

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
PORTLAND LAND CO., LLC
627 E 4TH STREET REVELOPMENT**

THIS AGREEMENT entered into this _____ day of _____, 2021, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, whose address is 402 City Hall, 411 West First Street, Duluth, MN 55802 (hereinafter referred to as "DEDA") and PORTLAND LAND CO., LLC, a Minnesota limited liability company, whose address is 202 East First Street, Duluth, Minnesota, 55802 (hereinafter referred to as "Developer").

WHEREAS, Developer is the fee owner of the herein after-described property located at 627 East Fourth Street, Duluth, Minnesota, and has proposed to redevelop the structure thereon into approximately sixteen (16) apartment units, not less than 100% of which will be occupied by households at 80% or less of area median income; and

WHEREAS, Developer has requested assistance from DEDA for infrastructure and other costs eligible for public financing related to the redevelopment of the Property as are set forth herein since without such assistance the redevelopment would not be economically viable; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the well-being and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the redevelopment of the site; and

WHEREAS, after careful analysis of the projected costs of the Project and of the financial resources available and economic feasibility to pay for the infrastructure and other costs related to the Project described herein, DEDA has determined that:

- A. a "gap" exists between the cost to Developer of redeveloping the Project and the funds presently available to or known to Developer and DEDA to finance those

costs at rates that would be economically feasible as hereafter described. Based on the best estimates currently available to the parties, the amount of said “gap” equals \$126,000. In order to reduce this “gap,” DEDA has committed to provide tax increment proceeds from DEDA’s pooled tax increment districts in the amount of up to One Hundred Twenty-six Thousand Dollars (\$126,000). DEDA has determined that said tax increment investment is sufficient to fill said gap; and

- B. without the tax increment assistance to be provided pursuant to this Agreement, the cost of redevelopment of the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental of the units, and the available resources would be inadequate and not economically feasible to redevelop said Project, and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be redeveloped in the foreseeable future; and
- C. the increased market value of the Property that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the Project after subtracting the present value of the projected tax increment financing.

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to enhance the economic diversity of the City and the City’s tax base; to enhance the quality of life of the City’s residents by investing in neglected neighborhoods or business areas or stimulating the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or demolition of commercial areas in the City and substandard structures; to expand the City’s tax base and realize a reasonable rate of return on the public investment; to encourage the development of safe and affordable housing for persons of low and moderate income in the City; and to achieve development on sites which would not be developed without assistance; and

WHEREAS, the Property is located in a redevelopment district within the meaning of Minnesota Statutes §469.174 et. seq.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Certificate of Completion: means a written certification executed by the Director in recordable form certifying that the construction of the Project in conformance with the Plans has been totally completed.
- B. City means the City of Duluth.
- C. Eligible Project Costs means costs of Project construction incurred by Developer which may be legally funded with TIF. The current estimate of Eligible Project Costs is \$126,000.
- D. Executive Director means the Executive Director of DEDA or such person or persons designated in writing by said Executive Director to act on behalf of him/her with regard to this Agreement or any portion thereof.
- E. Plans: means the those plans, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations for the Project necessary and appropriate for the work to be completed, and as approved pursuant to Article III below.
- F. Project means the redevelopment by Developer of a multi-family residential development with not less than sixteen (16) residential apartments, not less than 100% of which will be held for rent to households at 80% or less of area median income together with related utilities and other amenities at a total project cost of approximately \$1,083,000, all according to the plans approved by the Executive Director pursuant to Article III and pursuant to required City approvals.
- G. Property means that Property located in St. Louis County, Minnesota, described on Exhibit A.

- H. TIF: means tax increment proceeds generated in accordance with the requirements of Minnesota statutes §§ 469.174-469.1812.

ARTICLE II

Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to DEDA the following items:

- A. Title. Proof reasonably satisfactory to DEDA that Developer owns the Property in fee simple absolute.
- B. Construction Costs. A sworn construction cost statement showing that upon completion of the Project, it will have a “hard” construction cost of approximately One Million eighty three thousand and 00/100s (\$1,083,000) Dollars. The aforesaid construction cost statement shall be subject to the approval of the Executive Director, which approval shall not be unreasonably withheld.
- C. Construction Contract. A copy of the executed contract between Developer and a general contractor necessary to complete the construction of the Project in accordance with the Plans.
- D. Construction Financing. Copies of loan commitments and other financing commitments obtained by Developer for the Project, the total of said commitments and the equity contribution to be in an amount not less than the total contract price between Developer and its general contractor as described in Paragraph C above.
- E. Survey. A survey of the Property performed by a Registered Land Surveyor under the laws of the State of Minnesota.

ARTICLE III

Project Plans

- A. Plans, Specifications and Elevations. No less than thirty (30) days prior to the commencement of construction of the Project, or such lesser time as approved

by the Executive Director, Developer shall submit any working drawings and specifications for the Project together with detailed site grading, utility and landscaping plans and elevations required for construction to the Executive Director for approval. All such plans, specifications and elevations shall be in material conformance with this Agreement, with the schematic design which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. The Executive Director shall review such plans, specifications and elevations within fifteen (15) days of submission of same by Developer. The Executive Director's approval shall be provided to the Developer in writing. If the Executive Director rejects such plans, specifications and elevations in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected plans hereinafter provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved in writing by the Executive Director. The Executive Director's approval of Developer's plans, specifications and elevations shall not constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees, connected with said plans, specifications and elevations and any revisions thereto.

- B. Changes After Initial Approval. Any material or substantial changes made to plans by Developer after initial review of the Executive Director shall be submitted to the Executive Director for approval in the same manner provided for in Paragraph A above.

ARTICLE IV

Construction

- A. Construction. Upon the fulfillment of the preconditions to construction provided for in Articles II and III above, but in no event later than December 31, 2021, Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article III. Construction of the Project shall be completed, as evidenced by receipt of a Certificate of Completion as set forth in paragraph D below not later than February 1, 2023. Notwithstanding the above, the time for completion of Project construction in accordance with this Agreement may be extended for a period of up to six (6) months upon the prior written approval of the Executive Director, but only if the Executive Director is given sixty (60) days advance written notice of Developer's request for an extension.
- B. Developer to Bear All Costs. Except for payments by DEDA provided for in Article V, Developer specifically agrees to bear all costs related to the construction of the Project.
- C. Progress Reports. Until construction of the entire Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by the Executive Director as to the actual progress of Developer with respect to the Project, but no more often than monthly. Additionally, upon reasonable notice, the Developer also agrees that it will permit DEDA access to the Property during construction.
- D. Project Costs/Certificate of Completion. Promptly upon completion by Developer of the construction of the Project in accordance with this Agreement, Developer shall submit to the Executive Director written evidence in a form satisfactory to the Executive Director of Eligible Project Costs incurred and paid. Such evidence shall include, at a minimum, paid invoices, receipts, canceled checks, mechanic lien waivers or comparable evidence of payment of at least \$126,000 in Eligible Costs or such lesser amount as may be approved in writing by the Executive Director. DEDA and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Eligible Project Costs and the Project. Such records shall be kept and maintained by Developer for a period of six (6)

years following the issuance of the Certificate of Completion. Upon furnishing by Developer of said written evidence of Eligible Project Costs and upon completion by Developer of the construction of the Project in accordance with this Agreement, DEDA through its Executive Director shall furnish to Developer the Certificate of Completion in the form of that attached hereto as Exhibit B. A Certificate of Completion shall not be issued until all elements of the Project have been completed consistent with this Agreement and applicable City code and ordinances. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction obligations of Developer undertaken pursuant to this Agreement and may be recorded against the Property.

ARTICLE V

Payment Obligations

Upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article IV, DEDA agrees to reimburse Developer for the amount of the Eligible Costs as approved by the Executive Director up to the amount of One Hundred Twenty-six Thousand Dollars (\$126,000), payable from TIF District NO. 24.

ARTICLE VI

Operating Covenants

Developer agrees that in its operations and use of the Property and the Project, in accordance with commercially reasonable standards for similar projects in the Duluth region, Developer shall:

- A. **Maintenance.** At all times cause the Project and the Property to be operated and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Property and Project and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Project and the Property shall include but not be limited to maintenance of all foundations, external walls, doors,

windows, utility openings and all roofing systems as well as outside maintenance including snow removal, landscape maintenance, and all other exterior maintenance to the Property and the Project.

- B. Rental Restriction: Developer agrees and commits that, during the Term of this Agreement as set forth in Article XV below that the average rents for all apartment units in the Project will be rented to persons or families whose income is equal to or less than eighty (80%) percent of the area median income at rental rates determined to be affordable to such persons annually by the United States Department of Housing and Urban Development.
- C. Utilities. Unless disputed, pay or cause to be paid any and all charges for utilities including hook-up charges and assessments furnished to the Project and the Property, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power, as applicable.
- D. Licenses and Permits. Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Project and the Property and to be qualified to do business in the State of Minnesota.
- E. Obey All Laws. Conduct its affairs and carry on its business and operations with respect to the Project and the Property in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota, including all laws related to unlawful discrimination, and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Project and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Project and the Property.
- F. Payment of Taxes. Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Project or the Property, subject to the right to

contest in good faith in accordance with Minnesota law.

- G. Assessment Fees and Charges. Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Project and the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Project and the Property and all other charges lawfully made by any governmental body for public improvements.
- H. Obligations and Claims. Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.
- I. Continued Use. Continue use of the Project and the Property not less than sixteen (16) residential apartments, not less than 100% of which will be occupied by households at 80% or less of area median income, and provide reports evidencing the same.

ARTICLE VII

Provision Against Liens, Assignments and Transfers

- A. Provision Against Liens. Except for encumbrances permitted pursuant to this Article, the Developer shall not create or permit any mortgage or encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project or the Property or any part thereof which would materially or adversely affect DEDA's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify DEDA of its intention to do so and post such security as DEDA reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context. Notwithstanding the above, encumbrances in the nature of easements, licenses or the like, but not to include mechanic's or materialmen's lien, may be created or permitted after the issuance of a Certificate of Completion without the approval of

DEDA.

- B. Transfers prior expiration of the Continued Operations Covenant. The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Project and the Property. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the expiration of Term of this Agreement, Developer represents and agrees that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Project, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior written approval of DEDA.
- C. Permitted Encumbrances. Notwithstanding anything in this Article to the contrary, Developer is authorized, without the approval of DEDA, to obtain construction and permanent financing for the Project and to mortgage the Project and Property to provide security for the construction and permanent financing, and the Executive Director is authorized to subordinate this Agreement to such mortgaging of the Project and the Property. In addition, Developer is authorized to lease the residential units and the retail/commercial space to tenants at all times without the approval of DEDA.

ARTICLE VIII

Indemnification

- A. Generally. Developer shall, to the fullest extent permitted by law, protect,

indemnify and save DEDA and the City and their officers, agents, servants, employees and any person who controls DEDA within the meaning of the Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and also, without limitation, the construction or installation of the Project or any portion of the Project. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any material violation by Developer of any provision of this Agreement.
3. Any contract, agreement or restriction related to the Project or the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer.
4. Any material violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification. In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and the City and their officers, agents, servants and employees and any person who controls DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing in the Project or on the Property, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with

regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or on the Property, or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Property.

- C. Indemnification Procedures. Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA or the City under this Article, DEDA shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA or the City with respect to which indemnity may be sought against Developer, DEDA and the City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Developer.

ARTICLE IX

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following:

A. Insurance During Construction. Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance. Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project and the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force.
2. Public Liability Insurance. Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Insurance and Automobile Liability Insurance Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$1,500,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$1,500,000 for property damage liability. If per person limits are specified, they shall be for not less than \$1,500,000

per person and be for the same coverages. DEDA and the City shall be named as additional insureds on the Commercial General Liability Insurance and Automobile Liability Insurance policies. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions;
- f. Workers' Compensation coverage in required statutory limits.

Policy shall carry an "all states" endorsement. In addition, employers liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance. Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the Project and the Property, carried in the name of Developer as follows:

1. Property Insurance. Prior to expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$15,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer hereby waives any and all claims or causes of action against DEDA for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an

interest in the insurance proceeds payable in the event of such loss.

2. Liability Insurance. During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form in limits of not less than \$1,500,000 per occurrence for personal bodily injury and death, and limits of \$1,500,000 for property damage liability. If person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds therein. Insurance shall cover:
 - a. Public liability, including premises and operations coverage;
 - b. Independent contractors--protective contingent liability;
 - c. Personal injury;
 - d. Owned, non-owned and hired vehicles;
 - e. Contractual liability covering the indemnity obligations set forth herein;
 - f. Products--completed operations.
3. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA. Employees' liability insurance shall be carried in limits of \$100,000 per employee.

- C. Modification of Insurance Requirements. It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance

requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect.

- D. Requirements for All Insurance. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.
- E. Certifications. Developer shall be required to supply to DEDA written certifications of insurance requiring the insurer to give DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance for any reason other than non-payment of premium and ten (10) days' written notice prior to cancellation for non-payment of premium of said insurance.
- F. Reconstruction Obligation and Uninsured Loss. In the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, restoration, or construction, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.

ARTICLE X

Developer Defaults and Remedies Therefor

- A. Events of Default. The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Section B below shall be applicable.
 - 1. Developer shall fail to pay real estate taxes as and when due and payable

unless contested in good faith by Developer.

2. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of 45 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 45 day period, shall have failed to commence to cure said default within 45 days of the date of said notice and to diligently pursue the same to completion.
3. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Project or the Property, or Developer loses title to the Project or the Property or both.
4. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similar action under any present or future bankruptcy or insolvency statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

B. Remedies. DEDA shall have the following remedies in the event of a default, and after the expiration of any applicable cure periods:

1. Terminate this Agreement.

2. Withhold the performance of any obligation owed by DEDA under this Agreement.
 3. Seek and be entitled to monetary damages for any damages incurred by DEDA as a result of a default.
 4. Withhold payment under this Agreement.
 5. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
 6. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.
- C. Non-Waiver. The waiver by DEDA of any default on the part of Developer or the failure of DEDA to declare default on the part of Developer of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Developer of the same or of any other obligation of Developer under this Agreement. To be effective, any waiver of any default by Developer hereunder must be in writing by the Executive Director.
- D. Remedies Cumulative. The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- E. Attorneys' Fees. In the event that Developer is in default of any of the terms and conditions of this Agreement and DEDA shall successfully take legal action to enforce said rights herein, in addition to the foregoing, DEDA shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XI

Representations by DEDA

DEDA makes the following representations as the basis for the undertaking on its part herein contained:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law, all actions of DEDA have been taken to establish its tax increment financing districts and duly approve the grant of Available Tax Increment, and it has full power and authority to enter into this Agreement and perform all of its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any federal, state, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA will perform all of its obligations under this Agreement.

ARTICLE XII

Developer's Representations and Warranties

Developer represents and warrants that:

- A. The Developer is a Minnesota limited liability company duly organized and authorized to transact business in the State of Minnesota, it has acquired the Property and is fully competent to construct the Project thereon, it is not in violation of any provisions of its articles of organization, member control agreement, or the laws of the State of Minnesota, it has the power to enter into this Agreement, and it has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.
- B. Developer will perform all of its obligations under this Agreement. 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 of any agreement or instrument

of whatever nature to which the Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.

- C. No actions, suits, or proceedings are pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any federal, state, or municipal or other governmental agency that, if decided adversely to Developer, would have a material adverse effect upon Developer, the Property, or the Project, and Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Property or the Project.
- D. The Developer shall be responsible for constructing the Project 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, and living and prevailing wages). The 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 Project may be lawfully constructed.
- E. Developer is not in default on the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to DEDA or any third party under this Agreement to be true, correct, and complete in all material respects.
- G. 100% of the units will be held for rent to individuals and family with incomes at 80% or less of the St. Louis County median income.
- H. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be more than can be supported by the amounts that are reasonable to be charged for rent and the available resources would be inadequate and not economically feasible to construct the Project and that, therefore, but for the DEDA assistance to be provided for hereunder, the Project

would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

ARTICLE XIII

Term

The term of this Agreement shall commence on the date first shown above and shall continue for a period of 15 years from the date of the payment from DEDA to Developer as provided for in Article V above. Termination shall not terminate the indemnification provisions or any other provisions of this Agreement which by their nature survive termination and shall not terminate any other rights or remedies arising under this Agreement due to any event of default which occurred prior to such termination.

ARTICLE XIV

Agreement Personal to Parties

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to the extent assignment is permitted hereunder. This Agreement shall run with the land.

ARTICLE XV

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of DEDA: DEDA
 402 City Hall

418 West First Street
Duluth, MN 55802
Attn: Executive Director

In the case of Developer: Portland Land Co., LLC
202 E 1st St.
Duluth, MN 55802
Attn: Mike Schraepfer

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.

ARTICLE XVI

Recordation

Promptly upon execution of this Agreement, Developer agrees to record this Agreement in the offices of the St. Louis County Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of the Agreement showing the date and document number of record, or a certified copy of the filed original.

ARTICLE XVII

Disclaimer of Relationships

Developer acknowledges that nothing contained in this Agreement nor any act by the City, DEDA or the Developer shall be deemed or construed by Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between DEDA, Developer and/or any third party.

ARTICLE XVIII

Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

ARTICLE XIX

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.

ARTICLE XX

Authorization to Execute Agreement

Developer represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Developer who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

ARTICLE XXII

Title of Articles

Any title, Articles and Sections in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE XXIII

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XXIV

Unavoidable Delays

Neither party shall be held responsible for, and neither party shall be in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, labor disputes, or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

ARTICLE XXV

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

ARTICLE XXVI

Counterparts

This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(The remainder of this page intentionally left blank.)

EXHIBIT A

Legal Description of Property

That tract of land in **PORTLAND DIVISION OF DULUTH** enclosed in the following described boundary lines, to-wit:

1. The original center line of East Fourth Street as such street was dedicated by the original plat of said Portland Division of Duluth, which plat was filed for record April 23, 1870 in the office of the Register of Deeds in Book A of Plats on page 91.
2. The center line of the alley in the rear of Block 93 as dedicated by said plat.
3. The extended westerly line of Lot 11 in said Block 93.
4. The center line of Seventh Avenue East as dedicated by said plat.

Property Address: 621-633 East 4th Street
Duluth, MN 55805

Property being Torrens: - Certificate of Title No. 297936

EXHIBIT B

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2021, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and Portland Land Co., LLC, a Minnesota limited liability company (“Developer”), entered into a Development Agreement, which agreement was recorded in the Office of the St. Louis County Registrar of Title on _____, 2021, as Document No. _____ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described in the attached Exhibit A (the “Property”).

B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.

C. Paragraph D of Article V of the Development Agreement provides that a Certificate of Completion be issued by DEDA’s Executive Director upon, among other things, completion by Developer of the construction of the Project in accordance with the Development Agreement.

D. Developer has completed construction of the Project in a manner deemed sufficient by DEDA to permit execution and recording of this Certificate of Completion.

NOW, THEREFORE:

1. Construction of the Project required to be performed by Developer pursuant to the Development Agreement with respect to the Property, has been completed, and those requirements under the Development Agreement which relate solely to construction obligations of the Project have been fulfilled, but all other conditions and restrictions contained in the Development Agreement shall remain in effect.

2. The Registrar of Titles in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.

