

## RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this “Agreement”) is made and entered into as of this \_\_\_\_ day of January, 2024, by and between the CITY OF GRAND RAPIDS, MINNESOTA, a municipal corporation and political subdivision under the laws of the State of Minnesota (the “City”), and SE 7th AVE DISTRIBUTION LLC, a Minnesota limited liability company (“Developer”).

### RECITALS

- A. The City manages and maintains certain property jointly owned as by the City and Itasca County (the “County”) legally described in Exhibit A attached hereto (the “Property”) pursuant to a Grand Rapids/Itasca County Airport Joint Powers Cooperative Agreement (“Cooperative Agreement”).
- B. Pursuant to Section 1 of the Cooperative Agreement, the City is responsible for the operation, maintenance, and management of the Property.
- D. The City has entered or plans to enter into a Purchase Agreement with the Grand Rapids Economic Development Authority, a public body corporate and politic under the laws of the State of Minnesota (the “EDA”), for the EDA to acquire the Property. The EDA has entered or plans to enter into a Purchase Agreement with Developer (the “Developer Purchase Agreement”), for the Developer to acquire the Property from the EDA. Prior to the Closing Date (as defined in the Developer Purchase Agreement), the City must remove certain restrictions from the Property, and to remove those restrictions, the City must receive approval from the Federal Aviation Administration (the “FAA”).
- E. Developer entered into the Development Assistance Agreement, (the “Contract”), with the City and EDA to develop the Project (as defined in the Contract) on the Property. Developer would like to begin work on the Property pursuant to the Contract.
- F. The City has agreed to allow Developer and its employees, officers, contractors, subcontractors, representatives, and agents on the Property in order to commence site clearance and grading at the Developer’s sole risk and expense (the “Site Preparation Activities”).

### TERMS

The City and Developer agree as follows:

1. Right of Entry. The City hereby agrees to permit Developer and its employees, officers, contractors, subcontractors, and agents to enter upon the Property for the purpose of conducting the Site Preparation Activities. The Site Preparation Activities shall be paid for by Developer and shall be conducted in accordance with the Contract. Developer shall undertake the Site Preparation Activities in conformity with all applicable federal, state and local laws, ordinances, rules and regulations. Under no circumstances shall Developer commence construction of any buildings on the Property prior to receipt of a building permit from the City.
2. Scope of Right of Entry. The grant of this right of entry to Developer shall not confer any estate, title, or exclusive possessory rights in the Property upon Developer.
3. Indemnification. Except for any willful misrepresentation or willful or wanton misconduct of the City or the EDA, their agents, officials, and employees, and except for any breach by any of the City or the EDA, their agents, officials, and employees of their obligations under this Agreement, Developer

agrees to indemnify, defend and hold harmless the City and the EDA, their agents, officials, and employees from and against any liens, claims, losses, judgments, causes of actions, costs or expenses, or damages directly attributable by Developer's exercise of its right to enter and conduct the Site Preparation Activities upon the Property.

4. Improvements. The Developer agrees that no building, structure, or other above or below ground obstruction that may interfere with the purposes for which this right of entry is granted may be placed, erected, installed, or permitted upon the Property. The Developer further agrees that, in the event that the terms of this section are violated, the Developer shall correct such violation, at its sole expense, as soon as reasonably practicable following receipt of written notice from the City.

5. [Reserved.]

6. Term. This Agreement shall automatically terminate on July 31, 2024 or upon the closing on the sale of the Property to Developer, whichever occurs first.

7. Insurance. Before commencing any work on the Property, Developer or its subcontractors shall furnish the City and the EDA with certificates of insurance demonstrating that Developer or its subcontractors have obtained commercial general liability and property damage insurance coverage with a liability limit of at least \$1,500,000 and showing the City and the EDA as additional named insureds. Such certificates shall contain a statement that the insurance coverage shall not be changed or canceled without at least 10 days' prior written notice to the City and the EDA. Certificates of insurance shall be signed by an authorized representative of each insurer and all coverage shall be written on policy forms and by insurers acceptable to the City and the EDA.

8. Binding Effect: Modification. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their successors and permitted assigns and may only be modified by written agreement of the parties. This Agreement may not be assigned, transferred, or conveyed by either party without the prior written consent of the other, which consent may be granted in such other party's sole and absolute discretion.

9. Governing Law. The laws of the State of Minnesota shall govern this Agreement.

10. Risk. Developer acknowledges that it is proceeding at its own risk in starting work in advance of the closing on the purchase of the Property, and understands that this Agreement imposes no obligation on the City or the EDA to take any action or do anything that would compromise the City's and the EDA's ability to exercise its legislative discretion.

11. Mechanics' Liens. Developer shall not permit any mechanics', materialmens' or other liens to stand against the Property or any part thereof for work or materials furnished to Developer in connection with the right of entry granted pursuant to this Agreement and Developer agrees to indemnify, defend and hold harmless the City and the EDA from and against the same.

12. Default. If any default is made by Developer in any of the agreements contained in this Agreement which is not cured within thirty (30) days of written notice from the City, it shall be lawful for the City to declare the term ended and to enter the Property either with or without legal process, and to remove Developer or any other person occupying the Property, using such force as may be necessary, without being liable for prosecution, or for damages, and to repossess the Property free and clear of any rights of Developer.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

**CITY OF GRAND RAPIDS, MINNESOTA**

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Administrator

**SE 7TH AVE DISTRIBUTION LLC**

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

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

## **EXHIBIT A**

### **Legal Description of the Property**

An area of land lying over, under, and across the following described property located in Itasca County, Minnesota:

East 330 feet of the South one-half (S $\frac{1}{2}$ ) of the Southeast Quarter, Northeast Quarter (SE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section Thirty-three (33), Township Fifty-five (55), Range Twenty-five (25) west of the Fourth Principal Meridian.