

TAX ABATEMENT AGREEMENT

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

THIS TAX ABATEMENT AGREEMENT, entered into this ____ day of _____, 2018, by and between the **County of St. Louis**, a municipal corporation created and existing under the laws of the State of Minnesota (“County”) and the **City of Duluth**, a municipal corporation created and existing under the laws of the State of Minnesota (“City”) is in response to the following:

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

B. CityView Flats, LLC (“Developer”) desires to construct 105 units of rental housing, up to 96 of which will be market rate units and no less than 9 of which will be rent restricted units as part of a project known as CityView Flats in downtown Duluth.

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

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

E. Pursuant to County Board resolution _____ (_____, 2018), County is willing to so abate said taxes and to provide said proceeds to City, as hereinafter provided for, in order to assist City in reimbursing Developer for costs associated with CityView Flats.

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

ARTICLE I

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

1.1. Project: shall mean the construction of a building known as CityView Flats containing 105 rental units, up to 96 of which will be market rate units and no less than 9 of

which will be rent restricted units, located in downtown Duluth at 333 North First Avenue West in St. Louis County, Minnesota.

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

1.3. TAF: shall mean Tax Abatement Financing.

1.4. Tax Abatement Development Agreement: shall mean that agreement between City and Developer which provides for the reimbursement to Developer of TAF-Eligible Costs up to the amount of \$800,000, \$400,000 of which will be funded through County tax abatement and \$400,000 of which will be funded through City tax abatement.

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

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

ARTICLE II

TAF-Eligible Costs Stipulation. The parties hereto hereby agree that Developer will incur the TAF-Eligible Costs in furtherance of the Project that are listed on Exhibit B and that the amount of those costs for each item of such costs related thereto is substantially as shown on said Exhibit B. The parties further stipulate that the total amount of TAF-Eligible Costs incurred by Developer will be at least \$400,000 per taxing jurisdiction identified above.

ARTICLE III

TAF Proceeds to City.

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

3.2. Notwithstanding anything to the contrary herein, County's obligation to pay the TAF proceeds is furthered conditioned upon: a) Developer having paid real estate taxes on the Property in the relevant tax-payable year; b) no challenge to the tax assessment having been

served upon County; and c) certification from the City that TAF-Eligible Costs of at least \$400,000 have been paid by Developer.

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

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

ARTICLE IV

Term. The term of this Agreement shall be deemed to run from the date of first receipt of TAF Proceeds by City from County until the total amount of TAF Proceeds received by City equals the amount of \$400,000 (the "Termination Event"). Upon the happening of the Termination Event, this Agreement shall terminate and County shall have no further obligation to remit TAF Proceeds to City.

ARTICLE V

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

ARTICLE VI

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

ARTICLE VII

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

ARTICLE VIII

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

ARTICLE XIX

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

ARTICLE X

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

ARTICLE XI

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

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

CITY OF DULUTH

COUNTY OF ST. LOUIS

By _____
Mayor

By _____
Board Chair

Attest: _____
City Clerk

By _____
County Auditor

Countersigned:

By _____
City Auditor

Approved as to Form and Execution:

By _____
Assistant County Attorney

Approved as to Form and Execution:

By _____
City Attorney

EXHIBIT A
Legal Description of the Property

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

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

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

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

EXHIBIT B
TAF-Eligible Costs

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