

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

CAPSTONE, LLC

Relating to MALL AREA WORKFORCE HOUSING

Dated as of February_____, 2017

TABLE OF CONTENTS

	<u>Page</u>
Article I Definitions	1
Article II Preconditions to Project Construction	5
Article III Project Plans	7
Article IV Construction	8
Article V Disbursements	9
Article VI Books and Records	11
Article VII Certificate of Completion	12
Article VIII Tax Abatement Assistance.....	12
Article IX Operating Covenants	13
Article X Provision Against Liens	15
Article XI Indemnification	16
Article XII Insurance	18
Article XIII Capstone Defaults and Remedies Therefor	23
Article XIV Representations, Covenants and Warranties	26
Article XV Term	29
Article XVI Runs with the Land	30
Article XVII Notices	30
Article XVIII Recordation	30
Article XIX Disclaimer of Relationships	31
Article XX Applicable Law	31
Article XXI Judicial Interpretation	31
Article XXII Title of Articles	32
Article XIII Severability	32
Article XIV Unavoidable Delays	32
Article XXV Entire Agreement	32
Article XXVI Counterparts	33
Article XXVII Attorney's Fees	33

EXHIBIT A - Legal Description of Land

EXHIBIT B - City Abatement Resolution

EXHIBIT C - County Abatement Resolution

EXHIBIT D - Estimate of Project Costs

EXHIBIT E - Certificate of Completion

EXHIBIT F - Memorandum of Development Agreement

DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City", and CAPSTONE APARTMENTS, LLC, a Minnesota limited liability company, hereinafter referred to as "Capstone." WHEREAS, Capstone proposes to create 80 units of Workforce Housing (the hereinafter-described "Project") on property owned by it and described in Exhibit A hereto (the "Land"); and

WHEREAS, the County of St. Louis, Minnesota, and the City are considering abatement of real estate taxes, as set forth on Exhibits B and C attached hereto to fill gaps in the available funding for the Project, making the Project financially feasible; and

WHEREAS, Capstone 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 Cole Group Architects, LLC, a Minnesota limited liability company.

City Abatement Resolution means a resolution approved by the Duluth City Council, substantially in the form of that attached hereto as Exhibit B, authorizing the abatement of portion of the real property taxes on the Land and the Project paid to the

City for a term of up to Twenty (20) years which will commence with taxes payable in 2019 and provide for a total of up to \$278,373 of Tax Abatement to be paid to Capstone as provided for in the City Abatement Resolution and this Agreement. The City shall remit the Abatement amounts to the Project only when, if and as property tax payments are received by City from the Project and only to reimburse for a portion of the costs of constructing the Project.

Closing Date means a date agreed to in writing between the Director and Capstone, currently estimated to be July 1, 2017.

Construction Account means the account maintained by Title to disburse funds for the Construction Costs.

Construction 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 costs for construction of the Project:

- 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, the Architect, legal counsel and other professionals for surveys and estimates and other preliminary investigations, preparation of plans, drawings and specifications, assistance with bidding, and supervising construction, as well as for the performance of all other duties of the Construction Manager/Contractor, the Architect and other professionals in relation to the acquisition and betterment of the Project.

Construction Manager/Contractor means a contract with 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 below.

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 C, authorizing the abatement of portion of the real property taxes on the Land and

the Project paid to the County for a term of up to ____ years which will commence with taxes payable in 2019 and provide for a total of up to \$250,000 of tax abatement to be paid to Capstone as provided for in the County Abatement Resolution and this Agreement. The County shall remit the Abatement amounts to the Project only when, if and as property tax payments are received by County from the Project and only to reimburse for a portion of the costs of constructing the Project.

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

Disbursement Agreement means the disbursement agreement in a form approved by the Director between Capstone, LLC, the lender, the City and Title for the disbursement of Project funds to pay all Construction Costs.

Documents means this Agreement, the Construction Plans, the Disbursement Agreement and any other documents given to the City to evidence, effect, secure or modify the Documents.

Event of Default means an event which, with notice or passage of time or both, would constitute an Event of Default under this Agreement.

Land means the real estate located in St. Louis County, Minnesota and described in Exhibit A hereto.

Living Wage Ordinance means Article XXV of Chapter 2 of the Duluth City Code, 1959, as amended.

Matterhorn Apartments Project or Matterhorn means the 96 unit rent-restricted apartment development located on the following-described property in St. Louis County, Minnesota:

The Westerly 235.83 feet of the North Half of the Southeast Quarter of the Northwest Quarter and the East Half of the East Half of the North Half of the North Half of the Southwest Quarter of the Northwest Quarter, all in Section 19, Township 50 North of Range 14 West of the Fourth Principal Meridian.

Mixed Income Facility means that Capstone will be operated, not as a single property, but in conjunction with the related development of Matterhorn Apartments as

generally provided for in this Agreement and in specific as set forth in Article V below so as to create and broaden the mixed income housing community which was created through Matterhorn Apartments at the time of its construction, all for the public good.

Project means the construction of a Workforce Housing apartment building on the Land having at least Eighty (80) units currently known as “Capstone Apartments,” to be constructed in accordance with the Plans approved pursuant to Article III of this Agreement, consisting generally of ten (10) studio apartments, twenty-four (24) one-bedroom apartments, forty (40) two-bedroom apartments, and six (6) three-bedroom apartments (or as otherwise agreed to by the Director), together with all necessary utilities, driveways, sidewalks, and landscaping and having a Construction Cost of not less than Thirteen Million Dollars (\$13,000,000).

Project Costs means the total cost of constructing the Project which will consist of the Construction Costs.

Public Improvements means the improvements to be paid for, to include site improvements and any and all improvements that would be eligible to be funded with tax increment financing, inclusive of, but not limited to, foundations, parking lots, underground parking, site utilities, soil remediation, and storm water control and diversion facilities, among others.

Repayments means any payments from Capstone to the City required hereunder.

Title means Consolidated Title & Abstract Company of Duluth, Minnesota.

Workforce Housing means rental housing designed for and targeted toward households with one or more working adults and having household incomes between \$27,000 and \$78,000. The aforesaid Income guidelines for initial or continuing occupancy shall apply to resident occupants of the Project during the term of this Agreement.

ARTICLE II

Preconditions to Project Construction

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

A. Deed.

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

B. Approvals.

Approvals of the Abatement Resolutions and the Disbursement Agreement which shall be subject to the approval of the Director. The Abatement Resolutions will make clear that the abatement is a rebate/refund to the Developer, contingent upon the payment of the real estate taxes on an annual basis and upon Developer not otherwise being in default under this Agreement.

C. Construction Plans

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

D. Construction Contract.

A copy of the executed contract between Capstone 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 below. Such contract shall contain a guaranteed maximum price and shall provide that payments for the work thereunder are the sole obligation of Capstone.

E. Performance and Payment Bonds

A copy of executed payment and performance bonds provided by Capstone in connection with the construction of the Project, which bonds shall be in the penal amount of not less than one hundred (100%) percent of Construction Cost as set forth in Paragraph C above written by a bonding company licensed to do business in the State of Minnesota, certified by Capstone to be true and correct copies thereof which name the City as a beneficiary thereof.

F. Financing.

Copies of financing commitments or capital commitments by Capstone or a certification as to availability of funds acceptable to Director, which are utilized by

Capstone for the capital necessary so that the total of said commitments and certification are not less than the Project Costs.

G. Construction Cost Certification.

Evidence satisfactory to the Director that the Construction Cost of the Project will equal or exceed Thirteen Million Dollars (\$13,000,000).

H. Additional Documentation

Capstone shall also deliver the following documents to the City:

1. Corporate Resolutions authorizing the Documents;
2. A certificate of Capstone's good standing;
3. An opinion of legal counsel addressed to the City stating that Capstone is in compliance with its organizational documents and other agreements;
4. Marketing plan describing the mixed income philosophy of the Project as provided for in this Agreement as it relates to the adjacent Matterhorn Apartments.
5. Insurance Certificates

I. Survey.

A survey of the Land 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 Capstone, or such lesser time as approved by the Director, Capstone shall submit working drawings, specifications and elevations for the Project together with detailed site grading, utility, storm water control and diversion facilities and landscaping plans and elevations to the Director for approval. All such plans, specifications and elevations shall be in conformance with this Agreement, with the schematic design which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and

with all applicable laws, ordinances, rules, regulations and requirements of the City, the State of Minnesota and the United States of America. The Director shall review such plans, specifications and elevations within 30 days of submission of same by Capstone. The Director's approval shall be provided to Capstone 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 Capstone of said rejection together with a detailed explanation of the reason or reasons therefor, Capstone 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 Capstone'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 Capstone by law.

B. Changes After Initial Approval.

Any material or substantial changes made to plans by Capstone 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 Article II and upon award of the construction of the Project and the deposit of any amounts required to be deposited into the Construction Account pursuant to this Agreement, or in the alternative, the provision of evidence reasonably satisfactory to the Director of the availability of all funds required to complete construction of the Project, the sufficiency of which evidence shall be approved by the Director in writing, Capstone 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 November 1, 2017 and shall be completed not later than December 31, 2018. Notwithstanding the above, the construction period may be extended upon the prior written approval of the Director.

B. Capstone to Bear All Costs.

Capstone specifically agrees to bear all costs related to the construction of the Project and any modifications thereto utilizing equity and its financing.

C. Prevailing Wage and PLA.

Capstone shall cause the laborers, mechanics or apprentice-trainees directly employed in the construction of the Project to be paid the wage rates as provided in the federal Davis Bacon Act, as amended. Payroll for the construction trades must be submitted to the Director on a monthly basis. In addition, Capstone will require that its contractor or contractors constructing the Project enter into a project labor agreement with Capstone and the City meeting the requirements of Section 2-29 of the Duluth City Code, 1959, as amended, or, at the discretion of the Director, Capstone shall enter into a community benefit agreement in a form approved by the Director which includes but is not limited to benefits to the City similar to those benefits to the City normally attendant to upon the execution of a project labor agreement..

D. Progress Reports.

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

ARTICLE V

Matterhorn Apartments Covenants

As an element of the consideration for the City to approve the Capstone Project and to provide tax abatement assistance to it under the terms of this Agreement,

Capstone has committed that the Matterhorn Apartments will be operated in a manner so as to provide not less than 68 units meeting the State of Minnesota Housing Finance Agency's Affordability Guidelines for the term of the payment of tax abatement proceeds by the City pursuant to this Agreement. Any violation of this commitment with regard to the Matterhorn Apartments shall constitute a breach of this Agreement, without regard to the ownership or control of either this Project or of the Matterhorn Apartments Project.

ARTICLE VI

Tax Abatement Payments

Tax abatement proceeds shall only be made to reimburse Capstone for Construction Costs of the Project incurred and paid by capstone and only after the Certificate of Completion provided for in VIII below has been issued. All requests for payment of all Construction Costs shall be approved for payment by the Architect and shall be transmitted to the Disbursement Agent. Pursuant to the Disbursement Agreement the Disbursement Agent shall verify that the documentation required by this Article is complete. All such requests shall be broken down so as to separate Construction Costs from other Project Costs and shall be accompanied by documentation consisting of and establishing the following:

- A. Proof that contractors and suppliers providing labor and materials to the construction of the Project have provided such labor and materials to the construction of the Project as shown in the approved Plans for which Capstone 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 therefore, including necessary lien waivers evidencing the same.
- C. In addition to the foregoing documentation, City shall be entitled to request such additional information as it deems reasonably necessary to establish the costs for which reimbursement are requested comply with all requirements of the State of Minnesota pursuant to this Agreement.

ARTICLE VII

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 Capstone relating to the Project. Additionally, Capstone 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 Capstone, the Construction Manager/Contractor and the Architect shall be kept and maintained by Capstone for a period of six years following the recordation of the Certificate of Completion as provided for in Article VIII.

ARTICLE VIII

Certificate of Completion

Upon completion by Capstone of the construction of the Project in accordance with this Agreement, through its Director, shall within 30 days of written request from Capstone, furnish to Capstone an appropriate certificate certifying completion of construction of the Project, (Certificate of Completion) substantially in the form of that attached hereto as Exhibit E. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction of Capstone undertaken pursuant to this Agreement. Immediately upon issuance of the Certificate of Completion, Capstone agrees to record the Certificate of Completion in the office of the St. Louis County Recorder and/or Registrar of Titles and to pay all costs associated therewith. Upon recordation, Capstone 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

Capstone 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 IX

Tax Abatement Assistance

As a part of the financial assistance provided to this Project to make it feasible, City and St. Louis County have agreed to provide tax abatement assistance in the form of the Abatement Resolutions. The terms and conditions of that assistance shall be those set forth in the City Abatement Resolution and the County Abatement Resolution respectively; provided that the breach by MH II of any of the terms, covenants or conditions of this Agreement or of either or both of the Abatement Resolutions shall constitute a breach of the requirements of the other of the Abatement Resolutions.

ARTICLE X

Operating Covenants

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

A. **Maintenance.**

At all times cause the Building and the Land 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 Land and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Building and the Land 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 Land.

B. Utilities.

Unless disputed, pay or cause to be paid any and all charges for utilities furnished to the Building and the Land 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 Land 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 Land 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 Land; 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 Capstone's title to the Building and the Land.

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 Land, 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 Land, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Building

and the Land 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 Land 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. Living Wage.

The construction of the Project shall be done in compliance with the Living Wage Ordinance of the City of Duluth.

ARTICLE X

Provision against Liens

A. Provision against Liens.

Except for encumbrances permitted pursuant to Paragraph B below, Capstone 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 Land 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 Capstone shall first notify the City of its intention to do so and post such security as the City reasonably deems necessary, Capstone 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 Capstone.

Capstone 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 Capstone is of particular concern to the community, the City is relying upon the qualifications and identity of Capstone to build and operate the Building. Therefore,

except for the purposes of obtaining financing or as otherwise allowed by this Agreement, Capstone represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Building, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and except for the financing, Capstone will not make or create or suffer to be made any such transfer of Capstone's rights hereunder without the prior approval of the City until a Certificate of Completion has been obtained. Notwithstanding the above, Capstone may sell or transfer its interest in the Building to a Related or Affiliated Entity or as part of an organizational acquisition or merger without the prior approval of the City. An entity acquiring or accepting an interest in the Building as part of an organizational acquisition or merger shall be required to execute a Guaranty. Capstone shall give written notice of such sale or transfer and provide copies of the sale or transfer documentation, and well as any Guaranty required above to the Director within 30 days of the event of sale or transfer.

C. Conversion

In addition to the foregoing, Capstone agrees and commits that the Land and Property shall be used solely to provide Workforce Housing as herein defined for at least the duration of the Term of this Agreement as provided for in Article XVI below.

ARTICLE XII

Indemnification

A. Generally.

Capstone will 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, except to the extent that same result from the sole negligence by the City, its officers, agents or employees, in which case Capstone indemnification and hold harmless shall not apply:

1. Any injury to or death of any person or damage to the Building or the Land, or growing out of or in connection with the use or non-use, condition or occupancy of the Building or the Land 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 Land. 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 Capstone 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 Capstone;
3. Any violation of any contract, agreement or restriction related to Capstone's use of the Building or the Land which shall have existed at the commencement of the term of this Agreement or shall have been approved by Capstone;
4. Any violation, or alleged violation by Capstone, or any employee or agent of Capstone or any contractor of Capstone, of state, federal or local law, rule or regulation affecting the Building, the Land or the Project or the ownership, occupancy or use thereof; and
5. Any mechanic's liens or similar liens.

B. Environmental Indemnification.

In addition to the generality of the foregoing, Capstone hereby agrees that for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees and any person who controls the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing on the Building or the Land arising out of Capstone's use

and occupancy of the Land or the Building or both which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence on the Land 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 Land and that 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 on the Building or the Land.

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 Land.

C. Indemnification Procedures.

Promptly after receipt by Capstone of notice of the commencement of any action with respect to which Capstone is required to indemnify such person under this Article, the City shall notify Capstone in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Capstone shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee 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 MH II, 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 Capstone.

ARTICLE XIII

Insurance

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

A. Insurance During Construction.

Capstone, prior to entering on the Land 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 on the Project, 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 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 name of Capstone 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 Capstone shall waive all rights against the City for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance.

Public Liability Insurance written on an "occurrence" basis in limits of not less than \$2,000,000 per occurrence and in the aggregate for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The City shall be named as additional insureds on the Comprehensive General Liability and Automobile Liability insurance policies against losses caused by the negligent act or omission of Capstone. 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, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$20,000 per occurrence. For the purposes

hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. The insurance policy shall bear a payee clause in favor of the City with loss proceeds under any property policies made payable to the City, to the extent of its advance of funds. Capstone hereby waives any and all claims or causes of action against the City for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, Capstone will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

2. Liability Insurance.

During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Capstone 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. The City shall be named as additional insureds therein against losses caused by the negligent act or omissions of Capstone. Insurance shall cover:

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

D. Workers' Compensation.

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

E. Requirements for All Insurance.

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

F. Policies.

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

G. Uninsured Loss.

In the event the Building or the Land or any portion thereof is destroyed by fire or other casualty covered by insurance, Capstone shall forthwith repair, reconstruct, and restore the Building and the Land 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, Capstone shall apply the proceeds of any insurance received by Capstone to the payment or reimbursement of the costs thereof. Capstone shall, however, complete the repair, reconstruction and restoration of the Building and the Land whether or not the proceeds of any insurance received by Capstone are sufficient to pay for such repair, restoration, and reconstruction. In the alternative, and only with the prior written consent of the City, Capstone may construct a building of a new design having utility to the City equal to or greater than the Building, approved by the City as a replacement to the Building, at its own cost and at no cost to the City. In the event that the City

approves construction of such a replacement building, said building shall be constructed in accordance with the terms hereof.

ARTICLE XIV

Capstone Defaults and Remedies Therefor

A. Events of Default.

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

1. Capstone fails to make any Repayments when due and such failure is not cured within 10 days after delivery of written notice by the City to Capstone.
2. Capstone shall permit any liens on the Building or the Land except as expressly provided for in the Documents.
3. Capstone shall fail to complete construction of the Project in conformance with the requirements of this Agreement or shall fail to operate the Project in conformance with said requirements during the term hereof.
4. The Matterhorn Apartments project shall fail to be operated in accordance with the requirements of Article V hereof during the term of this Agreement.
5. Any of the following shall occur: (i) Capstone shall seek relief in bankruptcy, or make a general assignment for the benefit of creditors, or (ii) there is filed by or against Capstone 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 Capstone, or (iv) an action is sought for the composition, extension, arrangement or adjustment of Capstone's obligations, or (v) Capstone discontinues its business as a going concern, or (vi) Capstone defaults on any other obligation to the City

beyond any applicable notice and cure periods, or (vii) Capstone's business is taken over or control is assumed by any government or governmental agency. Capstone shall have 15 days to obtain dismissal of any action in Paragraph A. 3 (i), (ii), (iii), (iv) or (vii).

6. Any of the following shall occur:
- i. Any warranty, representation or statement made by Capstone in any Document, is untrue or misleading in any material respect.
 - ii. Any financial information provided by or on behalf of Capstone is untrue or misleading in any material respect.
 - iii. Any of the Documents ceases to be in full force and effect (including failure of a collateral document to create a valid and perfected security interest or lien) at any time and for any reason.
 - iv. Capstone 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 Capstone's property or Capstone's ability to make the Repayments or perform their respective obligations under any of the Documents.
 - v. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Capstone 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 Capstone as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Capstone 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. Capstone fails to perform any other obligation required under the Documents and such failure is not cured within 30 days after delivery

of written notice by the City to Capstone describing the failure and the act required to cure the failure.

- vii. Capstone converts or allows the Land and the Project to be used for any purpose other than the provision of Workforce Housing during the Term of this Agreement.
- viii. Capstone fails to pay when due any real estate tax payment or legally-imposed assessment with regard to the Land or the Project
- ix. Capstone is in default of any other obligation of Capstone 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 an Event of Default by Capstone:

- 1. Terminate this Agreement.
- 2. Suspend or terminate at its discretion payment of tax abatement proceeds to Capstone otherwise payable hereunder.
- 3. Any of the various remedies provided in any of the Documents.
- 4. Seek and be entitled to monetary damages from Capstone for any damages incurred by the City as a result of Capstone's default.
- 5. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Capstone's violation of the terms and conditions of this Agreement or to compel Capstone's performance of its obligations hereunder.
- 6. Cumulatively to exercise all other rights, options and privileges provided by agreement, law or in equity.

C. Non-Waiver.

The waiver by the City of any Event of Default on the part of Capstone or the failure of the City to declare default on the part of Capstone of any of its obligations pursuant to this Agreement or the other Documents shall not be deemed to be a waiver of any subsequent Event of Default on the part of Capstone of the same or of any other obligation of Capstone under this Agreement or the

other Documents. To be effective, any waiver of any Event of Default by Capstone 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.

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 Capstone.

Capstone represents, covenants and warrants as follows:

1. Capstone is a duly formed and validly existing corporation under the laws of the State of Minnesota, is not in violation of its organizational documents, has power to enter into this Agreement and to perform its obligations hereunder, and has duly authorized the execution, delivery, and performance of this Agreement and the other Documents by proper corporate action.
2. Capstone 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 Capstone.

3. The execution and delivery by Capstone of this Agreement; compliance with the provisions thereof by Capstone; and the performance by Capstone of its agreements, covenants, and obligations under this Agreement, do not, in any material respect, constitute on the part of Capstone a breach or violation of, or default under, its organizational documents, will not violate any law or regulation applicable to Capstone, or result in the breach of, or constitute a default under, any indenture or loan, credit, or other agreement or instrument to which Capstone 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 Capstone, threatened against Capstone or any premises leased or owned by Capstone in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Capstone, could have a material adverse effect upon Capstone, any premises leased or owned by Capstone, the financial position of Capstone, or the operation of Capstone, and that Capstone 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 Capstone of this Agreement, or any document or instrument related thereto.
6. It 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. Capstone shall promptly and at all times pay all reasonable fees and expenses incurred by the City in pursuing its rights hereunder or under the

Documents, including attorney's, accountant's and other fees subsequent to the Closing Date.

8. Except as permitted in this Agreement or any other Document, Capstone will not sell, encumber, transfer or otherwise pledge the Building or the Land to any other person for any purpose whatsoever except with the prior written consent of the City.
9. Capstone will perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Documents, and in all other instruments and agreements between Capstone and the City. Capstone shall notify the City immediately in writing of any default in connection with this Agreement, any Document or in any other agreement between Capstone and the City promptly upon Capstone becoming aware of such default.
10. Except as otherwise permitted, Capstone shall not, without written consent of the City, engage in any business activities substantially different than those in which Capstone 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 Land out of the ordinary course of business.
11. Capstone shall not enter into any agreement containing any provisions which would be violated or breached by the performance of Capstone's obligations under this Agreement or in connection herewith.
12. Capstone shall not subject the Building or the Land to any additional declaration, condition, restriction or easement without the prior written consent of the City.
13. Capstone 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). Capstone 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. Capstone 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 Capstone's governing body or board, that the officer of Capstone who executed this Agreement on its behalf is fully authorized to do so, and that this Agreement when thus executed by said officer on its behalf will constitute and be the binding obligation and agreement of Capstone in accordance with the terms and conditions thereof.
15. This Agreement is binding and enforceable against Capstone in all respects.

ARTICLE XVI

Term

The term of this Agreement shall commence upon execution by the parties hereto 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. Only the requirement to operate The Project as Workforce Housing and to operate the Matterhorn Apartments Project in conformance with the requirements of Article V shall continue after the Certificate of Completion is issued.

ARTICLE XVII

Runs with the Land

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

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

In the case of Capstone: Capstone, LLC.
Attn: Scott Vesterstein, Chief Manager
c/o Fitger's On-the-Lake
600 E. Superior Street
Duluth, MN 55802

Copies to: Hanft Fride, a Professional Association
Attn: William M. Burns
130 W. Superior St. #1000
Duluth, MN 55802

ARTICLE XIX

Recordation

Immediately upon execution of this Agreement, Capstone agrees to record a Memorandum of Development Agreement substantially in the form of that attached hereto as Exhibit E in the office of the St. Louis County Recorder and/or Registrar of Titles and to pay all costs associated therewith. Upon recordation, Capstone shall immediately submit to the City an executed original of the Memorandum of Development Agreement showing the date and document numbers of record.

ARTICLE XX

Disclaimer of Relationships

Capstone acknowledges that nothing contained in this Agreement nor any act by the City or Capstone shall be deemed or construed by Capstone 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 Capstone.

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 XXIV

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

Unavoidable Delays

Neither party shall be held responsible for, and neither party shall be in considered in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, strikes or embargoes, 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.

ARTICLE XXVI

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 XXVII

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 XXVIII

Attorney's Fees

In the event that Capstone 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. In the event City is in default of any of the terms and

conditions of this Agreement, and Capstone shall successfully take legal action to enforce said rights herein, in addition to any other right or remedy, Capstone shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

[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
company

CAPSTONE, LLC
a Minnesota limited liability

By _____
Emily Larson
Mayor

By _____
Scott Vesterstein, Chief Manager

Attest:

By _____
Its City Clerk

(date)

Countersigned:

Its Auditor

Approved:

Its Assistant City Attorney

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Scott Vesterstein, Chief Manager of Capstone, 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 _____, 2017, by Emily Larson and Jeffrey J. Cox, the Mayor and City Clerk of the City of Duluth, a Minnesota Municipal corporation, on behalf of the City.

Notary Public

DRAFTED BY:

William M. Burns
HANFT FRIDE,
A Professional Association
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094
Tel. (218) 722-4766

EXHIBIT A

Legal Description of the Land

Lots 0006 and 0007, Block 001, Village Mall First Addition; Parcel numbers 010-4423-00070 and 010-4423-00080

EXHIBIT B

City Abatement Resolution

EXHIBIT C
County Abatement Resolution

EXHIBIT D
Estimate of Project Costs

EXHIBIT E

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 Capstone, LLC a Minnesota limited liability company ("Capstone") , entered into a Development Agreement, a memorandum of which was recorded in the Office of the St. Louis County Recorder and/or Registrar of Titles on _____, 20____, as Document No. _____ (the "Memorandum of Development Agreement"), relating to property located in St. Louis County, Minnesota, and legally described as:

Lots 0006 and 0007, Block 001, Village Mall First Addition; Parcel numbers 010-4423-00070 and 010-4423-00080.

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 Capstone complete construction of the Project no later than December 31, 2018.

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

E. Capstone 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 and/or Registrar of Titles in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.

CITY OF DULUTH

By: _____
Director of Planning and
Construction Services

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

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

Notary Public

This instrument was drafted by:

William M. Burns
HANFT FRIDE,
A Professional Association
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094
Tel. (218) 722-4766

EXHIBIT F

MEMORANDUM OF DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT is entered into by and between the CITY OF DULUTH, MINNESOTA, a municipal corporation under the laws of the State of Minnesota (the "City") and CAPSTONE, LLC a Minnesota limited liability company, ("Capstone").

The purpose of this Memorandum of Development Agreement is to provide notice of the existence of a Development Agreement dated July ____, 2016, by and between the City and Capstone. The Development Agreement affects the land located in St. Louis County, Minnesota and legally described as:

Lots 0006 and 0007, Block 001, Village Mall First Addition; Parcel numbers 010-4423-00070 and 010-4423-00080

The terms, covenants and conditions of the Development Agreement are incorporated herein by reference with the same force and effect as though fully set forth herein.

It is understood this Memorandum of Development Agreement shall not change, modify or amend the aforesaid Development Agreement in any respect.

CITY OF DULUTH, MINNESOTA

By _____
Its Mayor

By _____
Its City Clerk

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Emily Larson and Jeffrey J. Cox, the Mayor and City Clerk, respectively, of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

CAPSTONE, LLC,
A Minnesota limited liability company

By: _____
Scott Vesterstein, Chief Manager

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Scott Vesterstein, the Chief Manager of Capstone, a Minnesota limited liability company. on behalf of the company.

Notary Public

This instrument was drafted by:

William M. Burns
Hanft Fride, A Professional Association
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094
Tel. (218) 722-4766