

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

ROERS LAKE & FIRST LLC

Dated as of September_____, 2019

TABLE OF CONTENTS

		<u>Page</u>
Article I	Definitions	3
Article II	Preconditions to Project Construction	5
Article III	Project Plans	7
Article IV	Construction	8
Article V	Certificate of Completion.....	9
Article VI	Audits.....	10
Article VII	Tax Abatement Assistance.....	10
Article VIII	Business Subsidy.....	13
Article IX	Project Covenants	16
Article X	Operating Covenants	16
Article XI	Provision Against Liens.....	18
Article XII	Indemnification.....	20
Article XIII	Insurance	22
Article XIV	Defaults and Remedies Therefor	26
Article XV	Representations, Covenants and Warranties.....	29
Article XVI	Term	32
Article XVII	Runs with the Land.....	33
Article XVIII	Notices	33
Article XIX	Recordation	34
Article XX	Disclaimer of Relationships.....	34
Article XXI	Applicable Law.....	34
Article XXII	Judicial Interpretation	35
Article XXIII	Title of Articles	35
Article XXIV	Severability	35
Article XXV	Entire Agreement	35
Article XXVI	Counterparts	36
Article XXVII	Subordination.....	36

- EXHIBIT A – City Abatement Resolution
- EXHIBIT B - County Abatement Resolution
- EXHIBIT C – TAF-Eligible Costs
- EXHIBIT D - Certificate of Completion

DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, is by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as the "City", and Roers Lake & First LLC, a Minnesota limited liability company, hereinafter referred to as "Roers."

WHEREAS, Roers proposes to redevelop the buildings located at 1 and 5 East First Street in downtown Duluth into approximately 47 studio, one and two bedroom units of rental housing, at least 10% (minimally, 5 rental units) of which will be units with rents restricted to reflect 80% area median income, as well as approximately 9,000 square feet of commercial space; and

WHEREAS, the City and the County of St. Louis, Minnesota desire to assist the project with abatement of real estate taxes in an amount not to exceed \$400,000 in City property taxes and not to exceed \$300,000 in County property taxes to fill the gap in the available funding for the project, making the project financially feasible; and

WHEREAS, Roers is pursuing a commitment for financing and has agreed to make available sufficient equity monies that, when combined with the tax abatement, will be sufficient to complete the project;

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

Architect means the firm of Foundations Architecture.

Building means a structure on the Property containing approximately 47 studio, one and two bedroom units of rental housing, at least 10% (minimally, 5 rental units) of which will be units with rents restricted to reflect 80% of the area median income (AMI) for St. Louis County as established by HUD as well as approximately 9,000 square feet of commercial space.

Business Subsidy Act means Minnesota Statutes §§116J.993 through 116J.995.

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 the real property taxes on the Property and the Project paid to the City for a term of up to twenty (20) years which will commence with taxes payable in 2021 and provide for a total of up to \$400,000 of tax abatement to be paid to Roers as provided for in the City Abatement Resolution and this Agreement.

Construction Manager/Contractor means either a construction management firm or a general contractor to construct the Project in accordance with the Plans, Specifications and Elevations approved pursuant to Article III.

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

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 ten (10) years which will commence with taxes payable in 2021 and provide for a total amount not to exceed \$300,000 of tax abatement to be paid to Roers as provided for in the County Abatement Resolution and this Agreement.

HUD means the U.S. Department of Housing and Urban Development.

Project means the acquisition and redevelopment of the buildings located at 1 and 5 East First Street into approximately 47 studio, one and two bedroom units of rental housing, at least 10% (minimally, 5 rental units) of which will be units with rents restricted to reflect 80% of the area median income (AMI) for St. Louis County as established by HUD, as well as approximately 9,000 square feet of commercial space, both components

collectively titled "1st Street Lofts", to be constructed in accordance with the Plans approved pursuant to Article III and having a total Project cost of not less than Ten Million Five Hundred Thousand Dollars (\$10,500,000).

Property means the real estate located in St. Louis County, Minnesota and legally described as Lots 1 and 3, Duluth Proper 1st Division East 1st Street.

TAF-Eligible Costs means, without intending thereby to limit or restrict any proper definition of such costs under any applicable laws or sound accounting practices, the following tax abatement financing eligible costs associated with redevelopment of the Project as more specifically set forth in Exhibit C:

- A. Obligations incurred for labor and to 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 the Construction Manager/Contractor and the Architect, for preparation of plans, drawings and specifications, assistance with bidding and supervising construction, as well as for the performance of all other duties of the Construction Manager/Contractor and the Architect regarding the acquisition and betterment of the Project.

ARTICLE II

Preconditions to Project Construction

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

- A. Title.
Evidence that the Property is owned by Roers in fee simple absolute and that an appropriate policy of title insurance has been issued in the name of Roers.
- B. Approvals.
Approvals of the Abatement Resolutions.

C. Construction Plans

Approved Plans, Specifications and Elevations for the construction of the Project as described above and in Article III along with the Architect's or Construction Manager's certified estimate of the construction costs.

D. Construction Contract.

A copy of the executed contract between Roers and the Construction Manager/Contractor necessary to complete the construction of the Project in accordance with the Plans, Specifications and Elevations, approved pursuant to Article III.

E. Proof of Financial Capacity.

Evidence satisfactory to the Director of the ability of Roers to complete the Project, such as payment and performance bonds or a certified letter from Roers's lender stating financial capacity to complete the Project.

F. Financing.

Copies of financing commitments or capital commitments by Roers or a certification as to availability of funds acceptable to Director, which are utilized by Roers so that the total of said commitments and certification are not less than the total construction costs.

G. Construction Cost Certification.

Evidence satisfactory to the Director that the TAF-Eligible Costs of the Project will equal or exceed Seven Million Dollars (\$7,000,000).

H. Additional Documentation

Roers shall also deliver the following documents to the City:

1. A certificate of Roers good standing;
2. An opinion of legal counsel addressed to the City stating that Roers is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Minnesota and has the power to own the Property and conduct its business as now conducted; and that all necessary limited liability company action has been taken by Roers to authorize the execution, delivery and performance by Roers of this Agreement;

3. Insurance Certificates satisfying the coverage requirements of this Agreement.

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 Roers, or such lesser time as approved by the Director, Roers shall submit working drawings, specifications and elevations for the Project 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's approval shall be provided to Roers 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 Roers of said rejection together with a detailed explanation of the reason or reasons therefor, Roers 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 Roers'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 Roers by law.

B. Changes After Initial Approval.

Any material or substantial changes made to plans by Roers 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, Roers 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 December 1, 2019 and shall be completed not later than December 31, 2021. Notwithstanding the above, the construction period may be extended upon the prior written approval of the Director, such approval not to be unreasonably withheld by the Director.

B. Roers to Bear All Costs.

Except for payments by the City provided for in Article VII, Roers specifically agrees to bear all costs related to the construction of the Project and any modifications thereto.

C. Prevailing Wage and PLA.

Roers shall cause the laborers, mechanics and 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 shall be submitted to the Director on a monthly basis. In addition, Roers shall require that its contractor or contractors constructing the Project enter into a Project Labor Agreement (“PLA”) with Roers meeting the requirements of Section 2-29 of the Duluth City Code, 1959, as amended. Roers shall also enter into a Community Benefit Agreement in a form approved by the Director.

D. Progress Reports.

Until construction of the entire Project has been completed, Roers shall make reports in such detail and at such times as may reasonably be requested by the Director as to the actual progress of construction of the Project. Additionally, upon reasonable notice, Roers also agrees that it will permit the City access to the Property and the Building to ascertain the progress of the Project.

ARTICLE V

Certificate of Completion

Upon completion by Roers of the construction of the Project in accordance with this Agreement and upon written request for the same from Roers, the Director will furnish to Roers an appropriate certificate certifying completion of construction of the Project, ("Certificate of Completion") substantially in the form of that attached hereto as Exhibit D. 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, Roers 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, Roers 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, within said 30-day period, provide Roers 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 VI

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 Roers relating to the construction costs of the Project and compliance with affordability requirements. Additionally, Roers shall cause the Construction Manager/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 Construction Manager/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 Roers, the Construction Manager/Contractor and the Architect shall be kept and maintained by Roers for a period of six years following the recordation of the Certificate of Completion as provided for in Article V.

ARTICLE VII

Tax Abatement Assistance

As a part of the financial assistance provided to this Project to make it feasible, the City and St. Louis County have agreed to provide tax abatement assistance in the form of the Abatement Resolutions. Roers understands that the St. Louis 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 the City and to St. Louis County, and (4) completion of the Project on the schedule provided to the City and to 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.

Tax abatement proceeds shall only be made to reimburse Roers for TAF-Eligible Costs incurred and paid by Roers and only after the Certificate of Completion has been issued. The City shall remit the City abatement amounts to the Project only when, if and as property tax payments are received by the City from the Project and only to reimburse for a portion of the costs of constructing the Project. The County shall remit the County 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. Notwithstanding anything to the contrary herein, St. Louis County's obligation to pay the County abatement amount is further conditioned upon: a) Roers 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 St. Louis County County; c) certification from the City that TAF-Eligible Costs of at least \$300,000 have been paid by Roers; and d) no default or termination of the Development Agreement having occurred.

All requests for payment of TAF-Eligible Costs shall be approved for payment by 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 Roers 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, the 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 this Agreement.

The City will, on each August 31 and December 31 (each a "Payment Date") commencing August 31, 2021 and terminating on the Termination Date set forth in Article XVI pay to Roers abatement of the taxes received by the City and St. Louis

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 Roers shall be the lesser of the TAF-Eligible Costs and \$700,000 (\$400,000 from City abatement and \$300,000 from County abatement). No interest shall accrue with respect to the principal amount of such costs.

In no case shall the City make payments of tax abatements to Roers pursuant to this Agreement that, together with any other abatements payable by the City and St. Louis County under Minnesota Statutes §§ 469.1812 to 469.1815, exceed in any one year the greater of 10% of the net tax capacity of the City or of the County, respectively, or \$200,000 for the City and the County, respectively; provided that in the event that total abatements payable by the City and/or the County in any year exceed the maximum under this section, the City will pay to Roers a reduced amount of the City/County tax abatements otherwise due pursuant to this Agreement in order for the City and/or the County to remain in compliance with Minnesota Statutes §§ 469.1812 to 469.1815 in that year.

Roers understands and acknowledges that neither the City nor St. Louis County makes representations or warranties regarding the amount of tax abatements that will be generated as a result of the Project. Roers has made its own projections of tax abatement and revenues to be generated from the Project and of Roers's returns on cost or investment and Roers has not relied on any assumptions, calculations, determinations or conclusions made by the City, St. Louis 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.

Roers further understands and acknowledges that no assistance is being provided by the City hereunder except as set forth herein, and that Roers shall have no other claim against any funds of the City. The City shall have no obligation to make any payment to Roers from any source other than the tax abatements.

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

ARTICLE VIII

Business Subsidy

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

- A. Definitions. For the purposes of determining whether the Business Subsidy Goal set forth in Paragraph E of this Article has been met, the following terms shall have the meanings hereinafter ascribed to them.
1. Benefit Date means the date upon which a Certificate of Completion has been issued by the City as set forth in Article V.
 2. Reporting Period means that calendar year, from January 1st of any year through December 31st of that calendar year for the period prior to the year in which a report referred to in Paragraph F of this Article is required.
- B. Business Subsidy. The business subsidy provided to Roers consists of the tax abatement assistance for a period of up to ten (10) years for the County abatement and up to twenty (20) years for the City abatement. The total amount of the City tax abatement assistance is up to \$400,000, and the total amount of tax abatement assistance from St. Louis County flowing through the City is up to \$300,000.
- C. Need for Subsidy. Without the tax abatement assistance to be provided pursuant to this Agreement, the cost of redevelopment of the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental of the units, and the available resources would be inadequate and not economically feasible to redevelop the Project and that, therefore, but for the tax abatement assistance to be provided for hereunder, the Project could not reasonably be expected to be redeveloped in the foreseeable future.
- D. Public Purpose. The public purpose of the tax abatement assistance to be provided pursuant to this Agreement is to redevelop a Project which will enhance the economic diversity of the City and the City’s tax base; enhance the quality of life of the City’s residents by investing in neglected neighborhoods or business areas or stimulating the redevelopment of underutilized, blighted or

obsolete and uses including rehabilitation or demolition of commercial areas in the City and substandard structures; expand the City's tax base and realize a reasonable rate of return on the public investment; provide affordable housing; encourage the development of commercial areas in the City that result in higher quality development or redevelopment and private investment; and achieve development on sites which would not be developed without assistance.

- E. Business Subsidy Goal. Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Roers agrees that on or before December 31, 2021, or such additional time as approved in writing by the Executive Director pursuant to Paragraph A of Article IV, it shall have redeveloped the Project on the Property in accordance with this Agreement (the "Business Subsidy Goal"). In accordance with §116J.994, Subdivision 4, the City has determined after a public hearing that the creation or retention of jobs is not a goal of this redevelopment effort. Accordingly, the wage and job goals are set at zero.
- F. Reporting Requirement. On or before March 1st of each year following the commencement of this Agreement, Roers shall file with the City and for two (2) years after the Benefit Date, reports on forms developed by the Minnesota Department of Employment and Economic Development ("DEED") setting forth Roers' progress in meeting the Business Subsidy Goal during the preceding Reporting Period. Said report shall include the information required in Minnesota Statute §116J.994, Subdivision 7, and shall be accompanied by such documentation as the Director shall reasonably request in writing. All such reports shall be signed on behalf of Roers by an officer of Roers with authority to bind Roers.
- G. Penalty. If the City does not receive the reports described in Paragraph F of this Article, it will send to Roers a warning by certified mail within one week of the required filing date. If within 14 days of the post marked date of the warning the reports are not received, Roers agrees to pay DEDA a penalty of \$100 for each subsequent day until the report is filed, up to a maximum of \$1,000.
- H. Special Event of Default if Business Subsidy Goals Not Met. Roers agrees that if

the Business Subsidy Goal of Project redevelopment is not met by December 31, 2021, or such additional time as approved in writing by the Director pursuant to Paragraph A of Article IV, as determined in the sole discretion of the City, Roers shall not receive any tax abatement assistance under this Agreement.

- I. Additional Enforcement. In the event that Roers shall fail for any reason whatsoever to meet the reporting requirements of Paragraph F of this fully and completely and in a timely manner as required, said failure shall be deemed to be a material breach of the terms and conditions of this Agreement and, in addition to the rights and remedies available to the City pursuant to Paragraph G, the City shall be entitled to withhold any payment due from the City under this Agreement and to withhold the performance of any obligation owed by the City under this Agreement until Roers' reporting obligations pursuant to this Article have been fully complied with. Further, the City shall be entitled to reimbursement for any reasonable costs, including the value of staff time and attorneys' fees and costs, incurred by the City to secure Roers' compliance with the reporting requirements.
- J. Parent Corporation. Roers represents that it does not have a "parent corporation" for purposes of Minnesota Statutes Section 116J.994. Day to day control of Roers is expected to be indirectly under the control of Roers Companies LLC, a Minnesota limited liability company.
- K. Other Financial Assistance. Roers represents that it reasonably expects the Project to qualify for State of Minnesota historic tax credits in the approximate amount of \$1,628,000 and Federal historic tax credits in the approximate amount of \$1,252,000.
- L. Continued Operations Covenant. Roers agrees to own and operate the Building and the Property and to not assign, convey, transfer, sell or change its identity in violation of Article XI for at least five (5) years after the Benefit Date (the "Continued Operations Covenant").

ARTICLE IX
Project Covenants

As an element of the consideration for the City to approve the Project and to provide tax abatement assistance to Roers, following the issuance of the Certificate of Completion and during the remainder of the term of this Agreement, Roers has committed that the Project will be operated so as to provide approximately 47 units of rental housing, at least 10% (minimally, 5 rental units) of which will be units with rents restricted to reflect 80% area median income for St. Louis County as established by HUD, and will otherwise operate in conformance with the description of the Project herein for the term of this Agreement. Any violation of this commitment with regard to the Project shall constitute a breach of this Agreement, without regard to the ownership or control of the Project. Annually on or before March 1, Roers or its agent shall provide a copy of the residential rental rates charged for the units to the Director.

ARTICLE X
Operating Covenants

Roers agrees that in its operations and use of the Project and the Property, in accordance with industry standards, Roers 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 Roers' 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 and 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 to 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 residential rental units and commercial space during the term of this Agreement, at least 10% of which residential units (minimally, 5 rental units) will be units with rents restricted to reflect 80% of the area median income (AMI) for St. Louis County as established by HUD. 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.

H. 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 XI

Provision against Liens

A. Provision against Liens.

Except for encumbrances permitted pursuant to Paragraph B below, Roers 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 Roers shall first notify the City of its intention to do so and post such security as the City

reasonably deems necessary, Roers 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 Roers.

Roers recognizes that, in view of the importance of the development of the Project to the general welfare of the community and the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of Roers is of particular concern to the community, the City is relying upon the qualifications and identity of Roers to build and operate the Building and the Property. Therefore, except for the purposes of obtaining financing (including construction and permanent financing and historic tax credit equity investment) or as otherwise allowed by this Agreement, Roers 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, 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 Roers, the Building, the Property, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Roers will not make or create or suffer to be made any such transfer of Roers's rights hereunder without the prior written approval of the City. If any assignment of Roers's obligations under this Agreement is approved by the City, any such assignee shall explicitly assume the obligations of Roers under this Agreement.

C. Permitted Encumbrances

Notwithstanding anything in this Article to the contrary, Roers is authorized to obtain construction and permanent financing for the Project and to mortgage the Project and the Property to provide security for construction and permanent financing, and to enter into such easements or financial or real estate agreements as are needed to construct and operate the Project. Roers is also authorized to

admit Bremer Community Investment Fund II LLC and its successors and assigns (collectively, the “Federal Historic Tax Credit Investor”) as a member of Roers.

ARTICLE XII

Indemnification

A. Generally.

Roers 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 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 Roers’ 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 Roers;
3. Any violation of any contract, agreement or restriction related to Roers’ 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 Roers;
4. Any violation, or alleged violation by Roers, or any employee or agent of Roers or any contractor of Roers, of state, federal or local law, rule or

regulation affecting the Property or the Building 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, Roers hereby agrees 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 preexisting or after-created which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the 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 the Building or the Property, and the indemnification granted hereby shall include all costs of clean-up, remediation, 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 in the Building or the Property.

C. Survival.

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

D. Indemnification Procedures.

Promptly after receipt by Roers of notice of the commencement of any action with respect to which Roers is required to indemnify the City under this Article, the City shall notify Roers in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Roers shall assume the defense of such action, including the employment of counsel satisfactory to the 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 Roers, the City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Roers.

ARTICLE XIII

Insurance

Roers 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 Roers' occupancy of or use of the Building or the Property, carried in the name of Roers and the City as their respective interests may appear, as follows:

A. Insurance During Construction.

Roers, prior to entering on the Property for construction of the Project, shall procure or cause to be procured and maintain or require the Construction Manager/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 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 Roers 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 Construction Manager/Contractor, contractors, all subcontractors, and suppliers and Roers 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 \$2,000,000 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 Construction Manager/Contractor shall also require such liability coverage of its contractors and subcontractors unless they are insured under the Construction Manager/Contractor's policies. The Construction Manager/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. Roers 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.

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, Roers 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 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. 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.

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/Additional Insured.

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. The City of Duluth shall be named as an additional insured on all liability insurance required under this Article.

F. Policies.

Roers 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.

G. Uninsured Loss.

In the event that, during the term of this Agreement, the Building or the Property or any portion thereof is destroyed by fire or other casualty covered by insurance, Roers 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, Roers shall apply the proceeds of any insurance received by Roers to the payment or reimbursement of the costs thereof. Roers shall, complete the repair, reconstruction and restoration of the Building and the Property whether or not the proceeds of any insurance received by Roers are sufficient to pay for such repair, restoration, and reconstruction. In the alternative, and only with the prior written

consent of the City, Roers 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. In the event that Roers fails to complete repair, reconstruction, and restoration as required by this Section G within 18 months from the date of damage, then Roers shall promptly repay to the City all abatement payments Roers has received under this Agreement and this Agreement shall thereupon terminate. Notwithstanding the above, Roers may request the City to consider waiving the repayment requirement upon evidence provided by Roers that market conditions make reconstruction economically infeasible.

ARTICLE XIV

Defaults and Remedies Therefor

A. Events of Default.

The following shall be deemed to be Events of Default by Roers under the terms and conditions of this Agreement to which the remedies set forth in Paragraph B below or as otherwise set forth in this Agreement shall be applicable. Except as otherwise specifically provided in this Agreement, following notice of a default, Roers 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. The City shall accept any cure of an Event of Default hereunder effectuated by the Federal Historic Tax Credit Investor to the same extent that the City would accept a cure directly by Roers under this Agreement.

1. Roers fails to pay when due any real estate tax payment or legally-imposed assessment with regard to the Building or the Property.
2. Roers shall permit any liens on the Building or the Property except as expressly provided for in this Agreement.

3. Roers shall fail to complete construction of the Project in conformance with the requirements of this Agreement.
4. The Building shall fail to be operated in accordance with the requirements of Article IX or any other requirements of this Agreement during the term of this Agreement.
5. Roers shall fail to repair, reconstruct or restore the Building and the Property in the event of fire or other casualty in accordance with the requirements of Article XIII G.
6. Any of the following shall occur: (i) Roers shall seek relief in bankruptcy, or make a general assignment for the benefit of creditors, or (ii) there is filed by or against Roers 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 Roers , or (iv) an action is sought for the composition, extension, arrangement or adjustment of Roers's obligations, or (v) discontinues its business as a going concern, or (vi) Roers defaults on any other obligation to the City beyond any applicable notice and cure periods, or (vii) Roers' business is taken over or control is assumed by any government or governmental agency.
7. Any of the following shall occur:
 - i. Any warranty, representation or statement made by Roers in this Agreement is untrue or misleading in any material respect.
 - ii. Any financial information provided by or on behalf of Roers is untrue or misleading in any material respect.
 - iii. This Agreement ceases to be in full force and effect at any time and for any reason.
 - iv. Roers 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 Roers' property or Roers' ability to perform its obligations under this Agreement.

- v. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Roers 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 Roers as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Roers gives the 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 the City, in its sole discretion, as being an adequate reserve or bond for the dispute.
- vi. Roers is in default of any other obligation of Roers under the terms and conditions of this Agreement.

B. General Remedies

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

- 1. Terminate this Agreement.
- 2. Suspend or terminate at the City's discretion payment of tax abatement proceeds to Roers otherwise payable hereunder.
- 3. Seek and be entitled to monetary damages from Roers for any damages incurred by the City as a result of Roers' default.
- 4. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Roers' violation of the terms and conditions of this Agreement or to compel Roers' performance of its obligations hereunder.
- 5. 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 Roers or the failure of the City to declare default on the part of Roers 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 Roers of the same or of any other obligation of Roers under this Agreement. To be effective, any waiver of any Event of Default by Roers 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 hereunder.

E. Attorneys' Fees.

In the event that Roers is in default of any of the terms and conditions of this Agreement and the City shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the City shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XV

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 Roers.

Roers represents, covenants and warrants as follows:

1. Roers 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 by proper corporate action.
2. Roers 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 Roers.
3. The execution and delivery by Roers of this Agreement, compliance with the provisions thereof by Roers and the performance by Roers of its agreements, covenants, and obligations under this Agreement, do not, in any material respect, constitute on the part of Roers a breach or violation of, or default under, its organizational documents, will not violate any law or regulation applicable to Roers, or result in the breach of, or constitute a default under, any indenture or loan, credit, or other agreement or instrument to which Roers 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 Roers, threatened against Roers or any premises leased or owned by Roers in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Roers, could have a material adverse effect upon Roers, any premises leased or owned by Roers, the financial position of Roers, or the operation of Roers, and that Roers 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 Roers of this Agreement, or any document or instrument related thereto.

6. Roers 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. Roers shall promptly and at all times pay all reasonable fees and expenses incurred by the City in pursuing its rights under this Agreement following an Event of Default by Roers, including attorneys, accountants and other fees.
8. Except as permitted in this Agreement, Roers 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 the City.
9. Roers will perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Roers and the City. Roers shall notify the City promptly in writing of any default in connection with this Agreement or in any other agreement between Roers and the City promptly upon Roers becoming aware of such default.
10. Except as otherwise permitted, Roers shall not, without written consent of the City, engage in any business activities substantially different than those in which Roers 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. Roers shall not enter into any agreement containing any provisions which would be violated or breached by the performance of Roers' obligations under this Agreement or in connection herewith.
12. Except for any permitted encumbrances under this Agreement, Roers 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. Roers 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). Roers 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. Roers 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 Roers' governing body, board or executive, that the manager or officer who executed this Agreement on its behalf is fully authorized to do so, and that this Agreement when thus executed by said manager or officer on its behalf will constitute and be the binding obligation and agreement of Roers in accordance with the terms and conditions thereof.
15. This Agreement is binding and enforceable against Roers in all respects.

ARTICLE XVI

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 XVII

Runs with the Land

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

ARTICLE XVIII

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City:

City of Duluth
Attn: Director of Planning & Economic Development
160 City Hall
411 West 1st Street
Duluth, MN 55802

In the case of Roers:

Roers Lake & First LLC
110 Cheshire Lane, Suite 120
Minnetonka, MN 55305
Attn: Brian Roers and Jared Ackmann

With a copy to:

Winthrop & Weinstine, P.A.
225 South 6th Street, Suite 3500
Minneapolis, MN 55402
Attn: Kevin McLain

And to:

Bremer Community Investment Fund II LLC
225 South 6th Street, Suite 300
Minneapolis, MN 55402
Attn: Vassil Zanev

And to:

Jones Walker LLP
201 St. Charles Avenue, Suite 5100
New Orleans, LA 70170
Attn: Jonathan R. Katz

ARTICLE XIX

Recordation

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

ARTICLE XX

Disclaimer of Relationships

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

ARTICLE XXI

Applicable Law

This Agreement together with all of its Articles, Paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

ARTICLE XXII

Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

ARTICLE XXIII

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 XIV

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 XXV

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 XXVI

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 XXVII

Subordination

This Agreement shall be subordinate to that certain mortgage given by Roers on or about the date of this Agreement to Bremer Bank, National Association, providing construction and permanent financing for the Project.

[Remainder of page left blank intentionally. Signature page follows.]

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

ROERS LAKE & FIRST LLC,
a Minnesota limited liability company

By _____
Emily Larson, Mayor

By: Roers Lake & First MM LLC
Its: Managing Member

Attest:

By: Roers Lake & First MM Manager
LLC
Its: Manager

By _____
Its City Clerk
_____, 2019
(Date)

By: Roers Companies LLC
Its: Manager

Countersigned:

By: _____
Brian J. Roers, its Manager

Its Auditor

Approved:

Its City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by Brian J. Roers, a Manager of Roers Companies LLC, a Minnesota limited liability company and the Manager of Roers Lake & First MM Manager LLC, a Minnesota limited liability company and the Manager of Roers Lake & First MM LLC, a Minnesota limited liability company and the Managing Member of Roers Lake & First LLC, a Minnesota limited liability company.

Notary Public

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, 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

EXHIBIT A

City Abatement Resolution

EXHIBIT B

County Abatement Resolution

EXHIBIT C
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

EXHIBIT D

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 20____, the City of Duluth, a home rule charter city and political subdivision of the State of Minnesota (the “City”), and Roers Lake & First LLC, a Minnesota limited liability company (“Roers”) , entered into a Development Agreement which was recorded in the Office of the St. Louis County Recorder on _____, 20____, as Document No. _____ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described as:

Lots 1 and 3, Duluth Proper 1st Division East 1st Street

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

C. The Development Agreement requires Roers to complete construction of the Project no later than December 31, 2021, subject to adjustment as provided in the Development Agreement.

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

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

NOW, THEREFORE:

1. Construction of the Project, pursuant to the Development Agreement, has been completed and those requirements under the Development Agreement which relate solely to Project construction have been fulfilled, but all other conditions, provisions and restrictions contained in the Development Agreement shall remain in effect.

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

