

TAX ABATEMENT DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

CITYVIEW FLATS, LLC

Relating to DOWNTOWN AREA WORKFORCE HOUSING

Effective as of June _____, 2018

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- EXHIBIT A - City Abatement Resolution
- EXHIBIT B - County Abatement Resolution
- EXHIBIT C – Eligible Project Costs
- EXHIBIT D - Legal Description of Land
- EXHIBIT E - Certificate of Completion

TAX ABATEMENT DEVELOPMENT AGREEMENT

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

WHEREAS, Developer proposes a project to construct 105 rental units, up to 96 units of which will be market rate units for workforce housing and no less than 9 of which will be rent restricted units at 80% area median income on property owned by Developer located at 333 North First Avenue West in the downtown area of Duluth; and

WHEREAS, the County of St. Louis, Minnesota, and the City desire to assist the project with abatement of real estate taxes in an amount not to exceed \$400,000 each to fill gaps in the available funding for the project, making the project financially feasible.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

ARTICLE I

Definitions

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

Abatement Resolutions means the City Abatement Resolution and the County Abatement Resolution.

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

Building means a structure on the Property containing 105 rental units, up to 96 units of which will be market rate units for workforce housing and no less than 9 of which will be rent restricted units at 80% area median income and will include a tuck under parking garage, fitness center, community rooms, management offices and other amenities.

City Abatement Resolution means a resolution approved by the Duluth City Council, substantially in the form of that attached hereto as Exhibit A, authorizing the abatement of real property taxes on the Property and the Project paid to the City for a term of up to fifteen (15) years which will commence with taxes payable in 2021 and provide for a total amount not to exceed \$400,000 of tax abatement to be paid to Developer as provided for in the City Abatement Resolution and this Agreement. The City shall remit the abatement amounts to the Project only when, if and as property tax payments are received by City from the Project and only to reimburse for a portion of the costs of constructing the Project.

County Abatement Resolution means a resolution approved by the St. Louis County Board of Commissioners, substantially in the form of that attached hereto as Exhibit B, authorizing the abatement of real property taxes on the Property and the Project paid to the County for a term of up to fifteen (15) years which will commence with taxes payable in 2021 and provide for a total amount not to exceed \$400,000 of tax abatement to be paid to Developer as provided for in the County Abatement Resolution and this Agreement. The County shall remit the Abatement amounts to the Project through the City only when, if and as property tax payments are received by County from the Project and only to reimburse for a portion of the costs of constructing the Project.

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

Eligible Project Costs means, without intending thereby to limit or restrict any proper definition of such costs under any applicable laws or sound accounting practices, the costs for construction of the Project shown on Exhibit C including:

- A. Obligations incurred for labor and contractors, builders and materialmen in connection with the acquisition, construction and installation of the Project;
- B. Site improvement and off-site improvement costs required for the construction of the Project;
- C. Fees and expenses of a general contractor, architect, legal counsel and other professionals for surveys and estimates and other preliminary investigations, preparation of plans, drawings and specifications, assistance with bidding, and supervising construction, as well as for the

performance of all other duties of the general contractor, the architect and other professionals in relation to the acquisition and development of the Project.

Event of Default means an event which, with notice or passage of time or both, would constitute an event of default under this Agreement as set forth in Article XII.

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

Project means the construction of 105 rental units, up to 96 units of which will be market rate units for workforce housing and no less than 9 of which will be rent restricted units at 80% area median income and will include a tuck under parking garage, fitness center, community rooms, management offices and other amenities together with all necessary utilities, driveways, sidewalks and landscaping having a total Project cost of not less than Twenty Million Dollars (\$20,000,000).

Subgrant Agreement means that agreement between City and Developer under the State of Minnesota's Workforce Housing Development Program to assist Developer with development of rental housing to serve employees of local business in the amount of \$180,000.

ARTICLE II

Preconditions to Project Construction

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

A. Title.

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

B. Approvals.

Approvals of the Abatement Resolutions and the Subgrant Agreement.

C. Construction Plans.

Approved Plans, Specifications and Elevations for the construction of the Project as described in Article III below along with the architect's certified estimate of the Project cost.

D. Construction Contract.

A copy of the executed contract between Developer and the general contractor necessary to complete the construction of the Project in accordance with the Plans, Specifications and Elevations approved pursuant to Article III below. Such contract shall provide that payments for the work thereunder are the sole obligation of Developer.

E. Performance and Payment Bonds.

A copy of executed payment and performance bonds provided by Developer in connection with the construction of the Project, which bonds shall be in the penal amount of not less than one hundred (100%) percent of the contract price under said construction contract as set forth in Paragraph D above written by a bonding company licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name the City as a beneficiary thereof, or, in the event payment and performance bonds are not required by the Minnesota Housing Finance Agency under its Workforce Housing Development Program, Developer shall provide such other evidence satisfactory to the Director of the ability of Developer to complete the Project.

F. Financing.

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

G. Construction Cost Certification.

Evidence satisfactory to the Director that the total cost of the Project will equal or exceed Twenty Million Dollars (\$20,000,000).

H. Additional Documentation

Developer shall also deliver the following documents to the City:

1. Corporate resolutions authorizing this Agreement;
2. A certificate of Developer's good standing;
3. An opinion of legal counsel addressed to the City stating that Developer is in compliance with its organizational documents and other agreements;
4. Insurance Certificates.

I. Survey.

A survey of the Property prepared by a Registered Land Surveyor under the laws of the State of Minnesota.

ARTICLE III

Project Plans

A. Plans, Specifications and Elevations.

No less than 30 days prior to the commencement of construction of the Project by Developer, or such lesser time as approved by the Director, Developer shall submit working drawings, specifications and elevations for the Project together with detailed site grading, utility, storm water control and diversion facilities and landscaping plans and elevations to the Director for approval. All such plans, specifications and elevations shall be in conformance with this Agreement, with the schematic design which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of the City, the State of Minnesota and the United States of America. The Director shall review such plans, specifications and elevations within 30 days of submission of same by Developer. The Director's approval shall be provided to Developer in writing. If the Director rejects such plans, specifications and elevations in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with a detailed explanation of the reason or reasons therefor, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within 15 days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission

of corrected plans hereinafter provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved in writing by the Director. The Director's approval of Developer's plans, specifications and elevations shall not constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law.

B. Changes After Initial Approval.

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

ARTICLE IV

Construction

A. Construction.

Upon the fulfillment of the preconditions to construction provided for in Articles II and III, Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article III; provided, however, that said construction work shall be commenced no later than August 1, 2018 and shall be completed no later than July 31, 2020.

B. Developer to Bear All Costs.

Except for payment by the city provided for in Article VII, and except for funding provided through the Subgrant Agreement, Developer specifically agrees to bear all costs related to the construction of the Project and any modifications thereto utilizing equity and its financing.

C. Prevailing Wage and PLA.

Developer shall cause the laborers, mechanics or apprentice-trainees directly employed in the construction of the Project to be paid the wage rates as provided in the federal Davis Bacon Act, as amended. Payroll for the construction trades must be submitted to the Director on a monthly basis. In addition, Developer shall enter into a project labor agreement in conformance with the requirements of Section 2-29 of the Duluth City Code, 1959, as amended.

D. 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 Director as to the actual progress of Developer with respect to the Project. Additionally, upon reasonable notice, Developer also agrees that it will permit the City access to the Property and to ascertain the progress of the Project.

ARTICLE V

Audits

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

ARTICLE VI

Certificate of Completion

Upon completion by Developer of the construction of the Project in accordance with this Agreement and upon written request for the same by the Developer, Director shall furnish to Developer an appropriate certificate certifying completion of construction of the Project (Certificate of Completion), substantially in the form of that attached hereto as Exhibit E. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction of the Project undertaken pursuant to this Agreement. Immediately upon issuance of the Certificate of Completion, Developer agrees to record the Certificate of Completion in the office of the St. Louis County

Recorder and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to the City an executed original of the Certificate of Completion showing the date and document numbers of record, or a certified copy of the filed original. In the event the Director refuses or denies to provide a Certificate of Completion, the Director will provide Developer a written statement indicating the reasons for such refusal or denial and what measures or actions are required in order to obtain a Certificate of Completion.

ARTICLE VII

Tax Abatement Assistance

As a part of the financial assistance provided to this Project to make it feasible, City and St. Louis County have agreed to provide tax abatement assistance in the form of the Abatement Resolutions.

Tax abatement proceeds shall only be made to reimburse Developer for Eligible Project Costs incurred and paid by Developer and only after the Certificate of Completion provided for in Article VI below has been issued. All requests for payment of all Eligible Project Costs shall be approved for payment by the architect and shall be transmitted to the Director. All such requests shall be accompanied by documentation consisting of and establishing the following:

- A. Proof that contractors and suppliers have provided labor and materials to the construction of the Project for which Developer has not been previously reimbursed.
- B. Proof that the contractors and suppliers supplying the labor and materials referenced in Subparagraph A above have been paid therefor, including paid invoices, receipts, canceled checks, necessary lien waivers evidencing the same or comparable evidence of payment.
- C. In addition to the foregoing documentation, City shall be entitled to request such additional information as it deems reasonably necessary to establish the costs for which reimbursement are requested comply with all requirements of the State of Minnesota and this Agreement.

The City will, on each February 1 and August 1 (each a "Payment Date") commencing February 1, 2021 and terminating on the Termination Date pay to

Developer abatement of the taxes received by City and County during the six-month period prior to that Payment Date, payable from Fund 310-030-5479 (Debt Service, Finance, Tax Abatement). The maximum amount to be paid to the Developer shall be the lesser of the Eligible Costs and \$800,000 (\$400,000 from City abatement and \$400,000 from County abatement). No interest shall accrue with respect to the principal amount of such costs.

In no case shall City make payments of tax abatements to Developer pursuant to this Agreement that, together with any other abatements payable by City and County under Minnesota Statutes §§ 469.1812 to 469.1815, exceed in any one year the greater of 10% of City's and County's levy for that year or \$200,000; provided that in the event that total abatements payable by City and County in any year equal the maximum under this section, City will pay to Developer a ratable share of the tax abatements otherwise due pursuant to this Agreement, allocated on the basis of the total annual abatements payable by the City or County in that year.

Developer understands and acknowledges that City makes no representations or warranties regarding the amount of tax abatements that will be generated as a result of the Project. Any estimates of the projected amount of tax abatements prepared by City, its financial advisors, or its other officers, agents, or employees in connection with this Agreement are for the benefit of City, and are not intended as representations on which Developer may rely. Developer further understands and acknowledges that no assistance is being provided by City hereunder except as set forth herein, and that Developer shall have no other claim against any funds of City.

City shall have no obligation to make any payment to Developer from any source other than the tax abatements.

City shall have no obligation to make any payment to Developer under this Agreement if there is an Event of Default on Developer's part under that Agreement that has not been cured as of the Payment Date.

ARTICLE VIII

Operating Covenants

Developer agrees that in its operations and use of the Building and the Property, in accordance with industry standards, Developer shall:

A. Maintenance.

At all times cause the Building 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 Building and Property and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Building 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 from all sidewalks, driveways and roadways, grass cutting and landscape maintenance, all necessary maintenance of storm water control and diversion facilities included in the Plans and all other exterior maintenance to the Building and the Property.

B. Utilities.

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

C. Licenses and Permits.

Preserve the existence of all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Building 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 Building 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 Building 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 Building 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 Building 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 Building and/or the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Building and the Property and all other charges lawfully made by any governmental body for public improvements.

G. Obligations and Claims.

Promptly pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Building and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.

H. Continued Use.

Continue use of the Building and the Property as rental units during the term of this Agreement, 92 of which shall be market rate units used to provide workforce housing. Continued use includes the rental units being offered for lease. Continued use does not require actual leasing as long as commercially reasonable efforts are being used to lease the rental units.

I. Living Wage.

Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance").

ARTICLE IX

Provision against Liens

A. Provision against Liens.

Except for encumbrances permitted pursuant to Paragraph B below, Developer shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Building, the Property or any part thereof which would materially or adversely affect the City's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify the City of its intention to do so and post such security as the City reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as the City does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

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

Developer recognizes that the City is relying upon the qualifications and identity of Developer to build and operate the Building. Therefore, except for the purposes of obtaining financing or as otherwise allowed by this Agreement, Developer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Building, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and except for the financing, Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of the Director until a Certificate of Completion has been obtained. Any such transfer made following the issuance of a Certificate of Completion shall require the transferee to agree by affidavit to assume this Agreement and 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 form of the affidavit shall have the prior written approval of the City's Attorney and shall be provided to the Director upon transfer.

ARTICLE X

Indemnification

A. Generally.

Developer shall to the fullest extent permitted by law, protect, indemnify and save the City and its officers, agents, servants, employees and any person who controls the City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims including claims for contribution or indemnity, demands and judgments of any nature arising from any of the following:

1. Any injury to or death of any person or damage to the Building or the Property or any part thereof, or growing out of or in connection with the use or non-use, construction or rehabilitation, condition or occupancy of the Building or the Property or any part thereof and also, without limitation, any and all acts or operations related to the construction or installation of the Project on any portion of the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;
2. Any breach of this Agreement by Developer;
3. Any violation of any contract, agreement or restriction related to Developer's use of the Building or the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer;
4. Any violation, or alleged violation by Developer, or any employee or agent of Developer or any contractor of Developer, of state, federal or local law, rule or regulation affecting the Building, the Property or the Project or the ownership, occupancy or use thereof; and
5. Any mechanic's liens or similar liens.

B. Environmental Indemnification.

In addition to the generality of the foregoing, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims including claims for contribution or indemnity, demands and judgments arising out of any condition existing on the Building or 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 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 Building 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 or to the Building or the Property, and that indemnification granted hereby shall include all costs of clean-up, remediation and response costs, together with the costs incurred in proceedings before any court of law or administrative agency, including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans, as defined by the foregoing agencies, as may be necessary to meet the requirements of said agencies and any other costs and expenses of any kind whatsoever arising out of conditions existing on the Building or the Property.

The indemnification set forth in Paragraphs A and B of this Article shall survive any termination of this Agreement, foreclosure or deed in lieu transfer of the Building or the Property.

C. Indemnification Procedures.

Promptly after receipt by City of notice of the commencement of any action with respect to which Developer is required to indemnify City under this Article, City shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of counsel satisfactory to City and the payment of expenses. In so far as such action shall relate to any alleged liability of the City with respect to which indemnity may be sought against Developer, 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 XI

Insurance

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

A. Insurance During Construction.

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

1. Property Insurance.

"All Risk" builders' risk insurance 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 in the

Building or on the Project or the Property , to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed \$20,000 per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Building and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the name of Developer and shall bear a payee clause in favor of the City with loss proceeds under any property policies made payable to the City, to the extent of its advance of funds. The general contractor, contractors, all subcontractors, and suppliers and Developer shall waive all rights against the City for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance.

Public Liability Insurance written on an "occurrence" basis in limits of not less than \$2,000,000 per occurrence and in the aggregate for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The City shall be named as an additional insured on the Comprehensive General Liability and Automobile Liability insurance policies. The general contractor shall also require such liability coverage of its contractors and subcontractors unless they are insured under the general contractor's policies. The general contractor's, contractors' and subcontractors' liability coverages shall include:

- (a) Contractors' public liability--premises and operations;
- (b) Independent contractors' vicarious liability
- (c) Personal injury;
- (d) Owned, non-owned, and hired vehicles;
- (e) Contractual liability covering customary construction contract and subcontract indemnify provisions; and

- (f) Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employer's liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance.

1. Property Insurance.

Prior to the expiration of the builders' risk coverage specified above and during the entire term of this Agreement, the Building, 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 \$20,000 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. The insurance policy shall bear a payee clause in favor of the City with loss proceeds under any property policies made payable to the City, to the extent of its advance of funds. Developer hereby waives any and all claims or causes of action against the City for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, Developer will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

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 Comprehensive General Liability Form and Automobile Liability Insurance Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death and limits of

\$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The City shall be named as additional insureds. Insurance shall cover:

- (a) Public liability, including premises and operations coverage.
- (b) Independent contractors' vicarious liability;
- (c) Personal injury.
- (d) Owned, non-owned and hired vehicles.
- (e) Contractual liability covering the indemnity obligations set forth herein.
- (f) Products--completed operations.
- (g) Property of Others.

D. Workers' Compensation.

Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees' liability insurance shall be carried in limits of \$100,000 per employee as required by Minnesota law.

E. Requirements for All Insurance.

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

F. Modification of Insurance Requirements.

It is agreed between the parties that City 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 City with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that City shall desire to so modify said insurance requirements, City shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by City for said modifications to go into effect.

G. Policies.

Developer shall be required to supply to the City certification of all policies required under this Agreement. In addition, each insurer providing such policies shall be required to provide evidence satisfactory to the Director that such policies will require the insurer to give the City 30 days' written notice prior to cancellation or modification of said insurance. In the event that an ACORD form of certification is used, the words, "endeavor to" shall be stricken from the notification provisions thereof.

H. Uninsured Loss.

In the event the Building or the Property or any portion thereof is destroyed by fire or other casualty covered by insurance, Developer shall forthwith repair, reconstruct, and restore the Building and the Property to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the Building and the Property whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction. In the alternative, and only with the prior written consent of the City, Developer may construct a building of a new design having utility to the City equal to or greater than the Building, approved by the City as a replacement to the Building, at its own cost and at no cost to the City. In the event that the City approves construction of such a replacement building, said building shall be constructed in accordance with the terms hereof.

ARTICLE XII

Developer Defaults and Remedies Therefor

A. Events of Default.

The following shall be deemed to be Events of Default by Developer under the terms and conditions of this Agreement to which the remedies set forth in

Paragraph B below shall be applicable as otherwise set forth in this Agreement. Except as otherwise specifically provided herein, following notice of a default, Developer shall have 30 days to cure such default and provide evidence of such cure to the City. The Director may grant extension of the opportunity to cure such a default if such default is not reasonably susceptible to being cured within thirty (30) days.

1. Developer shall fail to pay when due any real estate taxes or assessments with regard to the Building or the Property.
2. Developer shall permit any liens on the Building or the Property except as expressly provided for in this Agreement.
3. Developer shall fail to complete construction of the Project in conformance with the requirements of this Agreement or shall fail to operate the Building or the Property in conformance with said requirements during the term hereof.
4. Any of the following shall occur: (i) Developer shall seek relief in bankruptcy, or make a general assignment for the benefit of creditors, or (ii) there is filed by or against Developer a petition in bankruptcy or for the appointment of a receiver, or (iii) any creditor commences under any bankruptcy or insolvency law proceedings for relief against Developer, or (iv) an action is sought for the composition, extension, arrangement or adjustment of Developer's obligations, or (v) Developer discontinues its business as a going concern, or (vi) Developer defaults on any other obligation to City beyond any applicable notice and cure periods, or (vii) Developer's business is taken over or control is assumed by any government or governmental agency. Developer shall have 15 days to obtain dismissal of any action in Paragraph A. 4 (i), (ii), (iii), (iv) or (vii).
5. Any of the following shall occur:
 - i. Any warranty, representation or statement made by Developer with respect to this Agreement is untrue or misleading in any material respect.

- ii. Any financial information provided by or on behalf of Developer is untrue or misleading in any material respect.
- iii. Developer defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Developer's property or Developer's ability to perform its obligations under any of this Agreement.
- iv. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Developer or by any governmental agency against any collateral securing financing. However, this Event of Default shall not apply if there is a good faith dispute by Developer as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Developer gives City written notice of the creditor or forfeiture proceeding and deposits with the City monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by City, in its sole discretion, as being an adequate reserve or bond for the dispute.
- v. Developer fails to perform any other obligation required under this Agreement and such failure is not cured within 30 days after delivery of written notice by the City to Developer describing the failure and the act required to cure the failure.
- vi. Developer converts or allows the Building and the Property to be used for any purpose other than provided in this Agreement during the term of this Agreement.
- vii. Developer is in default under the terms and conditions of the Subgrant Agreement.

B. General Remedies

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

- 1. Terminate this Agreement.

2. Suspend or terminate at City's discretion payment of tax abatement proceeds to Developer otherwise payable hereunder.
3. Seek and be entitled to repayment from Developer all sums paid by City to Developer under this Agreement, which repayment obligation shall, from the date of default, bear interest at the rate of 6.0% per annum
4. Seek and be entitled to monetary damages from Developer for any damages incurred by City as a result of Developer's default.
5. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
6. Cumulatively to exercise all other rights, options and privileges provided by agreement, law or in equity.

C. Non-Waiver.

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

D. Remedies Cumulative.

The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of an Event of Default by Developer hereunder.

ARTICLE XIII

Representations, Covenants and Warranties

A. Representations, Covenants and Warranties of the City.

The City represents, covenants and warrants as follows:

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

B. Representations, Covenants and Warranties of Developer.

Developer represents, covenants and warrants as follows:

1. Developer is a duly formed and validly existing limited liability company under the laws of the State of Minnesota, is not in violation of its organizational documents, has power to enter into this Agreement and to perform its obligations hereunder, and has duly authorized the execution, delivery, and performance of this Agreement and the other Documents by proper corporate action.
2. Developer is not in violation of any provision of its organizational documents, or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule or regulation to which it is a party or by which it or its properties are bound or affected, other than violations and defaults which would not, individually or in the aggregate, have a material adverse effect on the financial position or results of operation of Developer.
3. The execution and delivery by Developer of this Agreement; compliance with the provisions thereof by Developer; and the performance by Developer of its agreements, covenants, and obligations under this Agreement, do not constitute on the part of Developer a breach or violation

of, or default under, its organizational documents, will not violate any law or regulation applicable to Developer, or result in the breach of, or constitute a default under, any indenture or loan, credit, or other agreement or instrument to which Developer is a party or by which it or its property is bound or affected.

4. There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any premises leased or owned by Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer, could have a material adverse effect upon Developer, any premises leased or owned by Developer, the financial position of Developer, or the operation of Developer, and that Developer is not in default of any order of any court or governmental agency.
5. No consent, approval, or authorization of, or permit or license from, or registration with, or notice to any federal or state regulatory authority or any third party not already obtained is required in connection with the execution, delivery, and performance by Developer of this Agreement, or any document or instrument related thereto.
6. Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
7. Developer shall promptly and at all times pay all reasonable fees and expenses incurred by City in pursuing its rights under this Agreement and under the Subgrant Agreement, including attorney's, accountant's and other fees.
8. Except as permitted in this Agreement, Developer will not sell, encumber, transfer or otherwise pledge the Building or the Property to any other person for any purpose whatsoever except with the prior written consent of City.
9. Developer will perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, the Subgrant Agreement and in all other instruments and agreements between Developer

and the City. Developer shall notify the City immediately in writing of any default in connection with this Agreement, the Subgrant Agreement or in any other agreement between Developer and City promptly upon Developer becoming aware of such default.

10. Except as otherwise permitted, Developer shall not, without written consent of the City, engage in any business activities substantially different than those in which Developer is presently engaged, or cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change ownership, dissolve or transfer or sell the Building or the Property out of the ordinary course of business.
11. Developer shall not enter into any agreement containing any provisions which would be violated or breached by the performance of Developer's obligations under this Agreement or in connection herewith.
12. Developer shall not subject the Building or the Property to any additional declaration, condition, restriction or easement without the prior written consent of the City.
13. Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and federal Davis-Bacon). Developer shall obtain, in a timely manner, all required permits, licenses and approvals, and shall meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed. Developer shall be responsible for obtaining all of the permits and licenses necessary for construction and operation of the Project.
14. The execution of this Agreement has been duly and fully authorized by Developer's governing body or board, that the officer of Developer who executed this Agreement on its behalf is fully authorized to do so, and that this Agreement when thus executed by said officer on its behalf will

constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

15. This Agreement is binding and enforceable against Developer in all respects.

ARTICLE XIV

Term

The term of this Agreement shall commence upon attestation by the City Clerk and shall continue until all tax abatement payments provided for in the Abatement Resolutions have been paid, unless this Agreement is terminated earlier as provided for herein (the "Termination Date"). Termination shall not terminate any indemnification provisions or any other provisions 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 XV

Runs with the Land

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

ARTICLE XVI

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 & Construction Services
322 City Hall
411 West First Street
Duluth, MN 55802

In the case of Developer: CityView Flats, LLC.
Attn: Marshall Jackson
1905 Stevens Avenue South, Suite B
Minneapolis, MN 55403

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 VII

Recordation

Immediately upon execution of this Agreement, Developer agrees to record this Agreement in the office of the St. Louis County Recorder and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to City an executed original of the Agreement showing the date and document numbers of record, or a certified copy of the filed original.

ARTICLE VIII

Disclaimer of Relationships

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

ARTICLE XIX

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 XX

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 XXI

Title of Articles

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

ARTICLE XXII

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 XXIII

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 XXIV

Counterparts

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

(The remainder of this page is intentionally left blank.)

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

CITYVIEW FLATS, LLC
a Minnesota limited liability company

By _____
Emily Larson
Mayor

By _____
Marshall Jackson
Managing Member

Attest:

By _____
Chelsea Helmer
City Clerk

Date: _____, 2018

Countersigned:

Josh Bailey
Auditor

Approved:

Gunnar Johnson
City Attorney

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Marshall Jackson, the Managing Member of CityView Flats, LLC. a Minnesota limited liability company on behalf of the company.

Notary Public

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Emily Larson and Chelsea Helmer, the Mayor and City Clerk of the City of Duluth, a Minnesota municipal corporation, on behalf of the City.

Notary Public

DRAFTED BY:

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

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EXHIBIT A

City Abatement Resolution

EXHIBIT B

County Abatement Resolution

EXHIBIT C

Eligible Project Costs

Eligible Project Costs	\$ Amount
Land Acquisition	160,800
Site Development	20,000
Construction	18,849,681
Machinery & Equipment	50,000
Legal Fees	15,000
Interest during Construction	514,013
Debt Service Reserve	-
Contingencies	540,900
Total Eligible Project Costs	20,150,394

EXHIBIT D

Legal Description of the Property

PID 010-1000-00400: DULUTH PROPER 1ST DIVISION WEST 4TH STREET - LOTS 18 AND 20

PID 010-1000-00420: DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 22 E ½

PID 010-1000-00430: DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 22 W ½

PID 010-1000-00440: DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 24 ELY 46 FT

EXHIBIT E

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2018, the City of Duluth, a home rule charter city and political subdivision of the State of Minnesota ("City"), and CityView Flats, LLC a Minnesota limited liability company ("Developer"), entered into a Tax Abatement Development Agreement which was recorded in the Office of the St. Louis County Recorder on _____, 2018, as Document No. _____ (the "Agreement"), relating to property located in St. Louis County, Minnesota, and legally described as:

DULUTH PROPER 1ST DIVISION WEST 4TH STREET - LOTS 18 AND 20
(PID 010-1000-00400)

DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 22 E ½
(PID 010-1000-00420)

DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 22 W ½
(PID 010-1000-00430)

DULUTH PROPER 1ST DIVISION WEST 4TH STREET – LOT 24 ELY 46 FT
(PID 010-1000-00440)

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

C. The Agreement requires Developer complete construction of the Project no later than July 30, 2020.

D. Article VI of the Development Agreement provides that a Certificate of Completion be issued by City through its Director upon completion by Developer of the construction of the Project.

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

NOW, THEREFORE:

1. Construction of the Project, pursuant to the Agreement, has been completed and those requirements under the Agreement which relate solely to Project

construction have been fulfilled, but all other conditions, provisions and restrictions contained in the Agreement shall remain in effect.

2. The Recorder in and for St. Louis County, Minnesota, is hereby authorized to accept for recording and to record this instrument.

CITY OF DULUTH

By: _____
Director of Planning and
Construction Services

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

The foregoing instrument was acknowledged before me this ____day of _____, 20____, by Keith Hamre, the Director of Planning and Construction Services of the City of Duluth, a home rule charter city and political subdivision of the State of Minnesota, on behalf of the City.

Notary Public

This instrument was drafted by:

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