

## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this “Agreement”) is entered into effective as of the 15th day of May, 2020, (the “Effective Date”) by and between BIX PRODUCE COMPANY, LLC, a Delaware limited liability company (the “Seller”), and State of Minnesota, acting by and through its Department of Administration (the “Buyer”).

### RECITALS

- A. Seller is the owner of property located at 1415 L’Orient Avenue, St. Paul, Ramsey County, Minnesota, which is legally described on attached Exhibit A (the “Real Property”). The Real Property consists of approximately five (5) Acres and is improved with a building having approximately 71,015 square feet (the “Building”) parking lot and related improvements.
- B. The term “Property” includes the fee simple interest in and to the Real Property, plus (i) all easements and rights-of-way belonging to or in any way held by Seller; (ii) the Building and other structures, improvements and fixtures owned by Seller located on or at the Property; (iii) all agreements, contracts, relating to same owned by Seller regarding the Property, if any, provided Buyer, at Buyer’s sole option, has agreed to assume the same by written notice to Seller prior to or at Closing (“Contracts”); (iv) Seller’s interests in all assignable permits and licenses benefiting the Property, if any (the “Permits”); (v) all warranties and guarantees, if any, given to, assigned to or benefiting Seller or the Property regarding the acquisition, construction, design, use, operation, management or maintenance of the Real Property or the Building, however, only the extent such warranties can be assigned and transferred to Buyer (“Warranties”), (vi) Seller’s interests in the blueprints, plans and specifications regarding the Real Property, if any (the “Plans”); (vii) all records of Seller regarding the Property and the Building, including all Contracts, Permits, Warranties, Plans, surveys, environmental reports and soil reports, and all records regarding management, real estate taxes and assessments, maintenance, repairs, and capital improvements (“Records”); and (viii) all mineral rights and water rights in, under, on or above the Real Property, to the extent they are owned by Seller.
- C. The Seller desires to sell and Buyer desires to purchase the Property subject to the terms and conditions contained in this Agreement.
- D. The parties wish to memorialize their understanding in writing.

### AGREEMENT

In consideration of the foregoing and the mutual covenants hereinafter set forth and other good and valuable consideration, the parties agree as follows:

1. Purchase and Sale. Seller hereby agrees to sell and Buyer hereby agrees to purchase the Property, together with all rights, privileges and appurtenances that benefit the

Property, including, but not limited to, all rights owned by Seller, subject to and in accordance with the terms and conditions set forth in this Agreement.

2. Purchase Price. Buyer will pay Five Million Four Hundred Seventy-Five Thousand Dollars (\$5,475,000.00) as and for the Purchase Price for the Property (the "Purchase Price"). At Closing (as defined below) Buyer will pay the Purchase Price for the Property, subject to the credits and adjustments to the Purchase Price provided for in this Agreement, via wire transfer funded before 1:00 PM on the Closing Date (defined below).

3. Closing.

a. Closing. The act of settlement of the purchase and sale of the Property where Seller conveys title to the Property to Buyer and Buyer pays to Seller the Purchase Price, subject to the terms and conditions set forth in this Agreement, is referred to as the "Closing". The Closing of the Property will take place on or before May 18, 2020 (the "Closing Date"). The Closing will be held by each party escrowing their respective closing documents and funds with a title company selected by the Buyer (the "Title Company").

b. Closing Documents.

i. Seller Documents. At Closing, Seller will deliver to Buyer the following items, at Seller's expense (the "Seller's Closing Documents"):

1. A certificate, in form and substance reasonably acceptable to the Buyer or the Title Company, dated as of the Closing Date and duly executed by the Secretary of Seller certifying (1) as to the incumbency and signatures of the officers of such Seller executing any documents being delivered to the Buyer in connection with the Closing, and (2) that attached to such certificate are true and correct copies of (a) the resolutions of members of Seller authorizing the execution and delivery of this Agreement and the Seller's Closing Documents and the consummation of the transaction taken under this Agreement, and (b) a Certificate of Good Standing or its equivalent for Seller from the State of Delaware;
2. A duly executed and acknowledged Limited Warranty Deed conveying good, marketable and indefeasible fee simple title to the Property, free of all liens and encumbrances, subject only to the Permitted Exceptions accepted by Buyer (the "Deed");
3. An owner's affidavit as to possession, no outstanding, unsatisfied judgments, no bankruptcies and no liens against or involving Seller or the Property, and that there have been no skill, labor or material furnished to the Property at the request of Seller for which payment has not been made or which mechanic's liens could be filed and that there are no other unrecorded interests in the Property;

4. A certificate signed by Seller or a statement on the Deed warranting that there are no “wells” on the Property within the meaning of Minnesota Statutes § 103I or if there are “wells” a well certificate in the form required by law;
  5. A FIRPTA or “non foreign” affidavit, properly executed, containing such information as is required by IRC Section 1445(b)(2) and its regulations;
  6. An assignment and assumption of the Contracts, Warranties and Records affecting the Property to the extent assignable, without any representations or warranties from Seller (the “Assignment and Assumption”), and delivery of the originals of the Contracts, Warranties, and Records to the extent in Seller’s possession;
  7. A closing statement acceptable to the Seller and the Buyer itemizing the Purchase Price and closing costs, together with all applicable credits and debits (the “Closing Statement”); and
  8. A certificate of Seller, dated as of the Closing Date, certifying the warranties and representations stated in Section 4.
  9. An affidavit to the Title Company that the Seller is not aware of any material changes to the Existing Survey in a form required by the Title Company to provide the Buyer with a survey endorsement.
  10. Any other documents that may be reasonably determined to be necessary, or required by Title Company, to vest in Buyer fee simple title to the Property or to complete the Closing via wire transfer.
- ii. Buyer Documents. At Closing, Buyer will deliver to Seller the following items, at Buyer’s expense:
1. A signed Assignment and Assumption;
  2. A signed Closing Statement; and
- c. Payment and Prorations. At Closing, the Purchase Price will be paid by Buyer to Seller at Closing. Cash at Closing to the Seller shall be adjusted by the following:
- i. Real Estate Taxes and Assessments. Seller must pay all real estate taxes due and payable for all years prior to the year of Closing for the Property. Real estate taxes due and payable in the year of Closing for the Property will be pro-rated between Seller and Buyer on a per diem basis as of the Closing Date. Seller must pay the full balance of certified special assessments due and owing in the year of Closing. Buyer shall assume all levied and pending assessments not yet due and owing in the year of the Closing.

ii. Operating Expenses. All utilities and other charges will be prorated as of the Closing Date.

d. Closing Costs. Seller will pay the state deed tax applicable to recording the Deed. Seller shall pay the recording costs of all mortgage satisfactions and other documents necessary to release all liens of record, if any. Except as otherwise provided herein, each party will be responsible for the payment of their own attorneys' fees incurred in connection with the transaction that is the subject of this Agreement. Seller and Buyer will share closing fees charged by the Title Company equally. Buyer shall pay all mortgage registry tax, if any, and the cost of recording the Deed.

4. Sale to be "As Is"; Seller's Express Representations. With the exception of the representations expressly set forth herein, the Property will, on the Date of Closing, be transferred "as is", without warranty or representation of any kind or character, including without limitation any representations as to physical condition, value, compliance of legal requirements, or absence of toxic or hazardous substances. **WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** The Buyer acknowledges and represents to the Seller that it (a) is knowledgeable in real estate generally, (b) has made (or will make prior to the Closing Date) such inspections of the Property as it deems appropriate, and (c) has not received any warranties or representations of any kind, whether written or oral, except for the representations expressly set forth herein.

The Seller expressly represents and warrants to the Buyer as follows:

a. Authority. The execution and delivery of this Agreement by Seller and the consummation by Seller of the transaction contemplated by this Agreement are within Seller's capacity, and all requisite action has been taken to make this Agreement valid and binding on Seller in accordance with its terms. No consent approval, or notice to, any third party is required by or with respect to Seller in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The individuals signing this Agreement on behalf of Seller are fully authorized and empowered to sign this Agreement on Seller's behalf. Upon execution, this Agreement will be fully binding upon Seller.

b. Litigation. There are not, and on the Closing Date there will not be, any litigation, condemnation, claim, action or cause of action, lawsuit or proceeding against Seller or the Property or affecting the Property or the transaction contemplated by this Agreement, or proceeding of any kind pending, or threatened in writing by notice, against any portion of the Property, and to Seller's actual knowledge, there are no facts, events or circumstances by reason of which any such action, lawsuit or proceeding may be brought.

c. Rights of Others. There are no leases, licenses, or other rights of possession, and no rights of first refusal or options granted or belonging to any other person to occupy or purchase the Property.

d. Wells. Except as disclosed in the Records, Seller has no actual knowledge of any wells or aboveground or underground storage tanks located in or about the Property. Seller has no actual knowledge of any individual sewage treatment system on or serving the Property.

e. Methamphetamine Production. That Seller's actual knowledge, methamphetamine production has not occurred on the Property.

f. Hazardous Materials. To Seller's actual knowledge, Seller has disclosed and made available to Buyer all reports and investigations commissioned by or otherwise readily available to Seller relating to Hazardous Substances and the Property. "Hazardous Substances" means toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents and such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601-9657, as amended ("CERCLA"))

g. Property Condition Reports. To Seller's actual knowledge, Seller has disclosed and made available to Buyer all reports and investigations commissioned by or otherwise readily available to Seller related the condition of the Property, including but not limited to, any outstanding maintenance, repairs or scheduled replacements of building systems and equipment.

The foregoing representations and warranties herein shall survive the Closing for a period of twelve (12) months.

5. Buyer's Conditions to Closing. Notwithstanding anything in the foregoing to the contrary, unless expressly waived by Buyer in writing, Buyer's obligation to purchase the Property shall be subject to and contingent upon only the following:

a. Representations and Warranties. The representations, warranties and covenants of the Seller contained in this Agreement must be true as of the Effective Date and on the Closing Date as if made on the Closing Date.

b. Title. Seller must provide good and marketable title that is insurable under a title insurance policy, and which is not subject to any liens or encumbrances determined to be objectionable by Buyer.

If any of the foregoing conditions are not satisfied, Buyer shall have the right to terminate this Agreement by written notice to Seller on or before the Closing Date. Following termination, neither party shall have any further obligations hereunder, except those made to survive such termination under the terms of this Agreement.

6. Breach by Seller. If Seller fails to fully and timely perform any of its obligations hereunder, and such failure continues for three (3) day after receipt of written notice from Buyer, then Buyer may, as its sole remedies, at its option, either: (a) terminate this Agreement by written notice delivered to Seller or (b) enforce specific performance of this Agreement; provided,

however, that any action for specific performance must be commenced within sixty (60) days from the breach of this Agreement by Seller, and if no such action has been brought by such date, the right to bring such an action shall be deemed to have been waived by Buyer.

7. Breach by Buyer. If Buyer fails to fully perform any of its obligations hereunder, and such failure continues for three (3) days after receipt of written notice from Seller pursuant to Minnesota Statutes § 559.21, then Seller, as its sole and exclusive remedy for such default, terminate this Agreement by written notice delivered to Buyer.

8. Real Estate Commissions. The Seller represents to the Buyer that the Seller has retained CBRE, Inc. as its broker in connection with this transaction pursuant to a separate written agreement. Seller is solely responsible for payment of any commissions or other fees owed to its broker for this sale.

9. Risk of Loss. Risk of loss to the Property shall be borne by Seller until the Closing Date. In the event that any part of the Property is destroyed or damaged between the Effective Date and the Closing Date, Seller shall immediately give notice to Buyer of such fact and Buyer may, at Buyer's option to be exercised by Buyer within five (5) business days of Buyer's receipt of written notice from Seller of such damage or destruction (a) terminate this Agreement, in which event both Buyer and Seller shall be released from all obligations hereunder, or (b) proceed with the purchase of the Property, with either (i) a reduction in the Purchase Price commensurate with the damage to the Property, as may be agreed to by the parties hereto, or (ii) an assignment of the insurance proceeds. If Buyer fails to exercise either option within said five (5) business day period, then Buyer shall be deemed to have elected to terminate this Agreement. If Buyer chooses to proceed, but the parties are unable to agree upon a modified Purchase Price or assignment of the insurance proceeds following a minimum of three (3) days of good-faith negotiation following the date on which Buyer provides notice to Seller of Buyer's intent to proceed with the transaction, then this Agreement shall be deemed terminated, and the parties shall have no further obligation under this Agreement.

10. Operation Prior to Closing. During the period from the Effective Date to the Closing Date (the "Executory Period"), Seller shall operate and maintain the Property in the ordinary course of business in accordance with prudent, reasonable business standards, including the maintenance of adequate liability insurance and insurance against loss by fire, windstorm and other hazards, casualties and contingencies, including vandalism and malicious mischief in amounts currently maintained. However, Seller shall execute no contracts, leases or other agreements regarding the Property during the Executory Period that are not terminable on or before the Closing Date, without the prior written consent of Buyer, which shall not be unreasonably withheld.

11. Notice. Any notice to be given or served upon any party hereto in connection with this Agreement must be in writing, and delivered to the other party (a) in person; (b) by email, followed by nationally-recognized overnight delivery service; (c) by a nationally recognized overnight delivery service; or (d) by certified mail, return receipt requested. If notice is given in person or via email, notice is deemed to have been given when personal delivery was received by the party or when the email was transmitted (unless such email was delivered after 4:00 p.m. central time, in which case notice shall be deemed given on the following business day). If notice

is given by a nationally recognized overnight delivery service, notice is deemed to have been given the business day following delivery to the delivery service of such notice. If notice is given by certified mail, notice is deemed to have been given three (3) days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail. Notices should be sent to the parties at the following addresses:

If to the Buyer:

Minnesota Department of Administration  
Real Estate and Construction Services  
50 Sherburne Avenue, Room 309  
St. Paul, MN 55155

If to the Seller:

BIX PRODUCE COMPANY, LLC  
Attn: Alejandro Montoya  
3060 Centerville Road  
Little Canada, MN 55117  
Email: AMontoya@bixproduce.com

With a copy to:

BALLARD SPAHR LLP  
Attn: Laura L. Krenz  
2000 IDS Center  
80 S. 8th Street  
Minneapolis MN 55402  
Email: krenzl@ballardspahr.com

12. Assignment. Neither Seller or Buyer may assign this Agreement without the prior written consent of the other party, which shall not be unreasonable withheld, conditioned or delayed. No assignment by either party shall relieve the assigning party of its obligations hereunder.

13. Entire Agreement. This Agreement embodies the entire agreement between the parties and cannot be varied, except by the written agreement of the parties. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

14. Attorneys' Fees; Costs; Venue. Each party shall bear its own costs, expenses, and attorneys' fees with respect to this Agreement, except as may otherwise be provided for by law. Venue is proper in Ramsey County, Minnesota, the county in which the Property is located and each party submits to the jurisdiction of such court located within Ramsey County, Minnesota.

15. Counterparts and Electronic Signature. This Agreement may be executed in several counterparts, each of which and all together will constitute this Agreement in its entirety. A counterpart of this Agreement or any amendment thereto executed by a party and delivered to the other party via email, telecopier, or other electronic means on this Agreement will be as binding and enforceable against the signatory as an original signature.

16. Headings. The headings contained in this Agreement are for reference purposes only and do not in any way affect the meaning or interpretation hereof.

17. Dates. Time is of the essence with respect to this Agreement. If the final day of a period or date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance will be deemed to fall on the next day which is not a Saturday, Sunday or legal holiday.

18. Enforceability. If any provision of this Agreement is adjudged to be invalid or unenforceable by a court of competent jurisdiction, this Agreement should be construed as if such invalid or unenforceable provision had not been inserted herein and should not affect the validity or enforceability of the remainder of this Agreement.

19. No Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns. Furthermore, nothing in this Agreement is intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

20. Construction. All of the parties to this Agreement have participated freely in the negotiations and preparation hereof. Accordingly, this Agreement should not be construed more strictly against any one of the parties.

21. Choice of Law. This Agreement is governed by and construed in accordance with the laws of the State of Minnesota.

22. Recitals. The above Recitals are incorporated herein by reference and made a part of this Agreement.

23. Binding. The persons executing this Agreement each represents that he or she has full authority to bind the Seller or Buyer, as the case may be, to this Agreement, and that this Agreement has been by him or her duly and validly executed and delivered and is the binding obligation of the Seller or the Buyer, respectively, enforceable in accordance with its terms.

24. State Audits. Pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5, the books, records, documents, and accounting procedures and practices of the Seller pertaining to the Property and relevant to this Agreement shall be subject to examination by the Buyer and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.

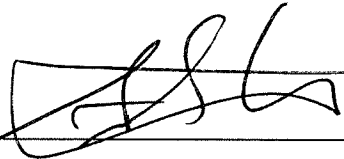


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IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**SELLER:**

**BIX PRODUCE COMPANY, LLC**

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

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

Date: May 15, 2020 \_\_\_\_\_

**BUYER:**

STATE OF MINNESOTA, ACTING BY AND  
THROUGH ITS COMMISSIONER  
ADMINISTRATION

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

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

Date: \_\_\_\_\_

*[Signature Page to Real Estate Purchase Agreement]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**SELLER:**

**BIX PRODUCE COMPANY, LLC**

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

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

Date: \_\_\_\_\_

**BUYER:**

STATE OF MINNESOTA, ACTING BY AND  
THROUGH ITS COMMISSIONER  
ADMINISTRATION

By: APBurtis, Dan

Its: Commissioner of Administration

Date: 05.15.2020

EXHIBIT A

Legal Description

Lot 1, Block 1, Arlington Business Park, Ramsey County, Minnesota

PID: 192922420018