

**2F. Consideration of adopting Resolution No. 2022-90 approving a Business Subsidy Agreement contained within a Contract for Private Development between the City of Monticello Economic Development Authority (EDA) and Block 52 Holdings, LLC related to the Block 52 Redevelopment proposal**

<b>Prepared by:</b> Economic Development Manager	<b>Meeting Date:</b> 8/22/2022	<input checked="" type="checkbox"/> <b>Consent Agenda Item</b> <input type="checkbox"/> <b>Regular Agenda Item</b>
<b>Reviewed by:</b> Community Development Director, City Clerk	<b>Approved by:</b> City Administrator	

**ACTION REQUESTED**

Motion to adopt Resolution No. 2022-90 approving a Business Subsidy Agreement contained within a Contract for Private Development between the City of Monticello Economic Development Authority (EDA) and Block 52 Holdings, LLC related to Block 52 Redevelopment.

**PREVIOUS COUNCIL ACTION:**

**June 27, 2022:** The City Council adopted Resolution No. 2022-64 authorizing the creation of Redevelopment TIF District No. 1-45 in support of a mixed-use residential-commercial development proposal by Block 52 Holdings, LLC (fka Deephaven Development) in Block 52.

**REFERENCE AND BACKGROUND**

A Business Subsidy Agreement is required when a developer or business receives funding exceeding \$150,000 as part of a financial assistance package. The developer must acknowledge the amount of the “Business Subsidy” granted and the City must take action to approve the subsidy. The subsidy and supporting Agreement for Block 52 are needed due to the extraordinary costs of land acquisition and site improvements necessary to construct the project on the proposed site. Without the subsidy, construction of the Project is not sufficiently feasible for the Developer to undertake.

In approving a business subsidy for Block 52, the City also makes a finding regarding its public purpose. The public purpose of the Business Subsidy is to increase the tax base in the City and State, increase jobs (including construction jobs) in the City and State.

The EDA held the required public hearing for the Business Subsidy for Block 52 Holdings, LLC as part of its consideration of the Contract for Private Development at its August 10, 2022, meeting. The EDA authorized entering into the contract with the developer, Block 52 Holdings,

LLC at the August 10, 2022, meeting. The City Council is asked to consider adopting Resolution 2022-90 approving the Business Subsidy Agreement contained in the Contract for Private Development.

The language in the Contract for Private Development (TIF Development Agreement) identified the TIF assistance (Section 3.10) as well as additional project funding consisting of a DEED Redevelopment Grant (Section 3.11) and an Authority Grant [Pooled TIF dollars] (Section 3.12).

The total assistance being provided to Block 52 Holdings, LLC is shown below:

Tax Increment Financing (TIF)	\$2,867,954 (from increment over 26 yrs.)
MN-DEED Redevelopment Grant	\$ 517,500
EDA Authority Grant	<u>\$ 367,400</u>
<b>Total Assistance</b>	<b>\$3,752,854</b>

Per the Business Subsidy Act Section (Section 3.13), in exchange for the financial assistance, Block 52 Holdings, LLC must complete its mixed-use development project and operate the new facility for five years. It must also create 45 new FTE (full time equivalent) jobs within two years of receiving a certificate of occupancy (CO). The wages of the new jobs per the Agreement must average \$12.39 per hour with benefits totaling \$1.75 per hour.

The estimated total cost of development proposal is \$27,500,000 +/- . This amount includes all components, such as asbestos-regulated materials abatement, structure demolition, site excavation, utility relocates-extensions, underground parking garage, new building construction, HVAC-Energy Efficiency appliances-materials, parking lots, sidewalks, outdoor lighting and landscaping. A summary Funding Sources and Uses of the Block 52 Holdings, LLC proposal is shown below.

**Block 52 Redevelopment Project Funding Sources and Uses**

<b><u>Sources of Funds</u></b>		<b><u>Uses of Funds</u></b>	
Owner Equity Cash	\$ 5,600,001	ARM Abatement and Demo	\$ 517,500
Bank Loan (1 <sup>st</sup> Mortgage)	\$18,150,000	Site Prep-Excavation	\$ 468,000
Tax Increment Financing	\$ 2,868,000	Underground Parking	\$ 1,800,000
DEED Redev Grant	\$ 517,500	Utilities (Major-Minor)	\$ 600,000
EDA Authority Grant (PT \$)	<u>\$ 367,400</u>	Bldg Construction	\$19,900,000
<b>Total</b>	<b>\$27,502,901</b>	HVAC-Appl	\$ 2,800,000
		Park-Sidewa-Landscap-Light	<u>\$ 1,417,401</u>
		<b>Total</b>	<b>\$27,502,901</b>

- I. **Budget Impact:** The budgetary impact related to the City Council consideration of Resolution 2022-90 approving a Business Subsidy Agreement related to the Block 52 redevelopment proposal and contract is minimal. The funding identified in this Agreement are EDA sources. The City has considered and will consider other Block 52-related project expenses as separate considerations.
- II. **Staff Workload Impact:** The EDA attorney, financial advisor, Economic Development Manager, Community Economic Development Coordinator, and the Community Development Director have been involved in the work tasks related to the funding assistance for the Block 52 Holdings, LLC redevelopment proposal. The EDA attorney prepared the City Council resolution as part of these work tasks.
- III. **COMPREHENSIVE PLAN IMPACT:** The Vision adopted as part of the Monticello 2040 Plan is to create a friendly and safe community which is inclusive and fosters a sense of belonging. The value statements call for a “Vibrant downtown that embraces the River and provides a focal point for the community”. It also notes as a value “A range of attainable housing options in terms of type, cost, and location”. Another value is “A diversified and strong local economy competitive at regional, state and national levels”. The Block 52 Holdings, LLC mixed-use redevelopment proposal checks the boxes for all these value statements.

**STAFF RECOMMENDED ACTION**

Staff recommends that the City Council approve the Business Subsidy Agreement contained in the Contract for Private Development between the EDA and Block 52 Holdings, LLC as required under state statutes. But for the assistance, this project would not be feasible.

**SUPPORTING DATA**

- A. Resolution 2022-90
- B. Contract for Private Development related to TIF District 1-45

# CITY OF MONTICELLO, MINNESOTA

## RESOLUTION NO. 2022-90

### RESOLUTION APPROVING BUSINESS SUBSIDY AGREEMENT CONTAINED WITHIN A PURCHASE AND DEVELOPMENT CONTRACT BETWEEN THE CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY AND DEEPHAVEN DEVELOPMENT LLC

BE IT RESOLVED by the City Council (“Council”) of the City of Monticello, Minnesota (“City”) as follows:

#### Section 1. Recitals.

1.01. The City has approved the creation of Tax Increment Financing District No. 1-45 (the “TIF District”) within the Central Monticello Redevelopment Project (the “Project”), pursuant to Minnesota Statutes, Sections 469.174 to 469.1794, as amended.

1.02. To facilitate development of certain property in the TIF District (the “Redevelopment Property”), the City of Monticello Economic Development Authority (the “Authority”) has approved a Purchase and Development Contract (the “Agreement”) between the Authority and Deephaven Development LLC, a Minnesota limited liability company, or an affiliate thereof or entity related thereto (the “Developer”), under which among other things the Authority will convey to the Redeveloper, certain property described in Exhibit A attached hereto (the “Redevelopment Property”) in order for the Redeveloper to construct an mixed-use five-story building located on the Redevelopment Property that will include approximately 87 rental housing units and 27,342 square feet of commercial retail and office space, with approximately 83 lower-level parking spaces and 114 adjacent off-street parking stalls (the “Minimum Improvements”).

1.03. In addition, pursuant to the Agreement the Authority will (i) convey to the Developer, certain property in the City (the “Redevelopment Property”) Developer at the price of \$1,484,100 which will be paid from cash in the amount of \$1.00 a land write down from the Authority in the amount of \$132,482 (the “Land Write Down”), and a Purchase Price Note (the “Purchase Price Note”) from the Redeveloper in the amount of \$1,351,617.00 which will be repaid from available tax increment generated by the Redevelopment Property in accordance with the Agreement; (ii) reimburse the Developer for certain public redevelopment costs in the amount not to exceed \$2,867,954 through the issuance of a pay as you go tax increment financing note (the “TIF Note”) and in an amount not to exceed \$367,400 through the issuance of a grant (the “Authority Grant”), subject to the terms and conditions set forth in the Agreement; and (iii) reimburse the Developer for a portion of the demolition and hazardous materials removal work on the Redevelopment Property in an amount not to exceed \$517,500 (the “DEED Grant”) pursuant to a Redevelopment Grant Contract Agreement Number RDGP-22-0009-o-FY22, effective as of April 1, 2022, between the Authority and the State of Minnesota, acting through

the Department of Employment and Economic Development, Business and Community Development.

1.04. The proposed tax increment assistance to be provided to the Redeveloper requires that the Council of the City and the Board of Commissioners of the Authority adopt a modification to the TIF Plan (the “TIF Plan Modification”) to update the budget.

1.05. The Purchase Price Note, the TIF Note, the Land Write Down, the Authority Grant and the DEED Grant to the Developer in accordance with the terms of the Agreement constitute a “business subsidy” exceeding \$150,000 within the meaning of Minnesota Statutes, Section 116J.993 to 116J.995, as amended (the “Business Subsidy Act”).

1.06. The “business subsidy agreement” as required under the Business Subsidy Act is included as one section of the Agreement, and on August 10, 2022, the Authority conducted a duly noticed public hearing regarding the business subsidy agreement, at which all interested persons were given an opportunity to be heard.

1.07. The City finds and determines that the business subsidy to the Developer is for a public purpose and is in the public interest because it will further the objectives of the Project, redevelop land in the City’s downtown which is underutilized or characterized by blight, increase the tax base of the City and the State, increase jobs in the City and State (including construction jobs), and help provide a range of housing options in the City.

Section 2. Business Subsidy Approved; Further Proceedings.

2.01. Contingent upon the approval by the Board of Commissioners of the Authority and the Council of the City of the Modification, the Council approves the business subsidy agreement contained within the Agreement, subject to modifications that do not alter the substance of the transaction and that are approved by the President and Executive Director of the Authority, provided that execution of the documents by those officials shall be conclusive evidence of their approval.

Approved by the City Council of the City of Monticello, Minnesota this 22<sup>nd</sup> day of August, 2022.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

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**PURCHASE AND DEVELOPMENT CONTRACT**

**By and Between**

**CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY**

**and**

**DEEPHAVEN DEVELOPMENT LLC**

**Dated as of: August \_\_, 2022**

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This document was drafted by:  
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## PURCHASE AND DEVELOPMENT CONTRACT

THIS AGREEMENT, made as of the \_\_\_ day of August, 2022, (the “Effective Date”) by and between the CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic and a political subdivision under the laws of the State of Minnesota (the “Authority”), and DEEPHAVEN DEVELOPMENT LLC, a Minnesota limited liability company (the “Redeveloper”).

WITNESSETH:

WHEREAS, the Housing and Redevelopment Authority in and for the City of Monticello (the “HRA”) has undertaken a program to promote economic development and job opportunities and to promote the redevelopment of land which is underutilized within the City of Monticello, Minnesota (the “City”), and in this connection created the Central Monticello Redevelopment Project No. 1 (the “Redevelopment Project”) pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”), and adopted a redevelopment plan for the Redevelopment Project; and

WHEREAS, the Authority was established pursuant to Minnesota Statutes, Sections 469.090 to 469.1081, as amended (hereinafter referred to as the “EDA Act”), and was authorized to transact business and exercise its powers by a resolution of the City Council of the City, which also transferred the control and responsibility for the Redevelopment Project from the HRA to the Authority; and

WHEREAS, pursuant to its powers under the EDA Act and the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the development of real property by private enterprise; and

WHEREAS, the Authority has acquired or will acquire certain property described in Schedule A (the “Redevelopment Property”) within the Redevelopment Project, and intends to convey the Redevelopment Property to the Redeveloper for development of certain improvements as described herein; and

WHEREAS, the Authority and the City have approved a Tax Increment Financing Plan and a Modification to the Tax Increment Financing Plan (collectively, the “TIF Plan”) for Tax Increment Financing (Redevelopment) District No. 1-45 (the “TIF District”), a redevelopment district within the Redevelopment Project, pursuant to Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the “TIF Act”); and

WHEREAS, pursuant to the Act, the Authority is authorized to undertake certain activities to facilitate the redevelopment of real property by private enterprise; and

WHEREAS, the Authority intends to convey the Redevelopment Property to the Redeveloper for the purposes of constructing a mixed-use five-story building on the Redevelopment Property that will include approximately 87 rental housing units and 27,342 square feet of commercial retail and office space, with approximately 83 lower-level parking spaces and 114 adjacent off-street parking

stalls (collectively the “Minimum Improvements”) in accordance with the terms hereof and has requested that the Authority provide certain financial assistance to assist the Redeveloper with certain costs thereof in order to fill the gap between the total development costs and the funds available to pay such costs; and

WHEREAS, the Authority believes that the redevelopment of the Redevelopment Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Redevelopment Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Act, Minnesota Statutes, Section 116J.993 through 116J.995, as amended (the “Business Subsidy Act”), apply to this Agreement; and

WHEREAS, the City and the Authority have previously adopted criteria for awarding business subsidies that comply with the Business Subsidy Act, after public hearings for which notice was published; and

WHEREAS, in connection with the assistance provided under this Agreement, this agreement constitutes a subsidy agreement under the Business Subsidy Act.

NOW, THEREFORE, in consideration of the premises and the mutual 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:

“Act” means, collectively, the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 to 469.1081, as amended, and the Housing and Redevelopment Authority Act, Minnesota Statutes, Sections 469.001 to 469.047, as amended.

“Affiliate” means with respect to any entity (a) any corporation, partnership, limited liability company or other business entity or person controlling, controlled by, or under common control with the entity, and (b) any successor to such party by merger, acquisition, reorganization, or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words “controlling”, “controlled by,” and “under common control with” shall mean, with respect to any corporation, partnership, limited liability company, or other business entity, the ownership of fifty percent or more of the voting interests in such entity or possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether through ownership of voting securities or by contract or otherwise.

“Agreement” means this Purchase and Development Contract, as the same may be from time to time modified, amended, or supplemented.

“Assessment Agreement” means the Minimum Assessment Agreement, between the Redeveloper and the Authority, in substantially the form of the agreement attached as Exhibit H hereto and made part of this Agreement.

“Authority” means the City of Monticello Economic Development Authority, or any successor or assign.

“Authority Grant” means the grant made by the Authority to the Redeveloper as defined in Section 3.12 hereof.

“Authority Representative” means the Executive Director of the Authority, or any person designated by the Executive Director to act as the Authority Representative for the purposes of this Agreement.

"Authorizing Resolution" means the resolution of the Authority, substantially in the form attached as Schedule E to be adopted by the Authority to approve this Agreement, authorize the issuance of the TIF Note, and approve the Authority Grant.

“Business Subsidy Act” means Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

“Certificate of Completion” means the certification in the form set forth in Schedule D and provided to the Redeveloper pursuant to Section 4.4 of this Agreement.

“City” means the City of Monticello, Minnesota.

“Closing Date” or “Closing” means not later than October 10, 2022, or such other date as mutually agreed to by the Authority and Redeveloper on which the Authority will convey title to the Redevelopment Property to the Redeveloper.

“Construction Documents” shall mean the following documents, all of which shall be in form and substance acceptable to the Authority: (a) evidence satisfactory to the Authority showing that the Minimum Improvements conform to applicable zoning, subdivision and building code laws and ordinances, including a copy of the building permit for the Minimum Improvements; (b) a copy of the executed agreement between owner and architect for architectural services for the Minimum Improvements, if any, and (c) a copy of the executed general contractor’s contract for the Minimum Improvements, if any.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Redeveloper on the Redevelopment Property which a) shall be as detailed as the plans, specifications, drawings, and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following for each building: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such other plans or supplements to the foregoing plans as the Authority may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means the County of Wright, Minnesota.

“Deed” means the Quit Claim Deed in the form attached hereto as Schedule B, to be executed by the Authority conveying the Redevelopment Property to the Redeveloper.

“DEED Grant” means the \$517,500.00 to be used for DEED Redevelopment Costs on the Redevelopment Property, issued by the Department of Employment and Economic Development pursuant to the DEED Grant Agreement.

“DEED Grant Agreement” means the Redevelopment Grant Contract Agreement number RDGP-22-0009-o-FY22, effective as of April 1, 2022, between the Authority and the State of Minnesota, acting through the Department of Employment and Economic Development, Business and Community Development division which provides the DEED Grant to the Authority to reimburse the DEED Redevelopment Costs, as defined therein.

“DEED” means the Business and Community Development Division of the State of Minnesota’s Department of Employment and Economic Development, as grantor in the DEED Grant Agreement.

“Event of Default” means an action by the Redeveloper listed in Section 9.1 of this Agreement.

“Minimum Improvements” means the construction by the Redeveloper of a mixed-use five-story building located on the Redevelopment Property that will include approximately 87 rental housing units and 27,342 square feet of commercial retail and office space, with approximately 83 lower-level parking spaces and 114 adjacent off-street parking stalls.

“Mortgage” means any mortgage made by the Redeveloper, which is secured, in whole or in part, with the Redevelopment Property and which is a permitted encumbrance pursuant to the provisions of Article VII of this Agreement.

“Payment Date” means August 1 of the year commencing on August 1, 2025 and each February 1 and August 1 thereafter until the Termination Date.

“Planning Development Contract” means the Development Contract and Planned Unit Development Agreement between the City and the Redeveloper, preliminarily approved by the City Council of the City on July 11, 2022.

“Plat” shall mean the final plat entitled Block 52 First Addition and submitted to the City in conjunction with the Redevelopment Project and the Redevelopment Property.

“Public Redevelopment Costs” has the meaning provided in Section 3.10(a) hereof.

“Purchase Price Note” has the meaning provided in Section 3.2 hereof.

“Purchase Price Note Available Tax Increment,” means, on each Payment Date commencing on August 1, 2030, 25% of the Tax Increment attributable to the Redevelopment Property and paid to the Authority by Wright County in the six (6) months preceding the Payment Date. Purchase Price Note Available Tax Increment may also be used by the Authority to pay ongoing costs of administering the TIF District.

“Redeveloper” means Deephaven Development LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“Redevelopment Costs” has the meaning provided in Section 3.12 hereof.

“Redevelopment Plan” means the Authority’s Redevelopment Plan for the Redevelopment Project, as amended through the date of this Agreement.

“Redevelopment Property” means the real property described in Schedule A of this Agreement.

“Redevelopment Project” means the Authority’s Central Monticello Redevelopment Project No. 1.

“State” means the State of Minnesota.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the Redevelopment Property and which is actually remitted to the Authority as tax increment pursuant to the Tax Increment Act. The term Tax Increment does not include any amounts retained by or payable to the State auditor under Section 469.177, subdivision 11 of the Tax Increment Act.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 to 469.1794, as amended.

“Tax Increment District” or “TIF District” means the Authority’s Tax Increment Financing (Redevelopment) District No. 1-45.

“Tax Increment Plan” or “TIF Plan” means the Authority’s Tax Increment Financing Plan for the TIF District, as approved by the Authority on June 22, 2022, and by the City on June 27, 2022, and as may be amended from time to time.

“Tax Official” means any County assessor; County auditor; County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“Termination Date” means the later of (a) date of the Authority’s last receipt of Tax Increment from the TIF District in accordance with Section 469.176, subdivision 1b(3) of the TIF Act; (b) the date the Purchase Price Note has been paid in full, defeased, or terminated in accordance with the terms of the resolution set forth in Schedule C; or (c) the date the TIF Note has been paid in full or terminated in accordance with the terms of this Agreement.

“TIF Note” means the Taxable Tax Increment Revenue Note (Block 52 Project), substantially in the form contained in the Authorizing Resolution, to be delivered by the City to the Redeveloper in accordance with Section 3.10(a) hereof.

“TIF Note Available Tax Increment,” means pursuant to the TIF Note (i) on Payment Dates August 1, 2025 through February 1, 2030, one hundred percent (100%) of the Tax Increment attributable to the Minimum Improvements and Redevelopment Property that is actually paid to the Authority by Wright County in the six (6) months preceding the Payment Date; and (ii) on Payment Dates August 1, 2030 through February 1, 2051, seventy-five percent (75%) of the Tax Increment attributable to the Minimum Improvements and Redevelopment Property that is actually paid to the Authority by Wright County in the six (6) months preceding the Payment Date. TIF Note Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement.

“Title Company” means The Title Company, Fargo, North Dakota, or other title company designated by the Redeveloper in connection with the acquisition of the Redevelopment Property.

“Transfer” has the meaning set forth in Section 8.2(a) hereof.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of war, terrorism, strikes, other labor troubles,

prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, a pandemic or epidemic, but not including any current policies or practices in effect as of the Effective Date as result of the current Covid-19 pandemic, 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 exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Redeveloper's obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such approvals and construction is required under Sections 4.2 and 4.3 of this Agreement.

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## ARTICLE II

### **Representations and Warranties**

Section 2.1. Representations and Warranties by the Authority. The Authority makes the following representations and warranties:

(a) The Authority is an economic development authority duly organized and existing under the laws of the State. Under the provisions of the Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The activities of the Authority are undertaken to foster the development and redevelopment of certain real property which for a variety of reasons is presently underutilized, to increase the tax base in the City, to provide employment opportunities in the City, to increase housing options in the City, to provide a mixed-use development in the City's downtown, to meet the City's longtime goal of redeveloping the Redevelopment Property and revitalizing its downtown, and to stimulate further development of the TIF District and Redevelopment Project as a whole.

(c) The Authority has taken the actions necessary to establish the TIF District as a "redevelopment district" within the meaning of Minnesota Statutes, Section 469.174, Subdivision 10.

(d) No member of the Board of Commissioners of the Authority, or officer of the Authority, has either a direct or indirect financial interest in this Agreement.

(e) The Redevelopment Property is exempt from property taxes for taxes payable in 2022.

(f) To the actual knowledge of the undersigned, the Authority is not indebted for labor and material that might give rise to the filing of a notice of mechanic's lien against the Redevelopment Property.

(g) To the actual knowledge of the undersigned, there are no leases that will affect the Redevelopment Property as of the Closing Date.

(h) The Authority makes no representation or warranty, either express or implied, as to the Redevelopment Property or its condition, or that the Redevelopment Property shall be suitable for the Redeveloper's purposes or needs.

Section 2.2. Representations and Warranties by the Redeveloper. The Redeveloper represents and warrants that:

(a) The Redeveloper is a limited liability company duly organized and in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its organizational documents or the laws of the State, is duly authorized to transact business within 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 its governing members.

(b) If the Redeveloper acquires the Redevelopment Property in accordance with this Agreement, the Redeveloper will construct, operate, and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Redevelopment Plan and all applicable local, state, and federal laws and regulations (including, but not limited to, environmental, zoning, building code, labor, and public health laws and regulations).

(c) With the exception of those certain findings within the Hazardous-Asbestos-Regulated Materials reports dated June 17, 2022, and June 24, 2022 (the “Environmental Reports”), Redeveloper has received no actual notice or communication from any local, state, or federal official that the activities of the Redeveloper or the Authority in the Redevelopment Project may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the Authority is aware). The Redeveloper is not actually aware of any facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state, or federal environmental law, regulation, or review procedure.

(d) The Redeveloper will make reasonable efforts to obtain, in a timely manner, all required permits, licenses, and approvals, and will make reasonable efforts to 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 Minimum Improvements may be lawfully constructed.

(e) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Redeveloper is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) Whenever any Event of Default occurs and if the Authority shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Redeveloper under this Agreement, and the Authority prevails in such action, the Redeveloper agrees that it shall, within 30 days of written demand by the Authority, pay to the Authority the reasonable fees of such attorneys and such other expenses so incurred by the Authority.

(g) The proposed development by the Redeveloper hereunder would not occur but for the tax increment financing assistance being provided by the Authority hereunder.

(h) The Redeveloper understands that the Authority and the City may subsidize or encourage the development of other developments in the City, including properties that compete with the Redevelopment Property and the Minimum Improvements, and that such subsidies may be more favorable than the terms of this Agreement, and that neither the Authority nor the City has represented that development of the Redevelopment Property will be favored over the development of other properties.

## **ARTICLE III**

### **Acquisition and Conveyance of Property; TIF Assistance**

Section 3.1. Conveyance of the Redevelopment Property. As of the date of this Agreement, the Authority owns or will acquire from the City the Redevelopment Property described in Schedule A. At Closing, the Authority will convey title to and possession of the Redevelopment Property to the Redeveloper, subject to all the terms and conditions of this Agreement.

#### Section 3.2. Purchase Price; Provisions for Payment; and Fees.

(a) The purchase price to be paid to the Authority by the Redeveloper in exchange for the conveyance of the Redevelopment Property is \$1,484,100.00. The purchase price shall be paid in cash from the Redeveloper in the amount of \$1.00, a land write down in the amount of \$132,482 (the “Land Write Down”) from the Authority, and a purchase price note from the Redeveloper in the amount of \$1,351,617.00 (the “Purchase Price Note”) in substantially the form attached hereto as Schedule C payable from Purchase Price Note Available Tax Increments in accordance with the terms of this paragraph. The Purchase Price Note shall accrue interest at the rate of 3.00% per annum. Commencing August 1, 2030, on each February 1 and August 1 thereafter to and including the termination date of the TIF District, or, if the first day of either February 1 or August 1 should not be a Business Day, the next succeeding Business Day (the “Purchase Price Note Payment Dates”) the Authority will credit against the principal amount of the Purchase Price Note plus accrued interest thereon at the rate of 3.00% per annum, the Purchase Price Note Available Tax Increments. On the termination date of the TIF District, the Authority will forgive the outstanding balance of the Purchase Price Note subject to Section 4.3(d).

(b) In addition, the Redeveloper shall assume or pay all taxes, special assessments, and similar governmental impositions due and payable in the year of Closing and after the Closing Date and all future years. The Redeveloper will pay: (a) the closing fees charged by the Title Company, if any, utilized to close the transaction contemplated by this Article III; (b) fees for title evidence obtained by Redeveloper; (c) title insurance premium costs; (d) the recording fee for the deed transferring title to the Redeveloper; (e) any survey or environmental investigation costs incurred by Redeveloper; and (f) any transfer taxes, recording fees and Well Disclosure fees required to enable the Redeveloper to record the Deed from the Authority under this Agreement. The Authority shall pay any and all title fees and charges related to the filing of any instrument required to make title marketable or otherwise give the Authority the ability to transfer the Redevelopment Property.

#### Section 3.3 Representation and As Is Conveyance.

(a) In recognition of the significant economic contributions which the Authority is making to develop the Minimum Improvements by providing the tax increment assistance, the DEED Grant and the Authority Grant, the Redeveloper shall accept the conveyance of the Redevelopment Property on an “AS IS” “WHERE IS” basis, with all faults and defects, without any warranties, express or implied, except such representations and warranties as specifically set forth in this Agreement, and the Redeveloper waives any claims against the Authority, the City and their governing bodies’ members, officers, agents, including the independent contractors, consultants and

legal counsel and employees thereof (collectively the “Indemnified Parties”), for indemnification, contribution, reimbursement or other payments arising under federal and state law and the common law relating to environmental or any other condition of Redevelopment Property.

(b) The Authority makes no representations concerning nor shall have any responsibility or obligation to undertake any cleanup or remediation on the Redevelopment Property. If the Redeveloper does not terminate this Agreement pursuant to Section 3.5(a) hereof, following delivery of the Deed, the Redeveloper agrees to remediate any environmental contamination or pollution on the Redevelopment Property that may be required by law. The Redeveloper further agrees to complete all cleanup and remediation on the Redevelopment Property identified in the DEED Grant Agreement, the Environmental Reports, the Phase I Environmental Site Assessment, dated June 30, 2022 (the “Phase I”), and the Planning Development Contract. The Redeveloper acknowledges receipt of the Environmental Reports and the Phase I and Redeveloper waives any claims against the Authority for indemnification, contribution, reimbursement or other payments arising under federal and state law and the common law or relating to the environmental condition of the Redevelopment Property. The Redeveloper acknowledges that the Authority has provided copies of the Phase I and the Environmental Reports, to the Redeveloper, and that the Redeveloper has had sufficient time and opportunity to fully review and consider said document.

(c) The Authority has no obligation to produce any evidence of title. The Redeveloper will obtain a commitment for an owner’s title insurance policy issued by the Title Company naming Redeveloper as the proposed owner-insured of the Redevelopment Property (the “Commitment”) in accordance with Section 3.4 hereof and review copies of all documents referred to in the Commitment.

(d) In addition to those rights granted by the Authority to the Redeveloper in that certain Right of Entry Agreement effective July 28, 2022. Redeveloper is hereby granted the right to enter upon and inspect, analyze and test the Redevelopment Property for all reasonable purposes, including conducting soil tests upon 24 hours’ notice to the Authority. The Redeveloper shall pay for the cost of all investigations of the Redevelopment Property which are ordered by Redeveloper for purposes of conducting its own investigations of the Redevelopment Property. Redeveloper hereby agrees to indemnify and hold the Authority harmless from any claims, damages, costs and liability, including without limitation reasonable attorneys’ fees, resulting from entering upon the Redevelopment Property or the performing of the analysis, tests or inspections referred to in this section.

(e) Without limiting its obligations under Section 8.3 hereof, the Redeveloper agrees to indemnify, defend, and hold harmless the Indemnified Parties, from any claims or actions to the extent arising out of any claim related to the presence of hazardous substances on the Redevelopment Property, or any portion thereof, which either (i) arise out of activities of the Redeveloper on the Redevelopment Property, including but not limited to, those activities performed under the DEED Grant Agreement, or (ii) arise out of hazardous substances, asbestos, petroleum substances, or pollutants, irritants or contaminants brought onto the Redevelopment Property by the Redeveloper. In addition, the Redeveloper agrees to release the Indemnified Parties from any and all costs, expenses, losses, liabilities, claims, causes of action, demands, and damages relating to the environmental conditions on the Redevelopment Property as of the date of Closing, including without limitation any claim the Redeveloper may have to recover from all or any of the Indemnified Parties any costs or expenses incurred by the Redeveloper in performing any remediation of the

Redevelopment Property. Nothing in this section will be construed to limit or affect any limitations on liability of the City or Authority under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02, as amended.

Section 3.4 Title. Upon the Effective Date, and as soon as reasonably possible thereafter, Redeveloper shall have the right, but not the obligation, to may obtain (a) a current commitment for the most current ALTA Owner's Policy of Title Insurance for the Redevelopment Property issued by the Title Company (the "Commitment"); and (b) an updated as-built survey of the Redevelopment Property, certified to Redeveloper, its lender and the Title Company (the "Survey") (together with the Commitment referred to herein as the "Title Evidence"). The Redeveloper shall have 30 days from the date of its receipt of the last Title Evidence to review the state of title (including survey matters) to the Redevelopment Property and to provide the Authority with a list of written objections to such title (including survey matters). Objections not made within such time will be deemed waived by Redeveloper and considered "Permitted Exceptions". The Authority shall have 60 days from the date of its receipt of such objection to effect a cure; provided, however, that the Authority shall have no obligation to cure any objections, and may inform the Redeveloper of such. In the event that the Authority has failed to obtain a cure of such objections within 60 days after the date hereof, the Redeveloper may (i) by the giving of written notice to the Authority terminate this Agreement, upon the receipt of which this Agreement shall be null and void and neither party shall have any liability hereunder, or (ii) waive any title objections and proceed to Closing. The Authority shall have no obligation to take any action to clear defects in the title to the Redevelopment Property.

The Authority shall take no actions to encumber title to the Redevelopment Property between the Effective Date and the Closing Date. The Authority expressly agrees that it will not cause or permit the attachment of any mechanics, attorneys, or other liens to any portion of the Redevelopment Property prior to the Closing Date.

The Redeveloper shall take no actions to encumber title to any portion of the Redevelopment Property between the Effective Date and Closing Date. The Redeveloper expressly agrees that it will not cause or permit the attachment of any mechanics, attorneys, or other liens to any portion of the Redevelopment Property prior to the Closing Date. Notwithstanding termination of this Agreement prior to any Closing, the Redeveloper is obligated to pay all costs to discharge any encumbrances to any portion of the Redevelopment Property attributable to actions of the Redeveloper, its employees, officers, agents or consultants, including without limitation any architect, contractor and or engineer.

Section 3.5 Delivery of Documents. The Authority has delivered the Phase I and the Environmental Reports to the Redeveloper and the Redeveloper acknowledges that it has received the Phase I and the Environmental Reports.

Section 3.6 Contingencies to Closing on Redevelopment Property.

(a) Redeveloper's Contingencies. The Redeveloper's obligation to close on the purchase of the Redevelopment Property is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) Performance of all obligations required to be performed by the Authority under this Agreement as of the Closing Date, including but not limited to, delivery of all of the Authority's Documents described in Section 3.6(b) hereof;

(ii) the Redeveloper shall have received all necessary building permits, rezoning, variances, conditional use permits and other permits, municipal approvals, site plans and other approvals, including approval of the final Plat, and the Planned Unit Development District, all of which are needed to permit the construction of the Minimum Improvements and Redeveloper's use and enjoyment of the Redevelopment Property;

(iii) the Redeveloper shall have completed such environmental investigation (including soil conditions) with respect to the Redevelopment Property as it deems prudent and in its sole discretion shall be satisfied with the results thereof;

(iv) the Redeveloper shall have obtained financing acceptable to the Redeveloper for development of the Minimum Improvements;

(v) on the Closing Date, the Title Company shall be irrevocably committed to issue to Redeveloper an owner's policy of title insurance with respect to the Redevelopment Property in form and substance approved by Redeveloper;

(vi) the Redeveloper having reviewed and approved (or waived objections to) the Title Evidence and the Due Diligence Documents, and having obtained a commitment from the Title Company acceptable to the Redeveloper to issue a suitable owner's policy for the Redevelopment Property in accordance with Section 3.4 herein; and

(vii) the Authority shall have approved the Construction Plans pursuant to section 4.2 hereof.

(b) Authority's Contingencies. The Authority's obligation to close on the sale of the Redevelopment Property is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) Redeveloper shall have performed all of the obligations required to be performed by the Redeveloper under this Agreement as of the Closing Date, including but not limited to paying all outstanding Administrative Costs in full pursuant to Section 3.13 hereof;

(ii) Redeveloper shall have delivered to the Authority all of the Redeveloper's Documents described in Section 3.7(c);

(iii) The Authority shall have approved the sale of the Redevelopment Property to the Redeveloper upon satisfaction of all other conditions required by State law;

(iv) The Redeveloper shall have submitted the Construction Plans to the Authority and the Authority shall have approved the Construction Plans pursuant to Section 4.2 hereof;

(v) The Redeveloper shall have received a building permit for the construction of the Minimum Improvements;

(vi) Developer shall have received or the Authority shall have determined that the Redeveloper will receive all necessary rezoning, variances, conditional use permits and other permits, site plan and other approvals needed to permit the construction of the Minimum Improvements including without limitation any needed variances, zoning changes, final Plat approval, and the creation of the Planned Unit Development District;

(vii) Redeveloper shall have provided evidence that it has financing for development of the Minimum Improvements satisfactory to the Authority in its sole discretion;

(viii) The Authority shall have obtained final Plat approval or obtain the necessary subdivision approvals required for the construction of the Minimum Improvements;

(ix) the Authority and the City Council shall have approved a modification to the TIF Plan amending the budget; and

(x) The Redeveloper having paid all outstanding Administrative Costs as required by Section 3.14 hereof; and

(xi) The Authority shall have determined that the Minimum Improvements to be undertaken by the Redeveloper on the Redevelopment Property is in conformance with this Agreement and the development objectives set forth in the Authorizing Resolution.

(c) Authority's and Redeveloper's Options. In the event that any of the foregoing contingencies fail to be satisfied on or before October 10, 2022, the Redeveloper or the Authority, as the case may be, may:

(i) terminate this Agreement; or

(ii) waive such failure and proceed to close; provided that the contingencies in Section 3.6(a) are solely for the benefit of the Redeveloper and may be waived only by the Redeveloper and the contingencies in Section 3.6(b) are solely for the benefit of the Authority and may be waived only by the Authority; or

(iii) the Redeveloper and Authority may mutually agree to extend the Closing Date.

### Section 3.7 Closing.

(a) Time and Place. Subject to the terms and conditions of this Agreement, the Closing on the purchase and sale of the Redevelopment Property shall take place on or before the Closing Date and shall take place at such place which is mutually acceptable to the parties. The Authority shall deliver possession of the Redevelopment Property on the Closing Date.

(b) Authority's Documents. At the Closing, the Authority shall execute, where appropriate, and deliver all of the following (collectively the "Authority's Documents"):

(i) The Deed, in substantially the form as attached hereto as Schedule B, properly executed on behalf of the Authority conveying the Redevelopment Property to the

Redeveloper, together with any other documents reasonably required to be delivered by the Authority.

(ii) The Authorizing Resolution;

(iii) A transferor's certification stating that Authority is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code, and containing such additional information as may be required thereunder.

(iv) A Seller's affidavit in form of acceptable to the Title Company;

(v) A well disclosure certificate;

(vi) A settlement statement consistent with this Agreement;

(vii) The Assessment Agreement; and

(viii) Any other documents as may reasonably be required to transfer fee title to the Redevelopment Property to Redeveloper.

(c) Redeveloper's Documents. At the Closing, the Redeveloper shall execute, where appropriate, and deliver all of the following "Redeveloper's Documents":

(i) The Purchase Price Note;

(ii) A sworn construction cost statement executed by the Redeveloper and the general contractor setting forth total Construction Costs of the Minimum Improvements;

(iii) Proof of insurance required by this Agreement;

(iv) To the extent required and obtainable as of the Closing Date, environmental clearances, subdivision approvals, permits, and any other required governmental approvals for the Minimum Improvements;

(v) An affidavit from Redeveloper indicating on the Closing Date that there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving the Redeveloper; that there has been no skill, labor or material furnished to the Redevelopment Property for which payment has not been made or for which mechanic's liens could be filed;

(vi) Funds sufficient for payment by the Redeveloper at Closing of the recording charges or fees for all documents which are to be placed on record in accordance with this Agreement, the fee or charge imposed by any closing agent designated by the Title Company, in accordance with the terms herein;

(vii) The Construction Documents;

(viii) Evidence satisfactory to the Authority that the Redeveloper has sufficient financing to complete the Minimum Improvements;



- (ix) The Redeveloper's estimate of the total development costs of the Minimum Improvements and sources of revenue to pay such costs and proforma cash flow for the Minimum Improvements;
- (x) Such other documents as shall be required to carry out the intent of this Agreement;
- (xi) The Assessment Agreement; and
- (xii) The Planning Development Contract.

Section 3.8 Conveyance Subject to Right of Re-entry. The Authority's conveyance of the Redevelopment Property to the Redeveloper pursuant to this Agreement will be made subject to a right of reentry for breach of a condition subsequent in favor of the Authority. The condition subsequent is that, barring any Unavoidable Delays, the Redeveloper shall have completed or caused to be completed, not later than June 15, 2023, construction of the foundation of the Minimum Improvements on the Redevelopment Property in accordance with permits issued by the City. If Redeveloper fails to satisfy such condition subsequent, the Authority shall provide written notice to the Redeveloper and the Redeveloper shall have 60 days from receipt of the Authority's notice to complete construction of the foundation of the Minimum Improvements, or in the event such default cannot be reasonably cured with a 60 day period, the cure period herein may be extended by a reasonable period of time as determined by the Authority in its sole discretion. Failure to complete construction in such timeframe shall constitute a breach of the condition subsequent and the Redeveloper shall re-convey the Redevelopment Property back to the Authority, without cost to the Authority. If the Redeveloper fails to re-convey the Redevelopment Property to the Authority, the Authority may elect to exercise its right of reentry by commencing an action in Wright County District Court to establish the breach of the condition subsequent. If the Authority establishes a breach of the condition subsequent, title to and the right to possession of the Redevelopment Property and title to all improvements located thereon reverts to the Authority, without cost to the Authority, and the Redeveloper is not entitled to any compensation from the Authority for the value of the Redevelopment Property or any improvements the Redeveloper has made to the Redevelopment Property. The Redeveloper must record the Certificate of Release set forth in the Deed in the proper County land records at its expense.

Section 3.9. Advance of Purchase Price Note and Other Costs. At Closing, the Authority will forgo receipt of the full fair market value of the Redevelopment Property, by accepting the Purchase Price Note from the Redeveloper as partial payment for the Redevelopment Property and providing the Land Write Down. The total original principal amount of the Purchase Price Note is \$1,351,617.00. The terms of the Purchase Price Note are described in Section 3.2 hereof. The Authority is pledging Purchase Price Note Available Tax Increment to repayment of the Purchase Price Note. The Redeveloper has no rights or interest in the Purchase Price Note Available Tax Increment pledged to the repayment of the Purchase Price Note. The Authority retains the right to use any other Authority funds to prepay the principal of and interest on the Purchase Price Note on any date or to use Purchase Price Note Available Tax Increment to pay ongoing costs of administering the TIF District.

Section 3.10. Reimbursement of Public Redevelopment Costs; Issuance of TIF Note. The Authority has determined that, in addition to providing the land write down described in Section 3.2, the Authority Grant and the DEED Grant, in order to make development of the Minimum Improvements financially feasible, it is necessary to reimburse the Redeveloper for a portion of its costs related to site improvements including demolition, grading and excavating, environmental remediation, curb and gutter work, exterior utilities (e.g., stormwater, water, sanitary, electrical), bituminous paving, underground and surface parking, and sidewalks on the Redevelopment Property (the “Public Redevelopment Costs”) through the issuance of the TIF Note, subject to the terms of this Section. The total principal amount of Public Redevelopment Costs subject to reimbursement will not exceed \$2,867,954.00. Public Redevelopment Costs in excess of the specified total are the responsibility of the Redeveloper.

(a) *Conditions for Delivery of TIF Note.* To reimburse a portion of the Public Redevelopment Costs incurred by Redeveloper, the Authority shall issue and the Redeveloper shall purchase the TIF Note in the maximum principal amount of \$2,867,954.00. The Authority shall issue and deliver the TIF Note upon the occurrence of the following:

(i) The Redeveloper having delivered to the Authority evidence of Public Redevelopment Costs paid or incurred in at least the principal amount of the Note as well as one or more certificates signed by the Redeveloper’s duly authorized representative, containing the following: (A) a statement that each cost identified in the certificate is a Public Redevelopment Cost as defined in this Agreement and that no part of such cost has been included in any previous certification; (B) reasonable evidence that each identified Public Redevelopment Cost has been paid or incurred by or on behalf of the Redeveloper; and (C) a statement that, to the Redeveloper’s knowledge, no uncured Event of Default by the Redeveloper has occurred and is continuing under this Agreement; the Authority may, if not satisfied that the conditions described herein have been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require;

(ii) Developer having delivered to the Authority an investment letter in a form reasonably satisfactory to the Authority; and

(iii) Developer having received from the Authority the Certificate of Completion for the Minimum Improvements.

(b) *Terms of TIF Note.* The terms of the TIF Note will be substantially in the form shown in Schedule E in the form of the Resolution approving this Agreement and authorizing the TIF Note (the “Authorizing Resolution”), and the TIF Note will be subject to all terms of the Authorizing Resolution, which are incorporated herein by reference.

(c) *Termination of Right to TIF Note.* Notwithstanding anything to the contrary in this Agreement, if the conditions for delivery of the TIF Note are not met by the date five (5) years after certification of the TIF District, the Authority’s obligation to deliver the TIF Note shall terminate; provided that the remainder of this Agreement shall remain in full force and effect.

(d) *Assignment of TIF Note.* The Authority acknowledges that the Redeveloper may assign the TIF Note to one or more lenders that provide part of the financing for the construction of the Minimum Improvements. The Authority consents to such an assignment, conditioned upon the satisfaction of the conditions set forth in the Note, the receipt of an investment letter from such third party in a form reasonably acceptable to the Authority and an assignment in a form approved by the Board of Commissioners of the Authority.

(e) *Qualifications.* The Redeveloper understands and acknowledges that the Authority makes no representations or warranties regarding the amount of TIF Note Available Tax Increment, or that revenues pledged to the TIF Note will be sufficient to pay the principal amount of and the interest on the TIF Note. Redeveloper further acknowledges that estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or this Agreement are for the benefit of the Authority, and are not intended as representations on which the Redeveloper may rely. If the Public Redevelopment Costs exceed the maximum aggregate principal amount of the TIF Note, such excess is the sole responsibility of Redeveloper. The TIF Note shall be a special and limited obligation of the Authority and not a general obligation of the Authority or the City, and only TIF Note Available Tax Increments shall be used to pay the principal of the TIF Note.

(f) *Termination of Payments.* The Authority's obligation to make payments on the TIF Note on any Payment Date or any date thereafter shall be conditioned upon the requirement that (i) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement that has not been cured during the applicable cure period, (ii) this Agreement shall not have been terminated pursuant to Section 9.2, and (iii) a certificate of occupancy has been issued for the Minimum Improvements.

### Section 3.11 DEED Grant Assistance.

(a) At the Redeveloper's request, the Authority has applied for and received the DEED Grant to finance a portion of the demolition and hazardous materials removal work on the Redevelopment Property in an amount not to exceed \$517,500.00 pursuant to the DEED Grant Agreement (the "DEED Redevelopment Costs"). The Authority shall assign its rights to reimbursement under the DEED Grant Agreement, or otherwise will pay or reimburse the Redeveloper for the DEED Redevelopment Costs from and to the extent of the grant proceeds received in accordance with the terms of the DEED Grant Agreement and the terms of this Section. Notwithstanding anything to the contrary herein, if the DEED Redevelopment Costs exceed the amount to be reimbursed under this Section pursuant to the DEED Grant, such excess shall be the sole responsibility of the Redeveloper (except to the extent reimbursable under the TIF Note and the Authority Grant). The Redeveloper acknowledges and agrees that all terms, conditions and obligations contained in the DEED Grant Agreement are incorporated herein, and made a part of this Agreement. The Redeveloper shall comply in all respects with the requirements of the DEED Grant Agreement as if it were the "Grantee" thereunder.

(b) All disbursements pursuant to the DEED Grant will be made subject to the conditions precedent that on the date of such disbursement:

(1) The Authority has received a written statement from the Redeveloper's authorized representative certifying with respect to each payment: (a) that none of the items for

which the payment is proposed to be made has formed the basis for any payment previously made under this Section or this Agreement (or before the date of this Agreement); (b) that each item for which the payment is proposed is a DEED Redevelopment Cost; and (c) that the Redeveloper reasonably anticipates completion of the DEED Redevelopment Costs and the Minimum Improvements in accordance with the terms of this Agreement.

(2) No Event of Default under this Agreement or the Planning Development Contract or event which would constitute such an Event of Default but for the requirement that notice be given or that a period of grace or time elapse, shall have occurred and be continuing.

(3) No license or permit necessary for undertaking the DEED Redevelopment Costs or constructing the Minimum Improvements shall have been revoked or the issuance thereof subjected to challenge before any court or other governmental authority having or asserting jurisdiction thereover.

(4) The Redeveloper has submitted, and the Authority has approved, the Construction Plans for the Minimum Improvements in accordance with Article IV hereof and the City has issued a building permit for the Minimum Improvements.

(5) All requirements of the DEED Grant Agreement that are to be performed or complied with by the Redeveloper prior to the date of such disbursement have been met.

(6) The Redeveloper has included in any contract or subcontract for the DEED Redevelopment Costs appropriate provisions to ensure contractor or subcontractor compliance with all applicable state and federal laws and the requirements of the Grant Agreement. Along with such provisions, the Redeveloper shall require that contractors and subcontractors performing work covered by this grant obtain all required permits, licenses, and certifications, and comply with all applicable state and federal Occupational Safety and Health Act regulations, especially the federal Hazardous Waste Operations and Emergency Response standards under Code of Federal Regulations, Title 29, Sections 1910.120 and 1926.65. Further all such contracts shall include necessary language to make clear that no such grant funds may be used, treated, or converted into any type of loan.

(7) The Authority must certify to DEED that all contractors and subcontractors have been paid and that the work performed is determined to be satisfactory. The Redeveloper will provide a certification to the Authority that all contractors and subcontractors have been paid and that the work performed is determined to be satisfactory prior to seeking reimbursement for any related costs.

(c) Whenever the Redeveloper desires a disbursement to be made hereunder, which shall be no more often than monthly, the Redeveloper shall submit to the Authority a draw request in the form attached as Schedule F duly executed on behalf of the Redeveloper accompanied by paid invoices or other comparable evidence that the cost has been incurred and paid or is payable by Redeveloper. Each draw request shall constitute a representation and warranty by the Redeveloper that all representations and warranties set forth in this Agreement are true and correct as of the date of such draw request. Such draw request shall also include all information required by the DEED Grant Agreement.

(d) If the Redeveloper has performed all of its agreements and complied with all requirements theretofore to be performed or complied with hereunder, the Authority shall submit such request to DEED, and make a disbursement to the Redeveloper in the amount of the requested disbursement or such lesser amount as shall be approved upon receipt of DEED Grant. Each disbursement shall be paid from the proceeds of the grant and is subject to the DEED's determination that the relevant DEED Redevelopment Costs is payable from the DEED Grant under the DEED Grant Agreement. Eligibility for reimbursement of any and all expenditures made by the Redeveloper is solely within the discretion of DEED and as represented in the DEED Grant Agreement, and the Redeveloper shall be solely responsible for providing adequate documentation for reimbursement pursuant to the terms of the DEED Grant Agreement. The Redeveloper understands and agrees that any reduction or termination of funds made available to DEED from the Redevelopment Grant Program may result in a like reduction in the amount of the grant proceeds that will be made available to the Redeveloper pursuant to this Agreement. Pursuant to Section 7.01 of the DEED Grant Agreement, the parties agree that none of the grant funds may be made available to any subgrantee or subrecipient without the prior written consent of DEED. The Authority has no obligation to provide proceeds of the DEED Grant unless and until such funds are disbursed by DEED.

(e) The making of the final disbursement by the Authority under this Section shall be subject to the condition precedent that the Redeveloper shall be in compliance with all conditions set forth in this Section and further, that the Authority shall have received a lien waiver from each contractor for all work done and for all materials furnished by it for the DEED Redevelopment Costs.

(f) Minnesota Statutes, § 116L.66, subd. 1, requires a business or private enterprise to list any vacant or new positions with the state workforce center if an entity receives \$200,000 or more a year in grants from the State. The Redeveloper agrees to list all job vacancies in the Redeveloper's personnel complement with MinnesotaWorks.net at [www.minnesotaworks.net](http://www.minnesotaworks.net).

(g) Without limiting its obligations under Section 8.3 hereof, the Redeveloper agrees to indemnify, defend, and hold harmless the Indemnified Parties from any claims or causes of action, including attorney's fees incurred by the Indemnified Parties, arising from the performance of the DEED Grant Agreement by the Redeveloper, or its officers, agents or employees. The Redeveloper will further indemnify, defend, and hold harmless the Indemnified Parties from any claims or causes of action, including attorney's fees incurred by the Indemnified Parties, arising from the performance of or any obligations under the DEED Grant Agreement, including without limitation any obligation to pay or repay any amounts to DEED. The Redeveloper further covenants and agrees to repay the DEED Grant to DEED, should the Authority be required to repay the DEED Grant pursuant Minnesota Statutes 116J.575, subdivision 4 or the DEED Grant Agreement. The Redeveloper shall repay any amounts required under this paragraph (g) upon 30 days of a written request from the Authority.

Section 3.12 Other Assistance. In addition to the reimbursement of a portion of Redeveloper's Public Redevelopment Costs through issuance of the TIF Note and the reimbursement of a portion of the Redeveloper's DEED Redevelopment Costs with the proceeds of the DEED Grant, the Authority will reimburse a portion of the Redeveloper's redevelopment costs and additional environmental investigation costs detailed in Schedule G (the "Authority Grant Costs") to be undertaken on the Redevelopment Property, pursuant to and in conformity with the Authority's Policy Statements for Management of Available Tax Increment Financing Funds, adopted by the

Authority on January 10, 2018, the 2022 Pooled TIF Allocation Plan, adopted on May 25, 2022 and the TIF Act. The grant shall be in the amount of \$367,400 (the “Authority Grant”) and shall be disbursed to the Redeveloper upon the occurrence of the following:

(i) The Redeveloper having delivered to the Authority evidence of Authority Grant Costs paid or incurred in at least the principal amount of the Note as well as one or more certificates signed by the Redeveloper’s duly authorized representative, containing the following: (A) a statement that each cost identified in the certificate is a Authority Grant Cost as defined in this Agreement and that no part of such cost has been included in any previous certification; (B) reasonable evidence that each identified Authority Grant Cost has been paid or incurred by or on behalf of the Redeveloper; and (C) a statement that, to the Redeveloper’s knowledge, no uncured Event of Default by the Redeveloper has occurred and is continuing under this Agreement; the Authority may, if not satisfied that the conditions described herein have been met, return any certificate with a statement of the reasons why it is not acceptable and requesting such further documentation or clarification as the Authority may reasonably require; and

(ii) The Redeveloper having received from the Authority the Certificate of Completion for the Minimum Improvements; and

(iii) The Authority has received evidence that the projects for which the Authority Grant are being provided have been constructed and accepted by the City and the Authority has confirmed that the Redeveloper is in compliance with Planning Development Contract, including but not limited to the provisions therein relating to the projects consisting of the Authority Grant Costs.

The Redeveloper shall be responsible for all Authority Grant Costs in excess of \$367,400.

### Section 3.13 Business Subsidy Act.

(a) *Public Purpose.* In order to satisfy the provisions of the Business Subsidy Act, the Redeveloper acknowledges and agrees that the amount of the “Business Subsidy” granted to the Redeveloper under this Agreement is the TIF Note, the Purchase Price Note, the Land Write Down, the DEED Grant, and the Authority Grant, and that the Business Subsidy is needed because the construction of the Minimum Improvements is not sufficiently feasible for the Redeveloper to undertake without the Business Subsidy due to the extraordinary costs of land acquisition, demolition, hazardous material remediation, and site improvements necessary to construct the Minimum Improvements on the proposed site. The public purpose of the Business Subsidy is to redevelop land in the City’s downtown which is underutilized or characterized by blight, increase the tax base of the City and the State, increase jobs in the City and State (including construction jobs), and help provide a range of housing options in the City.

(b) *Operation of Site.* The Redeveloper must continue operation of the Minimum Improvements as a mixed-use development (the “Qualified Facility”) for at least 5 years after the Benefit Date (defined hereinafter), subject to the continuing obligation described in Section 10.3 of this Agreement. The improvements will be a Qualified Facility as long as the Minimum Improvements is operated by the Redeveloper for the aforementioned qualified uses. During any

period when the Minimum Improvements is vacant and not operated for the aforementioned qualified uses, the Minimum Improvements will not constitute a Qualified Facility.

(c) *Job and Wage Goals.* The “Benefit Date” of the assistance provided in this Agreement is the earlier of the date of issuance of the Certificate of Completion or the date the Minimum Improvements is occupied by Redeveloper. By or before the “Compliance Date”, defined as the date two years after the Benefit Date, the Redeveloper shall cause to be created at least 45 full-time jobs permanent to the Redevelopment Property. The Redeveloper shall cause the hourly wage of the new jobs to be at least \$12.39 per hour, with benefits equal to at least \$1.75 per hour. Notwithstanding anything to the contrary herein, if the wage and job goals described in this paragraph are met by the Compliance Date, those goals are deemed satisfied despite the Redeveloper’s continuing obligations under Sections 3.12(b). The Authority may, after a public hearing, extend the Compliance Date by up to one year, provided that nothing in this section will be construed to limit the Authority’s legislative discretion regarding this matter.

(d) *Remedies.* If the Redeveloper fails to meet the goals described in Section 3.13(b) and 3.13(c), the Redeveloper shall repay to the Authority upon written demand from the Authority a “pro rata share” of the outstanding principal amount of the TIF Note and the Authority Grant together with interest on that amount at the implicit price deflator as provided in Section 116J.994, subd. 6 of the Business Subsidy Act, accrued from the date of substantial completion of the Minimum Improvements to the date of payment. The term “pro rata share” means percentages calculated as follows:

- (i) if the failure relates to the number of jobs, the jobs required less the jobs created, divided by the jobs required;
- (ii) if the failure relates to wages, the number of jobs required less the number of jobs that meet the required wages, divided by the number of jobs required;
- (iii) if the failure relates to maintenance of the facility as a Qualified Facility in accordance with Section 3.12(b) 60 less the number of months of operation as a Qualified Facility (where any month in which the Qualified Facility is in operation for at least 15 days constitutes a month of operation), commencing on the Benefit Date and ending with the date the Qualified Facility ceases operation as determined by the Authority Representative, divided by 60; and
- (iv) if more than one of clauses (i) through (iii) apply, the sum of the applicable percentages, not to exceed 100%.

Nothing in this Section shall be construed to limit the Authority’s remedies under Article VIII hereof. In addition to the remedy described in this Section and any other remedy available to the Authority for failure to meet the goals stated in Section 3.13), the Redeveloper agrees and understands that it may not receive a business subsidy from the Authority or any grantor (as defined in the Business Subsidy Act) for a period of 5 years from the date of the failure or until the Redeveloper satisfies its repayment obligation under this Section, whichever occurs first.

(e) *Reports.* The Redeveloper must submit to the Authority a written report regarding business subsidy goals and results by no later than February 1 of each year, commencing February 1, 2024 and continuing until the later of (i) the date the goals stated in Section 3.13(b) and (c) are met; (ii) 30 days after expiration of the period described in Section 3.13(b); or (iii) if the goals are not met, the date the subsidy is repaid in accordance with Section 3.13(d). The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The Authority will provide information to the Redeveloper regarding the required forms. If the Redeveloper fails to timely file any report required under this Section, the Authority will mail the Redeveloper a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, the Redeveloper fails to provide a report, the Redeveloper must pay to the Authority a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this Section is \$1,000.

(f) *Other assistance.* There are no other state or local government agencies providing financial assistance for the Minimum Improvements other than the Authority and DEED, which is providing the DEED Grant.

(g) *Parent Corporation.* The Redeveloper's parent corporation is [REDACTED].

Section 3.14. Payment of Administrative Costs. The Redeveloper is responsible for the payment of all "Administrative Costs" which term means out of pocket costs incurred by the Authority together with staff costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Redevelopment Property. On the Closing Date, the Redeveloper shall pay all outstanding Administrative Costs. The Redeveloper is obligated to pay such Administrative Costs within twenty (20) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If any balance of funds deposited remains upon issuance of the Certificate of Completion pursuant to Section 4.4 of this Agreement, the Authority shall promptly return such balance to Redeveloper; provided that Redeveloper remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by Redeveloper. Upon termination of this Agreement in accordance with its terms, the Redeveloper remains obligated under this section for Administrative Costs.

Section 3.15. Assessment Agreement. Execution of Assessment Agreement.

(a) The Redeveloper and the Authority agree to execute an Assessment Agreement relating to the Minimum Improvements pursuant to the provisions of Minnesota Statutes, Section 469.177, subdivision 8, specifying the minimum market value for the Redevelopment Property for calculation of real property taxes. Specifically, the Redeveloper shall agree to a market value for the Redevelopment Property of \$18,500,000 commencing as of January 2, 2024 (the "Minimum Market Value").

(b) Nothing in the Assessment Agreement or this Agreement limits the discretion of the County Assessor to assign a market value to the property in excess of the Minimum Market Value nor prohibits the Redeveloper from seeking, through the exercise of legal or administrative remedies, a reduction in such market value for property tax purposes; provided however, the Redeveloper shall



not seek a reduction of such market value below the Minimum Market Value for any year so long as the Assessment Agreement remains in effect for that year.

(c) The Assessment Agreement shall remain in effect until the earlier of (i) January 31, 2051, or (ii) the date on which the TIF District expires or is otherwise terminated.

(d) The Assessment Agreement shall be certified by the County Assessor as provided in Section 469.177, subdivision 8 of the TIF Act, upon a finding by the County Assessor that the Minimum Market Value represents a reasonable estimate based upon the plans and specifications for the Minimum Improvements to be constructed on the Redevelopment Property and the market value previously assigned to the Redevelopment Property.

(e) Pursuant to Section 469.177, subdivision 8 of the TIF Act, the Assessment Agreement shall be filed for record in the office of the county recorder or registrar of titles of the County, and such filing shall constitute notice to any subsequent encumbrancer or purchaser of the Redevelopment Property, whether voluntary or involuntary, and such Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or encumbrancer, including the holder of any mortgage on the Redevelopment Property.

(f) The Assessment Agreement shall be filed, at the sole cost of the Redeveloper, against the Redevelopment Property prior to any lien or encumbrance on the Redevelopment Property, including any mortgage.

## ARTICLE IV

### Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. The Redeveloper agrees that it will construct the Minimum Improvements on the Redevelopment Property, in accordance with the approved Construction Plans, and will operate and maintain, preserve and keep the Minimum Improvements or cause the Minimum 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.

(a) Before commencement of construction of the Minimum Improvements, the Redeveloper shall submit the Construction Plans to the Authority. The Construction Plans shall provide for the construction of the Minimum Improvements, as applicable, and shall be in conformity with this Agreement and all applicable State and local laws and regulations. The Authority will approve such Construction Plans in writing if: (i) such Construction Plans conform to the terms and conditions of this Agreement and the Planning Development Contract; (ii) such Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations; (iii) such Construction Plans are adequate to provide for construction of the Minimum Improvements; and (iv) no Event of Default has occurred and remains uncured. No approval by the Authority shall relieve the Redeveloper of the obligation to comply with the terms of this Agreement, the Planning Development Contract, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority shall constitute a waiver of an Event of Default or waiver of any State or City building or other code requirements that may apply. If approval of the Construction Plans is requested by the Redeveloper in writing at the time of submission, such Construction Plans shall be deemed approved unless rejected in writing by the Authority, in whole or in part. Such rejections shall set forth in detail the reasons therefor, and shall be made within 30 days after the date of their receipt by the Authority. If the Authority rejects any Construction Plans in whole or in part, the Redeveloper shall submit new or corrected Construction Plans within 30 days after written notification to the Redeveloper of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the Authority. The Authority's approval shall not be unreasonably withheld. Said approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements, constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

(b) The Redeveloper hereby waives any and all claims and causes of action whatsoever resulting from the review of the Construction Plans by the Authority and/or any changes in the Construction Plans requested by the Authority. Neither the Authority nor any employee or official of the Authority shall be responsible in any manner whatsoever for any defect in the Construction Plans or in any work done pursuant to the Construction Plans, including changes requested by the Authority.

(c) If the Redeveloper desires to make any material change in the Construction Plans after their approval by the Authority, the Redeveloper shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section with respect to such previously approved Construction Plans, the Authority shall approve the proposed change and notify the Redeveloper in writing of its approval. Such change in the Construction Plans 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 Redeveloper, setting forth in detail the reasons therefor. Such rejection shall be made within 30 days after receipt of the notice of such change. The Authority's approval of any such change in the Construction Plans will not be unreasonably withheld. Nothing in this paragraph will relieve the Redeveloper of the obligation to comply with any City ordinances or procedures regarding changes in Construction Plans, and any approvals by the Authority hereunder will not constitute approval by any Authority officials regarding any City requirement related to construction of the Minimum Improvements.

(d) The approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the Authority does not constitute a representation or warranty by the Authority that the Construction Plans or the Minimum Improvements comply with any applicable building code, health or safety regulation, zoning regulation, environmental law, labor law or regulation, or other law or regulation, or that the Minimum Improvements will meet the qualifications for issuance of a certificate of occupancy, or that the Minimum Improvements will meet the requirements of the Redeveloper or any other users of the Minimum Improvements. Approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the Authority will not constitute a waiver of an Event of Default. Nothing in this Agreement shall be construed to relieve the Redeveloper of its obligations to receive any required approval of the Construction Plans from any City department.

#### Section 4.3 Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Redeveloper must commence construction of the Minimum Improvements not later than November 10, 2022. The construction of the Minimum Improvements shall be deemed to be commenced when physical improvements have been made to the Redevelopment Property, including grading, excavation, or other physical site preparation work (in accordance with a permit issued by the City).

(b) Subject to Unavoidable Delays, the Redeveloper must substantially complete construction of all Minimum Improvements by November 30, 2024. The construction of the Minimum Improvements will be considered substantially complete on the date when (i) the Redeveloper has received a temporary or permanent certificate of occupancy issued by the City for the Minimum Improvements, as applicable, and (ii) the Authority has determined the Minimum Improvements have been constructed substantially in accordance with the approved Construction Plans as provided in Section 4.2 and the City has determined that the Minimum Improvements have been constructed substantially in accordance with the Planning Development Contract. Completion shall be evidenced by a Certificate of Completion as described in Section 4.4.

(c) Developer agrees for itself, its successors and assigns, and every successor in interest to the Redevelopment Property, or any part thereof, that the Redeveloper, and such successors and assigns, shall promptly begin and diligently prosecute to completion the development of the Redevelopment Property through the construction of the Minimum Improvements thereon, and that

such construction shall in any event be commenced and completed within the period specified in this Section 4.3. Subsequent to conveyance of the Redevelopment Property, or any part thereof, to the Redeveloper, and until construction of the Minimum Improvements has been completed, the Redeveloper shall make reports, in such detail and at such times as may reasonably be requested by the Authority, as to the actual progress of the Redeveloper with respect to such construction. Notwithstanding the forgoing, such requests made by the Authority shall be limited to once per month.

(d) If the Redeveloper does not complete construction of the Minimum Improvements in accordance with the schedule set forth in Section 4.3 hereof, the Redeveloper shall repay the principal amount of the Purchase Price Note and the Land Write Down in full. The Redeveloper shall pay the Purchase Price Note and the Land Write Down within 60 days of written request from the Authority.

Section 4.4 Certificate of Completion. At the request of the Redeveloper, the Authority will issue a Certificate of Completion in accordance with this Section. The Redeveloper may notify the Authority when construction of the Minimum Improvements has been substantially completed. The Authority shall, within 20 days after such notification, inspect the Minimum Improvements in order to determine whether the Minimum Improvements have been substantially completed and constructed in accordance with all local, state and federal laws and regulations (including without limitation environmental, labor, zoning, building code, housing code, and public health laws and regulations), and any applicable permits and in substantial conformity with this Agreement, the Planning Development Contract and the final Construction Plans approved by the Authority.

Section 4.5. Records and Reports.

(a) The Authority, through any authorized representatives, shall have the right at all reasonable times after reasonable written notice to inspect, examine and copy all books and records of Redeveloper relating to the Minimum Improvements that are reasonably relevant to the Redeveloper's obligations under this Agreement. Such records shall be kept and maintained by Redeveloper through the Termination Date. Notwithstanding the foregoing, such audit rights contained herein shall be limited to one request per month.

(b) Upon request, the Redeveloper also agrees to submit to the Authority written reports so as to allow the Authority to remain in compliance with reporting requirements under state statutes.

Section 4.6. Compliance with Environmental Requirements.

(a) The Redeveloper shall comply with all applicable local, state, and federal environmental laws and regulations, and will obtain, and maintain compliance under, any and all necessary environmental permits, licenses, approvals or reviews.

(b) The Authority makes no warranties or representations regarding, nor does it indemnify the Redeveloper with respect to, the existence or nonexistence on or in the vicinity of the Redevelopment Property or anywhere within the TIF District of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as

defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 961-9657, as amended) (collectively, the “Hazardous Substances”) and Redeveloper waives any claims against the Authority for indemnification, contribution, reimbursement or other payments arising under federal and state law and the common law or relating to the environmental condition of the land comprising the Redevelopment Property.

(c) The Redeveloper agrees to take all necessary action to remove or remediate any Hazardous Substances located on the Redevelopment Property to the extent required by and in accordance with all applicable local, state and federal environmental laws and regulations, and the Environmental Reports and the Phase I.

(d) The Redeveloper acknowledges receipt of the Environmental Reports and the Phase I covering the Redevelopment Property and Redeveloper waives any claims against the Authority for indemnification, contribution, reimbursement or other payments arising under federal and state law and the common law or relating to the environmental condition of the land comprising the Redevelopment Property.

Section 4.7. Planning Development Contract. The Redeveloper shall at all times comply with the Planning Development Contract.

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## ARTICLE V

### Insurance

#### Section 5.1. Insurance.

(a) The Redeveloper will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(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 Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) together with an Owner's Policy with limits against bodily injury and property damage of not less than \$1,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used). The Authority shall be listed as an additional insured on the policy; and

(iii) Workers' compensation insurance, with statutory coverage, provided that the Redeveloper may be self-insured with respect to all or any part of its liability for workers' compensation.

(b) Upon completion of construction of the Minimum Improvements and prior to the Termination Date, the Redeveloper shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Commercial general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$1,000,000, and shall be endorsed to show the City and Authority as additional insureds.

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Redeveloper, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided

that the Redeveloper may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Redeveloper that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Redeveloper will deposit annually with the Authority policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Redeveloper and the Authority at least 30 days before the cancellation or modification becomes effective. In lieu of separate policies, the Redeveloper may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Redeveloper shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Redeveloper agrees to notify the Authority immediately in the case of damage exceeding \$250,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Redeveloper will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Redeveloper will apply the net proceeds of any insurance relating to such damage received by the Redeveloper to the payment or reimbursement of the costs thereof.

The Redeveloper shall complete the repair, reconstruction, and restoration of the Minimum Improvements, regardless of whether the net proceeds of insurance received by the Redeveloper for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Redeveloper.

(e) In lieu of the Redeveloper's obligation to reconstruct the Minimum Improvements as set forth in this Section, the Redeveloper shall have the option of terminating the TIF Note and paying to the Authority an amount that, in the opinion of the Authority and its fiscal consultant, is sufficient to pay in full the outstanding principal and accrued interest on the Purchase Price Note and repay the Authority Grant and the Land Write Down.

(f) The Redeveloper and the Authority agree that all of the insurance provisions set forth in this Article V shall terminate upon the termination of this Agreement.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance shall, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII of this Agreement.

## ARTICLE VI

### **Delinquent Taxes and Review of Taxes**

Section 6.1. Right to Collect Delinquent Taxes. The Redeveloper agrees for itself, its successors, and assigns, that in addition to the obligation pursuant to statute to pay real estate taxes, it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Redevelopment Property and the Minimum Improvements. The Redeveloper acknowledges that this obligation creates a contractual right on behalf of the Authority through the Termination Date to sue the Redeveloper or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In any such suit in which the Authority is the prevailing party, the Authority shall also be entitled to recover its costs, expenses, and reasonable attorney fees.

Section 6.2. Review of Taxes. The Redeveloper agrees that prior to the Termination Date, it will not cause a reduction in the real property taxes paid in respect of the Redevelopment Property through: (a) willful destruction of the Minimum Improvements or any part thereof; (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 of this Agreement, except as otherwise provided in Section 5.1(e); or (c) engaging in any other proceedings, whether legal, administrative or equitable, with any administrative body in the County or State or court of the State or federal government to reduce the amount of real estate or other taxes assessed against the Redevelopment Property or the Minimum Improvements. The Redeveloper also agrees that it will not, prior to the Termination Date, apply for a deferral of property tax on the Redevelopment Property pursuant to any law, or transfer or permit transfer of the Redevelopment Property to any entity whose ownership or operation of the property would result in the Redevelopment Property being exempt from real estate taxes under State law.

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## ARTICLE VII

### Financing

Section 7.1. Financing. (a) Before conveyance of the Redevelopment Property, the Redeveloper shall submit to the Authority evidence of one or more commitments for mortgage financing which, together with committed equity for such construction, is sufficient for the construction of the Minimum Improvements. Such commitments may be submitted as short term financing, long term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the mortgage financing is sufficiently committed and adequate in amount to provide for the construction of the Minimum Improvements, then the Authority shall notify the Redeveloper in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within 30 days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Redeveloper shall submit adequate evidence of financing within 30 days after such rejection.

Section 7.2. Authority's Option to Cure Default on Mortgage. In the event that there occurs a default under any Mortgage authorized pursuant to Article VII of this Agreement, the Redeveloper shall cause the Authority to receive copies of any notice of default received by the Redeveloper from the holder of such Mortgage. Thereafter, the Authority shall have the right, but not the obligation, to cure any such default on behalf of the Redeveloper within such cure periods as are available to the Redeveloper under the Mortgage documents.

## ARTICLE VIII

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

Section 8.1. Representation as to Redevelopment. The Redeveloper represents and agrees that its purchase of the Redevelopment Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of redevelopment of the Redevelopment Property and not for speculation in land holding.

Section 8.2. Prohibition Against Redeveloper's Transfer of Property and Assignment of Agreement. The Redeveloper represents and agrees that until the Termination Date:

(a) Except only by way of security for, and only for and the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the Redevelopment Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under the Agreement, and any other purpose authorized by this Agreement, the Redeveloper 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 Redevelopment Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a "Transfer"), without the prior written approval of the Authority's board of commissioners, which may not be unreasonably withheld or delayed, subject to Section 8.2(b). The term "Transfer" does not include (i) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Redeveloper or any successor in interest to the Redevelopment Property or to construct the Minimum Improvements or component thereof; (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Minimum Improvements; or (iii) an assignment or other transfer to an Affiliate.

(b) In the event the Redeveloper, upon Transfer of the Redevelopment Property, seeks to be released from its obligations under this Agreement, the Authority shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such Transfer that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement and the Purchase Price Note by the Redeveloper.

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Redeveloper under this Agreement (including the Purchase Price Note) and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Redevelopment Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the

Authority of any rights or remedies or controls with respect to the Redevelopment Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Redevelopment Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the Authority would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority to the contrary, no such transfer or approval by the Authority thereof shall be deemed to relieve the Redeveloper, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement and the Purchase Price Note or the Redevelopment Property governed by this Article VIII, shall be in a form reasonably satisfactory to the Authority.

(iv) The Redeveloper and its transferees shall comply with such other conditions as the Authority may reasonably require in order to achieve and safeguard the purposes of the TIF Act and this Agreement.

(v) The Redeveloper agrees to pay all reasonable costs and expenses, including fees of legal counsel retained by the Authority, to review the documents submitted to the Authority in connection with any such transfer.

In the event the foregoing conditions are satisfied then the Redeveloper shall be released from its obligation under this Agreement. The Authority shall execute and provide any and all documentation reasonably requested by Redeveloper evidencing the same at the Redeveloper's cost and expense.

### Section 8.3. Release and Indemnification Covenants.

(a) The Redeveloper releases from and covenants and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold harmless the Authority and the governing body members, officers, agents 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 Minimum Improvements or the Redevelopment Property.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Redeveloper agrees to protect and defend the Indemnified Parties, 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 Minimum Improvements.

(c) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Redeveloper or its officers, agents or employees or any other person who may be about the Redevelopment Property or Minimum Improvements.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any governing body member, officer, agent or employee of the Authority or the City in the individual capacity thereof.

(The remainder of this page is intentionally left blank.)

## **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, any one or more of the following events, after the non-defaulting party provides sixty (60) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said sixty (60) days or, if the event is by its nature incurable within sixty (60) days, the defaulting party does not, within such sixty (60) day period, provide assurances reasonably satisfactory to the party providing notice of default that it is proceeding with due diligence to cure such default and the event will be cured as soon as reasonably possible:

(a) any failure by either party to this Agreement to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement or under any other agreement entered into between the Redeveloper and the Authority in connection with development of the Redevelopment Property;

(b) any default by Redeveloper under a Mortgage, if any;

(c) any failure by the Redeveloper to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under the Planning Development Contract; and

(d) failure by the Redeveloper to timely pay any ad valorem real property taxes assessed with respect to the Redevelopment Property.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs, the non-defaulting party may exercise its rights under this Section 9.2:

(a) Suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement.

(b) The Authority may cancel and rescind or terminate this Agreement and/or the TIF Note.

(c) The Authority may suspend its performance under this Agreement and the TIF Note. Interest on the TIF Note shall not accrue during the period of any suspension of payment.

(d) The Authority may demand that the Redeveloper immediately repay the outstanding principal balance of and interest on the Purchase Price Note and repay the Authority Grant and the Land Write Down.

(e) The Authority may 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.

The Authority agrees that any mortgagee of the Redevelopment Property will have the right, but not the obligation, to cure any default by Redeveloper and any such cure will be deemed to have been made by Redeveloper.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or Redeveloper 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 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.

(The remainder of this page is intentionally left blank.)

## ARTICLE X

### Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Redeveloper, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Authority shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Redeveloper or successor or on any obligations under the terms of this Agreement.

Section 10.2. Equal Employment Opportunity. The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, state, and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Redeveloper agrees that until the Termination Date, the Redeveloper, and its successors and assigns, shall use the Redevelopment Property for the operation of the Minimum Improvements for uses described in the definition of such term in this Agreement, and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Redevelopment Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. 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 Redevelopment Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this 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, electronic mail with confirmed receipt, or delivered personally; and

(a) in the case of the Redeveloper, is addressed to or delivered personally to the Redeveloper at 4510 3<sup>rd</sup> Street S., Moorhead, MN 56560, Attn: Mark Buchholz, Email: mdbuchholz@gmail.com; and

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 505 Walnut Street, Suite 1, Monticello, Minnesota 55362, Attn: EDA Executive Director, jim.thares@ci.monticello.mn.us and Community Development Director at angela.schumann@ci.monticello.mn.us.

(c) or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

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. Recording. The Authority may record this Agreement and any amendments thereto with the Wright County recorder. The Redeveloper shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement approved by the Authority and the Redeveloper.

Section 10.10. Authority Approvals. Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative as determined by the Authority in their sole discretion.

Section 10.11. Termination. This Agreement terminates on the Termination Date. Upon termination of this Agreement, the Authority shall promptly execute any reasonable documents necessary to remove this Agreement from the title records of the Redevelopment Property. Notwithstanding the foregoing, the Redeveloper's obligations under Sections 3.3(d) and (e), 3.11(g), 4.6, 8.3 and 3.12 shall survive termination.

Section 10.12. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.



IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed and the Redeveloper has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

CITY OF MONTICELLO ECONOMIC  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF WRIGHT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ and \_\_\_\_\_, the President and Executive Director of the City of Monticello Economic Development Authority, a public body corporate and politic, on behalf of the Authority.

\_\_\_\_\_  
Notary Public



## **SCHEDULE A**

### **Development Property**

The real property in the City of Monticello, County of Wright, State of Minnesota, legally described as follows:

That part of Block 52, TOWNSITE OF MONTICELLO, Wright County, Minnesota lying southeasterly of the following described line: Commencing at the most northerly corner of said Block 52; thence southeasterly along the northeasterly line of said Block 52, a distance of 183.88 feet to the northwesterly line of the southeasterly 15.00 feet of Lot 13, said Block 52, being the point of beginning of the line to be described; thence southwesterly along said northwesterly line a distance of 94.52 feet; thence northwesterly parallel with the southwesterly line of said Block 52, a distance of 21.83 feet; thence southwesterly parallel with the southeasterly line of said Block 52, a distance of 107.48 feet; thence northwesterly parallel with the southwesterly line of said Block 52, a distance of 82.85 feet to the westerly line of the Easterly 20.00 feet of Lot 3, said Block 52; thence southwesterly along said westerly line, a distance of 128.50 feet to the southwesterly line of said Block 52 and said line there terminating.

To be replatted as follows:

Lot 2, Block 1, Block 52 First Addition

**SCHEDULE B**

**FORM OF QUIT CLAIM DEED**

**(Top 3 inches reserved for recording data)**

**QUIT CLAIM DEED**

DEED TAX DUE: \$ \_\_\_\_\_

DATE: \_\_

ECRV: \_\_\_\_\_  
(month/day/year)

FOR VALUABLE CONSIDERATION, \_\_\_\_\_ City of Monticello Economic Development Authority \_\_\_\_\_  
(insert name of Grantor)

a public body corporate and politic under the laws of Minnesota, ("Grantor"),  
hereby conveys and quitclaims to Deephaven Development LLC \_\_\_\_\_  
(insert name of Grantee)

a Minnesota limited liability company under the laws of Minnesota, ("Grantee"),  
real property in Wright County, Minnesota, legally described as follows:

That part of Block 52, TOWNSITE OF MONTICELLO, Wright County, Minnesota lying southeasterly of the following described line: Commencing at the most northerly corner of said Block 52; thence southeasterly along the northeasterly line of said Block 52, a distance of 183.88 feet to the northwesterly line of the southeasterly 15.00 feet of Lot 13, said Block 52, being the point of beginning of the line to be described; thence southwesterly along said northwesterly line a distance of 94.52 feet; thence northwesterly parallel with the southwesterly line of said Block 52, a distance of 21.83 feet; thence southwesterly parallel with the southeasterly line of said Block 52, a distance of 107.48 feet; thence northwesterly parallel with the southwesterly line of said Block 52, a distance of 82.85 feet to the westerly line of the Easterly 20.00 feet of Lot 3, said Block 52; thence southwesterly along said westerly line, a distance of 128.50 feet to the southwesterly line of said Block 52 and said line there terminating.

Check here if all or part of the described real property is Registered (Torrens)

together with all hereditaments and appurtenances and subject to the Right of Re-Entry for Breach of Condition Subsequent in favor of Grantor which is described on **Exhibit A**.

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described property.
- A well disclosure certificate accompanies this document (If electronically filed, insert WDC number: \_\_\_\_\_).
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property

City of Monticello Economic Development Authority

By: \_\_\_\_\_  
Steve Johnson

Its: President

By: \_\_\_\_\_

have not changed since the last previously  
filed well disclosure certificate.

Jim Thares

Its: Executive Director

State of Minnesota, County of WRIGHT

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by Steve Johnson, as President and by Jim Thares, as Executive Director of the City of Monticello Economic Development Authority (the "Authority"), a public body corporate and politic under the Constitution and laws of the State of Minnesota, on behalf of the Authority.

---

*Notary Public*

THIS INSTRUMENT WAS DRAFTED BY:  
*(insert name and address)*

Kennedy & Graven, Chartered (GAF)  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402

TAX STATEMENTS FOR THE REAL PROPERTY  
DESCRIBED IN THIS INSTRUMENT SHOULD BE  
SENT TO:

*(insert name and address of Grantee to whom tax  
statements should be sent)*

c/o Deephaven Development LLC  
4510 3<sup>rd</sup> Street S.  
Moorhead, MN 56560

EXHIBIT A

TO QUIT CLAIM DEED  
EXECUTED BY

THE CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY, GRANTOR,  
IN FAVOR OF DEEPHAVEN DEVELOPMENT LLC, GRANTEE.

The City of Monticello Economic Development Authority (the “Grantor”) is conveying the property described in the attached Quit Claim Deed (the “Development Property”) to Deephaven Development LLC (“Grantee”) subject to a right of re-entry for breach of conditions subsequent in favor of Grantor. The condition subsequent (such agreement, as the same may be modified or amended, the “Development Agreement” by and between the Grantor and Grantee in connection with this) (capitalized terms utilized herein and not separately defined shall have the meanings ascribed to them in the Development Agreement) is that barring any Unavoidable Delays, the Redeveloper shall have completed, by June 15, 2023, construction of the foundation of the Minimum Improvements (as those terms are defined in the Development Agreement) on the Redevelopment Property in accordance with permits issued by the Grantor. If, solely as a result of the City’s own willful misconduct, the City takes more than 30 days to review the Redeveloper’s complete request for a building permit, the date in the preceding sentence shall be extended by the number of days in excess of 30 that it takes the City to issue a building permit.

If the Grantee breaches the condition subsequent, and does not cure such breach within the period and in the manner provided in the Development Agreement, the Grantee shall re-convey the Redevelopment Property to the Grantor. If the Grantee fails to re-convey the Redevelopment Property to the Grantor, the Grantor may elect to exercise its right of reentry by commencing an action in Wright County District Court to establish the breach of the condition subsequent. If the Grantor exercises its right of reentry and establishes a breach of the condition subsequent, title to and the right to possession of the Redevelopment Property and title to all improvements located thereon reverts to the Grantor, and the Grantee is not entitled to any compensation from the City or the Grantor for the value of the Redevelopment Property or any improvements the Grantee has made thereto except as specifically provided in the Development Agreement.

The Grantee shall notify the Grantor when the Grantee has completed, or caused to be completed, construction of the foundation of the Minimum Improvements on the Redevelopment Property in accordance with permits issued by the Grantor. The Grantor shall, within 20 days after such notification, inspect the Redevelopment Property in order to determine whether the Grantee has completed construction of the foundation of the Minimum Improvements in accordance with permits issued by the Grantor. If the Grantor determines the Grantee has completed construction of the foundation of the Minimum Improvements in accordance with permits issued by the Grantor, the Grantor will furnish to the Grantee a Certificate of Release in the form attached hereto as Exhibit B, or as may otherwise be required by the County Recorders’ Office, releasing the Redevelopment Property from the right-of-reentry

The Certificate of Release issued for the Redevelopment Property shall conclusively satisfy and terminate the right of reentry of the Grantor with respect to the Redevelopment Property in this Quit Claim Deed or the Development Agreement. The Grantee must record the Certificate of

Release in the proper County land records.

## EXHIBIT B

### TO QUIT CLAIM DEED EXECUTED BY THE CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY, GRANTOR, IN FAVOR OF DEEPHAVEN DEVELOPMENT LLC, GRANTEE. CERTIFICATE OF RELEASE

#### Recitals.

Recital One. Deephaven Development LLC, a Minnesota limited liability company (the “Grantee”) is the owner of the real property legally described in Exhibit A hereto (the “Development Property”).

Recital Two. Grantee acquired title to the Redevelopment Property subject to a right of reentry for breach of conditions subsequent in favor of the Grantor (the “Right of Reentry”) set forth in a deed from the City of Monticello Economic Development Authority (the “Grantor”) dated \_\_\_\_\_, 2022 and recorded in the office of the Wright County Registrar of Titles /Wright County Recorder on \_\_\_\_\_ as Document No. \_\_\_\_\_ (the “Deed”).

Recital Three. The Grantee is a party to a Purchase and Development Contract between the Grantor and the Grantee, dated August \_\_, 2022 (such agreement, as the same may be modified or amended, the “Development Agreement”) (capitalized terms utilized herein and not separately defined shall have the meanings ascribed to them in the Development Agreement).

Recital Four. Pursuant to the Development Agreement the Grantee is obligated to have completed, or caused to be completed, by June 15, 2023, construction of the foundation of the Minimum Improvements in accordance with permits issued by the Grantor.

Recital Five. The Grantor’s Right of Reentry would be triggered by the Grantee’s failure to have completed, or caused to be completed, by June 15, 2023, construction of the foundation of the Minimum Improvements in accordance with permits issued by the City of Monticello, Minnesota.

Recital Six. The Grantee has represented to the Grantor that the Grantee has completed, by June 15, 2023, construction of the foundation of the Minimum Improvements in accordance with permits issued by the Grantor and has requested this Certificate of Release from the Grantor.

Certificate of Release. The Grantor hereby certifies that the Grantee has satisfied its obligations with respect to completing, or causing to be completed, by June 15, 2023, construction of the foundation of the Minimum Improvements in accordance with permits issued by the Grantor. The Grantor further acknowledges and agrees that the Redevelopment Property is released from the Right of Reentry.

Modification of Development Agreement. Section 3.8 of the Development Agreement is hereby

deleted in its entirety.

IN WITNESS WHEREOF, the Grantor has caused this certificate to be duly executed on its behalf this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Its: President

By: \_\_\_\_\_  
Its: Executive Director

STATE OF MINNESOTA  
COUNTY OF WRIGHT

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as President and by \_\_\_\_\_, as Executive Director of the City of Monticello Economic Development Authority, a public body corporate and politic under the Constitution and laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
*Notary Public*

DRAFTED BY:  
Kennedy & Graven, Chartered (GAF)  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402



EXHIBIT A  
TO CERTIFICATE OF RELEASE  
LEGAL DESCRIPTION OF REDEVELOPMENT PROPERTY

The real property in the City of Monticello, County of Wright, State of Minnesota, legally described as follows:

[INSERT]

**SCHEDULE C**

**PURCHASE PRICE NOTE**

**Dated** \_\_\_\_\_, **2022**

Deephaven Development LLC, a Minnesota limited liability company (the “Developer”), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay, solely from Purchase Price Note Pledged Tax Increment as provided herein, to the City of Monticello Economic Development Authority (the “EDA”) the principal sum of One Million Three Hundred Fifty One Thousand Six Hundred Seventeen and NO/100 Dollars (\$1,351,617.00).

The principal amount of this Purchase Price Note (the “Note”) shall equal, from time to time, the principal amount stated above, as reduced to the extent that such principal shall have been paid in whole or in part pursuant to the terms hereof. This Note is issued pursuant to that certain Purchase and Development Contract, dated as of \_\_\_\_\_, 2022, as the same may be amended from time to time (the “Development Agreement”), by and between the EDA and the Redeveloper. This Note bears interest until paid at a rate equal to 3.00% per annum (computed on the basis of a 360-day year, of twelve 30-day months).

The Redeveloper acknowledges that the EDA will credit Purchase Price Note Pledged Tax Increment (as defined in the Development Agreement) to the payment of this Note pursuant to the Purchase Price Loan (as defined in the Development Agreement). If, as of the termination date of the TIF District (as defined in the Assistance Agreement), the EDA has received Purchase Price Note Pledged Tax Increments available for the payment of this Note in an amount less than \$1,351,617.00 plus accrued interest thereon, the EDA will forgive the remaining principal amount of this Note plus accrued interest thereon.

This Note is prepayable at any time without penalty and the EDA may use apply other EDA funds to the prepayment of this Note.

IN WITNESS WHEREOF, Deephaven Development LLC, has caused this Note to be executed and delivered as of the date first written above.

**DEEPHAVEN DEVELOPMENT LLC**

A Minnesota limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SCHEDULE D  
FORM OF CERTIFICATE OF COMPLETION**

**CERTIFICATE OF COMPLETION**

WHEREAS, the City of Monticello Economic Development Authority (the “Authority”) and Deephaven Development LLC (“Developer”) entered into a certain Purchase and Development Contract dated August \_\_, 2022 (the “Contract”), recorded at the office of the County Recorder of Wright County as Document No. \_\_\_\_\_; and

WHEREAS, the Contract contains certain covenants and restrictions set forth in Articles III and IV thereof related to constructing certain Minimum Improvements; and

WHEREAS, the Redeveloper has performed said covenants and conditions insofar as it is able in a manner deemed sufficient by the Authority to permit the execution and recording of this certification;

NOW, THEREFORE, this is to certify that all construction and other physical improvements related to the Minimum Improvements specified to be done and made by the Redeveloper have been completed and the agreements and covenants in Articles III and IV of the Contract relating to such construction have been performed by the Redeveloper, and this Certificate is a conclusive determination of the satisfactory termination of the covenants and conditions of Articles III and IV of the Contract related to completion of the Minimum Improvements, but any other covenants in the Contract shall remain in full force and effect.

Dated: \_\_\_\_\_, 20\_\_.

CITY OF MONTICELLO ECONOMIC  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Authority Representative

STATE OF MINNESOTA )  
 ) SS.  
COUNTY OF WRIGHT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Monticello  
Economic Development Authority, a public body corporate and politic under the laws of the State  
of Minnesota, on behalf of the authority.

\_\_\_\_\_  
Notary Public

This document was drafted by:  
KENNEDY & GRAVEN, Chartered (GAF)  
150 South 5th Street, Suite 700  
Minneapolis, MN 55402  
Telephone: (612) 337-9300

(Signature page to Certificate of Completion)

## SCHEDULE E

### AUTHORIZING RESOLUTION

#### CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY

#### RESOLUTION AWARDING THE SALE OF, AND PROVIDING THE FORM, TERMS, COVENANTS AND DIRECTIONS FOR THE ISSUANCE OF A TAX INCREMENT REVENUE NOTE TO DEEPHAVEN DEVELOPMENT LLC AND APPROVING A PURCHASE AND DEVELOPMENT CONTRACT WITH DEEPHAVEN DEVELOPMENT LLC INCLUDING THE CONVEYANCE OF LAND AND APPROVING GRANT AND BUSINESS SUBSIDY AGREEMENT THEREIN

BE IT RESOLVED BY the Board of Commissioners (“Board”) of the City of Monticello Economic Development Authority, Monticello, Minnesota (the “Authority”) as follows:

#### Section 1. Recitals.

1.01. Authorization. The Authority and the City of Monticello, Minnesota (the “City”) have approved the establishment of its Tax Increment Financing (Redevelopment) District No. 1-45 ((the “TIF District”), within the Central Monticello Redevelopment Project No. 1 (“Redevelopment Project”) and have adopted a tax increment financing plan therefore for the purpose of financing certain public improvements within the Redevelopment Project.

1.02. To facilitate development of certain property in the TIF District, the Authority proposes to enter into a Purchase and Development Contract (the “Agreement”) with Deephaven Development LLC, a Minnesota limited liability company, or an affiliate thereof or entity related thereto (the “Redeveloper”), under which among other things the Authority will convey to the Redeveloper, certain property described in Exhibit A attached hereto (the “Redevelopment Property”) at a cost below market value in order for the Redeveloper to construct an mixed-use five-story building located on the Redevelopment Property that will include approximately 87 rental housing units and 27,342 square feet of commercial retail and office space, with approximately 83 lower-level parking spaces and 114 adjacent off-street parking stalls (the “Minimum Improvements”).

1.03. The Authority proposes to sell the Redevelopment Property to the Redeveloper at the price of \$1,484,100 which will be paid from cash in the amount of \$1.00, and a land write down from the Authority in the amount of \$132,482 (the “Land Write Down”), and a Purchase Price Note (the “Purchase Price Note”) from the Redeveloper in the amount of \$1,351,617.00 which will be repaid from available tax increment generated by the Redevelopment Property in accordance with the Agreement. In addition, the Authority proposes to reimburse the Redeveloper for certain public redevelopment costs in the amount not to exceed \$2,867,954 through the issuance of a pay as you go

tax increment financing note (the “TIF Note”) and in an amount not to exceed \$367,400 through the provision of a grant (the “Authority Grant”), subject to the terms and conditions set forth in the Agreement. Finally, the Authority also proposes to reimburse the Redeveloper for a portion of the demolition and hazardous materials removal work on the Redevelopment Property in an amount not to exceed \$517,500 (the “DEED Grant”) pursuant to a Redevelopment Grant Contract Agreement number RDGP-22-0009-o-FY22, effective as of April 1, 2022, between the Authority and the State of Minnesota, acting through the Department of Employment and Economic Development, Business and Community Development.

1.04. The Purchase Price Note, the Land Write Down the TIF Note, the Authority Grant, and the DEED Grant constitute a “business subsidy” exceeding \$150,000 within the meaning of Minnesota Statutes, Section 116J.993 to 116J.995, as amended (the “Business Subsidy Act”), and the Agreement includes a “business subsidy agreement” as required under the Business Subsidy Act.

1.05. On the date hereof, the Authority conducted a duly noticed public hearing regarding the conveyance of the Redevelopment Property to the Redeveloper pursuant to the Agreement and the business subsidy agreement, at which all interested parties were given an opportunity to be heard, and hereby finds that the execution of the Agreement and performance of the Authority’s obligations thereunder, including the conveyance of the Redevelopment Property to the Redeveloper and the business subsidy agreement, are in the best interest of the City and its residents.

## Section 2. Agreement Containing Land Sale and Business Subsidy Approved.

2.01 The Board approves the Agreement in substantially the form presented to the Board, together with any related documents necessary in connection therewith, including without limitation the business subsidy agreement provided therein, all documents, exhibits, certifications, or consents referenced in or attached to the Agreement including without limitation the Deed and any documents required by the title company relating to the conveyance of property (all as defined in the Agreement) (the “Development Documents”). The Board hereby approves the conveyance of the Development Property to the Redeveloper in accordance with the terms of the Agreement.

2.02. The Board hereby authorizes the President and Executive Director, in their discretion and at such time, if any, as they may deem appropriate, to execute the Development Documents on behalf of the Authority, and to carry out, on behalf of the Authority, the Authority’s obligations thereunder when all conditions precedent thereto have been satisfied. The Development Documents shall be in substantially the form on file with the Authority and the approval hereby given to the Development Documents includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by legal counsel to the Authority and by the officers authorized herein to execute said documents prior to their execution; and said officers are hereby authorized to approve said changes on behalf of the Authority. The execution of any instrument by the appropriate officers of the Authority herein authorized shall be conclusive evidence of the approval of such document in accordance with the terms hereof. This resolution shall not constitute an offer and the Development Documents shall not be effective until the date of execution thereof as provided herein.

2.03. In the event of absence or disability of the officers, any of the documents authorized by this resolution to be executed may be executed without further act or authorization of the Board by any duly designated acting official, or by such other officer or officers of the Board as, in the opinion of the City Attorney, may act in their behalf. Upon execution and delivery of the Development Documents, the officers and employees of the Board are hereby authorized and directed to take or cause to be taken such actions as may be necessary on behalf of the Board to implement the Development Documents, including without limitation the issuance of tax increment revenue obligations thereunder when all conditions precedent thereto have been satisfied and reserving funds for the payment thereof in the applicable tax increment accounts and the crediting of tax increments to the payment of the Purchase Price Note when all conditions precedent thereto have been satisfied.

Section 3. TIF Note Authorized and Approved.

3.01. The Authority hereby approves issuance of the TIF Note pursuant to the Agreement. The TIF Note shall be issued in the maximum aggregate principal amount of \$2,867,954 to the Redeveloper in consideration of certain eligible costs incurred by the Redeveloper under the Agreement, shall be dated the date of delivery thereof, and shall bear interest at a rate of 5.15%. The TIF Note will be issued in a single series designated Taxable Tax Increment Revenue Note (Block 52 Project) issued in the principal amount of \$2,867,954 to reimburse the Redeveloper for certain costs in accordance with the Agreement. The TIF Note is secured by TIF Note Available Tax Increment, as further described in the form of the TIF Note attached hereto as Exhibit B. The Authority hereby delegates to the Executive Director the determination of the date on which the TIF Note is to be delivered, in accordance with the Agreement.

Section 4. Form of TIF Note; Terms and Delivery of TIF Note.

4.01 The TIF Note shall be in substantially the form attached hereto as Exhibit B, with the blanks to be properly filled in and the principal and interest rate amounts adjusted as of the date of issue.

4.02. Denomination, Payment. The TIF Note shall be issued as a single typewritten note numbered R-1. The TIF Note shall be issuable only in fully registered form. Principal of and interest on the TIF Note shall be payable by check or draft issued by the Registrar described herein.

4.03. Dates; Interest Payment Dates. Principal of and interest on the TIF Note shall be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date, whether or not such day is a business day.

4.04. Registration. The Authority hereby appoints the City Finance Director to perform the functions of registrar, transfer agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the Authority and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep at its office a bond register in which the Registrar shall provide for the registration of ownership of the TIF Note and the registration of transfers and exchanges of the TIF Note.

(b) Transfer of TIF Note. Upon surrender for transfer of the TIF Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, and consent to such transfer by the Authority if required pursuant to the Agreement, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new TIF Note of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

(c) Cancellation. The TIF Note surrendered upon any transfer shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the Authority.

(d) Improper or Unauthorized Transfer. When the TIF Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is reasonably satisfied that the endorsement on such TIF Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(e) Persons Deemed Owners. The Authority and the Registrar may treat the person in whose name the TIF Note is at any time registered in the bond register as the absolute owner of the TIF Note, whether the TIF Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such TIF Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such TIF Note to the extent of the sum or sums so paid.

(f) Taxes, Fees and Charges. For every transfer or exchange of the TIF Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.

(g) Mutilated, Lost, Stolen or Destroyed TIF Note. In case any TIF Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new TIF Note of like amount, Termination Dates and tenor in exchange and substitution for and upon cancellation of such mutilated TIF Note or in lieu of and in substitution for such TIF Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such TIF Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such



cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed TIF Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new TIF Note prior to payment.

4.05. Preparation and Delivery. The TIF Note shall be prepared under the direction of the Executive Director and shall be executed on behalf of the Authority by the signatures of its President and Executive Director. In case any officer whose signature shall appear on the TIF Note shall cease to be such officer before the delivery of the TIF Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the TIF Note has been so executed, it shall be delivered by the Executive Director to the owner thereof in accordance with the Agreement.

Section 5. Security Provisions.

5.01. Pledge. The Authority hereby pledges to the payment of the principal of and interest on the TIF Note all TIF Note Available Tax Increment as defined in the TIF Note. TIF Note Available Tax Increment shall be applied to payment of the principal of and interest on the TIF Note in accordance with the terms of the form of TIF Note set forth in Section 2 of this resolution.

Section 6. Certification of Proceedings.

6.01. Certification of Proceedings. The officers of the Authority are hereby authorized and directed to prepare and furnish to the owner of the TIF Note certified copies of all proceedings and records of the Authority, and such other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the TIF Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the Authority as to the facts recited therein.

Section 7. Effective Date. This resolution shall be effective upon approval.

Approved by the Board of Commissioners of the City of Monticello Economic Development Authority on August 10, 2022.

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Executive Director

## EXHIBIT A

### DESCRIPTION OF REDEVELOPMENT PROPERTY

The real property in the City of Monticello, County of Wright, State of Minnesota, described as the following addresses:

101 W Broadway Street, 107 W Broadway Street, 113 W Broadway Street, 121 W Broadway Street, 103 Pine Street, 112 W River Street

That part of Block 52, TOWNSITE OF MONTICELLO, Wright County, Minnesota lying southeasterly of the following described line: Commencing at the most northerly corner of said Block 52; thence southeasterly along the northeasterly line of said Block 52, a distance of 183.88 feet to the northwesterly line of the southeasterly 15.00 feet of Lot 13, said Block 52, being the point of beginning of the line to be described; thence southwesterly along said northwesterly line a distance of 94.52 feet; thence northwesterly parallel with the southwesterly line of said Block 52, a distance of 21.83 feet; thence southwesterly parallel with the southeasterly line of said Block 52, a distance of 107.48 feet; thence northwesterly parallel with the southwesterly line of said Block 52, a distance of 82.85 feet to the westerly line of the Easterly 20.00 feet of Lot 3, said Block 52; thence southwesterly along said westerly line, a distance of 128.50 feet to the southwesterly line of said Block 52 and said line there terminating.

To be replatted as follows:

Lot 2, Block 1, Block 52 First Addition

EXHIBIT B

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF WRIGHT  
CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY

No. R-1

\$2,867,954.00

TAXABLE TAX INCREMENT REVENUE NOTE  
SERIES 20\_\_  
(BLOCK 52 PROJECT)

<u>Rate</u>	<u>Date</u> <u>of Original Issue</u>
5.15%	_____, 20__

The City of Monticello Economic Development Authority (the “Authority”) for value received, certifies that it is indebted and hereby promises to pay to Deephaven Development LLC, a Minnesota limited liability company, or registered assigns (the “Owner”), the principal sum of \$2,867,954.00 and to pay interest thereon at the rate of 5.15% per annum, solely from the sources and to the extent set forth herein. Capitalized terms shall have the meanings provided in the Purchase and Development Contract between the Authority and the Owner, dated as of \_\_\_\_\_, 2022 (the “Agreement”), unless the context requires otherwise.

1. Payments. Principal and interest (the “Payments”) shall be paid on August 1, 2025 and each February 1 and August 1 thereafter (“Payment Dates”) to and including February 1, 2051 (the “Maturity Date”) in the amounts and from the sources set forth in Section 3 herein. Payments shall be applied first to accrued interest, and then to unpaid principal. This Note shall be paid solely from TIF Note Available Tax Increment (as hereinafter defined). TIF Note Available Tax Increment will not include any Tax Increment (as defined the Agreement) if, as of any Payment Date, there is an uncured Event of Default under the Agreement.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon sixty (60) days written notice to the Authority. Payments on this TIF Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Interest at the rate stated herein shall accrue on the unpaid principal, commencing on the date of original issue. The Note shall bear simple non-compounding interest.

3. TIF Note Available Tax Increment. (a) Payments on this TIF Note are payable on each Payment Date solely from and in the amount of TIF Note Available Tax Increment, which shall mean:

(i) on Payment Dates August 1, 2025 through February 1, 2030, one hundred percent (100%) of the Tax Increment attributable to the Minimum Improvements and Redevelopment Property that is actually paid to the Authority by Wright County in the six (6) months preceding the Payment Date; and

(ii) on Payment Dates August 1, 2030 through February 1, 2051, seventy-five percent (75%) of the Tax Increment attributable to the Minimum Improvements and Redevelopment Property that is actually paid to the Authority by Wright County in the six (6) months preceding the Payment Date.

(b) The Authority shall have no obligation to pay principal of and interest on this TIF Note on each Payment Date from any source other than TIF Note Available Tax Increment and the failure of the Authority to pay the entire amount of principal or interest on this TIF Note on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of TIF Note Available Tax Increment. The Authority shall have no obligation to pay any unpaid balance of principal or accrued interest that may remain after the final Payment on the Maturity Date.

4. Default. The Authority's payment obligations shall be subject to Sections 9.1 and 9.2 of the Agreement and are further subject to the conditions that (i) no Event of Default under Section 9.1 of the Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder; and (ii) the Agreement and this TIF Note shall not have been terminated in accordance with Section 9.2 of the Agreement. Any such suspended and unpaid amounts shall become payable, without interest accruing thereon in the meantime, if this TIF Note has not been terminated in accordance with Section 9.2 of the Agreement and said Event of Default shall thereafter have been cured in accordance with Section 9.2. If pursuant to the occurrence of an Event of Default under the Agreement the Authority elects, in accordance with the Agreement, to cancel and rescind the Agreement and/or this TIF Note, the Authority shall have no further obligation under this TIF Note whatsoever. Reference is hereby made to all of the provisions of the Agreement, for a fuller statement of the rights and obligations of the Authority to pay the principal of this TIF Note and the interest thereon, and said provisions are hereby incorporated into this TIF Note as though set out in full herein.

5. Prepayment. The principal sum and all accrued interest payable under this TIF are prepayable at the option of the Authority at any time.

6. Nature of Obligation. This TIF Note is one of an issue in the total principal amount of \$2,867,954, issued to aid in financing certain Public Redevelopment Costs of a Redevelopment Project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.090 through 469.1081, as amended, and Section 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Authority on July 13, 2022, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.1794, as amended. This TIF Note is a limited obligation of the Authority which is payable solely from TIF Note Available Tax Increment pledged to the payment hereof under the Resolution. This TIF Note and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political

subdivision thereof, including, without limitation, the Authority or the City of Monticello, Minnesota (the "City"). Neither the State of Minnesota, the City, the Authority nor any political subdivision thereof shall be obligated to pay the principal of or interest on this TIF Note or other costs incident hereto except out of TIF Note Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota, the City, the Authority, or any political subdivision thereof is pledged to the payment of the principal of or interest on this TIF Note or other costs incident hereto.

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE TIF NOTE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

7. Registration and Transfer. This TIF Note is issuable only as a fully registered TIF Note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this TIF Note is transferable upon the books of the Authority kept for that purpose at the principal office of the Executive Director, by the Owner hereof in person or by such Owner's attorney duly authorized in writing, upon surrender of this TIF Note together with a written instrument of transfer satisfactory to the Authority, duly executed by the Owner. Upon such transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the Authority with respect to such transfer or exchange, there will be issued in the name of the transferee a new TIF Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates, within 15 days after the delivery by the Owner of its request and approval of such request by the Authority if required under the Agreement.

Except as otherwise provided in the Agreement, this TIF Note shall not be transferred to any person or entity, unless the Authority has provided written consent to such transfer and the Authority is provided with an investment letter in a form satisfactory to the Authority. The Registrar may close the books for registration of any transfer after the fifteenth (15<sup>th</sup>) day of the month preceding each Payment Date and until such Payment Date.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this TIF Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Board of Commissioners of the City of Monticello Economic Development Authority have caused this TIF Note to be executed with the manual signatures of its President and Executive Director, all as of the Date of Original Issue specified above.

CITY OF MONTICELLO ECONOMIC  
DEVELOPMENT AUTHORITY

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
President

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within TIF Note is registered in the bond register of the City Finance Director, in the name of the person last listed below.

Date of Registration	Registered Owner	Signature of Executive Director
_____, 20__	Deephaven Development LLC Federal Tax I.D No _____	_____

**SCHEDULE F**

**DISBURSEMENT REQUEST**

TO: City of Monticello Economic Development Authority  
505 Walnut Street, Suite 1  
Monticello, Minnesota 55362  
Attn: Executive Director

DISBURSEMENT DIRECTION

The undersigned authorized representative (the “Authorized Representative”) of Deephaven Development LLC, a Minnesota limited liability company, (the “Redeveloper”), hereby authorizes and requests you to disburse from proceeds of the DEED Grant in accordance with the terms of the Purchase and Development Contract, dated \_\_\_\_\_, 2022 (the “Agreement”), between the City of Monticello Economic Development Authority (“Authority”) and the Redeveloper, the following amount to the following person and for the following proper DEED Redevelopment Costs:

- 1. Amount: \_\_\_\_\_
- 2. Payee: \_\_\_\_\_
- 3. Purpose: \_\_\_\_\_
- 4. Grant Source: \_\_\_\_\_

all as defined and provided in the Agreement. The undersigned further certifies to the Authority that (a) none of the items for which the payment is proposed to be made has formed the basis for any payment previously made under Article III the Agreement (or before the date of the Agreement); (b) that each item for which the payment is proposed is an DEED Redevelopment Cost, eligible for funding from the grant source identified above; and (c) the Redeveloper reasonably anticipates completion of the DEED Redevelopment Costs and the Minimum Improvements in accordance with the terms of the Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Redeveloper’s Authorized Representative

**SCHEDULE G**

**AUTHORITY GRANT COST**

Estimated Costs for the Authority Grant Items are shown below.  
The total Authority Grant is not to exceed (capped at) **\$367,400**. The Redeveloper shall be responsible for all costs in excess of \$367,400.

Parking Paving	\$80,000.00
Parking Lot Excavation	\$80,000.00
Internal Sidewalk and Landscaping	\$80,000.00
Street Sidewalks	\$55,000.00
Plaza Concrete and Landscaping	\$55,000.00
ROW Landscape/Streetscape	\$55,000.00
Environmental Study – Phase II	\$15,400
	<hr/>
	\$420,400



## EXHIBIT H

### FORM OF MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT (the “Agreement”), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2022, is between the CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY (the “EDA”) and DEEPHAVEN DEVELOPMENT LLC, a limited liability company (the “Redeveloper”).

#### WITNESSETH

WHEREAS, on or before the date hereof the EDA and Redeveloper have entered into a Purchase and Development Contract dated as of \_\_\_\_\_, 2022 (the “Development Agreement”) regarding certain real property located in the City of Monticello, Minnesota (the “City”) the description of which is attached hereto as Exhibit A (the “Redevelopment Property”); and

WHEREAS, it is contemplated that pursuant to the Development Agreement, the Redeveloper will undertake the construction of an approximately constructing a mixed-use five-story building on the Redevelopment Property that will include approximately 87 rental housing units and 27,342 square feet of commercial retail and office space, with approximately 83 lower-level parking spaces and 114 adjacent off-street parking stalls (the “Project”), in accordance with plans and specifications approved by the EDA; and

WHEREAS, the EDA and Redeveloper desire to establish a minimum market value for the Redevelopment Property and the improvements constructed or to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177; and

WHEREAS, the Redeveloper has acquired the Redevelopment Property; and

WHEREAS, the EDA and the County Assessor of Wright County have reviewed plans and specifications for the Project; and

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each to the other, do hereby agree as follows:

1. As of January 2, 2024, the minimum market value, which shall be assessed for the Redevelopment Property for taxes payable 2025 and in each year thereafter, shall not be less than \$18,500,000.

2. The minimum market values herein established shall be of no further force and effect after assessment on or before January 31, 2050, for taxes payable in 2051; provided, however, this Agreement shall terminate on such date as the TIF District (as defined in the Development Agreement) is decertified (the “Termination Date”).

3. This Agreement shall be recorded by the EDA with the County Recorder of Wright County, Minnesota and in the Office of the Wright County Registrar of Titles. The Redeveloper shall pay all costs of recording.

4. Neither the preambles nor provisions of this Agreement are intended to, or shall they be construed as, modifying the terms of the Development Agreement between the EDA and the Redeveloper.

5. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties, shall be governed by and interpreted pursuant to Minnesota law, and may be executed in counterparts, each of which shall constitute an original hereof and all of which shall constitute one and the same instrument.

This Instrument Drafted By:  
Kennedy & Graven, Chartered (GAF)  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402

IN WITNESS WHEREOF, the EDA and the Redeveloper have caused this Minimum Assessment Agreement to be executed in their names and on their behalf all as of the date set forth above.

CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Executive Director

STATE OF MINNESOTA )  
 ) SS.  
COUNTY OF WRIGHT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by \_\_\_\_\_, the President of the City of Monticello Economic Development Authority, a body corporate and politic organized and existing under the Constitution and laws of the State of Minnesota, on behalf of said Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
 ) SS.  
COUNTY OF WRIGHT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by \_\_\_\_\_, the Executive Director of the City of Monticello Economic Development Authority, a body corporate and politic organized and existing under the Constitution and laws of the State of Minnesota, on behalf of said Authority.

\_\_\_\_\_  
Notary Public



CERTIFICATION BY COUNTY ASSESSOR

The undersigned, having reviewed the Assessment Agreement dated as of \_\_\_\_\_, 2022 by and City of Monticello Economic Development Authority and Deephaven Development LLC, the plans and specifications for the Project, as defined in the foregoing Minimum Assessment Agreement, and the market value currently assigned to land upon which the improvements are to be constructed and being of the opinion that the minimum market value contained in the Minimum Assessment Agreement appears reasonable, hereby certifies as follows:

The undersigned Assessor, being legally responsible for the assessment of the above described property, hereby certifies that the minimum market value of \$18,500,000 commencing as of January 2, 2024, assigned to such land and improvements is reasonable.

\_\_\_\_\_  
County Assessor for Wright County

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF WRIGHT    )

\_\_\_\_\_  
This instrument was acknowledged before me on \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, the County Assessor of Wright County.

\_\_\_\_\_  
Notary Public

Exhibit A to Minimum Assessment Agreement

Legal Description of Redevelopment Property

The property located in the City of Monticello, Wright County, Minnesota described as:

**[INSERT LEGAL DESCRIPTION]**