

TAX ABATEMENT AGREEMENT

**County of St. Louis,
and
City of Duluth**

THIS TAX ABATEMENT AGREEMENT, entered into this ____ day of _____, 2019, by and between the **County of St. Louis**, a municipal corporation created and existing under the laws of the State of Minnesota (“County”) and the **City of Duluth**, a municipal corporation created and existing under the laws of the State of Minnesota (“City”) is in response to the following:

A. City has a documented unfulfilled need to provide housing in the downtown area of Duluth.

B. Roers Lake & First LLC (“Developer”) desires to redevelop property at 1 and 5 East First Street into approximately 47 rental units, 10% of which will be units with rents restricted to reflect 80% area median income to assist an unfulfilled need for such housing in downtown Duluth.

C. City desires to reimburse Developer for eligible costs associated with site development and construction of the project through abatement of real property taxes to be received by the City from payment of taxes on the property upon which the project will be located, all as authorized by Minnesota Statutes §§ 469.1813 - 1815.

D. County has agreed to assist City in reimbursing such costs based upon the County’s ability to reimburse City for said costs through the abatement of real property taxes to be received by the County from the payment of taxes on the property upon which the project will be built, all as authorized by Minnesota Statutes §§ Sections 469.1813-1815.

E. Pursuant to County Board resolution _____ (_____, 2019), County is willing to so abate said taxes and to provide said proceeds to City, as hereinafter provided for, in order to assist City in reimbursing Developer for costs associated with the project.

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

ARTICLE I

Definitions: For the purposes of this Agreement the following terms shall have the meaning hereinafter ascribed to them:

1.1. Project: shall mean the redevelopment of the property located at 1 and 5 East First Street in downtown Duluth which project will be known as First Street Lofts

containing approximately 47 rental units, at least 10% of which (minimally, 5 rental units) will be rent restricted at 80% of area median income.

1.2. Property: shall mean the property upon which the Project will be constructed located in St. Louis County, Minnesota and legally described on Exhibit A attached hereto and made a part hereof.

1.3. TAF: shall mean Tax Abatement Financing.

1.4. Development Agreement: shall mean that agreement between City and Developer which provides for the reimbursement to Developer of TAF-Eligible Costs up to the amount of \$700,000, up to \$300,000 of which will be funded through County tax abatement and up to \$400,000 of which will be funded through City tax abatement. An executed copy of the Development Agreement will be provided to County prior to or concurrent with County's execution of this Agreement.

1.5. TAF Proceeds: shall mean the portion of County real property taxes on the Property which is actually received by County in any year.

1.6. TAF-Eligible Costs: shall mean the eligible costs associated with redevelopment of the Project as shown on Exhibit B, attached hereto and made a part hereof, incurred as part of the Project and paid for by Developer.

ARTICLE II

TAF-Eligible Costs Stipulation. The parties hereto hereby agree that Developer will incur the TAF-Eligible Costs in furtherance of the Project that are listed on Exhibit B and that the amount of those costs for each item of such costs related thereto is substantially as shown on said Exhibit B. The parties further stipulate that the total amount of TAF-Eligible Costs incurred by Developer will be up to \$400,000 per the City and up to \$300,000 per the County. By requesting TAF, City certifies to County that it has determined the Project would not proceed without TAF, and understands that County will rely on such determination in passing any board resolution authorizing the transfer of TAF Proceeds to City.

ARTICLE III

TAF Proceeds to City.

3.1. Commencing with real estate taxes payable in the year 2021, County hereby agrees and commits that it will remit all TAF Proceeds as herein defined to City for the term of this Agreement in an amount not to exceed \$300,000.00. Said payments shall be due and payable to City no later than thirty (30) days after receipt thereof by County. County shall be obligated to pay those TAF Proceeds to City actually received by County and such obligation shall apply to such proceeds only when and to the extent received by County. The City has also agreed to abate up to \$400,000 of its share of real property taxes, which taxes are not included within this agreement.

3.2. Notwithstanding anything to the contrary herein, County's obligation to pay the TAF proceeds is furthered conditioned upon: a) Developer having fully paid real estate taxes on the Property in the relevant tax-payable year; b) no challenge to the tax assessment having been served upon County; c) certification from the City that TAF-Eligible Costs of at least \$300,000 have been paid by Developer; and d) no default or termination of the Development Agreement having occurred.

3.3. Payments may be made by check or wire transfer, as mutually agreed by the finance staff of the County and City, respectively. If a payment is not made in a particular year because the conditions described in Section 3.2 are not met, City's right to receive the payment in that year is terminated (i.e., payments are not withheld and paid in a future year).

3.4. The City shall apply the County TAF Proceeds solely to reimburse Developer, pursuant to the Tax Abatement Development Agreement, for TAF-Eligible Costs.

ARTICLE IV

Term. The term of this Agreement shall be deemed to run from the date of first receipt of TAF Proceeds by City from County for a period of ten (10) years or until the total amount of TAF Proceeds received by City equals the amount of \$300,000.00, whichever is sooner (the "Termination Event"). Upon the happening of the Termination Event, this Agreement shall terminate and County shall have no further obligation to remit TAF Proceeds to City.

ARTICLE V

Default. If City gives Developer any notice of default under the Development Agreement, City will promptly provide a copy of the default notice to County.

ARTICLE VI

Force Majeure. In the event that County is prevented from making the payments to City required by Article III above due to events or circumstances which were beyond its control, including but not limited to laws enacted by the State of Minnesota Legislature, it shall be County's obligation to use its best efforts to secure an alternative source or sources of funding to meet said obligation and to the extent that such source or sources are available, County is obligated to make the payments to City in amounts which County would have been obligated to pay City pursuant to said Article III, had it not been for the event of Force Majeure; provided that nothing herein shall be deemed to require County to make such payments from its General Fund or to levy additional property taxes on other property in St. Louis County to make such payments.

ARTICLE VII

Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

ARTICLE VIII

Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota without regard to its choice-of-law provisions. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

ARTICLE IX

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

ARTICLE X

County Required Terms: The City will incorporate the following text into the Development Agreement:

10.1 County Estimation of Value: The Developer understands that the County estimation of value is based upon the following assumptions: (1) currently existing market conditions; (2) a presumption that the existing market conditions continue without significant change; (3) the full completion of the Project, consistent with the plans provided to City and to St. Louis County; and (4) completion of the Project on the schedule provided to City and St. Louis County. This estimated valuation is based upon the understanding that market conditions cannot be predicted and may change by 2021. Other factors may impact the actual assessment value of the property once the Project is complete, including but not limited to onsite inspection of the completed Project.

10.2 The Developer has made its own projections of Tax Abatement and revenues to be generated from the Project and of the Developer's returns on cost or investment and the Developer has not relied on any assumptions, calculations, determinations or conclusions made by the City, the County, their governing body members, officers or agents, including independent contractors, consultants and legal counsel, servants and employees thereof, with respect to the foregoing or in determining to proceed with the Project.

ARTICLE XI

Reporting. The parties agree that the County Abatement does not constitute a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995 (the "Business Subsidy Act") as the Project will provide housing. In the unlikely event the Commissioner of the Department of Employment and Economic Development ("DEED") declared the County Abatement to be subject to the reporting identified in Section 116J.994, subd. 8(b) of the Business Subsidy Act, City agrees to file such reports on the County's behalf, with copies to the County. If the City fails to timely file such reports with DEED, and fails to cure that default within thirty (30) days after receiving written notice from the County regarding such default, the County may terminate this Agreement.

ARTICLE XII

Entire Agreement. This Agreement, including Exhibits A and B, constitutes the entire agreement between County and City and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto.

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

CITY OF DULUTH

COUNTY OF ST. LOUIS

By _____
Mayor

By _____
Board Chair

Attest: _____
City Clerk

By _____
County Auditor

Countersigned:

Approved as to Form and Execution:

By _____
City Auditor

By _____
Assistant County Attorney

Approved as to Form and Execution:

By _____
City Attorney

EXHIBIT A

Legal Description of the Property

PID 010-0930-00010: DULUTH PROPER 1ST DIVISION EAST 1ST STREET - LOT 1

PID 010-0930-00020: DULUTH PROPER 1ST DIVISION EAST 1ST STREET - LOT 3

EXHIBIT B

TAF-Eligible Costs

TAF-Eligible Costs	\$ Amount
Construction Contract	\$6,498,140
Expected Contract Increases	\$132,860
Construction Contingency	\$455,000
Asbestos Abatement/Containment	\$55,000
Architect Fees	\$125,000
Total TAF-Eligible Costs	\$7,266,000