

## POUCHTEC INC. DEVELOPMENT AGREEMENT

**THIS AGREEMENT**, made as of \_\_\_\_\_, 2016, by and between **THE CITY OF FOLEY, MINNESOTA**, a public body corporate and politic (hereinafter referred to as the “City”) and **POUCHTEC INDUSTRIES, LLC**, a Delaware limited liability company (“Developer”).

### **RECITALS:**

A. The Developer owns the property described in **Exhibit A** (“Existing Property”) and holds a conditional use permit for its current operation on the Existing Property. The Developer has presented the City with a proposal for the purchase of property located within and owned by the City of Foley, the legal description of which is attached hereto as **Exhibit B** (“Property”), to construct a two phase, 51,000 square foot expansion to Developer’s existing building for the manufacturing and warehousing of food products in flexible packaging (“Addition”) as shown in the site plans as may be modified and approved by the City, attached as **Exhibit C** (“Site Plan”).

B. Developer’s proposal includes the purchase of land from the City, a vacated portion of 4<sup>th</sup> Ave. W., and the acquisition of certain vacated right of way if it becomes available from Benton County (“Additional Property”).

C. The Developer wishes to amend its existing conditional use permit to allow for the expansion.

D. The Developer requests a variance from the parking lot standards due to the location of an underground pipeline. Developer also requests a variance from certain setbacks in the event that the vacated right of way is not immediately available or cannot be acquired.

**NOW, THEREFORE**, in consideration of the mutual obligations contained herein, the City and the Developer agree as follows:

### **ARTICLE I** **Definitions**

**Section 1.1. Generally.** In this Agreement the Terms have the following definitions, unless the context indicates a different meaning.

- (a) The “City.” means the City of Foley, Minnesota, a public body corporate and political.
- (b) The “Developer” means PouchTec Industries, LLC.
- (c) The “Property” means the real property described in **Exhibit B**.

(d) The “Addition” means the Developer’s proposed 51,000 square foot food manufacturing facility as shown in **Exhibit C**. The Addition is planned to be constructed in two phases with the first phase consisting of 10,800 square feet of material handling space (“Phase I”) and the second phase consisting of 37,800 square feet of warehouse and production space (“Phase II”).

(e) “Unavoidable Delays” means delays outside of the control of the Developer which are the direct result of strikes, acts of God, other labor troubles, fire or other casualty to the Addition, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

## **ARTICLE II** **Development Proposal**

### **Section 1. Developer to Construct Improvements.**

(a) Developer anticipates that the Addition shall be substantially completed by December 31, 2017.

(b) All work with respect to the Addition to be constructed or provided for by the Developer on the Property shall be in conformity with the Site Plan as submitted by the Developer and approved by the City. Until the Addition has been completed, the Developer shall make progress reports, in such detail and at such times as may reasonably be requested by the City.

**Section 2. Term of Agreement.** This Agreement shall run with the land and shall bind the parties’ successors and assigns.

## **ARTICLE III** **Sale of Property**

### **Section 1. Purchase.**

(a) The City agrees to sell the Property to Developer under the terms of the purchase agreement attached as **Exhibit D** (the “Purchase Agreement”). The purchase price shall be \$38,750 ( 1.55 acres x \$25,000 per acre)

(b) The City also agrees to pursue the acquisition of vacated right of way from Highway 23, the Additional Property, from Benton County, for conveyance to Developer. There is presently no legal description of the Additional Property. The City, in its sole discretion, shall determine the exact amount of Additional Property is conveyed to the Developer if the Additional Property is acquired from Benton County. Such acquisition, if possible, shall be at the \$25,000 per acre price.

(c) City and Developer anticipate closing on the sale of the Property on January 1, 2017.

(d) In the event that Developer does not undertake Phase II by December 31, 2018, the Property shall re-vest in the City pursuant to the reverter in the deed conveying the Property. the City shall use its best efforts to resell the Property as soon and in such manner as the City, in its sole discretion, finds reasonable. Upon such resale of the Property, the proceeds thereof shall be applied:

- i. First, to reimburse the City for all costs and expenses incurred by the City in taking the Property back and reselling it; and;
- ii. Second, to reimburse the Developer up to the amount equal to: (1) the sum of the purchase price and cash actually invested by Developer in improving the Property; and
- iii. Any balance remaining after such reimbursements shall be paid to the City.

**Section 2. Annexation.** Municipal services are imperative to Developer’s business and tax base development is essential for long-term growth of the City, so the Parties agree that any Additional Property acquired by Developer shall be promptly annexed into the city limits of Foley upon Developer acquiring ownership.

#### **ARTICLE IV** **Conditional Use Permit**

**Section 1. Existing Permit.** Developer currently holds a conditional use permit for its existing operation as attached in **Exhibit E** (“Existing Permit”). Material compliance with the Existing Permit is a condition of this Agreement.

**Section 2. Amended Permit.** Developer’s expansion of its existing operation requires amendment of the Existing Permit to include the Property (“Amended Permit”). The expansion of the existing operation and the issuance of variances may necessitate additional terms and conditions in the Amended Permit. Further amendment may be necessary to include the Additional Property if conveyed to the Developer. Issuance of the Amended Permit requires compliance with City’s zoning ordinance, including application, review by the Foley Planning Commission, notice to the public, and a public hearing.

#### **ARTICLE V** **Variance**

**Section 1. Parking.** An underground pipeline crosses the Property to the west of the Addition. The existence of the pipeline easement makes it impractical to pave the area due to the pipeline company’s regular use of the area, which would occasionally require removal of pavement. Developer has requested a variance from the hard surface requirements of Section 7 Subdivision 3 of the Foley zoning ordinance for the western portion of the parking lot as shown on the Site Plan. The area will be surfaced with crushed granite and will not serve customers. If the property were zoned Industrial, the crushed granite would be permitted and a variance would not be necessary.

**Section 2. Setbacks.** Due to the configuration of the vacated right of way for Highway 23, the Property has an angled lot line that awkwardly aligns with Highway 23. Developer has requested a variance of approximately 7 feet from the 20 foot rear yard setback requirements of Section 16 Subdivision 5.2.C. of the Foley zoning ordinance as shown on the Site Plan. If Developer acquires the Additional Property, the variance will not be necessary.

**Section 3. Driveway Width.** Due to the configuration and number of loading docks on the Addition and close proximity to Glen Street, and to avoid multiple driveways a variance to driveway width is requested. Developer has requested a 100 foot wide driveway, which is a variance from the 30 foot driveway width requirements of Section 7 Subd. 3 of the Foley zoning ordinance as shown on the Site Plan. There are a number of similarly wide driveways at commercial and industrial facilities within the industrial park that have not caused traffic or safety concerns.

## **ARTICLE VI** **Unified Site**

**Section 1. Site Conditions.** Upon completing the sale of the Property and any Additional Property, Developer's full site will consist of several legal parcels; part of the site will lie within the TIF district and part of it will not; the site will include land from multiple plats; a significant and restrictive pipeline easement encumbers the site; for development purposes, part of the site is functionally severed by the pipeline easement; and development of the site as proposed in the Site Plan will result in buildings being built across lot lines. Typically these conditions would require the combination of parcels or replatting. However, the boundaries of the TIF district make these options impractical if not impossible.

**Section 2. Declaration of Restriction.** In order to address the site conditions in Article V Section 1 above, the City requires that the Developer execute and record a declaration of restriction substantially similar in form to **Exhibit F** requiring that Developer's full site shall be considered one parcel for resale and shall not be conveyed independently unless replatted or as otherwise approved by the City.

**Section 3. Construction Across Lines.** Developer agrees to indemnify and hold the City of Foley and its agents, including Nancy Scott and AllSpec Services, LLC, harmless from any and all claims arising out of the construction of the Addition across lot lines or tax parcels lines.

**Section 4. Annexation.** Developer agrees to seek annexation of any portion of Additional Property that lies outside of Foley's city limits, or cooperate with the City on annexation of Additional Property prior to conveyance to the Developer.

## **ARTICLE VII** **Municipal Improvements**

**Section 1. Sewer.** City sewer services are a critical component of the project.

(a) Permit. Developer is subject to an Interim Industrial Wastewater Discharge Permit (“Discharge Permit”). The Discharge Permit must be amended to accommodate Developer’s expansion prior to the issuance of a certificate of occupancy for the Addition. The revised Discharge Permit must address the increased volume of discharge and monitoring for phosphorus; a draft of the revised Discharge Permit is attached as Exhibit G (“Amended Discharge Permit”). Upon completion of the City’s permitting process through the Minnesota Pollution Control Agency for the City’s treatment facility, the Amended Discharge Permit shall be further extended or amended.

(b) SAC. A Sewer Access Charge (“SAC”) must be paid by Developer at the time of issuance of a building permit. The SAC amount shall be \$30,600 based on estimated additional sewer usage resulting from the Addition. \$15,300 shall be payable with Phase I building permit, and \$15,300 shall be payable with Phase II building permit.

**Section 2. Water.** A Water Access Charge (“WAC”) must be paid by Developer at the time of issuance of a building permit. The SAC amount shall be \$76,650 based on estimated additional water usage resulting from the Addition. \$38,325 shall be payable with Phase I building permit, and \$38,325 shall be payable with Phase II building permit.

**Section 3. Stormwater.** Developer shall be responsible for cleaning, dredging, and maintenance of any storm water improvements on the Property, at Developer’s sole cost and expense. The scope and nature of the cleaning, dredging, and maintenance will be that which is reasonably necessary for the adequate and efficient operation in conjunction with the Property and City’s storm sewer system.

**Section 4. Damage to Infrastructure.** Developer understands and acknowledges that it is responsible for all damage to streets, sidewalks, curbs, gutters, and storm sewers that results from development on the Property, including without limitation, the installation of the improvements and the construction of structures and parking areas within the Property. In the event the City determines, in its sole discretion, that repairs must be made, the Developer will be given ten (10) days written notice. If the Developer fails to make the repairs within the ten (10) day time period, the City may: 1) withhold all approvals related to the Property; 2) withhold all approvals related to the affected area of the Property; 3) make the necessary repairs, the cost of which Developer agrees to reimburse to the City; or 4) draw upon any security posted by the Developer with the City to affect the repairs in the manner it deems expedient.

## **ARTICLE VIII**

### **Approval of the Site Plan**

#### **Section 1. Site Plan Approval.**

(a) The Developer will submit site plans for the construction of the Addition on the Property to the City. Developer shall not begin construction until the City has approved the Site Plan. No approval by the City under this Section will relieve the Developer of its obligation to comply with the terms of this Agreement, applicable federal, state or local laws or regulations, or to construct the Site Improvements. No approval by the City shall constitute a waiver of an

Event of Default. Developer shall comply with all conditions of approval for the Site Plan. If the City rejects the site plans in whole or in part, the Developer shall submit new or corrected site plans within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected site plan shall continue to apply until this Agreement is terminated. The City's approval shall not be unreasonably withheld.

(b) If the Developer desires to make any material change to the Site Plan after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the Site Plan, as modified by the proposed change, conform to the requirements of this Section with respect to such previously approved site plans, the City shall approve the proposed change and notify the Developer in writing of its approval.

## **ARTICLE IX**

### **Representations and Warranties**

**Section 1. Representations and Warranties by the Developer.** The Developer represents and warrants to the City that:

(a) PouchTec Industries, LLC, is a Delaware limited liability company, and is in good standing under the laws of the state of which it is incorporated and with the Minnesota Secretary of State; are not in violation of any provisions of their governing documents or the state or federal laws; have the power to enter into this Agreement and to perform their obligations under this Agreement; have duly authorized the execution, delivery and performance of this Agreement; and neither the execution and fulfillment of this Agreement results in a breach of the terms of any restriction or other agreement Developer may be a party to.

(b) Developer will construct the Addition in accordance with the terms of this Agreement, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations). The Developer has received no notice or communication from any local, state or federal official that the activities of the Developer or the City may be or will be in violation of any law or regulation. To Developer's knowledge, the Developer is not aware of any facts which would cause the Property to be in violation of any local, state or federal law, regulation or review procedure.

(c) Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Site Improvements may be lawfully constructed.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions or any company restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(e) The Developer will cooperate with the City with respect to any litigation commenced with respect to this Agreement, the sale of the Property, or the development of the Addition.

(f) The Developer shall pay, on time, any and all obligations to the City, including but not limited to real property taxes payable with respect to the Property and all other real estate within the City owned by Developer.

(g) The Developer shall, at all times, ensure that the Property and use of the Property complies with all City ordinances including but not limited to the City's zoning, storm water, sewer discharge, and nuisance ordinances.

(h) Developer acknowledges that Developer is responsible for all costs associated with utility connections, SAC, WAC, storm water improvements, extension of electricity, phone, and gas.

(i) None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement. The obligations relating to the construction and maintenance of the Addition shall run with the land and bind the Developer's successors and assigns.

## ARTICLE X

### **Release, Indemnification and Insurance**

#### **Section 1. Release, Indemnification, and Insurance.**

(a) The Developer releases from and covenants and agrees, that the City of Foley and the governing body members, officers, agents, and employees shall not be liable for and agrees to indemnify, defend, and hold harmless the City of Foley and its governing body members, officers, agents, and employees against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Addition or Site Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to indemnify, defend and hold harmless the City of Foley and the governing body members, officers, agents, consultants and employees thereof from any claim, demand, suit, action or other proceeding whatsoever by any person or entity, including Developer and Developer's agents and employees, whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Addition and Site Improvements or negligent or intentional acts of any person (with the exception of intentional or negligent acts of one of the above named indemnities).

**ARTICLE XI**  
**Events of Default**

**Section 1. Events of Default Defined.** The term "Event of Default" means any failure by the Developer to observe or perform any covenant, condition, obligation or agreement on its part, including the failure to timely pay all necessary taxes or the failure to complete the development proposal outlined in this Agreement, to be observed or performed hereunder or any other agreement Developer may have with the City or the City of Foley Economic Development Authority.

**Section 2. Remedies on Default.** Whenever any Event of Default occurs, the City may: (i) immediately suspend its performance under this Agreement, until it receives assurances from the Developer, deemed adequate by the City in its sole discretion, that the Developer will cure its default and continue its performance under this Agreement; and (ii) take any one or more of the following actions after providing thirty (30) days written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days:

- (a) Terminate this Agreement;
- (b) Withhold a building permit, certificate of occupancy, the Certificate of Completion, or any other City approval; and
- (c) Take whatever action, including legal, equitable, and administrative action, which may appear necessary or desirable to the City to collect any payments due under this Agreement or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement or any other agreement Developer may have with the City or the City of Foley Economic Development Authority.

**Section 3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided in this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article.

**Section 4. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

**ARTICLE XII**  
**Additional Provisions**

**Section 1. Equal Employment Opportunity.** The Developer, for itself and its successors and assigns, agrees that during the construction of the Site Improvements provided for in the Agreement it will comply with all applicable federal, state and local equal employment and non-discrimination laws and regulations.

**Section 2. Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

- (a) In the case of the Developer, is addressed to or delivered personally to PouchTec Industries, LLC. at:

ATTN: Robert Jones  
PouchTec Industries, LLC  
347 Glen Street  
Foley, MN 56329

- (b) In the case of the City, is addressed to or delivered personally to the City at:

ATTN: City Administrator  
City of Foley  
P.O. Box 709,  
Foley, Minnesota 56329

with a copy to:

Foley City Attorney  
c/o Rinke Noonan  
P.O. Box 1497  
St. Cloud, MN 56302-1497

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

**Section 3. Disclaimer of Relationships.** The Developer acknowledges that nothing contained in this Agreement nor any act of or by the City or the Developer will be deemed or construed by the Developer or by any third party to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City and the Developer.

**Section 4. Counterparts and Modification.** This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument. This Agreement may not be amended or modified except upon a written document approved by the Foley City Council and signed by the City and Developer.

**Section 5. Enforcement.** Whenever any Event of Default occurs and the non-defaulting party shall employ attorneys or incur other expenses, for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, the defaulting party agrees that it will, within ten (10) days of written demand, pay to the non-defaulting all such fees and expenses incurred by the non-defaulting party.

**Section 6. City Costs.** The Developer shall pay all costs incurred by it or the City, including, but not limited to, legal, planning, engineering, and inspection expenses, in connection with the development, approval, and acceptance of the zoning, annexation and permitting of the Property, review of construction plans and documents, the preparation of this Agreement, as well as other required agreements, and all costs and expenses incurred by the City in monitoring and inspecting the construction of the Addition. Developer shall pay in full all bills submitted by the City for obligations incurred under this Agreement within thirty (30) days of submission to Developer. Failure to remit payment within thirty (30) days shall constitute a default of this Agreement.

**Section 7. Application Fee.** Developer has provided a \$5,000 application fee to secure future payment to the City for its costs related to this Agreement. In the event that such fees exceed \$5,000, the Developer shall be responsible to the City for the difference.

**Section 8. Rinke Noonan Represents City.** Rinke Noonan represents the City in negotiation and drafting of this Agreement. Developer is hereby advised to seek independent representation from a law firm other than Rinke Noonan to review and advise Developer as to the terms and ramifications of this Agreement.

**Section 9. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota. Any legal action arising out of this Agreement shall be venued in Benton County District Court unless a change in venue is agreed to by the City.

**Section 10. Judicial Interpretation.** Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

**Section 11. Record with the Benton County Recorder.** This Agreement shall be recorded with the Benton County Recorder. This Agreement binds the Developer and all successors and assigns until terminated.



STATE OF MINNESOTA )  
 ) SS  
COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Robert Barbian, the City Administrator for the City of Foley, Minnesota, on behalf of the City.

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

STATE OF MINNESOTA        )  
  )  SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public for this County, personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he/she is \_\_\_\_\_ of PouchTec Industries, LLC, and that this instrument was signed on behalf of said limited liability company by authority of its Members and acknowledged said instrument to be the free act and deed of said limited liability company.

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

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
File No. 04313-0241

## **EXHIBIT A to Development Agreement**

### **“Existing Property Legal Description”**

Lots 1, 2, 3, 4, Block 2, Foley Industrial Park, according to the plat thereof, on file and of record in the office of the County Recorder, Benton County, Minnesota, and that part of Lot 5, said Block 2 that lies Southwesterly of the following described line: Commencing at the most Southerly corner of said Lot 5; thence Northeasterly along the Southeasterly line of said Lot 5, a distance of 78.06 feet to the actual point of beginning of the line to be described, thence Northwesterly to a point on the Northwesterly line of said Lot 5, 84.86 feet Northeasterly of the Northwest corner of said Lot 5 and said line terminating thereat in and for Benton County, Minnesota.

**(Tax PID 130067000)**

## **EXHIBIT B to Development Agreement**

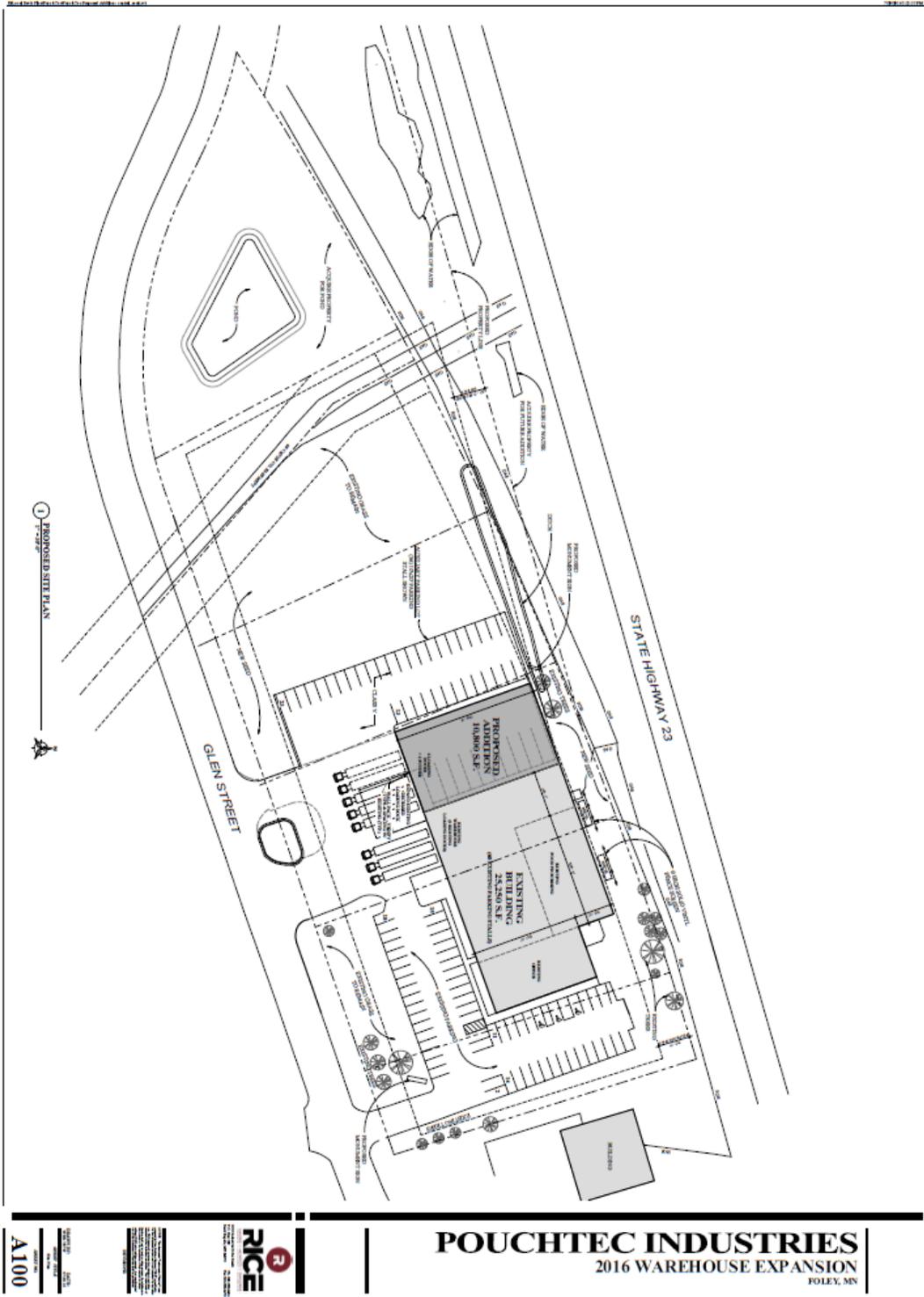
### **“Purchase Property Legal Description”**

<need confirmed legal descriptions> <That part of Lot 3 Block 1, Foley Industrial Park, less and except MnDOT right of way plat #\_ Parcel \_; together with vacated 4<sup>th</sup> Ave. W>

**(Tax PID 130066900; portion of 4<sup>th</sup> Ave. W. to be vacated)**

# EXHIBIT C to Development Agreement

## “Site Plan”



**EXHIBIT D to Development Agreement**

**“Vacant Land Purchase Agreement”**

## VACANT LAND PURCHASE AGREEMENT

1. **PARTIES.** This Purchase Agreement is made on \_\_\_\_\_, 2016, by and between the **City of Foley, Minnesota**, a public body corporate and politic under the laws of Minnesota (“SELLER”), and **PouchTec Industries LLC**, a Delaware limited liability company (“BUYER”).

2. **OFFER/ACCEPTANCE.** Buyer offers to purchase and Seller agrees to sell real property (the “Property”) located in Benton County, Minnesota, legally described as:

See attached **Exhibit 1**.

3. **PRICE AND TERMS.** The price for the Property included in this sale is \$**52,000.00** as provided in the Development Agreement dated \_\_\_\_\_, 2016. Buyer and seller anticipate closing on the sale of the Property on January 1, 2017.

4. **DEED/MARKETABLE TITLE.** Upon performance by Buyer, Seller shall execute and deliver a Quit Claim Deed (the “Deed”) conveying marketable title in substantially the same form as attached in **Exhibit 2**, subject to:

- (A) Building and zoning laws, ordinances, state and federal regulations;
- (B) Restrictions relating to use or improvement of the property without effective forfeiture provisions;
- (C) Reservation of any mineral rights by the State of Minnesota;
- (D) Utility and drainage easements which do not interfere with existing improvements; and
- (E) The following exceptions to title which constitute encumbrances or restrictions which have been disclosed to Buyer and accepted by Buyer in this Purchase Agreement: Development Agreement dated \_\_\_\_\_, 2016.

5. **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** Real estate taxes due and payable in and for the year of closing shall be prorated between Seller and Buyer on a calendar year basis to the actual DATE OF CLOSING. Buyer shall pay real estate taxes due and payable in the year following closing and thereafter.

**BUYER SHALL** pay all other special assessments levied or pending after the DATE OF CLOSING. The Buyer shall pay all SAC (\$30,600), WAC (\$76,650), **building permit (\$<>)** and other such fees charged by the City relating to the Improvements.

**SELLER SHALL PAY ON DATE OF CLOSING** any deferred or delinquent real estate taxes or special assessments.

**6. CONDITION OF PROPERTY.** Buyer shall have the right to have inspections of the Property conducted prior to closing. Seller does not plan to have the property inspected. Other than the representations made in this paragraph, the Property is being sold “AS IS” with no express or implied representations or warranties by Seller as to fitness for any particular purpose.

**7. TIME IS OF THE ESSENCE FOR ALL PROVISIONS OF THIS CONTRACT.**

**8. POSSESSION.** Seller shall deliver possession of the Property not later than the DATE OF CLOSING.

**9. STATE DEED TAX AND CLOSING COSTS.** Seller shall pay: (1) all state deed tax regarding the Deed to be delivered by Seller under this Agreement; (2) one-half of the closing fee; and (3) all recording costs necessary to place record title in Seller.

Buyer shall pay: (1) one-half of the closing fee; (2) premium for title insurance or cost of an attorney’s opinion obtained by Buyer; (3) inspection costs; and (4) all recording costs not paid by Seller.

**10. TITLE EXAMINATION.** Title Examination will be conducted as follows:

- (A) **Seller’s Title Evidence.** Seller shall, within 30 days after the date of this Agreement, furnish the following (“Title Evidence”) to Buyer: a commitment (“Title Commitment”) for an ALTA Form Owner’s Policy of Title Insurance insuring title to the Property, in the amount of the Purchase Price, issued by Commercial Partners Title, LLC (“Title Company”). The Title Commitment will commit the Title Company to insure title to the Property.
- (B) **Buyer’s Objection.** Within 10 days after receiving the last of the Title Evidence, Buyer will make written objections (“Objections”) to the form or contents of the Title Evidence. Seller will have 60 days after receipt of the Objections to cure the Objections, during which period the DATE OF CLOSING will be postponed as necessary. Seller shall use its best efforts to correct any Objections. To the extent an Objection can be satisfied by the payment of money, Buyer shall have the right to apply a portion of the cash payable to Seller at the DATE OF CLOSING to satisfaction of such Objection and the amount so applied shall reduce the amount of cash payable to Seller at the Closing. If the Objections are not cured within such 60 day period, Buyer will have the option to do any of the following:
  - (1) Terminate this Agreement and receive a refund of the Earnest Money; or
  - (2) Proceed to Closing and waive the Objections.

**11. NOTICES.** All notices required herein shall be in writing and delivered personally or mailed to the address below. If mailed, the notice will be effective as of the date of mailing.

**If to Seller:** City of Foley  
Attn: City Administrator  
P.O. Box 709  
Foley, MN 56329

**If to Buyer:** PouchTec Industries LLC  
Attn: Robert Jones  
347 Glen Street  
Foley, MN 56329

**With Copy to:** Rinke Noonan  
Attn: Adam Ripple  
P.O. 1497  
St. Cloud, MN 56302

**12. BUYER'S REPRESENTATIONS AND WARRANTIES.**

- (A) Organization. Buyer represents and warrants to the City that Buyer is qualified to do business in Minnesota, has the requisite power and authority to enter into and perform this Agreement. Buyer's execution, delivery and performance of this Agreement will not conflict with or result in a violation of any contract or court judgment or order to which Buyer is a part.
- (B) Financial Ability. The Buyer, at least 10 days prior to the DATE OF CLOSING, shall demonstrate Buyer's ability to perform under the Development Agreement dated \_\_\_\_\_, 2016 by providing a written financial commitment sufficient to purchase the Property.
- (C) No Land Speculation. The Buyer is purchasing the Property to develop the Property as provided in this Agreement and not for speculation in land holding.

**13. MINNESOTA LAW.** This Agreement shall be governed by the laws of the State of Minnesota.

**14. WELLS/STORAGE TANKS/SEWAGE SYSTEM DISCLOSURES.** To the best knowledge of Seller, no above ground or underground tanks, are located in or about the Property, or have been located under, in or about the Property and have subsequently been removed or filled. To the best knowledge of Seller, there are no known wells within the meaning of Minn. Stat. §103I.005 on the Property. To the best knowledge of Seller, there are no individual sewage systems on or serving the Property. Seller has disclosed to Buyer all environmental reports and studies with respect to the Property which are in Seller's possession. Seller is not aware of any methamphetamine production that has occurred on the Property.

**15. CANCELLATION BY EITHER PARTY FOR CONTAMINATION.** Buyer or Seller, at their discretion, may cancel this sale and Purchase Agreement and Seller shall return the sum(s) paid as consideration, in the event Buyer, prior to the closing hereunder, obtains at Buyer's expense soil or groundwater analyses, or other tests showing that the soil or groundwater at the Property is contaminated by hydrocarbons or other regulated or hazardous substances.

**16. RIGHT TO ENTER PROPERTY; INDEMNIFICATION; REPORTS.** Buyer shall have access to the Property for purposes of performing surveys, soil and groundwater sampling

or analyses, or engineering borings and other testing; provided, however, that Buyer shall indemnify and hold harmless Seller from and against all losses, damages, demands, claims, suits and other liabilities, including reasonable attorney fees and other expenses of litigation, because of personal or bodily injury or property damage resulting from Buyer's presence on or use of the Property for such testing. Buyer shall return the surface of the Property to substantially the same condition as before such testing, ordinary wear and tear and permanent groundwater or soil vapor monitoring wells installed during the course of such testing excepted. Buyer promptly shall deliver a copy of all such test results to Seller. Buyer is hereby authorized to report the results of any underground tank and piping tightness testing, and soil or groundwater sampling or analyses, to federal, state or local authorities having jurisdiction over the Property.

**17. REQUIREMENT THAT IMPROVEMENTS BE MADE.** Seller has agreed to sell the Property to Buyer based upon Buyer's written proposal and covenant to construct the Addition in accordance with the Development Agreement dated \_\_\_\_\_, 2016

**18. ASSIGNMENT.** Buyer will not have the right to assign its interest in this Purchase Agreement without Seller's prior, written consent.

**19. REPRESENTATION.** Rinke Noonan is representing the Seller in the preparation of this Agreement and the closing hereunder. Buyer is hereby advised to seek separate legal representation.

**20. SURVIVAL.** All provisions in this Agreement of the Development Agreement dated \_\_\_\_\_, 2016 relating to the completion of the Addition will survive the closing and delivery of the Deed.

**21. DISCLAIMER OF RELATIONSHIP.** Nothing in this Agreement, nor any act of Buyer or Seller, shall be construed by the parties of any third party to create any relationship of third party beneficiary, principal and agent, partnership, or joint venture between Buyer and Seller.

**THE CITY OF FOLEY, MINNESOTA**

By \_\_\_\_\_  
Dave Mosford, Its Mayor

ATTEST

By \_\_\_\_\_  
Robert Barbian, Its City Administrator

**POUCHTEC INDUSTRIES, LLC**

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

## **EXHIBIT 1 to Purchase Agreement**

<need confirmed legal descriptions> <That part of Lot 3 Block 1, Foley Industrial Park, less and except MnDOT right of way plat #\_ Parcel \_; together with vacated 4<sup>th</sup> Ave. W>

**(Tax PID 130066900; portion of 4<sup>th</sup> Ave. W. to be vacated)**

**EXHIBIT 2 to Purchase Agreement**

**QUIT CLAIM DEED**

No delinquent taxes and transfer entered; Certificate of Real Estate Value ( ) filed ( ) not required

Certificate of Real Estate Value No. \_\_\_\_\_

**STATE DEED TAX HEREON: \$** \_\_\_\_\_

Date: \_\_\_\_\_, 2016

**THIS DEED**, is made by the City of Foley, Minnesota (the “Grantor”), in favor of PouchTec Industries, LLC, a Delaware limited liability company (the “Grantee”).

Grantor, for good and valuable consideration the receipt whereof is hereby acknowledged, does hereby grant, bargain, quitclaim and convey to the Grantee, its successors and assigns forever, all the tract or parcel of land lying and being in the County of Benton and State of Minnesota described as follows, to-wit (such tract or parcel of land is hereinafter referred to as the “Property”):

<need confirmed legal descriptions> <That part of Lot 3 Block 1, Foley Industrial Park, less and except MnDOT right of way plat #\_ Parcel \_; together with vacated 4<sup>th</sup> Ave. W>

**(Tax PID 130066900; portion of 4<sup>th</sup> Ave. W. to be vacated)**

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging in anyway appertaining, to the said Grantee, its successors and assigns, forever,

Provided:

It is understood and agreed that this Deed is subject to the covenants, conditions, restrictions and provisions of a Development Agreement dated \_\_\_\_\_, 2016, (“Development Agreement”). This provision, however, shall in no way prevent the Grantee from mortgaging this Property in order to obtain funds for the purchase of Property hereby conveyed and for erecting improvements thereon in conformity with the Development Agreement.

It is specifically agreed that the Grantee shall promptly begin and diligently prosecute to completion of construction of the Addition, as provided for in the Development Agreement.

**IN WITNESS WHEREOF**, the Grantor has caused this Deed to be duly executed in its behalf by its Mayor and City Clerk-Administrator this \_\_\_\_\_ day of \_\_\_\_\_, 2016.



Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
File No. 04313-0241

**EXHIBIT E to Development Agreement**

**“Existing Permit”**

6-3

A 366370

Certified, Filed and/or Recorded on  
June 03, 2009 AT 03:35PM

Signed: BW  
MARILYN J NOVAK G V I  
BENTON COUNTY MINNESOTA  
MARILYN J NOVAK  
COUNTY RECORDER  
Fee Amount: \$46.00

**CITY OF FOLEY  
BENTON COUNTY, MINNESOTA**

In the Matter of:

**Application of:** PouchTec Industries, LLC  
for a Conditional Use Permit  
for Property located at: 347 Sheridan Rd., Foley, MN 56329

The above entitled matter came on to be heard before the Foley City Council on June 2, 2009, on a petition for a Conditional Use Permit pursuant to the Foley City Zoning Ordinance, for the **FOLLOWING DESCRIBED PROPERTY:**

Mailing address: 347 Sheridan Rd., Foley, MN 56329

Legally known as: See **Exhibit A**.

**FINDINGS OF FACT**

1. Applicants seek to continue to operate a food packaging operation within the B-2 Zoning District (Highway Commercial).
2. The proposed use existed previous to this application, but it is not clear if the use is a legal, non-conforming use. The City has not initiated any land use enforcement or negative action against the applicant.
3. There has been demonstrated a need for the proposed use.
4. With the noted conditions below, the proposed use is in compliance with land use regulations adopted by the City.
5. With the noted conditions below, there is no notable burden on public facilities.

Foley 28, 2008-C2007 10 12  
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PAGE 1 OF 5

City of Foley  
Bill 46

5

6. With the noted conditions below, the use will not be a detriment to the health, safety and welfare of the City.

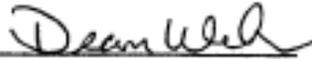
**DECISION**

**IT IS ORDERED** that the Conditional Use Permit **BE GRANTED** solely for the project described in the application for the permit, upon the following conditions:

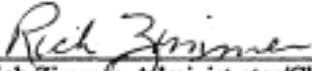
1. All zoning standards and regulations are currently being met, and the property will comply with the applicable zoning standards through the life of the Conditional Use Permit. Nothing in this condition requires a legal non-conforming use to conform to changes in the Zoning Code, if not required by law.
2. All requirements of the building code, fire code and other construction codes relevant to the property, are met and will continue to be met during the life of the Conditional Use Permit.
3. All facilities on the property have received and will continue to maintain all necessary approvals, permits, any licenses required for operation and use, as is now required by local, county, state or federal regulations, or may be required in the future.
4. The construction and use of the property shall comply with all representations of the applicant in the Conditional Use Permit submitted on March 31, 2009, and all subsequent representations to the Planning Commission and subsequent submissions to the City.
5. The facilities will meet all conditions required of this conditional use, including:
  - A. All odors, dust, smoke and similar pollutants from the operation of the business are controlled so that they do not extend beyond property boundaries;
  - B. Noise from the business operations are controlled so as to not interfere with the principal commercial retail use of the district or any adjacent residential district;
  - C. No outdoor storage;
  - D. Building and grounds are maintained so as to be aesthetically consistent with the principal commercial retail use of the district; and
  - E. Property has adequate street, approach and docking facilities for the anticipated transportation vehicles.

A 366370

Adopted by the City of Foley on June 2, 2009.

  
Dean Weber, Mayor

ATTEST:

  
Rich Zimmer, Administrator/Clerk

**THIS INSTRUMENT DRAFTED BY:**

RINKE-NOONAN (JAM)  
1015 West St. Germain Street, Ste. 300  
P.O. Box 1497  
St. Cloud, MN 56302  
(320) 251-6700

**LEGAL DESCRIPTION PROVIDED BY:**

PouchTec Industries, LLC, Applicant  
347 Sheridan Rd.  
Foley, MN 56329  
(320) 968-4868

A 366370

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

**DESCRIPTION**

Lots One (1), Two (2) Three (3), Four (4), Block Two (2), Foley Industrial Park, according to the plat thereof, on file and of record in the office of the County Recorder, Benton County, Minnesota, and that part of Lot Five (5), said Block Two (2) that lies Southwesterly of the following Described line:

Commencing at the most Southerly corner of said Lot 5; thence Northwesterly along the Southeasterly line of said Lot 5, a distance of 73.06 feet to the actual point of beginning of the line to be described; thence Northwesterly to a point on the Northwesterly line of said Lot 5, 84.16 feet Northwesterly of the Northwest corner of said Lot 5 and said line terminating thereat in and for Benton County, Minnesota.

**EXHIBIT F to Development Agreement**

**“Declaration of Restriction”**

**DECLARATION OF RESTRICTION**

This Declaration of Restrictions (“Declaration”) is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by the undersigned “Declarant”:

**WHEREAS**, the Declarant is the fee owner of the following described Property:

See attached **Exhibit A**;

**WHEREAS**, the Declarant desires to develop the Property as one unified commercial development with building located on lot lines; and

**WHEREAS**, the City of Foley has approved buildings placed over lot lines and this singular use of the Property on the condition that Property is conveyed as a single parcel and restricted by a recorded declaration of restriction.

**NOW, THEREFORE**, the Declarant make the following Declaration. The restrictions described below shall run with the land and shall be binding on all parties and all persons claiming under them:

1. The Property described in **Exhibit A** shall be considered one parcel for resale and shall not be conveyed independently unless replatted or as otherwise approved by the Foley City Council; and
2. All future subdivisions or transfers of the Property must comply with the zoning and subdivision controls of the City of Foley in effect at that time.

**IN WITNESS WHEREOF**, the Declarant has executed this Declaration on the date and year above written.

**PouchTec Industries LLC, Declarant**

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

STATE OF MINNESOTA        )  
  )  SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public for this County, personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he/she is \_\_\_\_\_ of PouchTec Industries, LLC, and that this instrument was signed on behalf of said limited liability company by authority of its Members and acknowledged said instrument to be the free act and deed of said limited liability company.

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

**THIS INSTRUMENT DRAFTED BY:**  
Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
File No. 04313-0241

## **EXHIBIT A to Declaration of Restriction**

### **(Legal Description of Property)**

Lots 1, 2, 3, 4, Block 2, Foley Industrial Park, according to the plat thereof, on file and of record in the office of the County Recorder, Benton County, Minnesota, and that part of Lot 5, said Block 2 that lies Southwesterly of the following described line: Commencing at the most Southerly corner of said Lot 5; thence Northeasterly along the Southeasterly line of said Lot 5, a distance of 78.06 feet to the actual point of beginning of the line to be described, thence Northwesterly to a point on the Northwesterly line of said Lot 5, 84.86 feet Northeasterly of the Northwest corner of said Lot 5 and said line terminating thereat in and for Benton County, Minnesota.

**AND**

<need confirmed legal descriptions> <That part of Lot 3 Block 1, Foley Industrial Park, less and except MnDOT right of way plat #\_ Parcel \_; together with vacated 4<sup>th</sup> Ave. W>

**(Tax PIDs 130067000 and 130066900; portion of 4<sup>th</sup> Ave. W. to be vacated)**

**EXHIBIT G to Development Agreement**

**“Amended Discharge Permit”**