

DEVELOPMENT AGREEMENT

INCLINE PLAZA PROJECT

This Development Agreement (“Agreement”) is made as of _____, 2024, subject to the Effective Date as defined below, by and between the **Duluth Economic Development Authority**, an economic development authority created and existing under Minnesota Statutes Chapter 469, (“DEDA”) and **STC Building LLC**, a Minnesota limited liability company (“STC”), **Chester Creek View LLC**, a New York limited liability company (“Chester Creek”) and **Incline Plaza Development LLC**, a New York limited liability company (“Incline”). STC, Chester Creek and Incline are collectively referred to as “Developer.”

WHEREAS, Developer has acquired real estate located in St. Louis County, Duluth, Minnesota, legally described as:

Lots 2 and 3, Block 1 and Lot 1, Block 2, Central Overlook (“Property”); and

WHEREAS, Developer intends to redevelop the Property over a period of 10 years through multiple phases comprised of independent redevelopment projects (together referred to as “Projects” individually referred to as a “Project”) dependent on market conditions and, therefore, the mix of residential and commercial development and amenities for all phases and Projects may change; and

WHEREAS, Developer estimates a minimum private investment of \$450,000,000 - 500,000,000 will be required to develop the entire Property; and

WHEREAS, DEDA and Developer desire to establish an overarching framework through this Agreement for review and approval of each independent redevelopment Project; and

WHEREAS, DEDA and Developer also desire to establish an overarching framework through this Agreement for approval of and certification of a minimum of two and a maximum of three Tax Increment Financing (“TIF”) districts; and

WHEREAS, DEDA and Developer have funded and undertaken environmental review of the Property as required by Minn. Statutes chapter 116D and Minn. Rules chapter 4410, in the form of an Alternative Urban Areawide Review (“AUAR”) anticipated to be completed in March 2024, which provides a level of analysis for the Property and surrounding area comparable to the level of analysis of an environmental impact statement; and

WHEREAS, DEDA and Developer agree that Minn. Rules section 4410.3100 prohibits the City or DEDA from granting a permit for or approving a Project, and prohibits Developer from commencing any construction on a Project, until environmental review is complete; and

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WHEREAS, because of the prohibition in Minn. Rules section 4410.3100, DEDA and Developer agree that this Agreement cannot be final or effective until environmental review is complete as defined in Minn. Rules chapter 4410; and

WHEREAS, DEDA and Developer understand that environmental review may require the alteration of preliminary redevelopment concepts in order to avoid or minimize potential significant environmental effects; and

WHEREAS, Developer has requested assistance from DEDA for infrastructure and other costs eligible for public financing related to the redevelopment of the Property since without such assistance the redevelopment would not be economically viable; and

WHEREAS, DEDA has determined that the interests of the residents of the City of Duluth (“City”) and the well-being and quality of life in the City will be enhanced by nurturing and encouraging the redevelopment of the Property; and

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to: i) stimulate the redevelopment of underutilized, blighted, or obsolete land uses including rehabilitation or demolition of substandard structures; ii) encourage the development of commercial areas in the City that result in higher quality redevelopment and private investment; iii) redevelop an area of the City that has not been redeveloped in several decades since the closing of the former school on this site, and attract a major generational investment; iv) achieve redevelopment of sites which would not be redeveloped without assistance; and v) enhance and diversify the City’s tax base; and

WHEREAS, as per DEDA resolution 24D-____ and City Council resolution 24-____, the Property is located in a redevelopment district or districts within the meaning of Minnesota Statutes §469.174 et. seq.; and

WHEREAS, after analysis of the projected costs of redevelopment of the Property, the financial resources available, and the economic feasibility to pay for the infrastructure and other costs related to redevelopment of the Property, DEDA has determined that the Projects that will redevelop the Property require tax-increment financing in order to proceed and a development agreement which will attract the investment proposed by Developer and has made the determination that:

- a. A gap exists between the cost to Developer of redeveloping the Property and constructing the collective Projects and the funds presently available to or known to Developer and DEDA to finance those costs at rates that would be economically feasible; and
- b. Based on the best estimates currently available to the parties, the amount of the gap for redevelopment of the entire Property may be up to \$120,000,000 - \$130,000,000; and
- c. In order to reduce the gap and allow redevelopment of the Property to move forward,

DEDA has committed to provide Developer with ninety percent (90%) of the tax increment proceeds from redevelopment of the Property and each Project based on an analysis by DEDA of the Developer's information for each Project as listed in paragraph IV.D of this Agreement and to the extent that same are made available from Developer's activity and not utilizing general pre-existing or future tax revenue of the City other than as generated by redevelopment of each Project; and

- d. Without the tax increment assistance to be provided pursuant to this Agreement, the available resources would be inadequate and not economically feasible to redevelop the Property or undertake Projects, and that therefore, but for the tax increment assistance to be provided for hereunder, the Property could not reasonably be expected to be redeveloped in the foreseeable future; and
- e. The increased market value of each Project that could reasonably be expected to occur without the use of TIF would be less than the increase in the market value estimated to result from each proposed redevelopment Project after subtracting the present value of the projected tax increment for the maximum duration of each TIF district permitted by the TIF Plan for the TIF Districts; and
- f. Without the tax increment assistance no Project would be commenced in 2024; and
- g. As redevelopment of the Property will be undertaken through a series of Projects to be developed individually, DEDA will examine each Project for compliance with the regulating plan and consistency with this Agreement; and
- h. For each Project, the amount of the present value of the anticipated and available tax increment cash flow is to be made payable in a promissory note extending over the terms of the Tax Increment Financing District in which the Project lies. The interest for all Projects in the first TIF District in which a Project is initiated will be calculated at a rate of seven percent (7%) based upon financial projections which assume certain tax capacity. The interest rate for all Projects in subsequent TIF Districts will be based on the prime rate as published in the Wall Street Journal on the date the first Project in each subsequent TIF District is first submitted for permitting, but in no instance shall the interest rate for the Project be lower than five percent (5%) or higher than nine percent (9%). A separate promissory note will be issued upon the delivery to Developer of a Certificate of Completion of each Project pursuant to the tax increment financing plan certified for that Project.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings stated unless a different meaning clearly appears from the context. In addition, terms related to TIF shall

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have the meanings as defined in Minnesota Statutes §469.174 et. seq. or their successor statutes.

- A. Captured Tax Increment shall mean all real estate taxes resulting solely from the payment of real estate taxes based upon the captured net tax capacity of a Project, as that term is defined below, resulting solely from the Project, including Captured Tax Increment attributable to any increases in captured net tax capacity resulting from the revaluation of the Project or increases resulting from changes in the tax capacity applicable to the Project or changes in the methodology or structure of real property taxation as permitted by law and as determined pursuant to Minnesota Statutes §469.174 et. seq. or their successor statutes, to the extent remitted to DEDA by the St. Louis County Auditor.
- B. Effective Date of this Agreement shall be the day after the date upon which environmental review of the Property has been completed as required by Minn. Statutes chapter 116D and Minn. Rules chapter 4410.
- C. Eligible Project Costs shall mean those actual documented costs as referenced in the TIF Plan for each Project which may be legally funded with tax increment proceeds under Minnesota Statutes §469.174 et. seq. and applicable case law. The current estimate of Eligible Project Costs for all Projects on the Property exceeds \$100,000,000 and will be limited by Eligible Tax Increment. As required by statute, Eligible Project Costs must be incurred, paid or otherwise contracted for, within five (5) years of the date of certification by the St. Louis County Auditor of each of the TIF Districts applicable to the Property.
- D. Eligible Tax Increment shall mean, for each full year of the payment of tax increment proceeds pursuant to each Promissory Note or Notes, as that term is utilized herein, ninety percent (90%) of the payments of Captured Tax Increment for said year. The total amount of Eligible Tax Increment that may be used to assist a Project shall not exceed eligible costs plus interest per annum on said amount from the date of payment by Developer of Eligible Project Costs for a period of twenty-six (26) years from the date of receipt by DEDA from St. Louis County Auditor's Office of the first payment of each of the TIF Districts applicable to a Project until paid in full, or ninety percent (90%) of the Captured Tax Increment over the term of the Agreement, whichever is less. The interest for the Promissory Note for all Projects in the first TIF District in which a Project is initiated will be calculated at a rate of seven percent (7%). The interest rate for Promissory Notes for all Projects in subsequent TIF Districts will be based on the prime rate as published in the Wall Street Journal on the date the first Project in each subsequent TIF District is first submitted for permitting, but in no instance shall the interest rate for the Project be lower than five percent (5%) or higher than nine percent (9%). Any interest not paid shall be accrued and payments shall first be applied to accrued interest. Additionally, as required by statute, the amount of Eligible Tax Increment shall not exceed the amount of Eligible Project Costs incurred, paid, or otherwise contracted for by the Developer within five (5) years of the date of

certification by the St. Louis County Auditor of the TIF District to be established in connection with a specific Project.

- E. Executive Director shall be the Executive Director of DEDA or such person or persons designated in writing by said Executive Director.
- F. Minimum Improvements shall mean the structures and infrastructure approved by DEDA for each Project that are TIF eligible improvements.
- G. Project shall mean redevelopment on a portion of the Property approved by the City comprised of one or more multifamily apartment buildings, condominiums or retail facilities together with Eligible Project Costs associated with a TIF District to include parking spaces, parking decks, related utilities, landscaping, other statutorily Eligible Project Costs, and other amenities as established and constructed and the actual costs thereof. It is recognized that as the breadth and scope of redevelopment of the Property are subject to the marketplace that other facilities, for example, a hotel, assisted living or other facilities, might be included. If Developer proposes such items may be approved by the Executive Director if the proposed change is in conformance with the approved regulating plan for the Property.
- H. Property shall mean Lots 2 and 3, Block 1 and Lot 1, Block 2, Central Overlook.
- I. Promissory Notes shall mean the notes which shall be payable over the term or terms of the TIF. The Notes shall be in the form consistent with the form attached as **Exhibit A**. The parties contemplate that at the completion of work and eligibility in each TIF District, a singular Promissory Note will be issued reflecting all of the advance rates and prior Notes to simplify reporting and payment.
- J. Regulating Plan shall mean the plan that includes the location, type, and intensity of proposed development and a description of public amenities or benefits for the Property as approved by the City following the requirements of the City of Duluth Unified Development Chapter. The current Regulating Plan that is contingent on and not effective until approval of the AUAR is attached to this Agreement as **Exhibit B**.

ARTICLE II DEVELOPER APPLICATION FEE

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 Dollars (\$3,000).

**ARTICLE III
OVERALL PROPERTY REGULATING PLAN AND
MAXIMUM TIF COMMITMENT**

The provisions in the Article III set forth context and requirements for the overall Property.

- A. Approved Regulating Plan Required. The redevelopment of the overall Property shall be subject to the Regulating Plan, as it may be amended from time to time.
- B. Relationship of Property to Individual Projects. Developer intends to redevelop the overall Property according to the Regulating Plan over a period of years through multiple phases comprised of individual Projects. The mix of uses and amenities associated with each Project will be dependent on market conditions, however, each Project must conform to the Regulating Plan. DEDA and the City will review each Project, consistent with the provisions in Article IV of this Agreement.
- C. Overall TIF Plan. The TIF Plan for the overall Property is that Plan described in, and attached to, DEDA Resolution 24D-____ and City Council Resolution 23-____ (“Overall TIF Plan”) establishing a redevelopment district or districts within the meaning of Minnesota Statutes §469.174 et. seq. Based on Developer’s request for assistance from DEDA for infrastructure and other costs eligible for public financing related to the redevelopment of the Property. DEDA has determined that TIF is appropriate to induce Developer to undertake redevelopment of the Property and has also determined that a gap exists between the funds that may be available or known to Developer and DEDA and that without such TIF assistance the redevelopment would not be undertaken or be economically viable. Therefore, DEDA has determined that redevelopment of the Property needs TIF to induce the commencement of redevelopment of the Property and to stay in place throughout redevelopment of the Property subject to this Agreement and the statutory provisions.
 1. Estimate of Development Gap for the Overall Property. Based on the best estimates currently available to the parties, the amount of the gap for redevelopment of the entire Property may be up to \$120,000,000 - \$130,000,000.
 2. Tax Increment Commitment. To reduce the gap and allow redevelopment of the Property to move forward, DEDA has committed to provide Developer with ninety percent (90%) of the tax increment proceeds from redevelopment of the Property to the extent made available by Developer’s activity and not utilizing any general pre-existing funds or future tax revenue of the City other than as generated by redevelopment of the Property.
 3. Tax Increment Commitment Dependent on Costs of Each Project. As redevelopment of the Property will be undertaken through a series of discreet Projects to be calculated individually, DEDA will calculate the present value of the anticipated and available tax increment cash flows prior to the approval of

each Project.

4. Maximum Total Tax Increment Commitment for All Projects. It is anticipated that the total of all tax increment committed to Projects will be by \$90,000,000 - \$100,000,000 plus interest payable under the terms hereof per the Promissory Notes.

ARTICLE IV PRECONDITIONS TO CONSTRUCTION OF EACH PROJECT

After the Effective Date of this Agreement, Developer is authorized to redevelop the Property through multiple Projects as those Projects may be approved by the Executive Director. The following preconditions shall be met by Developer prior to DEDA and City approval of each Project.

- A. Title. Developer shall provide proof reasonably satisfactory to DEDA that Developer owns the land related to the Project in fee simple absolute.
- B. Separate tax parcel. To the extent necessary and required for permitting or other purposes and prior to completion of the Minimum Improvements for each Project, Developer shall assure DEDA and the City that each Project will be a separate tax parcel.
- C. Conformance with Regulating Plan. Each Project submitted for City approval shall be determined by the City to be in conformance with the Regulating Plan.
- D. City Approval of But-For Test for the Property. Approval of this Agreement constitutes the City of Duluth's finding that Developer has met the but-for test requirement of Minn. Stat. § 469.175, subd. 3 for development of the Property and for all Projects necessary to develop the Property.
- E. TIF Information. Developer shall submit the following information to DEDA for DEDA's use in determining TIF Promissory Note amounts and terms for each Project:
 1. Detailed sources and uses of funds;
 2. Estimated TIF Eligible Costs;
 3. Property valuation at the time each Project is proposed;
 4. Site plan and location map;
 5. Building elevations; and
 6. For residential Projects, a detailed list of amenities, types of parking, interior unit finish materials, and exterior finish materials.

- F. Project TIF Approvals/ Promissory Note. Prior to issuance of any City permits required for a Project, DEDA will work with Developer to develop a TIF plan for each Project (referred to herein as “Project TIF Plan”) that specifies Minimum Improvements, Eligible Project Costs, Eligible Tax Increase, and Captured Tax Increase. DEDA will review the Project TIF plan for conformance with state law, the Overall TIF Plan, and this Agreement, and if the Project TIF plan is in conformance, the DEDA Director will approve the Project TIF plan. After approval of a Project TIF Plan, DEDA and Developer agree to enter into a Minimum Assessment Agreement and Promissory Note in forms consistent with the forms attached as **Exhibit A** and shall use their best efforts to cause the St. Louis County Assessor to execute the Minimum Assessment Agreement for the Project. Promptly upon execution of the Minimum Assessment Agreement for the Project, Developer agrees to record the Minimum Assessment Agreement in the Offices of the St. Louis County Recorder and the Registrar of Titles and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of the Minimum Assessment Agreement showing the date and document numbers of the record, or a certified copy of the filed original.
- G. Construction Preconditions. Prior to the commencement of construction of any Project and as a precondition to the commencement thereof, Developer shall provide to DEDA the following items:
1. Project Commencement and Completion Dates. Developer shall specify a date for commencement of construction of Minimum Improvements for the Project, and shall specify a completion date for the Project. The dates specified shall be incorporated into City approval of the Project.
 2. Construction Costs. Developer’s certified estimate of the total cost of construction of the Project.
 3. Construction Contracts. A copy of executed contracts between Developer and a general contractor necessary to complete the construction of the Project in accordance with plans, specifications and elevations, reviewed and approved by the City and certified by Developer to be a true and correct copy thereof. All such construction contracts shall provide that payments for the work thereunder are the sole obligation of Developer.
 4. Construction Financing. Copies of loan commitments and other financing commitments obtained by Developer for the Project, the total of said commitments and any equity contribution to be in an amount not less than the total price of all construction contracts between Developer and its general contractor as described in Paragraph F.3 of this Article.
 5. Survey. A survey of the land related to the Project performed by a Registered Land Surveyor under the laws of the State of Minnesota.

6. Public Utilities. To serve the Minimum Improvements, the Developer shall have entered into a Memorandum of Understanding (“MOU”) in a form acceptable to the City Engineer committing the Developer to the design and construction of public utility improvements including, but not limited to water, sanitary sewer, storm sewer, and natural gas. The MOU shall specifically provide that the City will not accept as “public” any of the utility improvements or unless all such improvements described in the MOU have been completed to the satisfaction of the City Engineer.
- H. Special Requirements for First Project. In addition to other requirements of this Article, the first Project submitted by Developer for DEDA and City approval shall include the following items to be negotiated prior to the issuance of any City permit approvals for the first Project:
1. Commencement and Completion of Construction. Developer shall commence construction of the Minimum Improvements for the first Project in conformance with approved plans no later than October 15, 2024, and shall complete the first Project no later than December 31, 2026.
 2. Minimum Improvements. The Minimum Improvements of the first Project shall include not less than 60 condominium units of one or two bedrooms with an average of approximately 1,070 square feet, but ranging from approximately 875 square feet to 1,100 square feet, as well as all related specific site improvements including site clearance, utility relocation, sanitary sewer, water mains and stubs, storm sewer and storm water system elements, private streets (to include, if City requests, an easement in favor of the public as will be negotiated and agreed to), curb and gutters, landscaping and retaining walls together with any other statutory improvements all in accordance with plans approved pursuant to Article IV hereof at a cost of approximately \$41,000,000, inclusive of TIF eligible improvements. When engineering, architecture, and permits and other fees are included, the cost of these Minimum Improvements is estimated to approach \$50,000,000.
 3. MOU for Trailhead Facility. The Developer shall enter into an MOU in a form acceptable to the City committing to the coordinated design and construction of a public trailhead facility (“Trailhead Facility”) and setting forth the terms under which the Trailhead Facility will be owned, operated, and maintained. At a minimum, the MOU shall ensure that the Trailhead Facility will be open for public use and serve the Duluth Traverse Trail as well as bike and walking trails on the property. The MOU shall require construction of the Trailhead Facility to be designed and constructed no later than five (5) years after the start of construction of the first Project. The MOU shall include provisions through which the City and Developer will cooperate to provide or obtain funding from grant sources for the design and construction of the Trailhead Facility. Minimum specifications for the Trailhead Facility must include toilets,

changing rooms, water fountain, tables and seating, trash receptacles, and at least 20 vehicle parking stalls. The City and Developer will cooperate in connection with the design and construction features ultimately approved and consented to by City with such approval and consent not to be unreasonably withheld. Developer is responsible for at least fifty percent (50%) of the design and construction costs of the Trailhead Facility.

4. MOU for Pavilion Facility. The Developer shall enter into an MOU in a form acceptable to the City committing to the coordinated design and construction of a public pavilion facility (“Pavilion Facility”) and setting forth the terms under which the Pavilion Facility will be owned, operated, and maintained. At a minimum, the MOU shall ensure that the Pavilion Facility will be open for public use providing opportunities for people to gather to celebrate and enjoy the view of the lake and harbor. The MOU shall require the Pavilion Facility to be designed and constructed no later than 7 years after the start of construction of the second Project. The Pavilion Facility must include a paved area a minimum of 3,000 square feet, a roof covering a minimum of 1,000 square feet, a view angle from the paved area to the lake and harbor that is a minimum of 120 degrees wide, an accessible route from vehicle parking, lighting from the parking area to the area of the pavilion structure, lighting of the pavilion and the area immediately surrounding the pavilion structure, tables and seating, trash receptacles, and grills. The City and Developer will cooperate in connection with the design and construction features ultimately approved and consented to by the City with such approval and consent not to be unreasonably withheld. Developer is responsible for funding construction of the Pavilion Facility. Developer is responsible for at least fifty percent (50%) of the design and construction costs of the Pavilion Facility.
5. Connection to Lake Avenue. The City and Developer will agree upon the location of a conveyance for pedestrians, at a minimum, and possibly bikes/scooters and vehicles, from the first Project to Lake Avenue. Space for the connection shall be reserved via easement from Developer dedicated to the public within one (1) year from the date of this Agreement.

ARTICLE V PROJECT PLANS

The following conditions apply to submission and review of plans for each Project.

A. Approval of Plans.

1. Submission of Plans. No less than sixty (60) days prior to the commencement of construction of any building associated with a Project, Developer shall submit draft working drawings, specifications, elevations, and schematic designs of the building to be constructed, and other documents illustrating scale

and relationship of various components of the Project together with draft site grading, utility and landscaping plans and elevations to the Executive Director for review (together "Plans").

2. Review of Plans. Within ten (10) days of submission of Plans, the Executive Director, together with City staff, shall review the Plans for conformance to the requirements of this Agreement, the Regulating Plan, and all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. If the Executive Director objects to the Plans in whole or in part as not being substantially in compliance with the foregoing requirements, the Executive Director shall notify Developer of the deficiency together with the reason or reasons therefor. After notice of a deficiency, Developer shall submit new, updated, or corrected Plans meeting said deficiencies within twenty (20) days of said notice. The provisions of this Paragraph relating to review and resubmission of corrected Plans shall continue to apply until the Plans have been approved by the Executive Director. The Executive Director's review of Developer's Plans 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.
 3. Final Plans. Final Plans and Specifications for each building within a Project will be submitted by Developer to the Executive Director at least ten (10) days in advance of the commencement of construction of each building within a Project with same to be consistent with the Plans developed with respect to Paragraphs 1 and 2 hereof.
 4. Developer to Bear All Costs. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with the Plans and any revisions thereto.
- B. Changes After Initial Approval. Any changes made to Plans by Developer after initial approval of the Executive Director, as set for in Paragraph A of this Article, costing in excess of \$100,000 shall be submitted to the Executive Director for review in the same manner provided for in Paragraph A.

ARTICLE VI CONSTRUCTION

The following conditions apply to the construction of each Project.

- A. Developer to Pay All Costs. Except for payments by DEDA provided for in Article VII, Developer specifically guarantees and agrees to pay all costs related to the construction of each Project and any modifications thereto. The only exception would be grant funding awarded and received for the Trailhead Facility or the Pavilion Facility.
- B. Progress Reports. Until construction of each Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by DEDA as to the actual progress of Developer with respect to the Project.
- C. Project Costs/Certificate of Completion. Promptly upon completion by Developer of the construction of each Project, Developer shall submit to the Executive Director written evidence, in a form satisfactory to the Executive Director, of Eligible Project Costs incurred and paid by Developer. Such evidence shall include, at a minimum, paid invoices or comparable evidence of payment. Upon furnishing by Developer of said written evidence relating to Eligible Project Costs and upon completion by Developer of the construction of the Project in accordance with this Agreement, the Executive Director shall promptly furnish to Developer an appropriate certificate certifying completion of construction (“Certificate of Completion”). No Certificate of Completion shall be issued until all elements of each Project have been substantially completed. Issuance of a Certificate of Completion by DEDA shall constitute a conclusive determination of satisfaction of construction obligations of Developer undertaken pursuant to a Project under this Agreement.

If the Executive Director shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section, the Executive Director shall, within ten (10) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the Project in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of Executive Director, for the Developer to take or perform in order to obtain such certification.

- D. As-Built Drawings. Developer shall provide as-built drawings of all public utilities to the City Engineer and provide easements in recordable form to the City Engineer before the City will issue a Certificate of Occupancy on the Minimum Improvements.

**ARTICLE VII
TIF PAYMENT OBLIGATIONS**

The following provisions apply to the payment of TIF obligations.

- A. Payment Obligation. From and after the issuance of a Certificate of Completion for each Project as set forth in Paragraph C of Article VII, until the maximum amount of Eligible Tax Increment plus interest for each Project has been paid or until the maximum amount of TIF plus interest for the Property as set out in Paragraph C of Article III has been paid, DEDA shall pay to Developer all Eligible Tax Increment for each Project which has been received by DEDA since the last such payment to Developer. Such payment shall be made on or before August 1 or February 1 of each year, or such later date as DEDA receives Captured Tax Increment for each Project from the St. Louis County Auditor's Office.

- B. Limitations on Payment Obligation. DEDA's obligation to make payments under this Agreement is agreed by the parties to be strictly revenue based and shall be payable only from the proceeds of Captured Tax Increment actually received by DEDA from the St. Louis County Auditor's Office. In the event that DEDA fails to receive any Captured Tax Increment payment, whether in whole or in part, for any reason whatsoever, including but not limited to changes in state statutes, the amount of payments otherwise due to Developer under Paragraph A of this Article 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.

**ARTICLE VIII
OPERATING COVENANTS**

Developer agrees to the following operating covenants, in accordance with industry standards, for the operation and use of the Property and all development constructed thereon (together the "Developed Property").

- A. Maintenance. Developer shall at all times cause the Developed Property to be operated, and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition the Developed Property and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Developed 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 maintenance of the Developed Property outside of the structures, including snow removal, grass cutting and landscape maintenance, parking lot cleaning, repair and striping, and all other necessary exterior maintenance. Notwithstanding the foregoing, it is understood and agreed that to the extent that the condominium ownership format is used in the development, the obligation of the condominium association to maintain the condominium property shall relieve the Developer of such obligations with respect to the condominium format properties only.

- B. Utilities. With respect to the installation and construction of utilities and utility systems, unless disputed, Developer shall pay or cause to be paid any and all charges for the construction of utilities furnished to the developed Property including, but not limited to, steam, water, sewer, gas, telephone, cable or satellite TV, internet facilities, and electrical power.
- C. Licenses and Permits. Developer shall 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 redevelopment of the Property and to be qualified to do business in the State of Minnesota; provided, however, that nothing herein contained shall be construed to obligate Developer to retain or preserve any of its licenses, permits, or consents which are no longer applicable.
- D. Obey All Laws. Developer shall conduct its affairs and carry on its business and operations with respect to redevelopment of 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 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 Property.
- E. Payment of Taxes. Developer shall 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 Property, subject to the right to contest in good faith in accordance with Minnesota law. Obligations with respect to such charges relative to condominium facilities may be assigned and transferred to the homeowners' association or condominium owners.
- F. Assessment Fees and Charges for Public Improvements. Developer shall pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Property, or any part thereof, and to pay all fees, charges, and rentals for utilities, service, or extensions for the Property and all other charges lawfully made by any governmental body for public improvements. Obligations with respect to such charges relative to condominium facilities may be assigned and transferred to the homeowners association or condominium owners.
- G. Obligations and Claims. Developer shall promptly pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Property or related to each Project 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. Payment of Living Wage. Developer shall pay both current and new employees of Developer, if Developer has employees, a living wage as set forth in Section 2-137 of the Duluth City Code, 1959, as amended, or as required by state or federal law, whichever is greater.
- I. Prevailing Wage. Developer shall cause the laborers, mechanics or apprentice-trainees employed in the construction of each Project to be paid the wage rates as set forth in Section 2-26 of the Duluth City Code, 1959, as amended or as provided in the federal Davis Bacon Act, as amended.
- J. Project Labor Agreement and Public Benefits Agreement. For each Project, Developer shall enter into a project labor agreement and a public benefits agreement in form and substance satisfactory to the Executive Director and in accordance with the requirements of the City and DEDA.

ARTICLE IX
PROVISION AGAINST LIENS, ASSIGNMENTS AND TRANSFERS

- A. Provision Against Liens. Developer shall not permit or allow, and shall promptly notify the Executive Director of any mechanics' or materialmen's liens to be filed or established or to remain against the Property or any part thereof or related to the construction of any Project provided that Developer may, in good faith, contest any such mechanic's or other liens filed or established. For each Project, the requirements of this Paragraph A shall terminate upon issuance of a Certificate of Completion referred to in Paragraph D of Article V for that Project. A mortgage, mortgages or other liens certified as providing funds to construct a Project shall not be deemed a violation of this provision.
- B. Transfers prior to Issuance of a Certificate of Completion. The parties acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Minimum Improvements associated with each Project. Therefore, except as may be approved in writing in advance by the Executive Director and until the issuance of a Certificate of Completion for each Project as set forth in Paragraph C of Article VI above, 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, 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 or any 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. The provisions of this Article shall not apply to any transfer or assignment made by the Developer to any entity controlled by,

controlling, or under common control of Developer. Notwithstanding the above, Developer is authorized to lease or mortgage the Property or any portion of the Property.

Additionally, upon the prior written approval of the Executive Director, Developer may sell that portion of the Property associated with an approved Project prior to a Certificate of Completion for that Project being issued. In such event of a sale prior to a Certificate of Completion being issued for a Project, Developer may assign to purchaser Developer's rights under this Agreement with respect to that portion of the Property being sold, but only if such purchaser assumes all Developer's outstanding obligations under this Agreement with respect to that portion of the Property being sold. The form of any such assignment must be approved in writing by DEDA's Attorney. The sale will be approved by the Executive Director if the Executive Director determines that the purchaser is capable of performing Developer's obligations under this Agreement, which consent shall not be unreasonably withheld. Developer shall pay all costs incurred by DEDA or City staff by reason of said assignments. Upon compliance by Developer and purchaser with the sale requirements set forth above, and in the event purchaser assumes Developer's outstanding obligations under this Agreement with respect to the portion of the Property being sold, Developer shall be immediately released from its obligations under this Agreement, but only with respect to the portion of the Property that was sold. A TIF Promissory Note or Notes in connection with the Project shall remain payable to Developer unless otherwise agreed.

As related to this Paragraph B, notwithstanding any limitations, Developer may sell residential condominiums pursuant to a common interest community plan consistent with condominium sales of residential real estate in the State of Minnesota. The plan for such sale or sales shall be provided to the Executive Director for approval, and such approval shall not to be unreasonably withheld. TIF proceeds payable to Developer with respect to the Property shall remain payable to Developer except as otherwise agreed.

- C. Transfers after Issuance of a Certificate of Completion. Provided a Certificate of Completion has been issued pursuant to Paragraph D of Article III for a Project, Developer may sell, assign, convey or otherwise transfer its interest in that portion of the Property associated with the completed Project provided all of the following have been satisfied:
1. Ten (10) days' prior written notice of the transfer is provided by Developer 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 that portion of the Property transferred hereunder. The affidavit shall be provided to the Executive Director prior to the transfer.

3. Notwithstanding any transfer authorized by the Paragraph C, the payment of the tax increment pursuant to this Agreement with respect to the Property shall remain payable to Developer unless otherwise agreed.
4. Failure to comply with the requirement of subsection 1 and 2 above shall be an event of default under Paragraph A.1.(a) of Article XI. Notwithstanding the foregoing, Developer is authorized to lease or mortgage the Property or any portion of the Property.
5. As related to this Paragraph C, notwithstanding any limitations, Developer may sell residential condominiums pursuant to a common interest community plan consistent with condominium sales of residential real estate in the State of Minnesota. The plan for such sale or sales shall be provided to the Executive Director for approval, and such approval shall not to be unreasonably withheld.
6. There shall be no restrictions on financing obtained by Developer and represented by a mortgage or mortgages with respect to such mortgages that cover a Project or portions of Projects constructed hereunder after a Certificate of Completion has been obtained for the same.

ARTICLE X INDEMNIFICATION

- A. Generally. Developer shall, to the fullest extent permitted by law, protect, indemnify and save DEDA and its officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:
1. Any injury to or death of any person or damage to property in or upon the Property or any structures on the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Property or any part thereof and also, without limitation, the construction or installation of any Project or any portion of the Property or any structures on 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 Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;
 2. Any violation by Developer of any provision of this Agreement;
 3. Any violation of any contract, agreement or restriction related to a Project or the Property which shall have existed at the commencement of the term of this

Agreement or shall have been approved by Developer;

4. Any violation of any law, ordinance, court order or regulation affecting the Property, any structures on the Property, or any Project, 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 its officers, agents, servants and 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 reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing 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 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 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 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 and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA with respect to which indemnity may be sought against Developer, DEDA 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

While each Project is under construction and until the Certificate of Completion for that Project is issued, Developer shall provide for purchase and maintenance of such insurance as will protect Developer and DEDA against risk of loss or damage to the Project. Such coverages shall include but shall not necessarily be limited to the following:

A. Insurance During Construction. Developer, prior to entering on any portion of 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 each 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, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed One Hundred Thousand Dollars (\$100,000) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Developer, DEDA, to the extent it has an insurable interest in the Property, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Developer shall waive all rights against DEDA 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.

Developer may apply to the Executive Director to increase the deductible amount related to the Property insurance, and Executive Director may, in her/his discretion, increase the deductible in an amount up to \$500,000 based on evidence of the financial feasibility and appropriateness of such deductible given the cost of the insurance and the resources indicated by and certified to by Developer to be available with respect to such deductible.

2. Public Liability Insurance. Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence 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. Developer's contractor shall also require

such liability coverage and contractor shall 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; and
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement.

Such policy or policies may provide for a deductible amount or amounts not to exceed One Hundred Thousand Dollars (\$100,000) per occurrence.

Developer may apply to the Executive Director to increase the deductible amount related to the Property insurance, and Executive Director may, in her/his discretion, increase the deductible in an amount up to \$500,000 based on evidence of the financial feasibility and appropriateness of such deductible given the cost of the insurance and the resources indicated by and certified to by Developer to be available with respect to such deductible.

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 Property, carried in the name of Developer, any subtenant and DEDA, to the extent it has an insurable interest as their respective interests may appear, as follows:

1. Property Insurance. Prior to expiration of the Property Insurance coverage specified above, the Property, including structures and 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 One Hundred Thousand Dollars (\$100,000) 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. 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.

Developer may apply to the Executive Director to increase the deductible amount related to the Property insurance, and Executive Director may, in her/his discretion, increase the deductible in an amount up to \$500,000 based on evidence of the financial feasibility and appropriateness of such deductible given the cost of the insurance and the resources indicated by and certified to by Developer to be available with respect to such deductible.

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 in limits of not less than \$2,000,000 aggregate 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. If so requested annually by the Executive Director, DEDA shall be named as an additional insured 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; and
 - f. Products--completed operations.

Such policy or policies may provide for a deductible amount or amounts not to exceed One Hundred Thousand Dollars (\$100,000) per occurrence.

Developer may apply to the Executive Director to increase the deductible amount related to the Property insurance, and Executive Director may, in her/his discretion, increase the deductible in an amount up to \$500,000 based on evidence of the financial feasibility and appropriateness of such deductible given the cost of the insurance and the resources indicated by and certified to by Developer to be available with respect to such deductible.

3. Workers' Compensation Coverage. If Developer has employees, 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.
- 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. In the event that Developer believes said modifications to be unjustified under the standards set forth in this Paragraph, Developer shall promptly so notify DEDA and the parties hereto agree to meet as soon as practical thereafter and to negotiate in good faith the character and amounts of any said modifications meeting the standards hereinbefore set forth.

Notwithstanding the foregoing, it is understood and agreed that change in insurance will not be allowable with respect to portions of the Property no longer owned by Developer and shall not be imposed by any buyer of property from Developer.

- 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 as required and requested by DEDA requiring the insurer to give DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance.
- F. Reconstruction Obligation and Uninsured Loss. In the event the Property, any 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, 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 improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.

Notwithstanding the foregoing, in the event Developer demonstrates that it is impractical or inappropriate given market conditions to replace the property recognizing that the tax increment is pay-as-you-go and Developer will not receive, in any event, tax increment other than as generated by Developer's improvements.

**ARTICLE XII
DEVELOPER DEFAULTS AND REMEDIES**

A. Defaults and Remedies

1. 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 A.2 below shall be applicable.
 - a. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Developer pursuant to this Agreement and such failure shall continue for a period of forty-five (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 forty-five (45) day period, shall have failed to commence to cure said default within forty-five (45) days of the date of said notice and to diligently pursue the same to completion.
 - b. Developer shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Property or any structure thereon or Developer loses title to the Property or any portion of the Property.
 - c. 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 similarly 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 of any trustee, receiver or liquidator of any material part of Developer's properties.

2. Remedies. DEDA shall have the following remedies in the event of a default:
 - a.
 - i. Cease any payment due from DEDA subject to the cure rights provided in Paragraph A.1.a and withhold the performance of any obligation owed by DEDA under this Agreement, and/or
 - ii. Terminate this Agreement subject to the cure rights provided in Paragraph A.1.a.
 - b. With respect to a default of any Project, seek and be entitled to repayment from Developer thereof of all sums paid by DEDA for that Project pursuant to Article VI, which repayment obligation shall, from the date of default, bear interest at the rate of seven percent (7%) per annum.
 - c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or compel Developer's performance of its obligations hereunder.
 - d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.
- B. 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 hereunder. To be effective, any waiver of any default by Developer hereunder must be in writing by DEDA.
- C. 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.
- D. 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. Reciprocally, should DEDA be in default of any of the terms and conditions of this Agreement and Developer shall successfully take legal action to enforce said rights hereunder, in addition to the foregoing, Developer shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

**ARTICLE XIII
REPRESENTATIONS BY DEDA**

DEDA represents and warrants that as of the date hereof:

- 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 and it has full power and authority to enter into this Agreement and perform 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 has investigated and has no knowledge that a DEDA Director or other member, official, or employee of DEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

**ARTICLE XIII
DEVELOPER'S REPRESENTATIONS AND WARRANTIES**

Developer represents and warrants for itself only that as of the date hereof:

- A. That Developer entities are legally constituted limited liability companies under the laws applicable to each of them and are not in material violation of any provisions of state law and that each has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. That Developer is fully competent to acquire the Property and to construct the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense. Compliance with the requirements of the referenced public benefits agreement and project labor agreement is also committed to.
- C. That there are no actions, suits or proceedings 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 which, if decided adversely to Developer, would have a material adverse effect upon Developer or the Buildings, Property or Project, and that 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 Buildings, the Property or the Project.

- D. That 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.
- E. That 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 and respects.
- F. Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.
- G. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be economically prohibitive and that, therefore, without DEDA assistance, 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 XIV TERM

The term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty-six (26) years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment in each of the Tax Increment Districts applicable to the Property unless changes in law prevent DEDA from any receipt of further payments of Captured Tax Increment in which event the Agreement is terminated, or unless this Agreement is otherwise terminated as provided for herein. Termination shall not terminate any indemnification provisions 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 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 be deemed to run with the land.

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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 or by overnight delivery requiring a receipt to:

In the case of DEDA: Attn: Executive Director
 DEDA
 Room 402 City Hall
 411 West First Street
 Duluth, MN 55802

In the case of Developer: Luzy Ostreicher
 11 Cucolo Lane
 Monsey, NY 10952
 Email: luzyostr@gmail.com

Copy to: William M. Burns
 Hanft Fride, a Professional Association
 1000 U.S. Bank Place
 130 West Superior Street
 Duluth, MN 55802-2094
 Phone: (218) 722-4766
 Email: wmb@hanftlaw.com

[Any notices delivered hereunder shall also be emailed to the party to receive them.](#)

ARTICLE XVII 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 XVIII 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.

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**ARTICLE XIX
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 XX
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 XXI
COUNTERPARTS**

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

**ARTICLE XXII
UNAVOIDABLE DELAYS**

Neither party shall be held responsible for 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 publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

(Signature Pages Follow)

EXHIBIT A

PROMISSORY NOTE FORM

Principal Amount

Annual Rate

\$ _____

_____ %

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

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

TAX INCREMENT FINANCING (TIF) REVENUE NOTE
INCLINE PLAZA

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 STC Building LLC, a Minnesota limited liability company (“STC”), Chester Creek View LLC, a New York limited liability company (“Chester Creek”) and Incline Plaza Development LLC, a New York limited liability company (“Incline”) (STC, Chester Creek and Incline are collectively referred to as “Developer”), or its registered assigns (the “Registered Owner”), the principal amount of \$ _____ and _____/100th Dollars (\$ _____), which is the amount determined in Paragraph C of Article III of that certain Development Agreement between DEDA and the Developer dated _____, 2024, 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 stated above, shall bear interest at an annual rate of _____%. 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 Eligible Tax Increment, as defined in the Agreement, actually received and retained by DEDA (“Actual Tax Increment”). DEDA shall pay to the Registered Owner of the TIF Note bi-annual payments in the amount of the Actual Tax Increment payable on August 1 and February 1 of each year, commencing on August 1, 2023, to and including February 1, 2048, or, if the 1st should

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not be a business day the next succeeding business day (the "Scheduled Payment Dates"). Actual 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, 20__; (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.

1/17/24

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 registered on the registration records for the TIF Note maintained by DEDA 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.

1/17/24

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

Form drafted by:
Jean Coleman
City of Duluth Assistant City Attorney
411 West First Street
Duluth, Minnesota 55802
(218) 730-5283
jcoleman@duluthmn.gov

1/17/24

EXHIBIT B
REGULATING PLAN
[TO BE INSERTED]