

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

ST PAPER 1 LLC.

Relating to DULUTH PAPER MILL REDEVELOPMENT

Dated as of _____, 2021

DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City", and ST PAPER 1 LLC, a Minnesota limited liability company, hereinafter referred to as "Developer."

WHEREAS, Developer proposes to acquire the closed papermill and associated property located at 100 North Central Avenue in Duluth, Minnesota as hereinafter described and to convert it to the production of tissue paper, paper towels, bathroom tissue, paper napkins and similar paper products (the hereinafter-described "Project"); and

WHEREAS, the cost of acquisition of the existing property and facilities together with the cost of conversion would render the Project not economically feasible without public assistance including assistance from the City, from St. Louis County and from the State of Minnesota as hereinafter described; and

WHEREAS, St. Louis County, and the City have indicated their willingness to agree to the abatement of real estate taxes as set forth on Exhibits B and C attached hereto to fill gaps in the available funding for the Project, making the Project financially feasible; and

WHEREAS, Developer is pursuing a commitment for financing and has agreed to make available sufficient equity monies that, when combined the tax abatement, will be sufficient to complete the Project;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns 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. Abatement Resolutions means the City Abatement Resolution and the County Abatement Resolution.

B. Agreement means this Development Agreement and its exhibits as may be amended, restated, supplemented or otherwise modified from time to time.

C. Benefit Date: shall mean the date when the Property acquisition has been completed the Equipment has been installed.

D. City Abatement Proceeds: means the amount of the proceeds of City's abatement as provided for in the Note.

E. City Abatement Resolution means a resolution approved by the Duluth City Council, substantially in the form of that attached hereto as Exhibit B, authorizing the abatement of portion of the real property taxes on the Property and the Project paid to the City for a term of up to Ten (10) years commencing with taxes payable in 2023 in the total amount of not to exceed Six Hundred Thousand Dollars (\$600,000) to be paid to Developer as provided for the City Abatement Resolution and this Agreement.

F. City Loan: means the forgivable loan of Two Hundred Forty-two Thousand Dollars (\$242,000) from City to Developer from the Fund 235-020-54344 (Grants and Awards Fund) under the terms and conditions hereinafter set forth.

G. City Loan Mortgage: means a mortgage against the Property granted by Developer to City to secure the repayment of the City Note under the terms and conditions hereinafter set forth.

H. City Loan Note: means the note from Developer to City evidencing the obligation of Developer to repay the City Loan to City under the terms and conditions hereinafter set forth.

I. Community Benefits Program Contract Specifications: shall mean the Community Benefits Program Contract Specifications on file in the office of the City Purchasing Agent.

J. Compliance Date: means the date that is two (2) years after the Benefit Date

K. Contract: means the contract or contracts for the construction of any structures or improvements to the Property and for the acquisition and/or installation of the Equipment as part of the Project.

L. Contractor means the contractor or contractors contracted for by the Developer to construct any structures or improvements to the Property or to install any of the Equipment as part of the Project.

M. Costs means, without intending thereby to limit or restrict any proper definition of such costs under any applicable laws or sound accounting practices, the following costs for construction of the Project:

1. Obligations incurred for labor and to contractors, builders, equipment suppliers and materialmen in connection with the Project acquisition, equipment acquisition, construction and installation of the Project;
2. Site improvement and off-site improvement costs required for the construction of the Project;
3. Fees and expenses of the Engineer, legal counsel and other professionals for surveys and estimates and other preliminary investigations, preparation of plans, drawings and specifications, assistance with bidding, and supervising construction, as well as for the performance of all other duties of the Engineer and other professionals in relation to the acquisition, betterment and financing of the Project

N. County: shall mean St. Louis County, Minnesota.

O. County Abatement Resolution means a resolution approved by the County Board of Commissioners, substantially in the form of that attached hereto as Exhibit C, authorizing the abatement of portion of the real property taxes on the Property and the Project paid to the County for a term of up to Ten (10) years commencing with taxes payable in 2023 in the amount of not to exceed Six Hundred Thousand Dollars (\$600,000) to be paid to Developer as provided for the County Abatement Resolution and this Agreement.

P. County Abatement Proceeds: shall mean the proceeds of the County's abatement of taxes pursuant to the County Abatement Resolution which are actually received by the City.

Q. Director means the City's Director of Planning and Economic Development or such other person as is designated to act on behalf of her with regard to this Agreement.

R. Documents means this Agreement, the Plans, the MIF Loan Agreement, the JCP Loan Agreement, the Note, the Mortgage the Agreement, the Tax Credit Documents and any other documents given to the City to evidence, effect, secure or modify the Documents.

S. Engineer: means ST Paper LLC, 106 East Central Avenue, Oconto Falls, Wisconsin, 54154.

T. Equipment: means that machinery and equipment listed and described on Exhibit __ at an estimated cost as set forth on said Exhibit ____.

U. Event of Default means an event which, with notice or passage of time or both, would constitute an Event of Default under this Agreement

V. Full-Time Equivalent: or "FTE" is the equivalent of one person working 2080 hours or more per year; or, the ratio of the total paid hours during a calendar year (permanent part time or full time) as the numerator, to the total of working hours in that same period (2080 hours per year), as the denominator.

W. Full-Time Job: means an employee that is employed 2080 hours per year.

X. Living Wage Ordinance means Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended.

X. JCF Grant: means the Jobs Creation Fund Grant in the amount of up to One Million Five Hundred Thousand Dollars (\$1,500,000) from the State of Minnesota through its Department of Employment and Economic Development pursuant to Minnesota Statutes § 116J.8748.

Y. MIF Loan: means a loan to the City in the amount of up to Three Million Dollars (\$3,000,000) of Minnesota Investment Fund funds from the State of Minnesota through its Department of Employment and Economic Development pursuant to Minnesota Statutes § 116J.8731 and Minn. Rules Chapter 4300 under the terms and conditions set forth in the MIF Loan Agreement, which funds will be loaned to Developer as hereinafter provided for.

Z. MIF Loan Agreement: means the agreement between DEED and the City, a copy of which is attached hereto and made a part hereof as Exhibit ____, setting forth the terms and conditions of the MIF Loan to the City.

AA. New Jobs: means the new permanent, Full-Time Job or FTE non-

contract, non-seasonal jobs to be created by the Developer on or after the Effective Date at its Duluth site.

BB. New Market Tax Credits or NMTC: means tax credits awarded to Developer by a CDE as provided for in the federal Internal Revenue Code.

CC. NMTC Documents: means those documents required by the Director establishing the award of NMTCs to Developer by one or more community development Entities as determined by the U.S. Internal Revenue Service, the amount of said credits and those agreements securing said credits to Developer

DD. Note: means a note issued by the City evidencing the amount and terms of the City's obligation to pay City Abatement Proceeds to Developer as provided for in this Agreement.

EE. Plans: means the working drawings, specifications and elevations for the construction of any element of the Project requiring construction and a detailed list of the Equipment together with plans for the installation thereof as described above and in Article III below, approved as provided for in said Article III, including improvements to public infrastructure needed as a result of the Project if any, along with the Engineer's certified estimate of the Project Costs.

FF. Project means the acquisition of the Property, the construction of any structures necessary for the Project and the acquisition and installation of the Equipment necessary to convert the existing facilities to the production of tissue paper, paper towels, bathroom tissue, paper napkins and similar paper products and associated costs, all having an estimated Cost of up to Fifty-four Million, Six Hundred Thousand Dollars (\$54,600,000) but in no event at a Cost of not less than Forty Million Dollars (\$40,000,000).

GG. Project Labor Agreement or PLA: shall mean a Project Labor Agreement conforming to that approved by the City Council pursuant to Section 2-29 (b) of the Duluth City Code, 1959, as amended.

HH. Property means the real estate located in St. Louis County, Minnesota and described in Exhibit A hereto.

II. Repayments means any payments from Developer to the City or the County required hereunder.

ARTICLE II

Preconditions to Project Construction

Prior to the City's obligations to Developer under this Agreement becoming binding on and enforceable against the City and as a precondition thereof, Developer shall provide to the City the following items which shall be subject to the approval of the Director in writing, which approval shall not be unreasonably withheld:

A. Deed.

Evidence that the Property is owned by Developer in fee simple absolute and that an appropriate policy of title insurance has been issued in the name of Developer.

B. Approvals.

Evidence of the approval of the Abatement Resolutions.

C. Plans

Approved Plans for the construction and installation of the Project as described above and in Article III below, including improvements to public infrastructure needed as a result of the Project if any, along with the Engineer's certified estimate of the Project Costs.

D. Contract.

A copy of the executed Contract between Developer and a Contractor or Contractors necessary to complete the construction and installation of the Project in accordance with the Plans, approved pursuant to Article III below and an executed PLA or PLAs with said Contractor for the Project. In addition, the Contract shall commit the Contractor to conform to the requirements of the Community Benefits Program Contract Specifications. The Contract shall provide that payments for the work thereunder are the sole obligation of Developer.

E. Performance and Payment Bonds

A copy of executed payment and performance bonds provided by Developer in connection with the construction of the Project, which bonds shall be in the penal amount of not less than one hundred (100%) percent of Cost as

set forth in Paragraph C above written by a bonding company licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name the City as a beneficiary thereof.

F. MIF Loan Agreement

A fully executed copy of the MIF Loan Agreement.

G. JCF Loan

Proof of the receipt by Developer of the JCF Loan.

H. City Loan Mortgage & Note

A copy of the City Loan Note duly executed by Developer and a fully executed and recorded copy of the City Loan Mortgage.

I. NMTC Documents

Fully executed copies of the NMTC Documents satisfactory to the Director establishing the amount of NMTC available to Developer to finance the Project.

j. Financing.

Copies of financing commitments or capital commitments by Developer or a certification as to availability of funds acceptable to Director, which are utilized by Developer for the capital necessary so that the total of said commitments and certification are not less than the Project Costs.

K. Construction Cost Certification

Evidence satisfactory to the Director that the Cost of the Project will equal or exceed \$40,000,000.

L. Additional Documentation

Developer shall also deliver the following documents to the City:

1. Corporate Resolutions authorizing the Documents;
2. A certificate of Developer's good standing;
3. Insurance Certificates

M. Survey.

A survey of the Property prepared 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 30 days prior to the commencement of construction of and installation of equipment for the Project by Developer, or such lesser time as approved by the Director, Developer shall submit Plans to the Director for approval. All such Plans shall be in 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 the City, the State of Minnesota and the United States of America. The Director shall review such plans, specifications and elevations within 30 days of submission of same by Developer. The Director's approval shall be provided to Developer in writing. If the 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 a detailed explanation of the reason or reasons therefor, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within 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 Director. The 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.

B. Changes After Initial Approval.

Any material or substantial changes made to Plans by Developer after initial review by the Director shall be submitted to the Director for approval in the same manner provided for in Paragraph A above.

ARTICLE IV

Construction

A. **Construction/Installation.**

Upon the fulfillment of the preconditions to construction provided for in Article II and upon award of the Contract pursuant to this Agreement, Developer shall commence construction and implementation of the Project in conformance with the Plans approved pursuant to Article III. Provided, however, that said work shall be commenced no later than September 1, 2022 and shall be completed not later than December 31, 2023. Notwithstanding the above, the above period may be extended upon the prior written approval of the Director.

B. **Developer to Bear All Costs.**

Developer specifically agrees to bear all costs related to the construction and implementation of the Project and any modifications thereto utilizing equity and its financing.

C. **Prevailing Wage.**

Developer shall cause the laborers, mechanics or apprentice-trainees directly employed in the Project to be paid the wage rates as provided in the federal Davis Bacon Act, as amended, and as required by the MIF Grant and the JCF Grant. Payroll for the construction trades must be submitted to the Director on a monthly basis.

D. **Progress Reports.**

Until the entire Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by the Director as to the actual progress of Developer with respect to the Project. Additionally, upon reasonable notice, Developer also agrees that it will permit the City access to the Property and the Project to ascertain the progress of the Project.

ARTICLE V

Audits

The City 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 Project. Additionally, Developer shall cause the Engineer to allow the City and its representatives at all reasonable times and after reasonable notice to inspect, examine and copy all books and records of the Engineer relating to the Project during the construction and for a period of six years after the recordation of the Certificate of Completion. Such records of Developer and the Engineer shall be kept and maintained by Developer for a period of six years following the recordation of the Certificate of Completion as provided for in Article VIII.

ARTICLE VI

Certificate of Completion

Upon completion by Developer of the Project in accordance with this Agreement, the Director, shall within 30 days of written request from Developer, furnish to Developer an appropriate certificate certifying completion the Project, (Certificate of Completion) substantially in the form of that attached hereto as Exhibit E. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the completion by the Developer of the Project undertaken pursuant to this Agreement. Immediately upon issuance of the Certificate of Completion, Developer agrees to record the Certificate of Completion in the office of the St. Louis County Recorder and/or Registrar of Titles and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to the City an executed original of the Certificate of Completion showing the date and document numbers of record, or a certified copy of the filed original. In the event the Director refuses or denies to provide a Certificate of Completion, the Director will, within said 30-day period, provide Developer a written statement indicating the reasons for such refusal or denial and what measures or actions are required in order to obtain a Certificate of Completion.

ARTICLE VII

Tax Abatement Assistance

A. Generally

As a part of the financial assistance provided to this Project to make it feasible, City and St. Louis County have agreed to provide tax abatement assistance in the form of the Abatement Resolutions. The terms and conditions of that assistance shall be those set forth in the City Abatement Resolution and the County Abatement Resolution respectively; provided that the breach by Developer of any of the terms, covenants or conditions of this Agreement or of either or both of the Abatement Resolutions shall constitute a breach of the requirements of this Agreement and of the other of the Abatement Resolutions.

B. Amount of City Abatement Proceeds

The amount of the City Abatement Proceeds shall be varied based on the amount of NMTC received by the Developer for the Project. In the event that the amount of such NMTC shall be Five Million Dollars (\$5,000,000) or less, the Developer shall be entitled to receive Six Hundred Thousand Dollars (\$600,000) in City Abatement Proceeds as provided for in the Note. In the event that the amount of such NMTC (in dollars) is greater than \$5,000,000 but less than \$10,000,000 the Developer shall be entitled to the amount of tax abatement determined by the following equation: { City Tax Abatement = [(\$10,000,000 – NMTC) / \$5,000,000] * \$600,000 } . In the event that the amount of such NMTC shall be more than Ten Million Dollars (\$10,000,000), the Developer shall not be entitled to receive City Abatement Proceeds as provided for in the Note.

C. Payment of County Abatement

City's obligation to provide abatement proceeds to Developer under this Agreement shall be limited to the proceeds of the City's Abatement Resolution and to the County Abatement Proceeds as defined herein.

ARTICLE VIII

City Loan

A. Loan to Developer

Upon entering into this Agreement and the receipt by City of the City Loan Note and the City Loan Mortgage, City agrees to extend the City Loan to Developer. The City Loan shall be for a term of Ten (10) years at a rate of Six (6%) Percent simple annual interest with payment there due at the end of the term except that all principal and interest thereon shall be forgivable as provided for in Paragraph B below.

B. Loan Forgiveness

As a condition of the forgiveness of the City Loan, Developer agrees that, prior to the Compliance Date, Developer will have created and maintained for the term of the City Loan at least Eighty (80) New Jobs as provided for in Article IX below.

ARTICLE IX

Business Subsidy Agreement

A. Business Subsidy Agreement.

The provisions of this Article constitute the "business subsidy agreement" for purposes of the Minnesota Business Subsidy Act (Minnesota Statutes Sections 116J.993-995 and its successor statute.)

1. The Developer acknowledges and agrees that the provisions of Minnesota's Business Subsidy Act apply to this Agreement, as Developer is receiving government assistance under the terms of this Agreement.

- a. The subsidy provided to the Developer includes up to \$842,000 in tax abatement payments and the proceeds of the City Loan made hereunder which will be used for the Project.
- b. The public purposes and goals of the subsidy are to increase net jobs in the City.
- c. The goals for the subsidy are to create jobs that pay a livable wage as provided for in Paragraph B below.
- d. If the goals are not satisfied, the Developer shall make payment to the City as required in this Agreement.

- e. The subsidy is needed because the cost of the Project makes it economically infeasible without such assistance.
- f. The Developer must continue operations in the Jurisdiction for at least Ten (10) years following the Benefit Date.

B. As of the Compliance Date, the Developer shall have created not less than eighty (80) New Jobs on the Property having a base wage rate of at least \$14.10 per hour.

C. Default on Business Subsidy Act Requirements.

1. If the Developer fails to meet the job creation goal and wage level commitment by the Compliance Date, the Developer will be required to repay to the City the Tax Abatement proceeds and the City Loan proceeds received by Developer hereunder.

2. If the Developer fails to meet the job creation goal and wage level commitment by the Compliance Date, the City may, after holding a public hearing, extend the Compliance Date for one year, after approval from the State. If after the extension, the Developer fails to meet the job creation goal and wage commitment, the Developer will be required to repay to the City the Tax Abatement proceeds and the City Loan proceeds received by Developer hereunder. City the Tax Abatement proceeds and the City Loan proceeds received by Developer hereunder.

3. In an event of an Event of Default arising from a breach by the Developer of any provision of Article IX of this Agreement, if the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31st of the previous year, exceeds Three (3.00%) percent on the date of the earliest such Event of Default, the Developer shall, in addition to any other payment required hereunder, pay to the City the difference between the present value of the interest actually paid and accrued on the Loan as of the

date of the payment required by this Article IX and the amount of interest that would have been paid and accrued on the Loan if the interest rate of the Loan at all times had been equal to the implicit price deflator on the date of the earliest Event of Default;

a. Interest required in Article shall commence to accrue as of the Initial Disbursement Date;

b. Nothing in this Article shall be construed to limit the City's rights or remedies under any other provision of this Agreement, and the provisions of Article are in addition to any other such right or remedy the City may have available.

C. Reporting.

The Developer shall provide to the City information regarding job and wage goals and results for two years after the Benefit Date or until the goals are met, whichever is later. This reporting requirement will expire if the goals are met by the Compliance Date. If the goals are not met, the Developer must continue to provide said information until all repayments provided for hereunder are paid. The information must be filed on the Non-JOBZ Minnesota Business Assistance form as found on the MN Department of Employment and Economic Development website:

<http://mn.gov/deed/government/business-subsidy/report-forms/index.jsp>

This information must be provided to the City no later than March 1 of each year for the previous year. If the Developer does not submit the report, the City shall mail the Developer a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the Developer fails to provide a report, the Developer must pay to the City a penalty of \$100 for each subsequent day until the report is filed. The maximum penalty shall not exceed \$1,000.

ARTICLE X

Operating Covenants

Developer agrees that in its operations and use of the Project and the Property, in accordance with industry standards, 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 Project and Property 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, grass cutting and landscape maintenance, and all other exterior maintenance to the Project and the Property.

B. Utilities.

Unless disputed, pay or cause to be paid any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.

C. Licenses and Permits.

Preserve the existence of 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.

D. 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.

E. 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 and the Property, subject to the right to contest in good faith in accordance with Minnesota law.

F. 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/or 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.

G. 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 collect ability is being contested in good faith by appropriate proceedings.

H. Living Wage.

The construction of the Project shall be done in compliance with the Living Wage Ordinance of the City of Duluth.

ARTICLE XI

Provision against Liens

A. Provision against Liens.

Except for encumbrances permitted pursuant to Paragraph B below, Developer shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against

the Project, the Property or any part thereof which would materially or adversely affect the City's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify the City of its intention to do so and post such security as the City reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as the City does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

B. Provision Against Assignments, Transfers or Change in Identity of Developer.

Developer recognizes that, in view of the importance of the development of the Project to the general welfare of the community and the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of Developer is of particular concern to the community, the City is relying upon the qualifications and identity of Developer to build and operate the Project. Therefore, except for the purposes of obtaining financing or as otherwise allowed by this Agreement, Developer represents and agrees for itself, its successors and assigns 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, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Project, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and except for the financing, Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of the City until a Certificate of Completion has been obtained. Notwithstanding the above, Developer may sell or transfer its interest in the Project to a Related or Affiliated Entity or as part of an organizational acquisition or merger without the prior approval of the City. An entity acquiring or accepting an interest in the Project as part of an organizational acquisition or merger shall be required to execute a Guaranty. Developer shall give written notice of such sale or transfer and provide copies of the sale or transfer documentation, and well as any Guaranty required above to the Director within 30 days of the event of sale or transfer.

ARTICLE XII

Indemnification

A. Generally.

Developer will to the fullest extent permitted by law, protect, indemnify and save the City and its officers, agents, servants, employees and any person who controls the City within the meaning of 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 any of the following, except to the extent that same result from the sole negligence by the City, its officers, agents or employees, in which case Developer' indemnification and hold harmless shall not apply:

1. Any injury to or death of any person or damage to 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, any and all acts or operations related to the construction or installation of the Project on any portion of the Property. 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 the Developer customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;
2. Any Breach of this Agreement by Developer;
3. Any violation of any contract, agreement or restriction related to Developer's use of 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 violation, or alleged violation by Developer, or any employee or agent of Developer or any contractor of Developer, of state, federal or local law, rule or regulation affecting the Project, the Property or the Project or the ownership, occupancy or use thereof; and

5. Any mechanic's liens or similar liens.

B. Environmental Indemnification.

In addition to the generality of the foregoing, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees and any person who controls 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 on the Project or the Property arising out of Developer's use and occupancy of the Property or the Project or both 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 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 on the Property 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 the Project or the Property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before any 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 defined by the foregoing agencies, as may be necessary to meet the requirements of said agencies and any other costs and expenses of any kind whatsoever arising out of conditions existing on the Project or the Property.

The indemnification set forth in this Article shall survive any termination of this Agreement, foreclosure or deed in lieu transfer of the Project or the Property.

C. Indemnification Procedures.

Promptly after receipt by Developer of notice of the commencement of any action with respect to which Developer is required to indemnify such person

under this Article, the City 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 counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the City with respect to which indemnity may be sought against Developer, 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 XIII

Insurance

Developer shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to the Project or the Property arising in any way out of or as a result of Developer's occupancy of or use of the Project or the Property, carried in the name of Developer, any subtenant and the City as their respective interests may appear, as follows:

A. **Insurance During Construction.**

Developer, prior to entering on the Property for construction of the Project, shall procure or cause to be procured and maintain or require the Construction Manager/Contractor and 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.**

"All Risk" builders' risk insurance 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, engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed \$50,000 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. Such insurance shall be provided by Developer as set forth below and shall bear a payee clause in favor of the City with loss proceeds under any property policies made payable to the City, to the extent of its interest. Said insurance may be written in the name of Developer or may be provided by Developer's Contractor in which case it shall name both Developer and City as additional insureds. The Developer shall be solely responsible for insuring that such insurance is provided. The Construction Manager/Contractor, contractors, all subcontractors, and suppliers and Developer shall waive all rights against the City for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance.

Public Liability Insurance written on an "occurrence" basis in limits of not less than \$2,000,000 per occurrence and in the aggregate for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The insurance requirements of this subparagraph may be met by augmenting an industry-standard liability policy with an "umbrella" policy, the combined limits of which meet those requirements. The City shall be named as additional insureds on the Comprehensive General Liability and Automobile Liability insurance policies against losses caused by the negligent act or omission of Developer. The Contractor shall also require such liability coverage of its contractors and subcontractors unless they are insured under the Contractor's policies. The Contractor's, contractors' and subcontractors' liability coverages shall include:

- (a) Contractors' public liability--premises and operations;
- (b) Independent contractors' vicarious liability;
- (c) Personal injury;

- (d) Owned, non-owned, and hired vehicles;
- (e) Contractual liability covering customary construction contract and subcontract indemnify provisions; and
- (f) Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employer's liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance.

1. Property Insurance.

Prior to the expiration of the builders' risk coverage specified above and during the entire term of this Agreement, the Project, 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 \$25,000 per occurrence; provided that if Developer shall have provided to DEDA a first secured position on a piece of the Equipment acceptable to the Director and having a marketable value of at least \$500,000, the deductible amount may be up to \$500,000. 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. The insurance policy shall bear a payee clause in favor of the City with loss proceeds under any property policies made payable to the City, to the extent of its interest. Developer hereby waives any and all claims or causes of action against the City 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. 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 Comprehensive General Liability Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death and limits of \$2,000,000 for property damage

liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The insurance requirements of this subparagraph may be met by augmenting an industry-standard liability policy with an “umbrella” policy, the combined limits of which meet those requirements. The City shall be named as additional insureds therein against losses caused by the negligent act or omissions of Developer. Insurance shall cover:

- (a) Public liability, including premises and operations coverage.
- (b) Independent contractors’ vicarious liability;
- (c) Personal injury.
- (d) Owned, non-owned and hired vehicles.
- (e) Contractual liability covering the indemnity obligations set forth herein to the extent that such insurance is available based on insurance industry-standard practices.
- (f) Products--completed operations.

D. Workers’ Compensation.

Workers’ Compensation Coverage in statutory amounts with "all states" endorsement. Employees’ liability insurance shall be carried in limits of \$100,000 per employee.

E. 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 the State of Minnesota.

F. Policies.

Developer shall be required to supply to the City certification of all policies required under this Agreement. In addition, each insurer providing such policies shall be required to provide evidence satisfactory to the Director that such policies will require the insurer to give the City 30 days’ written notice prior to cancellation or modification of said insurance. Uninsured Loss.

In the event the Project or the Property or any portion thereof is destroyed by fire or other casualty covered by insurance, Developer shall forthwith repair, reconstruct, and restore the Project and the Property 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, and restoration, 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 Project and the Property whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction. In the alternative, and only with the prior written consent of the City, Developer may construct a building of a new design having utility to the City equal to or greater than the Project, approved by the City as a replacement to the Project, at its own cost and at no cost to the City. In the event that the City approves construction of such a replacement building, said building shall be constructed in accordance with the terms hereof.

ARTICLE XIV

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 Paragraph B below shall be applicable as otherwise set forth in this Agreement. Except as otherwise specifically provided herein, following notice of a default, Developer shall have 30 days to cure such default and provide evidence of such cure to the City.

1. Developer fails to make any Repayments when due and such failure is not cured within 10 days after delivery of written notice by the City to Developer.
2. Developer shall permit any liens on the Project or the Property except as expressly provided for in the Documents.
3. Any of the following shall occur: (i) Developer shall seek relief in bankruptcy, or make a general assignment for the benefit of creditors, or (ii) there is filed by or against Developer a petition in bankruptcy or for the

appointment of a receiver, or (iii) any creditor commences under any bankruptcy or insolvency law proceedings for relief against Developer, or (iv) an action is sought for the composition, extension, arrangement or adjustment of Developer's obligations, or (v) Developer discontinues its business as a going concern, or (vi) Developer defaults on any other obligation to the City beyond any applicable notice and cure periods, or (vii) Developer's business is taken over or control is assumed by any government or governmental agency.

4. Any of the following shall occur:
 - i. Any warranty, representation or statement made by Developer in any Document, is untrue or misleading in any material respect.
 - ii. Any financial information provided by or on behalf of Developer is untrue or misleading in any material respect.
 - iii. Any of the Documents ceases to be in full force and effect (including failure of a collateral document to create a valid and perfected security interest or lien) at any time and for any reason.
 - iv. Developer defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Developer's property or Developer's ability to make the Repayments or perform their respective obligations under any of the Documents.
 - v. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Developer or by any governmental agency against any collateral securing financing. However, this Event of Default shall not apply if there is a good faith dispute by Developer as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Developer gives the City written notice of the creditor or forfeiture proceeding and deposits with the City monies or a surety bond for the creditor or

forfeiture proceeding, in an amount determined by the City, in its sole discretion, as being an adequate reserve or bond for the dispute.

- vi. Developer fails to perform any other obligation required under the Documents and such failure is not cured within 30 days after delivery of written notice by the City to Developer describing the failure and the act required to cure the failure.
- vii. Developer fails to pay when due any real estate tax payment or legally-imposed assessment with regard to the Property or the Project
- viii. Developer is in default of any other obligation of Developer under the terms and conditions of this Agreement.

B. General Remedies

Except as otherwise set forth in this Agreement, the City shall have the following remedies in the case of an Event of Default by Developer:

- 1. Terminate this Agreement.
- 2. Any of the various remedies provided in any of the Documents.
- 3. Seek and be entitled to monetary damages from Developer for any damages incurred by the City as a result of Developer's default.
- 4. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
- 5. Cumulatively to exercise all other rights, options and privileges provided by agreement, law or in equity.

C. Non-Waiver.

The waiver by the City of any Event of Default on the part of Developer or the failure of the City to declare default on the part of Developer of any of its obligations pursuant to this Agreement or the other Documents 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 or the other Documents. To be effective, any waiver of any Event of Default by Developer hereunder shall be in writing by the City.

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 an Event of Default hereunder.

ARTICLE XV

Representations, Covenants and Warranties

A. Representations, Covenants and Warranties of the City.

The City represents, covenants and warrants as follows:

1. The City is a duly formed and validly existing municipal corporation and political subdivision of the State of Minnesota, governed by the Constitution and laws of the State of Minnesota and its home rule charter.
2. The officers of the City executing this Agreement have been duly authorized to execute and deliver this Agreement and perform its obligations hereunder pursuant to the terms and provisions of a resolution of the Council of the City.
3. This Agreement is binding and enforceable against the City in all respects.

B. Representations, Covenants and Warranties of Developer.

Developer represents, covenants and warrants as follows:

1. Developer is a duly formed and validly existing corporation under the laws of the State of Minnesota, is not in violation of its organizational documents, has power to enter into this Agreement and to perform its obligations hereunder, and has duly authorized the execution, delivery, and performance of this Agreement and the other Documents by proper corporate action.
2. Developer is not in violation of any provision of its organizational documents, or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule or regulation to which it

is a party or by which it or its properties are bound or affected, other than violations and defaults which would not, individually or in the aggregate, have a material adverse effect on the financial position or results of operation of Developer.

3. The execution and delivery by Developer of this Agreement; compliance with the provisions thereof by Developer; and the performance by Developer of its agreements, covenants, and obligations under this Agreement, do not, in any material respect, constitute on the part of Developer a breach or violation of, or default under, its organizational documents, will not violate any law or regulation applicable to Developer, or result in the breach of, or constitute a default under, any indenture or loan, credit, or other agreement or instrument to which Developer is a party or by which it or its property is bound or affected.
4. There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any premises leased or owned by Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer, could have a material adverse effect upon Developer, any premises leased or owned by Developer, the financial position of Developer, or the operation of Developer, and that Developer is not in default of any order of any court or governmental agency.
5. No consent, approval, or authorization of, or permit or license from, or registration with, or notice to any federal or state regulatory authority or any third party not already obtained is required in connection with the execution, delivery, and performance by Developer of this Agreement, or any document or instrument related thereto.
6. It is not in default of 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.
7. Developer shall promptly and at all times pay all reasonable fees and expenses incurred by the City in pursuing its rights hereunder or under the

Documents, including attorney's, accountant's and other fees subsequent to the Closing Date.

8. Except as permitted in this Agreement or any other Document, Developer will not sell, encumber, transfer or otherwise pledge the Project or the Property to any other person for any purpose whatsoever except with the prior written consent of the City.
9. Developer will perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Documents, and in all other instruments and agreements between Developer and the City. Developer shall notify the City immediately in writing of any default in connection with this Agreement, any Document or in any other agreement between Developer and the City promptly upon Developer becoming aware of such default.
10. Except as otherwise permitted, Developer shall not, without written consent of the City, engage in any business activities substantially different than those in which Developer is presently engaged, or cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change ownership, dissolve or transfer or sell the Project or the Property out of the ordinary course of business.
11. Developer shall not enter into any agreement containing any provisions which would be violated or breached by the performance of Developer's obligations under this Agreement or in connection herewith.
12. Developer shall not subject the Project or the Property to any additional declaration, condition, restriction or easement without the prior written consent of the City.
13. 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 federal Davis-Bacon). Developer shall obtain, in a timely manner, all required permits, licenses and approvals, and shall 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. Developer shall be responsible for obtaining all of the permits and licenses necessary for construction and operation of the Project.

14. The execution of this Agreement has been duly and fully authorized by Developer's governing body or board, that the officer of Developer who executed this Agreement on its behalf is fully authorized to do so, and that this Agreement when thus executed by said officer on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.
15. This Agreement is binding and enforceable against Developer in all respects.

ARTICLE XVI

Term

The term of this Agreement shall commence upon execution by the parties hereto and shall continue until all tax abatement payments provided for in the Abatement Resolutions have been paid, unless this Agreement is terminated earlier as provided for herein.

ARTICLE XVII

Runs with the Land

This Agreement shall be deemed to run with the Land and shall enure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE XVIII

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 the City: City of Duluth
 Attn: Director of Planning and Economic Development
 402 City Hall
 411 West First Street
 Duluth, MN 55802

In the case of Developer:

ARTICLE XIX

Recordation

Immediately upon execution of this Agreement, Developer agrees to record a Memorandum of Development Agreement substantially in the form of that attached hereto as Exhibit E in the office of the St. Louis County Recorder and/or Registrar of Titles and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to the City an executed original of the Memorandum of Development Agreement showing the date and document numbers of record.

ARTICLE XX

Disclaimer of Relationships

Developer acknowledges that nothing contained in this Agreement nor any act by the City or 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 the City and Developer.

ARTICLE XXI

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 XXII

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 XXIII

Title of Articles

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

ARTICLE XXIV

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 XXV

Unavoidable Delays

Neither party shall be held responsible for, and neither party shall be in considered 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, strikes or embargoes, or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

ARTICLE XXVI

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 XXVII

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.

ARTICLE XXVIII

Attorney's Fees

In the event that Developer is in default of any of the terms and conditions of this Agreement and the City shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the City shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder. In the event City is in default of any of the terms and

conditions of this Agreement, and Developer shall successfully take legal action to enforce said rights herein, in addition to any other right or remedy, Developer shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH, a Minnesota
Municipal Corporation

ST PAPER 1 LLC,
a Minnesota Limited Liability Company

By _____
Emily Larson
Its Mayor

By _____

Attest:

By _____
Its City Clerk

Date: _____

Countersigned:

Its Auditor

Approved:

Its Assistant City Attorney

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, President of ST Paper 1 LLC, a Minnesota Limited Liability company, on behalf of the company.

Notary Public

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Emily Larson and Chelsea Helmer, the Mayor and City Clerk of the City of Duluth, a Minnesota Municipal corporation, on behalf of the City.

Notary Public

DRAFTED BY:

Robert Asleson
Assistant City Attorney
City of Duluth
411 West First Street, Room 440 City Hall
Duluth, MN 55802
(218) 730-5490

EXHIBIT A

Legal Description of the Land

EXHIBIT B

City Abatement Resolution

EXHIBIT C
County Abatement Resolution

EXHIBIT D
Estimate of Project Costs