain a covenant running with the Property that the Buyer must commence and complete site preparation of the Property which includes the substantial clearing of all vegetation on the Property, or the Property will be subject to a reversionary interest in favor of the EDA pursuant to Minnesota Statutes Section 469.105, subdivision 5 and 6. The Deed must also include a covenant running with the Property that the construction of a 4,500 square foot gas station/convenience store on the Property must be completed within two years from the date of the Deed, or the Property will be subject to a reversionary interest in favor of the EDA pursuant to Minnesota Statutes Section 469.105, subdivisions 5 and 6. The Buyer may also construct a fast food restaurant on the Property subject to the consent of the EDA, which approval shall not be unreasonably withheld, and receiving any necessary land use approvals. The Deed shall contain provisions for the EDA to execute and

record a Certificate of Completion evidencing that the required improvements have been completed.

4. Miscellaneous. Except as amended by this Amendment, the Agreement shall remain in full force and effect.

(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the parties have executed this First Amendment to Purchase Agreement as of the date written above.

**ECONOMIC
DEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF ELK
RIVER**

By: _____

Its: President

By: _____

Brent O'Neil
Its: Executive Director

JAVA COMPANIES LLC

By: _____

Its: _____

ASSIGNEE:

JAVA ELK RIVER RETAIL LLC

By: _____

Its: _____

**ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF ELK RIVER
COUNTY OF SHERBURNE
STATE OF MINNESOTA**

RESOLUTION NO. 24-08

**RESOLUTION APPROVING THE FIRST AMENDMENT OF THE PURCHASE
AGREEMENT FOR THE PURCHASE OF CERTAIN PROPERTY LOCATED AT 13530
& 13566 185TH AVENUE NW BY JAVA COMPANIES LLC AND JAVA ELK RIVER
RETAIL LLC**

WHEREAS, the Economic Development Authority in and for the City of Elk River (the “EDA”) entered into a purchase agreement with Java Companies LLC, a Minnesota limited liability company (“Java Companies”) dated April 15, 2024 (the “Purchase Agreement”); and

WHEREAS, Java Companies desires to assign its rights under the Purchase Agreement to Java Elk River Retail LLC, a Minnesota limited liability company (“Assignee”); and

WHEREAS, Assignee has agreed to accept the assignment from Java Companies of Java Companies’ rights and has agreed to assume Java Companies’ obligations under the Purchase Agreement; and

WHEREAS, the EDA, Java Companies, and Assignee have agreed to amend paragraph 6.1.1 of the Purchase Agreement to allow the buyer to extend the full completion of the building on the property from one year to two years with the site preparation being completed within one year, setting the minimum building size to 4,500 square feet, and to increase the purchase price in paragraph 3 of the Purchase Agreement from \$360,000 to \$370,000; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners (“Board”) of the Economic Development Authority in and for the City of Elk River as follows:

- 1.01. The Board hereby approves the First Amendment of Purchase Agreement between Java Companies and Assignee in substantially the form presented to the Board; and
- 1.02. The President and the Executive Director are authorized and directed to execute the First Amendment to the Purchase Agreement on behalf of the EDA.

Approved by the Board of Commissioners of the Economic Development Authority in and for City of Elk River this 4TH day of November, 2024.

President

ATTEST:

Executive Director

ASSIGNMENT AND ASSUMPTION OF PURCHASE AGREEMENT AND CONSENT TO ASSIGNMENT

THIS ASSIGNMENT AND ASSUMPTION OF PURCHASE AGREEMENT AND CONSENT TO ASSIGNMENT (this “Assignment”) is made effective as of _____, 2024, by and between Elk River Economic Development Authority, a Minnesota body corporate and politic (the “EDA”) and Java Companies LLC, a Minnesota limited liability company and its permitted assigns (“Assignor”) and Java Elk River Retail LLC, a Minnesota limited liability (“Assignee”).

RECITALS

- A. The EDA and Assignor have entered into that certain Purchase Agreement dated April 15, 2024, (“Purchase Agreement”) pursuant to which Seller agreed to sell to Assignor, and Assignor agreed to purchase from Seller, the Property, as described in the Purchase Agreement.
- B. Assignor desires to assign its rights under the Purchase Agreement to Assignee.
- C. The EDA desires to consent to such assignment and transfer of the Purchase Agreement upon the terms hereinafter set forth.

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

- 1. **Assignment.** Assignor hereby assigns to Assignee, all of Assignor’s right, title and interest in and to the Purchase Agreement.
- 2. **Acceptance of Assignment.** Assignee hereby accepts the foregoing assignment and agrees to assume and perform all the Assignor’s obligations under the Purchase Agreement which arise on or after the effective date of the Purchase Agreement (“Effective Date”). The Assignee shall be the Buyer under the Purchase Agreement for all purposes on and after the Effective Date.
- 3. **Indemnity.** Assignor agrees to indemnify and hold harmless Assignee with respect to any claims or liabilities arising from the Assignee’s acts or omissions prior to the Effective Date.
- 4. **Seller Consent.** Seller hereby consents to such assignment of the Purchase Agreement from Assignor to Assignee and to such assumption by Assignee, all as provided in this Assignment and in the Purchase Agreement. Seller releases and discharges Assignor from all obligations under the Purchase Agreement arising or accruing on or after the Effective Date.

5. **Authority to Sign.** Each party hereto represents and warrants that the person executing this Assignment on behalf of said party has the authority to execute this Assignment and to bind the party for which such person so executes this Assignment.
6. **Entire Agreement.** This Assignment, and any agreement executed in furtherance of this Assignment, constitute the entire, full and complete agreement concerning the assignment and assumption of the Purchase Agreement and supersede any and all prior or contemporaneous negotiations, discussions, understandings or agreements. There are no other representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, relating to the assignment other than those set forth in this Assignment. No obligations or duties that contradict or are inconsistent with the express terms of this Assignment may be implied into this Assignment.
7. **Counterpart Signatures.** This Assignment may be executed in one or more counterparts, any one of which need not contain the signature of more than one party, and all of which taken together shall constitute one and the same Assignment.

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

ASSIGNOR:

JAVA COMPANIES LLC, a Minnesota
limited liability company

By: _____
Mark Krogh
Its: Chief Manager

ASSIGNEE:

JAVA ELK RIVER RETAIL LLC, a
Minnesota limited liability company

By: _____
Its: _____

ACKNOWLEDGMENT

The undersigned Economic Development Authority for the City of Elk River, Minnesota, a Minnesota body corporate and politic, acknowledges the foregoing Assignment and Assumption of Purchase Agreement and Consent to Assignment.

SELLER:

ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF ELK RIVER, MINNESOTA

By: _____
Dan P. Tveite
Its President
Date: _____

By: _____
Brent O'Neil
Its Executive Director
Date: _____

Notary Public

This document drafted by:

KENNEDY & GRAVEN, CHARTERED
Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300