

EXHIBIT A

DEVELOPMENT AGREEMENT DULUTH ECONOMIC DEVELOPMENT AUTHORITY THREE D I, LLC BOARD OF TRADE HOUSING REVELOPMENT

THIS AGREEMENT entered into this _____ day of _____, 2019, 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 THREE D I, LLC, a Minnesota limited liability company, whose address is 3060 Peachtree Road, NW, Suite 1830, Atlanta, Georgia 30305 (hereinafter referred to as "Developer").

WHEREAS, Developer is the fee owner of property upon which the Board of Trade Building is located at 301 West First Street, Duluth, Minnesota, and has proposed the Project (described and defined herein) which includes the redevelopment of the building into approximately eighty-four (84) apartment units, not less than 20% of which will be occupied by households at 50% or less of area median income, and up to 19,280 square feet of commercial/retail space on the Property in downtown Duluth; and

WHEREAS, Developer has requested assistance from DEDA for infrastructure and other costs eligible for public financing related to the redevelopment of the site 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 \$1,800,000. In order to reduce this "gap," DEDA has committed to provide tax increment proceeds from the Project. Assuming payment over a 20-year term at a discount rate of 5% based upon financial projections which assume certain tax capacity and based on a minimum estimated market value assessment of \$9,170,320, DEDA has calculated that the present value of the anticipated and available tax increment cash flows 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 for the maximum duration of the district permitted by the Tax Increment Financing Plan for TIF District No. 32.

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 commercial areas in the City that result in higher quality development or redevelopment and private investment; and to achieve development on sites which

would not be developed without assistance; and

WHEREAS, the Property is located in a housing district within the meaning of Minnesota Statutes §469.174 et. seq. (Tax Increment Financing District No. 32).

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. Available Tax Increment means 90% of the Captured Tax Increment received by DEDA from St. Louis County with respect to the Property and the Project from TIF District No. 32 in the six (6) month period preceding each Scheduled Payment Date as defined in the TIF Note.
- B. Business Subsidy Act means Minnesota Statutes §§116J.993 through 116J.995.
- C. Captured Tax Increment means that portion of the real property taxes paid with respect to the Property and the Project, which is remitted to DEDA as tax increment under TIF District No. 32 pursuant to the TIF Act.
- D. City means the City of Duluth.
- E. Eligible Project Costs means costs of Project construction incurred by Developer which may be legally funded with tax increment proceeds under Minnesota Statutes §469.174 et. seq. and case law. The current estimate of Eligible Project Costs is \$9,444,347.
- F. 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.
- G. Housing District as defined in Minnesota Statutes §469.174, Subdivision 11, means a type of tax increment financing district which consists of a project, or a

portion of a project, intended for occupancy, in part, by persons or families of low and moderate income, as defined in Minnesota Statutes, Chapter 462A, Title II of the National Housing Act of 1934, the National Housing Act of 1959, the United States Housing Act of 1937, as amended, Title V of the Housing Act of 1949, as amended, any other similar present or future federal, state, or municipal legislation, or the regulations promulgated under any of those acts, and that satisfies the requirements of the TIF Act, §469.1761.

- H. Project means the redevelopment by Developer of a multi-family residential and mixed use development with not less than eighty-four (84) studio, 1-bedroom and 2-bedroom residential apartments, not less than 20% of which will be occupied by households at 50% or less of area median income, and up to 19,280 square feet of retail/commercial space on the Property together with related utilities and other amenities for a total redevelopment of approximately 96,403 square feet at a total project cost of approximately \$20,000,000, all according to the plans approved by the Executive Director pursuant to Article IV and pursuant to required City approvals.
- I. Property means that Property located in St. Louis County, Minnesota, described on Exhibit A.
- J. TIF Act means Minnesota Statutes §§469.174 through 469.1799, as the same may be amended from time to time.
- K. TIF District No. 32 means DEDA's Tax Increment Financing District No. 32.
- L. TIF Note means the limited revenue tax increment financing note ("pay-as-you-go" note) to be issued by DEDA to the Developer pursuant to Article VI of this Agreement.
- M. TIF Plan means the Tax Increment Financing Plan for TIF District No. 32 authorized in accordance with the TIF Act, which TIF Plan is on file in the office of the Executive Director.

ARTICLE II

Application Fee and Reimbursement of Consultant Costs

In consideration of the financial assistance provided by DEDA to Developer

pursuant to the terms of this Agreement, Developer has paid to DEDA a non-refundable application fee of Three Thousand and No/100 Dollars (\$3,000.00). Additionally, Developer agrees to reimburse DEDA upon invoice for services of Ehlers & Associates, Inc. to perform a “but for compliance” test for the Project and to prepare and process the TIF Plan in an amount up to Eighteen Thousand and No/100ths Dollars (\$18,000.00).

ARTICLE III

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. Developer’s certified estimate of the total cost of construction of the Project.
- 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 plans, specifications and elevations, approved pursuant to Article IV. Such construction contract shall provide that payments for the work thereunder are the sole obligation of Developer.
- 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 IV

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 working drawings, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations 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 V
Construction

- A. **Construction.** Upon the fulfillment of the preconditions to construction provided for in Articles III and IV above, but in no event later than December 31, 2019, Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article IV. 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 December 31, 2021. 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 VI, 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 \$1,800,000 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 an appropriate certificate certifying completion of construction of the Project (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 VI

Payment Obligations

- A. Upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article V, DEDA shall execute and deliver to Developer a Note substantially in the form of Exhibit C. The principal amount of the TIF Note shall be \$1,800,000 or the amount of documented Eligible Project Costs, whichever is less. The term of the TIF Note shall be for a period of twenty years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment, or until the principal and interest on the TIF Note has been paid in full, whichever is sooner.
- B. Pursuant to the TIF Plan, DEDA's first receipt of Available Tax Increment will be in August 2022. Interest payable on the TIF Note in the amount of 5% per annum shall start to accrue on the date of execution of the TIF Note. There shall be no accrual of interest on unpaid interest. As required by statute, the amount of Available Tax Increment shall not exceed the amount of Eligible Project Costs incurred, paid, or otherwise contracted for by the Developer within 5 years of the date of certification by the St. Louis County Auditor of TIF District No. 32.

- C. Developer acknowledges and agrees, as provided in the TIF Note, that payments under the TIF Note are to be made only as and to the extent that DEDA shall receive and be able to retain Available Tax Increment on any Scheduled Payment Date as defined in the TIF Note. If there is insufficient Available Tax Increment on any Scheduled Payment Date, the Available Tax Increment shall be applied to interest first and thereafter to principal. There shall be no interest on unpaid interest as it accrues. DEDA shall not be obligated to make any payments except as provided in the TIF Note.
- D. The TIF Note will be issued without registration under the State or federal securities laws pursuant to an exemption for such issuance; and, accordingly, the TIF Note may not be assigned, transferred or pledged, in whole or in part, except as specifically set forth herein. Notwithstanding anything to the contrary in this Agreement, prior to the issuance of a Certificate of Completion, the TIF Note may be assigned, transferred or pledged without the approval of DEDA for the purpose of securing financing to pay for costs of constructing the Project; provided that notice of the assignment, transfer or pledge is provided to the Executive Director along with a completed certification of registration as contemplated under the TIF Note. Following the issuance of a Certificate of Completion, the TIF Note may be assigned to private mortgage lenders as security for mortgage loans relating to the Project or to a purchaser of the Project if Developer and Purchaser comply with the provisions of Article X hereof; provided that notice of the assignment, transfer or pledge is provided to the Executive Director along with a completed certification of registration as contemplated under the TIF Note.
- E. DEDA's financial commitment for payment of the TIF Note under this Agreement is a revenue obligation only and will be paid by DEDA only out of Available Tax Increment. Developer acknowledges that DEDA makes no representations or warranties that the Available Tax Increment will be sufficient to pay Developer on the TIF Note. Developer acknowledges that Available Tax Increment is subject to calculation by St. Louis County and changes in state statute, and that the TIF Note may not be paid prior to the final payment set forth in the TIF Note and in

such event, the amount of payments otherwise due to Developer under Paragraph A above shall be deemed upon termination of this Agreement to have been paid in full and DEDA shall have no further obligations for payments of said amounts.

- F. Developer acknowledges that the estimates of Available Tax Increment and tax projections, which may have been made by DEDA or its agents, officers or employees are estimates only, are made for the sole use and benefit of DEDA and are not intended for Developer's reliance.

ARTICLE VII

Compliance with Low and Moderate Income Requirements.

- A. Developer understands and agrees that TIF District No. 32 constitutes a Housing District under §469.174, Subdivision 11 of the TIF Act. Accordingly, in compliance with §469.1761, Subdivision 3 of the TIF Act, Developer agrees that the Project must satisfy, or be treated as satisfying, the income requirements for a qualified residential rental project as defined in Section 142(d) of the Internal Revenue Code. Developer further agrees that not more than 20% of the square footage of the Project may consist of commercial, retail, or other nonresidential uses. Developer must meet the above requirements as follows:
 - 1. At least 20% of the residential units in the Project must be occupied by persons whose incomes do not exceed 50% of the St. Louis County median income; and
 - 2. The limits described in Subparagraph 1 must be satisfied throughout the term of this Agreement. Income for occupants of units described in subparagraph 1 shall be adjusted for family size in accordance with Section 142(d) of the Internal Revenue Code and related regulations.
- B. On or before each July 1 and January 1 during the period that the TIF Note is outstanding, commencing on July 1, 2022, Developer must deliver to DEDA a Compliance Certificate in the form of Exhibit D executed by Developer covering the preceding six (6) months together with written evidence satisfactory to DEDA of compliance with the covenants in this Article. This evidence must include a

statement of the household income of each of qualifying renter, a written determination that each qualifying renter's household income falls within the qualifying limits of this Article (and Section 142(d) of the Internal Revenue Code), and certification that the income documentation is correct and accurate (and that the determination of qualification was made in compliance with Section 142(d) of the Internal Revenue Code). Accuracy of the information contained in the Compliance Certificate is the sole responsibility of the Developer. DEDA may review, upon request, all documentation supporting Developer's submissions and statements. In determining compliance with this Article, Developer must use the St. Louis County median incomes for the year in which the payment is due on the TIF Note, as promulgated by the Minnesota Housing Finance Agency based on the area median incomes established by the United States Department of Housing and Urban Development.

- C. If DEDA receives notice from the Minnesota Department of Revenue, the Minnesota State Auditor, any tax official, or any court of competent jurisdiction that TIF District No. 32 does not or ceases to qualify as a Housing District due to the acts or omissions of Developer, such event shall be deemed an event of default under this Agreement. Additionally, failure of Developer to comply with the requirements of this Article VII shall constitute an event of default under this Agreement. Developer acknowledges such a default will cause DEDA irreparable harm and that in such event, DEDA is entitled to seek and obtain both temporary and permanent equitable relief. In addition to this remedy and any other remedies available to DEDA under Article XIII, Developer shall indemnify, defend and hold harmless DEDA for any damages, losses, or costs resulting therefrom. If DEDA receives notice from the Minnesota Department of Revenue, the Minnesota State Auditor, any tax official, or any court of competent jurisdiction that TIF District No. 32 does not or ceases to qualify as a Housing District due to acts or omissions other than those of Developer, no further payments shall be made under the TIF Note, this Agreement and the TIF Note shall terminate, and DEDA may recover any amounts paid under the TIF Note following the date TIF District No. 32 ceased to qualify as a Housing District.

ARTICLE VIII

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. 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.
- C. 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.
- 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 or 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 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 collectability is being contested in good faith by appropriate proceedings.
- H. Continued Use. Continue use of the Project and the Property as up to 19,280 square feet of retail/commercial space and not less than eighty-four (84) studio, 1-bedroom and 2-bedroom residential apartments, not less than 20% of which will be occupied by households at 50% or less of area median income, and provide reports evidencing the same.
- I. Living Wage. Pay to both current and new employees compensation that on an annualized basis is, at minimum, equal to at least 110 percent of the federal poverty level for a family of four, or a living wage as set forth in Section 2-137 (Living Wage) of the Duluth City Code, 1959, as amended, whichever is greater.
- J. Prevailing Wage. Cause the laborers, mechanics or apprentice-trainees employed directly upon the Project work site to be paid the prevailing wage rates as set forth in Section 2-25 (Wage Rates and Hours for City Projects). Payroll for the construction trades must be submitted to the Executive Director on a monthly basis and will be provided within 15 business days of the month to which it applies.

- K. Project Labor Agreement. Enter into a Project Labor Agreement in conformance with the requirements of Section 2-29 of the Duluth City Code, 1959, as amended, including the Community Benefits Provisions set forth in Paragraphs (c) and (d) of said Section 2-29.
- L. Community Benefits. Require its contractor to abide by the Community Benefits specifications on file in the Office of the City Purchasing Agent.

ARTICLE IX

Business Subsidy

The provisions of this Article constitute the “business subsidy agreement” for the purposes of the Business Subsidy Act.

- A. Definitions. For the purposes of determining whether the Business Subsidy Goal set forth in Paragraph E of this Article has been met, the following terms shall have the meanings hereinafter ascribed to them.
 - 1. Benefit Date means the date upon which a Certificate of Completion has been issued by DEDA as set forth in Paragraph D of Article V.
 - 2. Reporting Period means that calendar year, from January 1st of any year through December 31st of that calendar year for the period prior to the year in which a report referred to in Paragraph F of this Article is required.
- B. Business Subsidy. The business subsidy provided to Developer consists of the tax increment assistance in an amount up to \$1,800,000 net present value provided through the establishment of a Housing Tax Increment Financing District, TIF District No. 32.
- C. Need for Subsidy. 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 the 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.
- D. Public Purpose. The public purpose of the tax increment assistance to be provided pursuant to this Agreement is to redevelop a Project which will

enhance the economic diversity of the City and the City's tax base; 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; expand the City's tax base and realize a reasonable rate of return on the public investment; encourage the development of commercial areas in the City that result in higher quality development or redevelopment and private investment; and achieve development on sites which would not be developed without assistance.

- E. Business Subsidy Goal. Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Developer agrees that on or before December 31, 2021, or such additional time as approved in writing by the Executive Director pursuant to Paragraph A of Article V, it shall have redeveloped the Project on the Property in accordance with this Agreement (the "Business Subsidy Goal"). In accordance with §116J.994, Subdivision 4, DEDA has determined after a public hearing that the creation or retention of jobs is not a goal of this redevelopment effort. Accordingly, the wage and job goals are set at zero.
- F. Reporting Requirement. On or before March 1st of each year following the commencement of this Agreement, Development shall file with DEDA and the City and for two (2) years after the Benefit Date, reports on forms developed by the Minnesota Department of Employment and Economic Development ("DEED") setting forth Developer's progress in meeting the Business Subsidy Goal during the preceding Reporting Period. Said report shall include the information required in Minnesota Statute §116J.994, Subdivision 7, and shall be accompanied by such documentation as the Executive Director shall reasonably request in writing. All such reports shall be signed on behalf of Developer by an officer of Developer with authority to bind Developer.
- G. Penalty. If DEDA does not receive the reports described in Paragraph F of this Article, it will send to Developer a warning by certified mail within one week of the required filing date. If within 14 days of the post marked date of the warning the

reports are not received, Developer agrees to pay DEDA a penalty of \$100 for each subsequent day until the report is filed, up to a maximum of \$1,000.

- H. Special Event of Default if Business Subsidy Goals Not Met. Developer agrees that if the Business Subsidy Goal of Project redevelopment is not met by December 31, 2021, or such additional time as approved in writing by the Executive Director pursuant to Paragraph A of Article V, as determined in the sole discretion of DEDA, Developer shall not receive any tax increment financing assistance under this Agreement.
- I. Additional Enforcement. In the event that Developer shall fail for any reason whatsoever to meet the reporting requirements of Paragraph F of this Article fully and completely and in a timely manner as required, said failure shall be deemed to be a material breach of the terms and conditions of this Agreement and, in addition to the rights and remedies available to DEDA pursuant to Paragraph G, DEDA shall be entitled to withhold any payment due from DEDA under this Agreement and to withhold the performance of any obligation owed by DEDA under this Agreement until Developer's reporting obligations pursuant to this Article have been fully complied with. Further, DEDA shall be entitled to reimbursement for any reasonable costs, including the value of staff time and attorneys' fees and costs, incurred by DEDA to secure Developer's compliance with the reporting requirements.
- J. Parent Corporation. None.
- K. Other Financial Assistance. City of Duluth Brownfield Revolving Loan Fund (\$119,912 for commercial portion of building and \$200,000 for residential portion of building).
- L. Continued Operations Covenant. Developer agrees to own and operate the Project and the Property and to not assign, convey, transfer, sell or change its identity in violation of Article X for at least five (5) years after the Benefit Date (the "Continued Operations Covenant").

ARTICLE X

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. Additionally, the Business Subsidy Act requires that Developer own and operate the Project and the Property during the period of the Continued Operations Covenant. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the expiration of the Continued Operations Covenant, 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.

D. Transfers after the expiration of the Continued Operations Covenant.

Following the expiration of the Continued Operations Covenant, Developer may sell, convey or otherwise transfer the Property or any tract or parcel thereof with the prior written consent of the Executive Director, which consent shall not be unreasonably withheld or delayed, provided the following has been satisfied:

1. Sixty (60) days' prior written notice of the transfer is provided to the Executive Director.
2. The transferee shall agree by affidavit to comply with all the terms and conditions of this Agreement not otherwise extinguished by the completion and certification of construction of the Project. The affidavit shall comply with the terms of this Paragraph 2 and shall be provided to the Executive Director.
3. Developer shall assign the Development Agreement to the transferee in a form approved by the Executive Director.
4. Notwithstanding the above transfer, the payment of the tax increment pursuant to Article VI shall be made to the Registered Owner of the Note.

Failure to comply with the requirement of subsection 1, 2 and 3 above shall be an event of default under this Agreement.

Provided the above requirements are met, upon transfer of the Property, the obligations of Developer under this Agreement are terminated except as provided

for in Article XVI and except that Developer shall remain liable for any obligations that arose prior to the date of such transfer that were required to be performed prior to such transfer.

ARTICLE XI

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 XII

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 \$50,000 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 XIII

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 or 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 and/or the TIF Note.
 2. Withhold the performance of any obligation owed by DEDA under this Agreement and/or the TIF Note.
 3. Seek and be entitled to monetary damages for any damages incurred by DEDA as a result of a default.
 4. Cease making payments under this Agreement and the TIF Note of Available Tax Increment.
 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 XIV

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 Tax Increment Financing District No. 32 and duly approve the grant of Available Tax Increment and authorize the issuance of the TIF Note consistent with Article XI, 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 XV

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. The Project shall comply at all times with the requirements for a Housing District under Minnesota Statutes §469.174, Subdivision 11 and §469.1761, and at least

20% of the units will be occupied by individuals and family with incomes at 50% or less of the St. Louis County median income, and not more than 20% of the square footage of the Project will consist of commercial, retail, or other nonresidential uses.

- 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 XVI

Term

The term of this Agreement shall commence on the date first shown above and shall continue for a period of 20 years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment unless changes in law prevent DEDA from any receipt of further payments of Captured Tax Increment in which event the Agreement is terminated, or until the TIF Note obligation is paid in full, whichever is sooner, unless this Agreement is otherwise earlier terminated as provided for herein. 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 XVII

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 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 DEDA: DEDA
 402 City Hall
 418 West First Street
 Duluth, MN 55802
 Attn: Executive Director

In the case of Developer: Three D I, LLC
 3060 Peachtree Road, NW, Suite 1830
 Atlanta, Georgia 30305
 Attn: Guru Naganat

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 XIX

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 XX

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 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

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 XXIV

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 XXV

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 XXVI

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 XXVII

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 XXVIII

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

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

THREE D I, LLC,
a Minnesota limited liability company

By: Duluth BOT Managing Member, LLC
a Minnesota limited liability company
Its Managing Member

By: Strategic TC Properties DG Duluth, LLC,
a Georgia limited liability company
Its Managing Member

By: Strategic TC Holdings, LLC,
a Georgia limited liability company
Its Manager

By: Strategic Tax Solutions, LLC,
a Georgia limited liability company
Its Sole Member

By: JRS Strategic Holdings, LLC,
a Georgia limited liability company
Its Sole Member

By: _____
James W. Freeman, III
Manager

STATE OF GEORGIA)
) SS
COUNTY OF FULTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by James W. Freeman, III, the Manager of JRS Strategic Holdings, LLC, a Georgia limited liability company and the sole member of Strategic Tax Solutions, LLC, a Georgia limited liability company and the sole member of Strategic TC Holdings, LLC, a Georgia limited liability company and the manager of Strategic TC Properties DG Duluth, LLC, a Georgia limited liability company and the managing member of Duluth BOT Managing Member, LLC, a Minnesota limited liability company and the managing member of Three D I, LLC, a Minnesota limited liability company, for and on behalf of the company.

Notary Public

This instrument was drafted by:

Joan M. Christensen
Assistant City Attorney
440 City Hall
411 West First Street
Duluth, MN 55802
(218) 730-5273

EXHIBIT A

Legal Description of Property

That real property legally described as follows:

Tracts A, B, C, D, E, F, G, H, I and J, Registered Land Survey No. 142, St. Louis County, Minnesota

EXHIBIT B

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2019, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and Three D I, 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 _____, 2019, 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.

CERTIFICATE OF COMPLETION

EXHIBIT A

Legal Description of Property

That real property legally described as follows:

Tracts A, B, C, D, E, F, G, H, I and J, Registered Land Survey No. 142, St. Louis County, Minnesota

EXHIBIT C
TIF NOTE

Principal Amount

Annual Rate

\$ _____

5.00%

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

TAX INCREMENT FINANCING (TIF) REVENUE NOTE
(BOARD OF TRADE DEVELOPMENT)

The Duluth Economic Development Authority, an economic development authority created and existing pursuant to Minnesota Statutes Chapter 469 (“DEDA”), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay Three D I, LLC, a Minnesota limited liability company (the “Developer”), or its registered assigns (the “Registered Owner”), the principal amount of \$ _____ and ____/100th Dollars (\$ _____), which is the amount determined in Paragraph A of Article VI of that certain Development Agreement between DEDA and the Developer dated _____, 2019, and bearing DEDA Contract No. _____, as may be amended from time to time (the “Agreement”), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

This TIF Note is issued pursuant to the Agreement. Terms are defined in this TIF Note or in the Agreement. The principal amount of this TIF Note, as adjusted above, shall bear interest at the annual rate specified above and interest shall start to accrue as of the date of execution of this TIF Note. There shall be no accrual of interest on unpaid interest. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

This Note is issued and payable solely from Available Tax Increment, as defined in the Agreement, actually received and retained by DEDA. DEDA shall pay to the Registered Owner of the TIF Note bi-annual payments in the amount of the Available Tax Increment payable on August 1 and February 1 of each year, commencing on August 1, 2022, to and including February 1, 2042, or, if the 1st should not be a business day the next succeeding business day (the “Scheduled Payment Dates”). Available Tax Increment shall first be applied to accrued interest and then to principal.

This Note shall terminate and be of no further force and effect following (a) February 1, 2042; (b) any date upon which the Agreement or this TIF Note has terminated under said Agreement; or (c) on the date that all principal and interest payable hereunder

shall have been paid in full; whichever occurs earliest. This TIF Note may be prepaid in whole or in part at any time without penalty.

DEDA makes no representation or covenant, express or implied, that the Available Tax Increment will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

DEDA's payment obligations hereunder shall be further conditioned on the fact that no Event of Default by Developer under the Agreement shall have occurred and be continuing, but such unpaid amounts shall become payable, without interest accruing thereon in the meantime, if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Agreement DEDA elects to terminate the Agreement or this TIF Note, DEDA shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Agreement for a fuller statement of the rights and obligations of DEDA to pay the principal of this TIF Note and the interest thereon, and said provisions are hereby incorporated into this TIF Note as though set out in full herein.

THIS TIF NOTE IS A SPECIAL, LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF DEDA OR THE CITY OF DULUTH (THE "CITY") AND IS PAYABLE BY DEDA ONLY FROM THE SOURCES AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS TIF NOTE IS NOT A GENERAL OBLIGATION OF DEDA OR THE CITY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF DEDA OR THE CITY ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS TIF NOTE AND NO PROPERTY OR OTHER ASSET OF DEDA OR THE CITY, SAVE AND EXCEPT THE ABOVE REFERENCED PLEDGED AVAILABLE RELATED TAX INCREMENTS, IS OR SHALL BE A SOURCE OF PAYMENT OF DEDA'S OBLIGATIONS HEREUNDER.

The Registered Owner shall never have or be deemed to have the right to compel any exercise of any taxing power of DEDA, the City or of any other public body, and neither DEDA, the City nor any person executing or registering this TIF Note shall be liable personally hereon by reason of the issuance or registration thereof or otherwise.

This TIF Note is issued by DEDA in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes §§469.174 to 469.1799, the Minnesota Tax Increment Act.

THIS TIF NOTE HAS NOT BEEN REGISTERED UNDER ANY FEDERAL OR STATE SECURITIES LAWS AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, OR OTHERWISE DISPOSED OF OR TRANSFERRED EXCEPT AS PROVIDED FOR IN THE AGREEMENT.

This TIF Note may be assigned only as provided in the Agreement and, upon such assignment, the assignor shall promptly notify DEDA at the office of the Executive Director by registered mail, and the assignee shall surrender the same to the Executive Director either in exchange for a new fully registered note or for transfer of this Note on

the registration records for the TIF Note maintained by DEDA. Each permitted assignee shall take this TIF Note subject to the foregoing conditions and subject to all provisions stated or referenced herein and in the Agreement.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this TIF Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this TIF Note, together with all other indebtedness of DEDA outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of DEDA to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the Duluth Economic Development Authority, by its Board of Commissioners, has caused this TIF Note to be executed by the manual signatures of the President and the Secretary of DEDA and has caused this Note to be issued on and dated _____, 20__.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Its President

By: _____
Its Secretary

Approved as to form
Assistant City Attorney

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing TIF Note, as originally issued on _____, 20____, was on said date registered in the name of Three D I, LLC, a Minnesota Limited Liability Company, and that, at the request of the Registered Owner of this TIF Note, the undersigned has this day registered the TIF Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

<u>Name and Address of Registered Owner</u>	<u>Date of Registration</u>	<u>Signature of Secretary</u>
Three D I, LLC _____ _____	_____, 20_____	_____

EXHIBIT D
COMPLIANCE CERTIFICATE

The undersigned, Three D I, LLC, does hereby certify that as of the date of this Certificate not less than 50% of the residential units in the Three D I, LLC Project located at 301 West First Street in Duluth, Minnesota (the "Project") are occupied by individuals whose income is 50% or less of the St. Louis County, Minnesota, median income.

Dated this ____ day of _____, 20__.

Three D I, LLC
a Minnesota limited liability company

By _____

Its _____

[Attach income verification required by Article VII of the Development Agreement]