

June 2, 2015

**PURCHASE AND  
DEVELOPMENT AGREEMENT**

**By and Between**

**HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT  
AUTHORITY**

**and**

**HASTINGS LOFTS LLLP**

Dated: \_\_\_\_\_, 2015

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## PURCHASE AND DEVELOPMENT AGREEMENT

**THIS AGREEMENT**, made on or as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Hastings Economic Development and Redevelopment Authority, a public body politic and corporate under the laws of the State of Minnesota (hereinafter referred to as the "Authority"), and having its principal office at 101 4th Street East, Hastings, Minnesota 55033-1955, and Hastings Lofts LLLP, Inc., a Minnesota limited liability limited partnership (hereinafter referred to as the "Developer"), having its principal office at 250 3<sup>rd</sup> Avenue North, Suite 400, Minneapolis, Minnesota 55401.

### **WITNESSETH:**

**WHEREAS**, the Authority is a municipal economic development authority created by the City Council of the City of Hastings, Minnesota (the "City") pursuant to Minnesota Statutes, sections 469.090 to 469.108 (the "Act") and is the owner of certain real property located in the downtown area of the City and described on Schedule A to this Agreement (which real property is referred to herein as the "Property"); and

**WHEREAS**, pursuant to the Act the Authority administers the Hastings Downtown Redevelopment Project (the "Project") in order to encourage and assist the development and redevelopment of real property within the City's downtown area; and

**WHEREAS**, the Developer has presented to the Authority a proposal by which it would purchase the Property from the Authority and construct thereon 30 to 40 unit live/work housing units and commercial space in one building; and

**WHEREAS**, the Authority believes that the conveyance of the Property to the Developer for the proposed development is consistent with and furthers the Authority's goals with respect to the Project and is willing to sell the Property to the Developer but only if the Developer complies with its obligations under this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## ARTICLE I

### Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

"Agreement" means this Agreement, as the same may be from time to time modified, amended, or supplemented.

"Authority" means the Hastings Economic Development and Redevelopment Authority, a public body politic and corporate.

"Certificate of Completion" means the certificate that is described in Section 4.3(c) of this Agreement.

"Construction Plans" means the plans, specifications, drawings and related documents on the construction work to be performed by the Developer on the Property which shall be at least as detailed as the plans to be submitted to the building inspector of the City and shall include such supplemental information as the Authority may require.

"County" means Dakota County, Minnesota.

"Developer" means Hastings Lofts LLLP, a Minnesota limited liability limited partnership, its successors and assigns, and any future owners of any interest in the Property.

"Event of Default" means an action listed in Section 9.1 of this Agreement.

"Hazardous Substances" means asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, chemical waste, radioactive materials, explosives, known carcinogens, petroleum products and also all dangerous, toxic or hazardous pollutants, contaminates, chemicals, materials or substances defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by, any Laws or Regulations, as hereafter defined. Laws or Regulations mean and include the Comprehensive Environmental Response and Liability Act ("CERCLA" or the Federal Superfund Act) as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") 42 U.S.C. 9601-9675; The Federal Resource Conservation and Recovery Act of 1986 ("RCRA"); the Clean Water Act, 33 U.S.C. 1321, et seq.; the Clean Air Act 42 U.S.C. 7401, et seq., all as the same may be from time to time amended, and any other federal, state, county, municipal, local or other statute, law ordinance or regulation which may relate to or deal with human health or the environment including, without limitation, all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance.

"Holder" means the owner of a Mortgage.

"Improvements" means the construction by the Developer of a building with approximately 30 to 40 unit live/work housing units and commercial space on the Property in accordance with the Construction Plans.

"Investor" means a person who has made an equity investment in the Developer with respect to the Property.

"Mortgage" means any mortgage, lien or other encumbrance made or permitted to be made by the Developer which is secured, in whole or in part, by the Property.

"Permitted Encumbrances" means the provisions of this Agreement; reservations of minerals or mineral rights to the State of Minnesota; public utility, roadway and other easements which will not adversely affect the development and use of the Property pursuant to the Developer's Construction Plans; building laws, regulations and ordinances consistent with the Improvements; real estate taxes that Developer agrees to pay or assume pursuant to this Agreement; restrictions, covenants and easements of record that do not materially adversely affect the development and use of the Improvements; and exceptions to title to the Property which are not objected to by Developer upon examination of the title evidence to be delivered to the Developer pursuant to Section 3.4 of this Agreement.

"Property" means the real property described in Schedule A of this Agreement.

"State" means the State of Minnesota.

"Unavoidable Delays" means delays which are the direct result of acts of God, unforeseen adverse weather conditions, strikes, other labor troubles, fire or other casualty to the Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in enforcing its rights under this Agreement) which directly result in delays.

## **ARTICLE II**

### **Representations**

Section 2.1. Representations by the Authority. The Authority makes the following representations as the basis for the undertaking on its part herein contained:

(a) The Authority is a municipal economic development authority organized and existing under the laws of the State. Under the laws of the State, the Authority has the power to enter into this Agreement and to perform its obligations hereunder.

(b) The Property is directly accessible to City sewer located in the adjacent right-of-way or in a utility easement.

(c) To the best of the Authority's knowledge and belief, at the time of execution by the Authority of this Agreement, there are no environmental proceedings, applications, ordinances,

petitions, court pleadings, resolutions, investigations by public or private agencies, or other matters pending which could prohibit, impede, delay or adversely affect the contemplated use of the Property.

(d) To the best of the Authority's knowledge and belief, no underground storage tanks or Hazardous Substances have been, or pending the conveyance of the Property shall be, installed, used, incorporated into, discharged, released, stored, generated, disposed of, or allowed to escape in, to, or upon the Property.

(e) To the best of the Authority's knowledge and belief, no investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Substances is proposed, threatened, anticipated or in existence with respect to the Property.

(f) To the best of the Authority's knowledge and belief, the Property is not in violation of any federal, state, or local law, ordinance or regulation relating to Hazardous Substances.

(g) The Authority has received no notice or communication from any local, state or federal official that the activities of the Developer or the Authority on the Property may be or will be in violation of any environmental law or regulation. The Authority, to the best of the Authority's knowledge, is aware of no facts the existence of which would cause the Authority to be in violation of any local, state or federal environmental law, regulation or review procedure. In the event that the Developer is required to take any action to obtain any necessary permits or approvals with respect to the Property under any local, state or federal environmental law or regulation, the Authority will cooperate with the Developer in connection with such action.

(h) The Authority does not know of any "Wells" on the described Property within the meaning of Minn. Stat. §103I.005, or that it does know of one or more "Wells" on the Property and that it will disclose the same to the Developer pursuant to a Well Certificate to be delivered and executed at the closing on the conveyance of the Property to the Developer.

Section 2.2. Representations by the Developer. The Developer represents that:

(a) The Developer is a Minnesota limited liability limited partnership duly organized and authorized to transact business in the State, is not in violation of any provisions of its organizational documents or the laws of the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of the board of governors of the general partner of the Developer.

(b) The Developer will construct the Improvements on the Property in material compliance with the terms of this Agreement and in compliance with all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations), except for variances necessary to construct the improvements contemplated in the Construction Plans and site plan approved by the City.

(c) The Developer has received no notice or communication from any local, state or federal official that the activities of the Developer or the Authority on the Property may be or will

be in violation of any environmental law or regulation. The Developer, to the best of the Developer's knowledge, is aware of no facts the existence of which would cause the Developer to be in violation of any local, state or federal environmental law, regulation or review procedure. In the event that the Authority is required to take any action to obtain any necessary permits or approvals with respect to the Property under any local, state or federal environmental law or regulation, the Developer will cooperate with the Authority in connection with such action.

(d) The Developer has obtained or will obtain, in a timely manner, all required permits, licenses and approvals, and will 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 Improvements on the Property may be lawfully constructed and operated.

All representations set forth in Section 2.1 and 2.2. of this Agreement shall be true and correct in all material respects as of the date of closing on conveyance of the Property to the Developer.

### **ARTICLE III**

#### **Conveyance of Property**

Section 3.1. Status of Property. The Authority owns fee title to the Property.

Section 3.2 Agreement to Sell. (a) The Authority agrees to sell to the Developer and the Developer agrees to buy from the Authority the Property. The Developer agrees to pay to the Authority, as the purchase price for the Property (the "Purchase Price"), the sum of One Dollars (\$1.00). The Purchase Price shall be payable on the date of closing.

(b) The Purchase Price shall be payable by means of cash or certified funds on the date of closing on the sale of the Property to the Developer.

Section 3.3. Conditions Precedent to Conveyance. The Authority's obligation to sell and the Developer's obligation to purchase the Property shall be subject to satisfaction of all of the following conditions precedent:

(a) The Developer having obtained the requisite approval of the Authority hereunder and all applicable governmental agencies and instrumentalities, municipal, county, state and federal, to the development of the Property through the construction of the Improvements in accordance with the Developer's Construction Plans and site plan.

(b) The Developer having obtained: (i) amendments, revisions, exceptions or changes as may be necessary to applicable zoning codes and ordinances; (ii) special use permits, if applicable, (iii) building permits for the Improvements; (iv) driveway permits; (v) roadway access rights and permits; (vi) environmental consents, if necessary; and (vii) vacations and variances deemed necessary by Developer or as may be otherwise required to permit Developer to construct the Improvements in accordance with the Developer's Construction Plans and site plan.

(c) The Developer having determined that the soil and environmental conditions on the Property are acceptable for the Developer's purposes.

(d) The Developer having reviewed and approved, or waived any objections to, title to the Property pursuant to Section 3.4 of this Agreement.

(e) The Developer having secured construction loan financing sufficient for the acquisition of the Property and construction of the Improvements.

(f) All representations set forth in Sections 2.1 and 2.2. of this Agreement shall be true and correct in all material respects as of the date of closing.

In the event that the above conditions precedent have not been satisfied, or waived in writing by both the Authority and Developer, by September 1, 2016, unless such date shall be extended in a writing signed by the Authority and the Developer, either the Authority or Developer may terminate this Agreement by giving written notice of termination to the other party, whereupon this Agreement shall be null and void and the Developer and Authority shall execute an instrument in recordable form canceling this Agreement. Upon termination of this Agreement, the Authority and the Developer shall have no further obligations to the other under this Agreement, except as stated in Section 9.5 of this Agreement.

Section 3.4. Title. Within a reasonable time after the date of this Agreement the Authority shall obtain and furnish to the Developer a commitment for the issuance of an owner's policy of title insurance in the amount of the Purchase Price for the Property naming the Developer as the proposed insured party. The Developer shall be allowed the later of twenty (20) days after the date of its receipt of such commitment or (ii) twenty (20) days after the date of the last signature on this Agreement for examination of said title and the making of any objections thereto, said objections to be made in writing or deemed to be waived. The Developer may not object to Permitted Encumbrances. The Developer's objections shall be made in writing or shall be deemed waived. If any objections are so made, the Authority shall be allowed ninety (90) days from notice thereof to cure the title defect or exception, either by the removal thereof or by the procurement of title insurance endorsements satisfactory to Developer providing coverage against loss or damage as a result of such defect or exception. If the Authority does not cure such title defect or exception to Developer's satisfaction within said ninety (90) days, the Developer may, at its option, either (i) terminate the Agreement upon written notice to the Authority upon which this Agreement shall be null and void, the Developer and the Authority shall execute an instrument in recordable form canceling this Agreement; or (ii) waive the title defect or exception and proceed with the closing on the purchase of the Property. If the Developer waives the title defect or exception and proceeds to acquire the Property, the Authority shall have no further obligations with respect to any such defects or exceptions. The Authority shall have no obligation to expend any monies to cure any title objection made by the Developer. The cost of obtaining the title insurance commitment and the cost of the title insurance policy shall be paid by the Developer. The Authority agrees that after the Developer has reviewed and approved evidence of title to the Property, the Authority will take no action that would cause the Property to be subject to any title defects, liens or encumbrances other than those approved by the Developer or those that are removable by the Authority prior to the closing on the conveyance of the Property to the Developer.

Section 3.5 Condition of the Property. The Developer acknowledges that, except as expressly provided in this Agreement, the Authority makes no representations or warranties as to the condition of the soils on the Property, including any adverse environmental conditions, or its fitness for construction of the Improvements. The Developer shall have the right to enter upon the Property to undertake such environmental and soil tests as the Developer deems necessary to determine the condition of the Property. The Authority shall furnish the Developer with all test results and environmental assessments that it has in its possession relating to the Property. If the Developer determines that the condition of the soils or other environmental conditions on the Property are unacceptable to the Developer, in its sole discretion, it shall notify the Authority of such determination in writing and if the Authority and the Developer are unable to reach agreement on how to cure the defective condition within twenty (20) days of such notification either party hereto shall have the right to terminate this Agreement by giving ten (10) days' notice of termination to the other party. At the end of such ten (10) day period this Agreement shall terminate and be of no further force or effect, unless the Developer waives its objection to such conditions within such ten (10) day period, and the parties shall execute a certificate in recordable form evidencing the termination of this Agreement. Any notification by the Developer regarding unacceptable soils or environmental conditions on the Property shall be made within sixty (60) days after the date hereof or the Developer shall be deemed to have waived its right to object to any adverse soil or environmental conditions existing on the Property.

Section 3.6 Closing. (a) Closing on the conveyance of the Property to the Developer shall occur on or before ten (10) business days after satisfaction, or waiver, of all of the conditions precedent set forth in Section 3.3 of this Agreement.

(b) At closing on conveyance of the Property, the Authority shall deliver to the Developer: (i) a limited warranty deed duly executed and acknowledged, in recordable form, conveying to the Developer marketable title to the Property subject only to Permitted Encumbrances; (ii) the Owner's title insurance policy described in Section 3.4 (the premium for which shall be paid by Developer); (iii) a Seller's Affidavit, in customary form, relative to judgments, federal tax liens, mechanic's liens and outstanding interests in the Property; and (iv) a Well Certificate in the form required by Minnesota law; and (v) such further documents or instruments as may reasonably be required to vest title to the Property in the Developer and to enable the title company issuing the title commitment described in Section 3.4 of this Agreement to insure the title thereto, in accordance with the terms of this Agreement..

(c) At closing on the conveyance of the Property the Authority will pay the following costs:

- (i) State deed tax;
- (ii) Conservation fee payable in connection with the conveyance; and
- (iii) Those real estate taxes and special assessments set forth as the Authority's obligation to pay in Article VI.

At closing on the conveyance of the Property the Developer will pay the following costs:

- (i) The Purchase Price;
- (ii) The cost obtaining the title insurance commitment and the cost of the premium for the policy of title insurance;
- (iii) Recording fees for the deed, this Agreement and any other documents required to be recorded in connection with the conveyance;
- (iv) All other closing costs; and
- (v) Those real estate taxes and special assessments set forth as the Developer's obligation to pay in Article VI.

Section 3.7 Business Subsidy Law. Because the assistance being provided to the Developer through the sale of the Property at less than its market value is being provided for the purpose of facilitating the development of housing, the assistance does not constitute a "subsidy" within the meaning of Minnesota Statutes, sections 116J.993 to 116J.995.

Section 3.8. Authority Costs. The Developer agrees that it will pay the Authority's out of pocket costs incurred in connection with the negotiation and preparation of this Agreement and all related documents and the implementation of the transactions contemplated by this Agreement. Such costs will be due and payable from time to time within ten (10) days written demand by the Authority; provided that the Authority will be responsible for and will pay the first \$5,000 of such costs and the Developer will only be responsible for any amounts in excess of such amount.

## ARTICLE IV

### Construction of Improvements

Section 4.1. Construction of Improvements. The Developer agrees that it will construct the Improvements on the Property in accordance with the approved Construction Plans and site plan and at all times will operate and maintain, preserve and keep the Improvements or cause the Improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

#### Section 4.2. Construction Plans and Site Plan.

(a) The Authority's willingness to convey the Property to the Developer is predicated upon and subject to the Developer's agreement that it will construct the Improvements and that the Improvements will be of such quality and nature as will satisfy the Authority's goals for the development of the Property. The Developer will prepare and submit to the Authority and the City for their review and approval a site plan, plat and other documents necessary to obtain the City's and the Authority's approval for construction of the Improvements. Such site plan, plat and other documents shall be submitted by times that will enable City approval of the submitted documents by January 1, 2016. All additional plans relating to construction of the Improvements shall be prepared consistent with the approved Construction Plans and site plan. Nothing in this Section shall be deemed to relieve the Developer's obligations to comply with the requirements of the City's normal construction permitting process.

(b) If the Developer desires to make any material change in any Construction Plans or site plan after their approval by the Authority, the Developer shall submit the proposed change to the Authority for its approval. If the Construction Plans and site plan, as modified by the proposed change, conform to the requirements of this Agreement and such changes do not materially alter the nature, quality or exterior appearance of the Improvements, the Authority shall approve the proposed change and notify the Developer in writing of its approval. Any requested change in the Construction Plans or site plan shall, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Such rejection shall be made within ten (10) days after receipt of the notice of such change.

Section 4.3. Commencement and Completion of Construction. (a) The Developer agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Developer, and its successors and assigns, shall promptly begin and diligently prosecute to completion construction of the Improvements within the period specified in this Section 4.3 of this Agreement.

(b) Subject to Unavoidable Delays, the Developer shall commence construction of the Improvements within thirty (30) days after conveyance of the Property to the Developer and shall complete such construction within twelve (12) months after commencement. The Developer shall, however, be entitled to request additional time to complete the Improvements, together with any site improvements shown on the Construction Plans and site plan approved by the Authority;

provided, that any such request shall be made prior to the date that completion is required and that the Authority may require security from the Developer to assure that any uncompleted work is completed.

(c) Upon the Developer's completion of the construction of the Improvements, the Authority will execute and will provide to the Developer a certificate that evidences the completion (a "Certificate of Completion"). The Certificate of Completion will be conclusive evidence both of the satisfaction of the Developer's obligations pursuant to this Agreement to construct the Improvements and of the termination of (i) the limitation on encumbrances pursuant to Section 7.2 of this Agreement, (ii) the prohibition of transfers pursuant to Section 8.1 of this Agreement, and (iii) the Authority's remedy rights pursuant to Section 9.2(a)(ii) of this Agreement, and both the Certificate of Completion itself and the deed from the Authority to the Developer shall provide so expressly. The Certificate of Completion will be in recordable form to permit its recording in the applicable recording office, and the Developer, at the Developer's expense, is authorized to record the Certificate of Completion following the Developer's receipt of the Certificate of Completion from the Authority.

## ARTICLE V

### Insurance

#### Section 5.1. Insurance.

(a) The Developer will provide and maintain at all times during the process of constructing the Improvements and, from time to time at the request of the Authority, furnish the Authority with proof of payment of premiums on:

(i) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Improvements at the date of completion, and with coverage available in nonreporting form on the so called "all risk" form of policy;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, Broadening Endorsement including contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Worker's compensation insurance, with statutory coverage and employer's liability protection.

The policies of insurance described above shall be in form and content satisfactory to the Authority and shall be placed with financially sound and reputable insurers licensed to transact business in the State, the liability insurer to be rated A or better in Best's Insurance Guide. The policy of

insurance delivered pursuant to clause (i) above shall contain an agreement of the insurer to give not less than thirty (30) days' advance written notice to the Authority in the event of cancellation of such policy or change affecting the coverage thereunder.

## **ARTICLE VI**

### **Taxes**

Section 6.1. Real Property Taxes. Real estate taxes and pending or levied special assessments due and payable in the year of closing shall be apportioned between the Developer and the Authority as of the date of conveyance of the Property, with the result that the Authority shall pay that portion of such taxes attributable to the period of the year prior to the conveyance and the Developer shall pay that portion of the taxes attributable to the period of time commencing with the date of conveyance. Real estate taxes due and payable in all prior years, including deferred real estate taxes (e.g. Green Acres), shall be paid by the Authority.

## **ARTICLE VII**

### **Financing**

Section 7.1. Financing. Prior to and as a condition to the conveyance of the Property to the Developer, the Developer shall submit to the Authority evidence satisfactory to the Authority that the Developer has obtained mortgage or other construction financing in an amount sufficient for acquisition of the Property and construction of the Improvements. To that end the Developer covenants to meet the following schedule in its efforts to obtain such financing:

- (a) Secure HOPE Award Board Approval by 6/15/15;
- (b) Submit Tax Credit Application/ MHFA Consolidated RFP Application by 6/18/15;
- (c) Submit MN Philanthropies Application by 8/1/15;
- (d) Secure Tax Credit Application/ MHFA Consolidated RFP approval notification by Sept - Oct / 15;
- (e) Secure MN Philanthropies approval notification by 11/1/15;
- (f) Secure gap financing by 4/1/16; and
- (g) Close on financing by 6/1/16.

Section 7.2. Limitation Upon Encumbrance of Property. Prior to completion of construction of the Improvements, neither the Developer nor any successor in interest to the Property, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or

suffer any encumbrance or lien to be made on or attach to the Property, except for the purposes of obtaining funds only to the extent necessary for acquiring and constructing the Improvements, without the prior written approval of the Authority.

Section 7.3. Subordination. (b) The Authority agrees that, if requested by a Holder (other than Artspace, Inc., or its affiliates), it will subordinate its rights relative to the receipt and application of the proceeds of insurance under this Agreement and its remedies under Section 9.2(a)(i) to the lien of such Holder's mortgage and will consider such additional requests for subordination of the Authority's rights with respect to the Property to the lien of the Holder's mortgage.

## ARTICLE VIII

### **Prohibitions Against Assignment and Transfer, Indemnification**

Section 8.1. Prohibition Against Transfer of Property and Assignment of Agreement. (a) Prior to completion of construction of the Improvements, except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to constructing the Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer (except as so authorized) 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, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property or any part thereof or any interest herein or therein, or any contract or agreement to do any of the same, without the prior written approval of the Authority.

(b) In the absence of specific written agreement by the Authority to the contrary, no transfer of the Property or approval by the Authority thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement, from any of its obligations hereunder.

(c) Section 8.1(a) shall not apply to, and shall not prevent, any transfer of (i) an interest as a limited partner in the Developer, including in connection with an investment in the Developer by an Investor and the Investor's admission to the Developer or an Investor's transfer of the Investor's interest as a limited partner in the Developer, (ii) an interest as a general partner in the Developer as an assignment to a Holder in connection with debt financing from a Holder or pursuant to the Holder's exercise of its rights with respect to the assignment, or (iii) an interest as a general partner in the Developer in connection with the removal of a general partner of the Developer by an Investor in accordance with the terms and conditions of the partnership agreement pursuant to which the Investor (or a predecessor) was admitted as a limited partner in the Developer.

Section 8.2. Release and Indemnification Covenants. (a) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the following named

parties, the Developer releases from and covenants and agrees that the Authority, the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority, the City and the governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the following named parties, the Developer agrees to protect and defend the Authority, the City and the governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Improvements.

(c) Nothing in this Agreement is intended or shall be deemed to constitute a waiver by the Authority of any immunity or limits on liability under State law, including, without limitation, Minnesota Statutes, Chapter 466, relative to tort or other claims.

## **ARTICLE IX**

### **Events of Default**

Section 9.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any one or more of the following events:

(a) Failure by the Developer to pay when due any payments required to be paid under this Agreement.

(b) Failure by the Developer to obtain financing for construction of the Improvements pursuant to the terms and conditions of Section 7.1 of this Agreement.

(c) Failure by the Developer to commence and complete construction of the Improvements and any site improvements as shown on the Developer's Construction Plans or site plan approved by the Authority or specified as conditions of the Authority's approval pursuant to the terms, conditions and limitations of Article IV of this Agreement.

(d) Failure by Developer to provide any documentation or information required to be provided under the terms of this Agreement.

(e) Failure by Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder in any material respect.

(f) The Developer does any of the following : (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under United States Bankruptcy Laws or any similar federal or State Laws; or (ii) make an assignment for the benefit of its creditors; or (iii) admits, in writing, its inability to pay its debts generally as they become due; or (iv) be adjudicated, bankrupt or insolvent; or (v) if a petition or answer proposing the adjudication of the Developer as a bankrupt under any present or future federal bankruptcy act or any similar federal or State law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or (vi) a receiver, trustee or liquidator of the Developer, or of the Property and Improvements, shall be appointed in any proceeding brought against the Developer and shall not be discharged within sixty (60) days of such appointment, or if the Developer shall consent to or acquiesce in such appointment.

(g) Any representation or warranty made by the Developer herein is or becomes false in any material respect.

(h) Any representation or warranty made by the Authority herein is or becomes false in any material respect.

(i) The Authority refuses to convey title to the Property in accordance herewith or otherwise breaches any other provision of this Agreement when the Developer is not in default hereunder.

(j) Failure by the Authority to observe or perform in any material respect any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder.

#### Section 9.2. Remedies on Default.

(a) By the Authority. Whenever any Event of Default by the Developer occurs, the Authority may immediately suspend its performance under this Agreement and may take any one or more of the following actions after providing thirty (30) days prior written notice to the Developer, each Investor (if then any), and each Holder (if then any) of the Event of Default, but only if either the Event of Default has not been cured within thirty (30) days after the receipt of such written notice or, if the Event of Default reasonably cannot be cured within such thirty (30) day period, the Developer either has not commenced to cure such Event of Default during such thirty (30) day period or commenced to cure during such thirty (30) day period but is not continuing to pursue such cure in a reasonable manner or has not completed such cure within a reasonable time period:

(i) Terminate this Agreement.

(ii) Subject to the rights of a Holder, reenter and retake title to and possession of the Property pursuant to the terms of the deed from the Authority to the Developer, which deed will contain a provision allowing the Authority, if the Developer fails to commence or complete the construction of the Improvements when required by this Agreement, to reenter the Property and retake title to and possession of the Property and to resell the Property to

a third party who will develop it in accordance with the Authority's goals for development of the Project. The proceeds received by the Authority from the sale of the Property will be used to first reimburse the Authority for its costs incurred in exercising its remedies under this Agreement, including without limitation, all costs incurred related to the Authority's holding of title to the Property, with any excess proceeds being paid to the Developer to reimburse it up to the sum of (a) the amount of the Purchase Price and (b) the amount of the costs that it incurred for the construction of the Improvements prior to the conveyance of the Property from the Developer.

(iii) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Each Investor (if then any) and each Holder (if then any) shall have the right, but not the obligation, to cure an Event of Default by the Developer within the applicable time period that is set forth in this Section 9(a) from such person's receipt from the Authority of written notice of the Event of Default. If an Investor or a Holder cures such Event of Default, the Authority will accept the cure as if the Developer had made it.

(b) By the Developer. Whenever any Event of Default by the Authority occurs, the Developer may immediately suspend its performance under this Agreement and may take any one or more of the following actions after providing thirty (30) days prior written notice to the Authority of the Event of Default, but only if either the Event of Default has not been cured within thirty (30) days after the receipt of such written notice or, if the Event of Default reasonably cannot be cured within such thirty (30) day period, the Developer either has not commenced to cure such Event of Default during such thirty (30) day period or commenced to cure during such thirty (30) day period but is not continuing to pursue such cure in a reasonable manner or has not completed such cure within a reasonable time period:

(i) To terminate this Agreement.

(ii) To remedy or cure the default and to deduct the full cost thereof, including administration and overhead expenses, from the cash portion of the Purchase Price of the Property until fully reimbursed.

(iii) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant under this Agreement, including specific performance.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be

exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Effect of Termination of Agreement. In the event that this Agreement is terminated pursuant to Sections 3.3, 3.4, 3.5 or 9.2, all provisions hereof shall terminate except that Sections 3.8 and 8.2 shall survive such termination and any cause of action arising hereunder prior to such termination shall not be affected.

## ARTICLE X

### Additional Provisions

Section 10.1. Representatives Not Individually Liable. No member, official, or employee of the Authority shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach or for any amount which may become due to Developer or successor or on any obligations under the terms of the Agreement. No member, officer, governor, owner, or employee of Developer shall be personally liable to the Authority, or any successor in interest, in the event of any default or breach or for any amount which may become due to the Authority or successor or on any obligations under the terms of the Agreement.

Section 10.2. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 250 3<sup>rd</sup> Avenue North, Suite 400, Minneapolis, MN 55401, and to an Investor or a Holder at the address subsequently designated in writing and forwarded to the Authority in accordance with this Section; and

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at City Hall, 101 4th Street East, Hastings, Minnesota 55033-1955,

or at such other address with respect to either such party (or an Investor or a Holder) as that party (or the Investor or the Holder) may, from time to time, designate in writing and forward to the persons to whom this Section refers as provided in this Section.

Section 10.5. Disclaimer of Relationships. The Developer acknowledges that nothing contained in this Agreement nor any act by the Authority or the Developer shall be deemed or construed by the Developer 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 Authority, the Developer and/or any third party.

Section 10.6. Modifications. This Agreement may be modified solely through written amendments hereto executed by the Developer and the Authority.

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. 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.

Section 10.9. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.



liability limited partnership, on behalf of the limited liability company and the limited liability limited partnership.

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Notary Public

## **SCHEDULE A**

### **Description of Property**

That part of Outlots B and C, RIVERFRONT ADDITION, Dakota County, Minnesota lying south of the following described line: commencing at the southwest corner of Outlot C, thence North 00 degrees 06 minutes 45 seconds West, assumed bearing, along the most westerly line of Outlots B and C a distance of 170.00 feet to the point of beginning of the line to be described; thence North 89 degrees 59 minutes 58 seconds East, assumed bearing, and parallel with the most southerly line of Outlots B and C until the intersection with the most easterly property line of Outlots B and C, thence terminating. Containing 1.03 acres more or less.