

**DEVELOPMENT AGREEMENT**

**between**

**CITY OF DULUTH**

**and**

**INDEPENDENT SCHOOL DISTRICT NO. 709**

**Dated as of \_\_\_\_\_, 2022**

## **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 ("City"), and Independent School District No. 709 ("Developer").

### **RECITALS**

WHEREAS, Developer proposed to replat and cause to be redeveloped approximately 80 acres of land located on multiple parcels at 800 East Central Entrance Duluth, Minnesota, with the complete legal description attached hereto as Exhibit A (the "Property"); and

WHEREAS, Developer applied to City for approval of a preliminary plat and a final plat to divide the Property into two development lots identified on the Plat of Central Overlook (Block 1, Lots 2, and 3 and Block 2, Lot 1 (the "Third Party Development Property"), and Block 1, Lot 1 (the "District Development Property"), as hereinafter defined; and

WHEREAS, Developer desires to conduct site redevelopment activities on the Property of the hereinafter-described Project: demolition of existing Central High School building, which is located on the Property and the construction of the hereinafter described Required Improvements, all in preparation of the Developer's construction of two (2) large structures (transportation, district services center and renovation of an existing structure) (the "Project"); and

WHEREAS, Developer plans to sell the Third Party Development Property to an entity which may construct at a future date UDC compliant developments; and

WHEREAS, on November 9, 2021, the City Planning Commission approved the Plat subject to certain conditions, one of which required Developer to enter into a Development Agreement with City; and

WHEREAS, Developer has agreed to dedicate to the public for public use the drainage, utility, and right of way easements shown on the Plat, and to construct the Required Improvements as described in the hereinafter-referenced MOU; and

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:

### **AGREEMENT**

1. Definitions. The following term and phrases shall have the meanings hereinafter ascribed to them:
  - A. Building: shall mean the existing Central High School building located on the Property.
  - B. Easements: shall mean easements as shown and legally described on the Plat.
  - C. District Development Property: means Block 1, Lot 1 as identified on the Plat of Central Overlook.
  - D. Lots: shall mean the lots as shown and legally described on the Plat.
  - E. Memorandum of Understanding or MOU: shall mean that Memorandum of Understanding entered into between the City's City Engineer and Developer for the construction and implementation of the Required Improvements.
  - F. Plans: shall mean the plans and specifications for the construction and installation of all elements of the Required Improvements approved by the City Engineer and incorporated into the MOU.
  - G. Plat: shall mean the Plat of Central Overlook on file in the office of the County Recorder for St. Louis County, Minnesota, as shown in Exhibit A Proposed Final Plat.
  - H. Project: shall mean the dedication of easements for the Required Improvements, as shown on the Plat and MOU, the construction of the Required Improvements, the demolition of the Building, and the construction of two (2) large structures (transportation and district services center) and renovation of a third building located on the District Development Property.

- I. Public Utilities: means sewer, water, gas and stormwater improvements described in the Plans to be constructed in the Easements.
  - J. Property: shall mean that property referenced on Exhibit A attached hereto and made a part hereof, and consists of the District's Development Property and the Third Party Development Property.
  - K. Required Improvements: shall mean the Road Improvements, the Sidewalks, Public Utilities and the implementation of the Stormwater Management Plan, all in accordance with the MOU.
  - L. Road Improvements: shall mean the construction of the public roads to City Engineering standards, all as shown on the Plans.
  - M. Stormwater Improvements: shall mean the Stormwater Management Plan and the drainage easements as shown on the Plans.
  - N. Sidewalks: shall mean all public sidewalks as shown on the Plans.
  - O. Stormwater Management Plan: shall mean that Plan conforming to the requirements of § 50-18.1 E of the Duluth City Code, 1959, as amended, as such plan is approved as part of the MOU.
  - P. Third Party Development Property: means Block 1, Lots 2, and 3 and Block 2, Lot 1 as identified on the Plat of Central Overlook.
  - Q. Third Party Project: means a future development on the Third Party Development Property, to be developed by a purchaser of such property, and not by Developer. It is anticipated that such purchaser will enter into a separate memorandum of understanding and/or a development agreement with the City and City Engineer to govern the Third Party Project.
2. Developer's Duty and Compliance. Development of the Project must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all approvals and permits of any kind required to implement the Project from any governmental agency having jurisdictions with regard thereto, including but not limited to roadway access permits,

wetland permits, storm water management permits, utility construction permits, fill and grading permits, erosion and sediment control permits, and building permits. Developer agrees to include in any purchase and sale agreement of the Third Party Development Property that such purchaser must present its development plans to the City's planning department and such plans must comply with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota.

3. Recording of Plat: The Developer shall have caused to be recorded with the St. Louis County Recorder the fully-executed Plat and shall provide to the City's Director of Planning and Economic Development (the "Director") and the City Engineer two signed copies of Plat along with evidence of recording of the Plat; the City agrees that when requested to execute the Plat in the form approved by the Planning Commission, it shall expeditiously so execute it.

4. Pre-conditions to Issuance of Certificates of Occupancy: Developer agrees that prior to seeking the issuance of a Certificate of Occupancy, or as hereinafter set forth, the following shall have been completed:

A. Recording of Agreement: Developer shall have caused this Agreement to have been recorded against the District's Development Property in the Office of the County Recorder and Registrar of Titles for St. Louis County, Minnesota and shall have caused evidence of such recording to have been presented to the Director, such recording of this Agreement shall be completed within 30 days of the date this Agreement is fully executed by the parties hereto.

B. Plans: Developer shall have prepared and filed with the Director Plans which have been approved by the City Engineer; such Plans have been prepared, filed and approved as of the date hereof.

C. MOU: Developer shall have entered into MOU in the form acceptable to the City Engineer committing to the design and construction of the Required Improvements. Said MOU shall specifically provide that the City will not accept as "public" any of the Required Improvements unless all such improvements

described in the MOU have been completed to the satisfaction of the City Engineer. Such MOU has been completed as required herein.

D. Required Improvement Security. Developer shall have provided financial security in the form of an irrevocable Letter of Credit, cash escrow, or such other form as is acceptable to the Director in the amount of not less than \$10,000 to guarantee completion of construction of the Required Improvements in conformance with the requirements of this Agreement and the MOU, and authorizing the Director to exercise said security and to use the proceeds to complete construction of the Required Improvements if the Developer has not completed such Required Improvements before July 1, 2023.

E. Demolition: Developer expects to enter into a contract to demolish the Building on or about July 29, 2022 which will require demolition of the Building and site restoration to be completed by June 30, 2023. Developer agrees to require the demolition contract to provide payment and performance bonds for such demolition project. Further, the District shall require in the demolition contract that the City is named as an additional obligee under the payment and performance bonds.

F. Demolition by City: In the event that the demolition and site restoration work referenced in Subparagraph E above has not been completed by October 30, 2023, City shall have the right to exercise the bond referenced in that Subparagraph, and to cause said demolition and site restoration work to be completed.

5. Developer's Duty and Compliance. Development of the Project must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all relevant governmental approvals and building permits required.

6. Financing. Developer assumes all risks and agrees to bear all costs and fees related to the design and construction of the demolition of Central High School and all Required Improvements.

7. Property Conveyance and Easements. Developer agrees to convey and to dedicate to the City in trust for the general public the Easements. Developer warrants and represents to City that it has marketable fee title to the Property free and clear of all mortgages, liens and other encumbrances.

8. Sidewalk Maintenance: Developer shall be solely responsible for the maintenance, repair and reconstruction, including snow removal as necessary of the Sidewalks during the term of this Agreement.

9. Inspections. All Required Improvements shall be made in accordance with applicable City construction design standards and specifications and shall be subject to the inspection by and approval of the City. Developer hereby grants City, its agents, employees and contractors a limited license to enter the Property and perform all inspections which the Director in the exercise of his or her reasonable discretion deems appropriate in connection with this Agreement.

10. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, which is not cured following thirty (30) days' written notice from the City, or such longer period of time as may be reasonably required to cure such default, provided Developer is proceeding with diligence to cure such default, the parties hereto agree that no award of damages to City could constitute an adequate remedy for such default. Therefore, City may, in addition to and not in lieu of any other remedies or rights available to it by law or equity:

a. Institute an action for specific enforcement to compel Developer to perform any or all of its obligations under this Agreement. Developer acknowledges that the rights of City to performance of the obligations of Developer pursuant to this Agreement are special and unique, and that, in the event Developer violates, fails or refuses to perform any condition, agreement or provision herein, City may be without an adequate remedy at law.

b. Exercise any other remedy available to the City in law or in equity. No remedy conferred in this Development Agreement is intended to be exclusive. The election of any one or more remedies shall not constitute a waiver of any other

remedy. City may, but is not obligated to, exercise any of the remedies referred to in this paragraph.

11. Insurance. Developer agrees to purchase and maintain, during the term of this Agreement, insurance in the form of Workers Compensation and Employers Liability, Commercial General Liability and Automobile Liability covering operations associated with the Required Improvements and the Project, and Property insurance covering real and personal property interests at or near the Property, with the following limits:

|  |                      |
|--|----------------------|
| Workers' Compensation  | Statutory (MN)       |
| Employers' Liability   | \$1,500,000          |
| Auto Liability (owned, hired and non-owned)                    | \$1,500,000          |
| Commercial General Liability (including Contractual Liability) |                      |
| Each Occurrence  | \$2,000,000          |
| Aggregate  | \$4,000,000          |
| Property Insurance   | To Replacement Value |

Prior to commencement of construction, Developer agrees to deliver to the City a Certificate of Insurance, naming the City as an Additional Insured, as evidence that the above coverages are in full force and effect.

12. General Indemnity. During the term of this Agreement, Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or Developer, by reason of death of or injury to person or persons or the loss of or damage to property arising out of Developer's performance of its obligations under this Agreement, except to the extent caused exclusively by the willful misconduct or negligence of the City, or someone acting on its behalf, or a breach of this Agreement by the City. On ten (10) days written notice from City, Developer will appear and defend all lawsuits against City relating to or arising from such injuries or damage.

13. Environmental Indemnity. During the term of this Agreement, Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants



and employees from and against any liability, loss, damage, fine, judgment, penalty, fee, cost, interest, or expense arising out of any condition on the property relating in any way to the environment, preservation or reclamation of natural resources, the presence, management, release or threatened release of any Hazardous Material (any and all explosive or radioactive substances or wastes and hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any environmental law) or to health and safety matters.

14. 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  
411 West First Street, Room 160  
Duluth, MN 55802

In the case of Developer:                      ISD 709  
Attn: David J. Spooner, C.P.E., Manager of Facilities  
215 North 1st Ave East  
Duluth, MN 55802

15. Binding Effect. This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

16. Term. The term of this Agreement shall commence upon the date of attestation by the City Clerk and this Agreement and the MOU shall terminate upon the date the Director and City Engineer have certified in writing that demolition of Central High School and the Required Improvements required under this Agreement and the MOU have been completed and/or constructed in accordance with the requirements herein contained and contained in the MOU and Developer has conveyed such property and dedicated the Easements as are required hereunder; provided, however, the Developer warranty set forth in paragraph 15 of the MOU shall remain in effect for the two (2) year period set forth therein.

At Developer's request, the City will issue a written certificate of completion in recordable form acknowledging that the demolition of Central High School and the construction of the Required Improvements have been completed and that this Development Agreement is terminated.

17. Assignment. Developer may not assign this Agreement without the written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed, provided, however, that Developer may assign this Agreement to an entity controlling, controlled by or under common control with the Developer or its owners and shall provide the City with notice thereof.

18. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

19. Construction of Agreement. Developer and City have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

20. 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.

21. 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.

[Signature pages follow]

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

By \_\_\_\_\_  
Emily Larson  
Its Mayor

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF ST. LOUIS    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Emily Larson, the Mayor of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

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

By \_\_\_\_\_  
Its City Clerk  
\_\_\_\_\_  
(date)

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF ST. LOUIS    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Ian B. Johnson, the Acting City Clerk of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

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

Countersigned:

\_\_\_\_\_  
Its Auditor

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

Approved:

Its Assistant City Attorney

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

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

[illegible]

Notary Public

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

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**EXHIBIT A**  
**Legal Description of the Property (proposed)**

Block 1, Lots 1, 2, and 3, and Block 2, Lot 1, Central Overlook, St. Louis County,  
Minnesota.