

DEVELOPMENT ASSISTANCE AGREEMENT

BY AND BETWEEN

THE CITY OF GRAND RAPIDS, MINNESOTA,
THE GRAND RAPIDS ECONOMIC DEVELOPMENT AUTHORITY,

AND

SE 7TH AVE DISTRIBUTION LLC

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DEVELOPMENT ASSISTANCE AGREEMENT

THIS DEVELOPMENT ASSISTANCE AGREEMENT (the “Agreement”), made as of the 26th day of October, 2023, by and between THE CITY OF GRAND RAPIDS, MINNESOTA, a municipal corporation and political subdivision organized and existing under the Constitution and laws of the State of Minnesota (the “City”), the GRAND RAPIDS ECONOMIC DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), and SE 7TH AVE DISTRIBUTION LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the City has undertaken a program to promote economic development and job opportunities and to promote the development of land which is underutilized within the City, and in connection therewith, created a development project known as Municipal Development District No. 1 (the “Development District”) and developed a Development Program (the “Development Program”) therefor pursuant to Minnesota Statutes, Sections 469.124 to 469.133, as amended; and

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 to 469.1081 (the “Act”) and was authorized to transact business and exercise its powers by a resolution of the City Council of the City and has undertaken a program to promote economic development and job opportunities and to promote the development of land which is underutilized within the City, and in connection therewith, created a development project known as the EDA Development District (the “EDA Development District”); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the “TIF Act”), the City has created, within the Development District on property legally described in **Exhibit A** attached hereto, Tax Increment Financing District No. 1-14: L & M Supply, qualified as an economic development tax increment financing district (the “TIF District”), and has adopted a Tax Increment Financing Plan therefor (the “TIF Plan”), approved by the City Council of the City (the “City Council”) on September 25, 2023, which provides for the use of tax increment financing in connection with certain development within the Development District and TIF District; and

WHEREAS, in order to achieve the objectives of the Development Program and the TIF Plan, the Developer has requested tax increment financing assistance from the City to finance certain costs of the Project (as hereinafter defined) to be constructed within the TIF District as more particularly set forth in this Agreement; and

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, as amended (the “Tax Abatement Act”), the City has established a Tax Abatement Program (as defined herein); and

WHEREAS, the Developer has also requested tax abatement assistance from the City to finance certain other costs of the Project as more particularly set forth in this Agreement; and

WHEREAS, the Developer has also requested financial assistance in the form of the Land Write Down (as defined herein) from the Authority to finance the acquisition of the Development Property (as defined herein) from the Authority as more particularly set forth in this Agreement; and

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

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

WHEREAS, the City Council of the City (the “City Council”) and the Board of Commissioners of the Authority (the “Board”) have approved this Agreement as a business subsidy agreement under the Business Subsidy Act and have held duly noticed public hearings thereon; and

WHEREAS, the City and the Authority believe that the development of the Project and fulfillment of this Agreement are vital and are in the best interests of the City and the Authority, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

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 others as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Abatement Payment Date means each February 1 and August 1, commencing on the earlier of (i) the February 1 or August 1, whichever is first, following the Final TIF Payment Date and the satisfaction of the conditions set forth in Section 3.3(1) to and including the Final Tax Abatement Payment Date; provided, that if any such Abatement Payment Date should not be a Business Day, the Abatement Payment Date shall be the next succeeding Business Day;

Administrative Costs has the meaning set forth in Section 3.7;

Agreement means this Development Assistance Agreement, as the same may be from time to time modified, amended or supplemented;

Authority means the Grand Rapids Economic Development Authority, a body corporate and politic organized and existing under the laws of the State;

Benefit Date means the date on which a certificate of occupancy is issued by the City for the Project;

Board means the Board of Commissioners of the Authority;

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

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

Certificate of Completion means a Certificate of Completion with respect to the Project executed by the City pursuant to Section 4.4, in substantially the form set forth in **Exhibit E** attached hereto;

City means the City of Grand Rapids, Minnesota;

City Council means the City Council of the City;

City Financial Assistance means the financial assistance to be offered by the City to the Developer through the TIF Plan and the Tax Abatement Program as provided for in Article III of this Agreement in an aggregate principal amount not to exceed \$4,251,782;

Closing Date means individually or collectively as the context implies, the date or dates of the closing on the sale of the Development Property by the Authority to the Developer, pursuant to the Purchase Agreements;

Construction Documents means the following documents, all of which shall be in form and substance acceptable to the City: (a) evidence satisfactory to the City showing that the Project conforms to applicable zoning, subdivision and building code laws and ordinances, including a copy of the building permit for the Project; (b) a copy of the executed standard form of agreement between owner and architect for architectural services for the Project, if any; and (c) a copy of the executed General Contractor's contract for the Project, if any;

Construction Plans means the plans, specifications, drawings and related documents for the construction of the Project which shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building inspector of the City;

County means Itasca County, Minnesota;

Developer means SE 7th Ave Distribution LLC, a Minnesota limited liability company, and its authorized successors and assigns;

Development District means Municipal Development District No. 1, as amended;

Development Program means the Development Program for the Development District, as amended;

Development Property means the real property located in the City and legally described in **Exhibit B** attached to this Agreement;

Event of Default means any of the events described in Section 6.1 hereof;

Final Abatement Payment Date means the earliest of (i) the date on which the entire principal on the Tax Abatement Note has been paid in full; (ii) February 1, 2055; (iii) any earlier date this Agreement or the Tax Abatement Note is terminated or cancelled in accordance with the terms hereof or deemed paid in full; or (v) the date the City cancels the Tax Abatement Note upon a written request for termination from the Developer;

Final TIF Payment Date means the earliest of (i) the date on which the entire principal on the TIF Note has been paid in full; (ii) February 1, 2035; (iii) any earlier date this Agreement or the TIF Note is terminated or cancelled in accordance with the terms hereof or deemed paid in full; (iv) the February 1 following the date the TIF District is terminated in accordance with the TIF Act; or (v) the date the City cancels the TIF Note upon a written request for termination from the Developer;

General Contractor means the general contractor to be chosen by the Developer, in its sole discretion;

Land Write Down means the reduction of the purchase price from fair market value provided to the Developer by the Authority pursuant to the terms of Section 3.4 hereof;

Net Tax Capacity has the meaning provided in Minnesota Statutes, Section 273.13, subdivision 21b, as it may be amended from time to time;

Pledged Tax Abatements mean 100% of the Tax Abatements for the tax-payable years during which payments of Tax Abatements shall be made to the Developer in accordance with Section 3.3 hereof (estimated to commence August 1, 2035 and ending no later than February 1, 2055);

Pledged Tax Increments means for any six-month period, 90% of the Tax Increments received by the City since the previous TIF Payment Date;

Project means the acquisition of the Development Property by the Developer from the Authority and the construction and equipping thereon of an approximately 210,000 square foot warehouse and distribution center to be owned by the Developer and operated by the Tenant in connection with the expansion of an existing business;

Public Development Costs means the public development costs of the Project incurred by the Developer, or its assigns listed in **Exhibit F** attached hereto which the City intends to reimburse partially through the TIF Note and partially through the Tax Abatement Note;

Purchase Agreements means collectively, the Purchase Agreement, dated October 26, 2023, between the Authority and the Developer relating to the portion of the Development Property with the parcel identification numbers 91-033-1410, 91-033-1420, and 91-033-1430 and the Purchase Agreement, to be entered into , between the Authority and the Developer relating to the portion of the Development Property with the parcel identification number 91-033-1406, pursuant to which the Authority has agreed to sell the four parcels that comprise the Development Property to the Developer and the Developer has agreed to purchase the four parcels that comprise the Development Property from the Authority;

State means the State of Minnesota;

Tax Abatements mean a portion of the City's share of annual real estate taxes received by the City with respect to the Development Property in an amount calculated in each tax-payable year as follows: the City tax rate for such tax-payable year multiplied by the difference between the Net Tax Capacity of the Development Property as improved by the Project, as of January 2 in the prior year, less \$12,608 (i.e. the Net Tax Capacity of the Development Property, as established by the County assessor on January 2, 2022 for taxes payable in 2023) and excluding the portion of the Net Tax Capacity attributable to the areawide tax under Minnesota Statutes, Chapter 276A, then abated in accordance with the Tax Abatement Program;

Tax Abatement Act means Minnesota Statutes, Sections 469.1812 through 469.1815, as amended;

Tax Abatement Note means the Taxable Abatement Revenue Note (L & M Supply Project), to be executed by the City and delivered to the Developer pursuant to Section 3.3 hereof, substantially in the form set forth in **Exhibit D** attached hereto;

Tax Abatement Program means the terms set forth in the abatement resolution adopted by the City on September 25, 2023;

Tax Increments means the tax increments derived from the Development Property and the improvements thereon which have been received and are permitted to be retained by the City in accordance with the TIF Act, including without limitation Minnesota Statutes, Section 469.177, as amended;

Tenant means L & M Supply, Inc., a Minnesota corporation, and its authorized successors and assigns;

Termination Date means, with respect to this Agreement, the earliest of: (i) February 1, 2055; (ii) the date that both the TIF Note and the Tax Abatement Note are paid in full; (iii) the date the City cancels both the TIF Note and the Tax Abatement Note upon a written request for termination from the Developer; or (iv) the date the Agreement is cancelled in accordance with the terms hereof;

TIF Act means Minnesota Statutes, Sections 469.174 through 469.1794, as amended;

TIF District means Tax Increment Financing District No. 1-14: L & M, located within the Development District in the City, consisting of the property legally described in **Exhibit A** attached hereto, which was established as an economic development district under the TIF Act;

TIF Note means the Taxable Tax Increment Revenue Note (L & M Supply Project) to be executed by the City and delivered to the Developer pursuant to Section 3.2 hereof, substantially in the form attached hereto as **Exhibit C**; and

TIF Payment Date means each February 1 and August 1, commencing on August 1, 2026 and thereafter to and including the Final TIF Payment Date; provided, that if any such TIF Payment Date should not be a Business Day, the TIF Payment Date shall be the next succeeding Business Day;

TIF Plan means the tax increment financing plan approved for the TIF District;

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which include but are not limited to those which are the direct result of strikes, other labor troubles, unavailability of materials, hazardous materials, terrorism, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a municipal corporation organized and existing under the Constitution and laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The City has taken the actions necessary to establish the TIF District as an “economic development district” within the meaning of Minnesota Statutes, Section 469.174, Subdivision 12.

(3) The Tax Abatement Program was created, adopted and approved in accordance with the terms of the Tax Abatement Act and the City made the findings required by the Tax Abatement Act for the Tax Abatement Program.

(4) The Project contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program and the TIF Plan.

(5) The City will apply for a Wetlands Conservation Act permit on behalf of the Developer.

(6) The City makes no representation or warranty, either express or implied, as to the Development Property or its condition, or that the Development Property shall be suitable for the Developer’s purposes or needs.

Section 2.2 Representations and Warranties of the Authority. The Authority makes the following representations and warranties:

(1) The Authority is a public body corporate and politic organized and existing under the Constitution and laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Authority makes no representation or warranty, either express or implied, as to the Development Property or its condition, or that the Development Property shall be suitable for the Developer’s purposes or needs.

Section 2.3 Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer is a Minnesota limited liability company duly and validly organized and existing in good standing under the laws of the State, and has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and is not in violation of any law of the State.

(2) The Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(3) If and when constructed, the Developer will cause the Project to be constructed in accordance with this Agreement and all City, County, State and federal laws and regulations (including,

but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations including the Americans with Disabilities Act).

(4) Before the Project may be constructed, the Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable City, County, State, and federal laws and regulations.

(5) 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 contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(6) The Developer understands that the City and the Authority may subsidize or encourage other developments in the City, including properties that compete with the Development Property and the Project, and that such subsidies may be more favorable than the terms of this Agreement, and that the City and the Authority have informed the Developer that development of the Development Property will not be favored over the development of other properties.

(7) No member of the City Council, no other officer of the City, no member of the Board or other officer of the Authority has either a direct or indirect financial interest in this Agreement, nor will any member of the City Council, any other officer of the City, any member of the Board or any other officer of the Authority benefit financially from this Agreement within the meaning of Minnesota Statutes, Sections 412.311 and 471.87.

(8) The Developer is not currently in default under any business subsidy agreement with any grantor, as such terms are defined in the Business Subsidy Act.

(9) The Developer did not obtain a building permit for any portion of the Project or for any other improvements on the Property not included in the calculation of the original tax capacity before the date of original approval of the TIF Plan by the City.

(10) The total development costs of the Project are estimated to be approximately \$55,427,035, and the sources of revenue to pay such costs are approximately \$47,496,051, excluding the tax increment assistance, land write down, and tax abatement assistance, and the Developer has been unable to obtain additional private financing for the total development costs.

(11) The proposed development by the Developer hereunder would not occur but for the City Financial Assistance and the Land Write Down being provided by the City and the Authority hereunder.

(12) The Developer represents that although the Tenant is moving its warehouse and distribution from LaPrairie, Minnesota (“LaPrairie”) due to challenges for expanding at its existing site, the Tenant intends to retain its corporate campus in LaPrairie for at least five years from the Benefit Date and the Project will result in a net increase in jobs in the State.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1 Project and Public Development Costs.

(1) The Developer will acquire the Development Property from the Authority in accordance with the terms of the Purchase Agreements and cause the Project to be constructed on the Development Property substantially in conformance with the terms of this Agreement and all local, state, and federal laws and regulations including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations. The City acknowledges that this Agreement is the “Development Assistance Agreement” referred to in, and required as a contingency to closing under, the Purchase Agreements.

(2) The Developer shall, in a timely manner, comply or cause the Tenant to comply with all requirements necessary to obtain, or cause to be obtained, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met for the construction and operation of the Project.

(3) The costs of acquiring, constructing and improving the Project shall be paid by the Developer and the City shall reimburse the Developer for the Public Development Costs in the City Financial Assistance through the issuance of the TIF Note and the Tax Abatement Note as provided herein.

(4) The parties agree that the Public Development Costs to be incurred by the Developer are essential to the successful completion of the Project. The Developer anticipates that the Public Development Costs for the Project will be at least \$4,251,782. The City Financial Assistance shall be made from the Pledged Tax Increments and, if necessary, the Pledged Tax Abatements, but in no event shall the aggregate amount of City Financial Assistance exceed \$4,251,782.

Section 3.2 TIF Note.

(1) The TIF Note will be originally issued to the Developer, as provided in Section 3.2(2), in a principal amount equal to the lesser of (i) \$3,479,084; or (ii) the amount of Public Development Costs actually incurred and shall be dated as of its date of issuance. The principal of the TIF Note and interest thereon shall be payable on a pay-as-you-go basis solely from the Pledged Tax Increments as provided below.

(2) The TIF Note shall be issued, in substantially the form attached hereto as **Exhibit C** and interest will begin to accrue on the TIF Note only when: (A) the Developer shall have submitted written proof and other documentation as may be reasonably satisfactory to the City of the exact nature and amount of the Public Development Costs incurred by the Developer, together with such other information or documentation as may be reasonably necessary and satisfactory to the City to enable the City to substantiate the Developer’s tax increment expenditures for Public Development Costs and/or to comply with its increment reporting obligations to the Commissioner of Revenue, the Office of the State Auditor or other applicable official; (B) the Developer shall have obtained a certificate of occupancy from the City for the Project and a Certificate of Completion as provided in this Agreement; (C) the Developer shall have paid all of the Administrative Costs required to have been paid as of such date in accordance with Section 3.7 hereof; (D) the Developer is in material compliance with each term or provision of this Agreement required to have been satisfied as of such date; and (E) the Developer has signed an Acknowledgement Regarding TIF Note in substantially the form attached to the TIF Note. The documentation provided in accordance with Section 3.2(2)(A) shall include specific invoices for the particular work from the contractor or other

provider and shall include paid invoices, copies of remittances and/or other suitable documentary proofs of the Developer's payment thereof.

(3) Subject to the provisions thereof, the TIF Note shall bear simple, non-compounding interest at the rate equal to 6.50% per annum. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Principal and interest on the TIF Note will be payable on each TIF Payment Date; however, the sole source of funds required to be used for payment of the City's obligations under this Section and correspondingly under the TIF Note shall be the Pledged Tax Increments received in the 6-month period preceding each TIF Payment Date. On each TIF Payment Date the Pledged Tax Increment shall be credited against the accrued interest then due on the TIF Note and then applied to reduce the principal. All Tax Increments in excess of the Pledged Tax Increments necessary to pay the principal and accrued interest on the TIF Note are not subject to this Agreement, and the City retains full discretion as to any authorized application thereof. To the extent that the Pledged Tax Increments are insufficient to pay all amounts otherwise due on the TIF Note on the Final TIF Payment Date, said unpaid amounts shall then cease to be any debt or obligation of the City under the TIF Note. The Parties anticipate that there will be insufficient Pledged Tax Increment to pay the TIF Note in full and that any unpaid amount will be paid through the issuance of the Tax Abatement Note to the extent such funds are available. No interest will accrue on the TIF Note during any period in which payments have been suspended pursuant to Section 5.1 hereof.

(4) The TIF Note shall be a special and limited obligation of the City and not a general obligation of the City, and only Pledged Tax Increments shall be used to pay the principal of and interest on the TIF Note.

(5) The Developer further acknowledges that estimates of Tax Increments and Pledged Tax Increments prepared by the City or its financial advisors in connection with the TIF District or this Agreement are for the benefit of the City, and are not intended as representations on which the Developer may rely. The Developer further acknowledges that if development of the Project is delayed or not completed, the effect of such delay or failure to complete may be to reduce the amount of the Tax Increment available to pay the TIF Note.

(6) The City's obligation to make payments on the TIF Note on any TIF Payment Date or any date thereafter shall be conditioned upon the requirement (A) 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, (B) this Agreement shall not have been terminated pursuant to Section 5.2, and (C) all conditions set forth in Section 3.2(2) have been satisfied as of such date.

(7) The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as actually executed, in substantially the form set forth in **Exhibit C** attached hereto. In the event of any conflict between the terms of the TIF Note and the terms of this Section 3.2, the terms of the TIF Note shall govern. The issuance of the TIF Note is pursuant and subject to the terms of this Agreement.

(8) In accordance with Section 469.1763, Subdivision 3 of the TIF Act, conditions for delivery of the TIF Note must be met within 5 years after the date of certification of the TIF District by the County. If the conditions are not satisfied by such date, the City has no further obligations under this Section 3.2.

Section 3.3 Abatement Assistance.

(1) The City shall reimburse the Developer for Public Development Costs actually incurred and paid in connection with the Project in a principal amount equal to the unpaid balance of the City Financial Assistance after the Final TIF Payment Date as calculated by the City's municipal advisor in their

sole discretion (the “Abatement Note Amount”) by issuing the Tax Abatement Note to the Developer in the Abatement Note Amount, in substantially the form set forth in **Exhibit D** attached hereto, only when: (A) the Developer has paid all of the City’s Administrative Costs required to have been paid as of such date in accordance with Section 3.7 hereof, (B) the TIF District has been decertified in accordance with the TIF Act, (C) the City, in its sole discretion, has determined the final Abatement Note Amount; and (D) the shall have submitted written proof and other documentation as may be reasonably satisfactory to the City of the exact nature and amount of the Public Development Costs incurred by the Developer in an amount equal to the Abatement Note Amount (collectively, the “Issue Date”). The documentation provided in accordance with Section 3.3(1)(D) shall include specific invoices for the particular work from the contractor or other provider and shall include paid invoices, copies of remittances and/or other suitable documentary proofs of the Developer’s payment thereof. The Tax Abatement Note shall be secured solely by Pledged Tax Abatements. The Tax Abatement Note shall bear interest at a rate equal to the lesser of the interest rate on the TIF Note or the Prime Rate + 2.00% per annum, as calculated by the City in its sole discretion on date of issuance of the Tax Abatement Date. For purposes hereof, “Prime Rate” means the Prime Rate published in the Midwest Edition of the Wall Street Journal.

(2) On each Abatement Payment Date until the Final Abatement Payment Date, the City will pay the Pledged Tax Abatements to the Developer.

(3) Pledged Tax Abatements will be paid in semi-annual installments equal to the Pledged Tax Abatements actually received by the City in the 6-month period before each Abatement Payment Date. Notwithstanding anything to the contrary herein, the payments of Pledged Tax Abatements under this paragraph in each year may not exceed the Statutory Cap described in paragraph (5) of this Section and total payments of principal and interest under the Tax Abatement Note over its term shall not exceed \$3,734,740, which is the maximum amount of Tax Abatements set forth in the Tax Abatement Program. Payments on each Abatement Payment Date shall be subject to the qualification described in Section 3.6 in the case of a pending Tax Appeal (as defined in Section 3.6).

(4) The Developer acknowledges that:

(a) it has not relied on any representations of the City, or any of its officers, agents, or employees, and has not relied on any opinion of any attorney of the City, as to the federal or State income tax consequences relating to the payment of Tax Abatements under this Section.

(b) the City shall in no event be obligated to make any Tax Abatement payment under this Section to the Developer unless and until (i) all ad valorem property taxes due and payable with respect to the Development Property as of the applicable Abatement Payment Date have been paid in full and (ii) the City has received from the County or any other source as provided by law an ad valorem property tax distribution that includes all or any portion of the Pledged Tax Abatements.

(c) all estimates of Tax Abatements that have been prepared by or on behalf of the City have been done for the City’s use only and neither the City nor its consultants shall have liability to the Developer if the actual Tax Abatements are less than the amounts estimated.

(5) The Developer further acknowledges that the total Pledged Tax Abatements attributable to any calendar year (i.e., the combined payments on Abatement Payment Dates of August 1 and the following February 1) may not exceed the greater of \$200,000 or 10% of the City’s Net Tax Capacity for that tax-payable year (the “Statutory Cap”), all pursuant to Section 469.1813, Subdivision 8 of the Tax Abatement Act. The City has previously utilized abatements under the Tax Abatement Act for other projects in the City. The City reasonably expects that the Statutory Cap will not cause the Pledged Tax Abatements under

this Agreement to be reduced; however, the Developer acknowledges that, during the term of the tax abatement under this Section, if the total abatements payable by the City under the Tax Abatement Act in any year would exceed the Statutory Cap, the Statutory Cap is allocated first to the City's existing abatement obligations, second to the Pledged Tax Abatements payable under this Agreement, and third to any other tax abatements granted after the date of this Agreement.

Section 3.4 Land Write Down.

(1) Pursuant to the terms of the Purchase Agreements, the Authority has agreed to sell the Development Property to the Developer pursuant to the quit claim deeds attached to the Purchase Agreements (the "Deeds"). On the Closing Date, the Authority will forgo receipt of the full fair market value of the Development Property by accepting a reduced purchase price for the Development Property in accordance with the Purchase Agreements. The price that the EDA paid to acquire the Development Property is \$1,031,010 and the Purchase Agreements provide that the Developer will pay \$313,850 for the Development Property. As such, the financial assistance provided to the Developer by selling them the Development Property at the reduced purchase prices listed above is \$717,160 (the "Land Write Down").

(2) In the event that the Certificate of Completion is not issued pursuant to Section 4.4 hereof by June 1, 2025, the Developer shall pay to the Authority the full amount of the Land Write Down within 30 days of written request of the Authority.

(3) The Authority acquired the Development Property from third parties and incurred other due diligence costs related to the acquisition of the Development Property (the "Pre-Conveyance Costs") in an estimated principal amount of \$1,000,000. The Authority has paid such Pre-Conveyance Costs from general funds legally available to it, representing an advance of Authority and City funds that is repayable in whole or in part from tax increment from the TIF District. The Authority will treat the advance described in paragraph (a) as an interfund loan (the "Interfund Loan") within the meaning of Section 469.178, Subdivision 7 of the TIF Act. The total original principal amount of the Interfund Loan is \$1,000,000. The terms of the Interfund Loan are described in interfund loan resolutions which were adopted by the City Council and Board of Commissioners on September 25, 2023. The Authority will pledge Tax Increment to payment of the Interfund Loan. The Interfund Loan shall be payable from Available Tax Increment on a subordinate basis to the payments on the TIF Note.

Section 3.5 Business Subsidy Act. The provisions of this Section constitute the business subsidy agreement for the purposes of the Business Subsidy Act.

(1) *General Terms.* The parties agree and represent to each other as follows:

(a) The subsidy provided to the Developer consists of the City Financial Assistance from the City and the Land Write Down from the Authority.

(b) The public purposes of the subsidy are to facilitate industrial development in the City and the County, help an existing business in the County expand in the City, increase net jobs in the City, the County and the State (including construction jobs), and increase and maintain the tax base of the City, the County and the State.

(c) The goals for the subsidy are to secure development of the Project on the Development Property, to maintain such improvements as a warehouse distribution facility for the time period described in clause (f) below and to create the jobs and wage levels in accordance with Section 3.5(2) hereof.

(d) If the goals described in clause (c) are not met, the Developer must make the payments to the City described in Section 3.5(3).

(e) The subsidy is needed to mitigate the cost of site and building improvements to complete the Project on the Development Property is financially infeasible without public assistance, all as determined upon approval of the TIF Plan and adoption of the Tax Abatement Program.

(f) The Developer shall cause the Tenant to operate the Project as a warehouse and distribution facility for at least 5 years following the Benefit Date.

(g) The Developer's parent company is the Tenant.

(h) In addition to the City Financial Assistance and the Land Write Down, the Developer has received a loan from the Authority from the proceeds of a grant the Authority received from the State of Minnesota Department of Employment and Economic Development's ("DEED") Minnesota Investment Fund Program in the amount of \$1,000,000, a loan from DEED's Job Creation Fund Program in the amount of \$2,000,000 and financing from the IRRR in the amount of \$2,500,000 and tax abatement assistance from the County in the amount of \$1,401,130 in connection with developing the Project on the Development Property.

(2) *Job and Wage Goals.* By the compliance date, which is the date two (2) years after the Benefit Date (the "Compliance Date"), the Developer shall cause the Tenant to (i) create at least 31 new full-time equivalent jobs at the Project and relocate 66 full-time equivalent jobs to the Project, and (ii) cause the average hourly wage of the jobs to be at least \$21.55 per hour, exclusive of benefits. 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 as of the date such wage and job goals are met, despite the Developer's continuing obligations under Sections 3.5(1)(f) and 3.5(4). The City 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 City's legislative discretion regarding this matter.

(3) *Remedies.* If the Developer fails to meet the goals described in Section 3.5(1)(c), the Developer shall repay to the City or the Authority, respectively, upon written demand from the City or the Authority a "pro rata share" of the amounts paid by the City or the Authority to the Developer under the City Financial Assistance and the Land Write Down, as applicable, plus interest on said amount at the implicit price deflator as defined in Minnesota Statutes, Section 275.50, subd. 2, accrued from the Benefit Date to the date of payment. The term "pro rata share" means percentages calculated as follows:

(a) if the failure relates to the number of jobs, the jobs required less the jobs created, divided by the jobs required;

(b) 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;

(c) if the failure relates to maintenance of the Project as a warehouse and distribution facility in accordance with Section 3.5(1)(f), 60 less the number of months of operation as a warehouse and distribution facility (where any month in which the Project is in operation for at least 15 days constitutes a month of operation), commencing on the Benefit Date and ending with the date the Project ceases operation as determined by the City and the Authority divided by 60; and

(d) if more than one of clauses (a) through (c) apply, the sum of the applicable percentages, not to exceed 100%.

Nothing in this Section shall be construed to limit the City's remedies under Section 5.2 hereof. In addition to the remedy described in this Section and any other remedy available to the City for the Developer's failure to meet the goals stated in Section 3.5(1)(c), the Developer agrees and understands that it may not receive a business subsidy from the City 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 Developer satisfies its repayment obligation under this Section, whichever occurs first.

(4) *Reports.* The Developer must submit to the City a written report regarding the business subsidy goals detailed in this Section 3.5 and results by no later than February 1 of each year commencing February 1, 2025 and continuing until the later of (a) the date the goals stated Section 3.5(1)(c) are met; (b) 30 days after expiration of the period described in Section 3.5(1)(f); or (c) if the goals are not met, the date the subsidy is repaid in accordance with Section 3.5(3). The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The City will provide information to the Developer regarding the required forms. If the Developer fails to timely file any report required under this Section, the City will mail the Developer a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, the Developer fails to provide a report, the Developer must pay to the City a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this Section is \$1,000.

Section 3.6 Real Property Taxes. The Developer shall pay or cause to be paid all real property taxes payable with respect to all and any parts of the Development Property acquired and owned by it and any statutory or contractual duty that shall accrue subsequent to the date of its acquisition of title to the Development Property (or part thereof) and until the Developer's obligations have been assumed by any other person pursuant to the provisions of this Agreement or title to the property is vested in another person.

The Developer agrees that prior to the Termination Date, so long as it owns the Development Property:

(1) It will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; provided, however, that "tax statute" does not include any local ordinance or resolution levying a tax; and

(2) It will not seek any tax exemption, tax deferral or abatement, either presently or prospectively or any other State or federal law, of the taxation of real property contained in the Development Property between the date of execution of this Agreement and the Termination Date.

(3) The Developer shall notify the City within 10 days of filing any petition to seek a reduction in market value or property taxes on any portion of the Development Property under any State law (referred to as a "Tax Appeal"). If as of any TIF Payment Date or Abatement Payment Date, any Tax Appeal is pending, the City will continue to make payments on the TIF Note or the Tax Abatement Note but only to the extent that the Tax Increments or Tax Abatements, as applicable, relate to property taxes paid with respect to the market value of the Development Property not being challenged as part of the Tax Appeal and the City will withhold the Tax Increments and Tax Abatements related to property taxes paid with respect to the portion of the market value of the Development Property being challenged as part of the Tax

Appeal, all as determined by the City in its sole discretion. After the Tax Appeal is fully resolved and the amount of Tax Increments or Tax Abatements, as applicable, attributable to the disputed tax payments is finalized, the City will apply any withheld amount to the payment of the TIF Note or the Abatement Note, as applicable, to the extent not reduced as a result of the Tax Appeal promptly.

Section 3.7 Developer to Pay City and Authority's Fees and Expenses. The Developer will pay all of the reasonable Administrative Costs (as defined below) of the City and the Authority and must pay such costs to the City and the Authority within 30 days after receipt of a written invoice from the City or the Authority describing the amount and nature of the costs to be reimbursed. For the purposes of this Agreement, the term "Administrative Costs" means out of pocket costs incurred by the City or the Authority together with staff and consultant (including reasonable legal, financial advisor, etc.) costs of the City or the Authority, all attributable to or incurred in connection with the establishment of the Tax Abatement Program and the TIF District, the drafting and adoption of the TIF Plan, and the review, negotiation and preparation of this Agreement (together with any other agreements entered into between the parties hereto contemporaneously therewith) and the review and approvals of other documents and agreements in connection with the Project, including but not limited to the Purchase Agreement. In addition, certain engineering, environmental advisor, legal, land use, zoning, subdivision and other costs related to the development of the Development Property are required to be paid, or additional funds deposited in escrow, as provided in accordance with the City's planning, zoning, and building fee schedules. The City and the Authority acknowledge that the Developer has deposited \$5,000 with the City toward payment of the Administrative Costs. If such costs exceed such amount, then at any time, but not more often than monthly, the City or the Authority, as applicable, will deliver written notice to Developer setting forth any additional fees and expenses and Developer agrees to pay all fees and expenses within 30 days of the City's or the Authority's, as applicable, written request. Any unused amount of such deposit shall be returned to the Developer.

Section 3.8 Restrictions on Use in Economic Development TIF District.

(1) The TIF District is an economic development tax increment financing district within the meaning of the TIF Act and is subject, among other things, to the limitations of the types of uses permitted within the TIF District specified in section 469.176, subd. 4c of the TIF Act. Prior to the Termination Date, no more than 15 percent of the square footage of the Project may be used for a purpose other than:

- (a) The manufacturing or production of tangible personal property, including processing resulting in the change in condition of the property;
- (b) Warehousing, storage, and distribution of tangible personal property, excluding retail sales;
- (c) Research and development related to the activities listed in clause (1) or (2); or
- (d) Space necessary for and related to the activities listed in clauses (1) to (3).

The Developer understands and acknowledges that a violation of the above limitations on use may cause the termination of the TIF District and constitutes an Event of Default under this Agreement. The Developer agrees to notify the City immediately if at any time prior to the Termination Date more than 15 percent of the Project are occupied by any use other than one or more of the above uses. The Developer agrees to indemnify, defend and hold harmless the City and the Authority for any damages or costs resulting from a failure to limit the Project to the uses allowed in an economic development tax increment financing district. Those damages or costs may include reimbursement of any tax increment the City may be required or agrees to repay as a result of any action taken under Section 469.1771 of the TIF Act for violation of

said Act relating to disqualification of the TIF District or any other costs associated with any compliance audit.

If the City is required to reimburse tax increment to the County or any other governmental entity pursuant to Minnesota Statutes, Section 469.1771 or any other provision of the TIF Act for any reason related to action or inaction by the Developer, the Developer agrees to reimburse a similar amount to the City within 30 days' written notice by the City to the Developer. The City may add interest on the unpaid balance at the rate authorized by Minnesota Statutes, section 549.09 beginning on the 31st day after notice to the Developer. Failure by the Developer to reimburse the City pursuant to this Section shall constitute a lien on the Property.

(2) The limitation on the allowable uses in the TIF District specified in subsection (1) above is based solely on compliance with the requirements of the TIF Act for an economic development district. In addition, the City's zoning ordinance and other land use regulations restrict the uses permissible in the TIF District and include other limitations on development. The Developer acknowledges and agrees to comply with all such regulations.

(3) The City shall have the right to make a physical inspection of the Project in order to ensure compliance with the terms of this Agreement and the requirements of the TIF Act with regard to economic development districts. Such inspection shall be limited to regular business hours and upon at least 24 hours' notice by the City to the Developer. Absent probable cause regarding a violation of the TIF Act regarding allowable uses for economic development districts, such inspections shall not occur more than once within any 12-month period.

(4) Following the payment in full of the TIF Note and the expiration of the TIF District, the Developer shall maintain the Project as warehouse and distribution facility until the Termination Date.

ARTICLE IV

ADDITIONAL PROJECT COVENANTS

Section 4.1 Construction Plans.

(1) Prior to the commencement of construction of the Project, the Developer will deliver to the City the Construction Plans, Construction Documents and a sworn construction cost statement certified by the Developer and the General Contractor (the "Sworn Construction Cost Statement") all in form and substance reasonably acceptable to the City. The Construction Plans for the Project shall be consistent with the Development Program, this Agreement, and all applicable State and local laws and regulations and any site plan or design drawings previously submitted to the City. The City's building official and the City Administrator of the City on behalf of the City shall promptly review any Construction Plans upon submission and deliver to the Developer a written statement approving the Construction Plans or a written statement rejecting the Construction Plans and specifying in reasonable detail the deficiencies in the Construction Plans. Approval of the Construction Plans may be withheld unless: (i) the Construction Plans substantially conform to the terms and conditions of this Agreement; (ii) the Construction Plans are consistent with the goals and objectives of the Development Program, the TIF Plan and the Tax Abatement Program; (iii) the Construction Plans comply with any site plan or design drawings previously submitted to the City; and (iv) the Construction Plans do not violate any applicable federal, State or local laws, ordinances, rules or regulations. If the Construction Plans are not approved by the City, then the Developer shall make such changes as the City may reasonably require and resubmit revised Construction Plans to the City for approval. 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 City. The City's approval shall not be unreasonably withheld or conditioned. Said approval.

(2) No changes shall be made to the Construction Plans for the Project without the City's prior written approval, unless the aggregate of such changes does not increase or decrease the total costs of the Project by more than 10%. No changes which materially alter (a) the Project's site plan, (b) exterior appearance, (c) construction quality, or (d) exterior materials included in the final Design Drawings and Construction Plans shall be made without the City's prior written consent. The approval of the City will not be unreasonably withheld, conditioned or delayed.

(3) The approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the City does not constitute a representation or warranty by the City that the Construction Plans or the Project comply with any applicable building code, health or safety regulation, zoning regulation, environmental law or other law or regulation, or that the Project will meet the qualifications for issuance of a certificate of occupancy, or that the Project will meet the requirements of the Developer or any other users of the Project. Approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the City will not constitute a waiver of an Event of Default or of any State or City building or other code requirements that may apply. Nothing in this Agreement shall be construed to relieve the Developer of its obligations to receive any required approval of the Construction Plans from any City department and does not relieve the Developer of the obligation to comply with applicable federal, State and local laws, ordinances, rules and regulations, or to construct the Project in accordance therewith.

Section 4.2 Compliance with Environmental Requirements.

(1) The Developer 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.

(2) The City makes no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Development 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”).

(3) The Developer agrees to take all necessary action to remove or remediate any Hazardous Substances located on the Development Property to the extent required by and in accordance with all applicable local, state and federal environmental laws and regulations.

(4) The Developer waives any claims against the City and the County, 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 Development Property.

Section 4.3 Commencement and Completion of Construction. Subject to the terms and conditions of this Agreement and to Unavoidable Delays, the Developer will commence construction of the Project by May 1, 2024 or and shall substantially complete construction of the Project January 1, 2025. Notwithstanding the foregoing, failure of the Developer to commence construction or substantially complete the Project shall not be an Event of Default hereunder unless the Developer fails to commence construction of the Project by December 31, 2024 or fails to obtain a certificate of occupancy for the Project by June 1, 2025. The Project will be constructed by the Developer on the Development Property in conformity with the Construction Plans approved by the City. Prior to completion, upon the request of the City, and subject to applicable safety rules, the Developer will provide the City reasonable access to the Development Property. “Reasonable access” means at least one site inspection per week during regular business hours. During construction, marketing and rentals of the Project, the Developer will deliver progress reports to the City from time to time as reasonably requested by the City.

Section 4.4 Certificate of Completion. The Developer shall notify the City when construction of the Project has been substantially completed. The City shall, within 30 days after such notification, inspect the Project in order to determine whether the Project has been constructed in substantial conformity with the approved Construction Plans. If the City determines that the Project has not been constructed in substantial conformity with the approved Construction Plans, the City shall deliver a written statement to the Developer indicating in adequate detail the specific respects in which the Project has not been constructed in substantial conformity with the approved Construction Plans and Developer shall have a reasonable period of time to remedy such deficiencies. The City shall re-inspect the Project within a reasonable period of time after receiving notice that such deficiencies have been remedied in order to determine whether the Project has been constructed in substantial conformity with the approved Construction Plans and this Agreement. Within a reasonable period of time after determining that the Project has been constructed in substantial conformity with the approved Construction Plans and determining that the following conditions precedent have been satisfied, the City will furnish to the Developer a Certificate of Completion substantially in the form set forth in **Exhibit E** attached hereto certifying the completion of the Project:

- (1) There shall exist no uncured Event of Default hereunder;
- (2) The City shall have issued a Certificate of Occupancy for the Project;

(3) The City Administrator, or designee, on behalf of the City shall have reasonably determined that the Project has been substantially completed and constructed in accordance with all local, state and federal laws and regulations (including without limitation environmental, zoning, building code, housing code, and public health laws and regulations), and any applicable permits and in substantial conformity with this Agreement and the final construction plans approved by the City in connection with issuing construction permits, each as applicable;

(4) The Developer shall certify to the City that all costs related to the Project and the development of the Development Property, including without limitation, payments to all contractors, subcontractors, and project laborers, have been paid prior to the date of the request to the City.

(5) The Certificate of Completion issued for the Project shall conclusively satisfy and terminate the agreements and covenants of the Developer in this Agreement solely with respect to construction of the Project. The issuance of a Certificate of Completion under this Agreement shall not be construed to relieve the Developer of any inspection or approval required by any City department in connection with the construction, completion or occupancy of the Project nor shall it relieve the Developer of any other obligations under this Agreement.

Section 4.5 Additional Responsibilities of the Developer.

(1) The Developer will provide and maintain or cause to be maintained at all times and, from time to time at the request the City or the Authority, furnish the City or the Authority, as applicable, with proof of payment of premiums on insurance of amounts and coverages normally held by owners of property similar to the Project.

(2) The Developer will construct, operate and maintain, or cause to be operated and maintained, the Project substantially in accordance with the terms of this Agreement, the Development Program and all local, state, and federal laws and regulations including, but not limited to zoning, building code, public health laws and regulations, except for approved variances necessary to construct the Project contemplated in the Construction Plans approved by the City.

(3) The Developer will not construct any building or other structures on, over, or within the boundary lines of any public utility easement unless such construction is provided for in such easement or has been approved by the utility involved.

(4) The Developer, at its own expense, will replace any public facilities and public utilities damaged during the construction of the Project, in accordance with the technical specifications, standards and practices of the owner thereof.

(5) The Developer at all times prior to the termination of this Agreement will operate and maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in commercially reasonable good repair and condition.

(6) In the event of damage or destruction of the Project during the term of this Agreement, the Developer shall repair or rebuild the Project or cause the Project to be repaired or rebuilt.

Section 4.6 Right to Collect Delinquent Taxes. The Developer acknowledges that the City and the Authority are providing substantial aid and assistance in furtherance of the Project through reimbursement of the Public Development Costs with Pledged Tax Increments and Pledged Tax Abatements and the Land Write Down. The Developer understands that the Pledged Tax Increments and the Pledged Tax Abatements are derived from real estate taxes on the Development Property, which taxes

must be promptly and timely paid. To that end, the Developer 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 Development Property and the Project. The Developer acknowledges that this obligation creates a contractual right on behalf of the City to sue the Developer 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, the City shall also be entitled to recover its costs, expenses and reasonable attorney fees.

Section 4.7 Prohibition Against Transfer and Assignment. The Developer represents and agrees that prior to the Termination Date, the Developer shall not transfer this Agreement, the TIF Note, the Tax Abatement Note, the Development Property or the Project or any part thereof or any interest therein, except to the Tenant or an Affiliate, without written notice to the City and the Authority and without the prior written approval of both the City and the Authority. The City and the Authority shall be entitled to require as conditions to any such approval that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City and the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(2) Any proposed transferee, by instrument in writing satisfactory to the City and the Authority shall, for itself and its successors and assigns, and expressly for the benefit of the City and the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject.

(3) There shall be submitted to the City and the Authority for review and prior written approval all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Project.

(4) Any proposed transferee of the Tax Abatement Note shall execute and deliver to the City an acknowledgment regarding the limitations of the Tax Abatement Note in a form satisfactory to the City.

(5) Any proposed transferee of the TIF Note shall execute and deliver to the City an acknowledgment regarding the limitations of the TIF Note in a form satisfactory to the City.

(6) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer, and if approved by the City, its approval shall be indicated to the Developer in writing.

(7) The Developer shall have paid all reasonable legal fees and expenses of the City and the Authority, including fees of the City Attorney's office and outside counsel retained by the City and the Authority to review the documents submitted to the City and the Authority in connection with any transfer.

If either the City or the Authority reject the request for approval of an assignment as inadequate, it will do so in writing specifying the basis for the rejection.

In the event the foregoing conditions are satisfied, then the Developer will be released from its obligations under this Agreement.

Section 4.9 Records. The City and the Authority, through any authorized representatives, shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and

records of Developer relating to the Project. Such records shall be kept and maintained by Developer through the Termination Date

Section 4.10. Encumbrance of the Development Property. Until the issuance of a Certificate of Completion, without the prior written consent of the City and the County, which will not be unreasonably withheld or delayed, neither the Developer nor any successor in interest to the Developer will engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Development Property, or portion thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Development Property except for the purpose of obtaining funds only to the extent necessary for financing or refinancing the acquisition, construction and operation of the Project (including, but not limited to, land and building acquisition, labor and materials, professional fees, development fees, real estate taxes, reasonably required reserves, construction interest, organization and other direct and indirect costs of development and financing, costs of constructing the Project, and an allowance for contingencies) including without limitation land use restriction agreements in connection with such financings.

ARTICLE V

EVENTS OF DEFAULT

Section 5.1 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:

(1) Failure by the Developer to timely pay any ad valorem real property taxes, special assessments, utility charges or other governmental impositions with respect to the Project or the Development Property.

(2) Subject to Unavoidable Delays, failure by the Developer to commence construction of the Project by December 31, 2024, and to proceed with due diligence to substantially complete the construction of the Project pursuant to the terms, conditions and limitations of this Agreement and obtain a certificate of occupancy from the City by June 1, 2025.

(3) Failure of the Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(4) Sale of the Development Property or the Project, or any portion thereof, by the Developer in violation and without written permission by the City except pursuant to Section 4.8 of this Agreement;

(5) If the Developer shall:

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(b) make an assignment for the benefit of its creditors; or

(c) admit in writing its inability to pay its debts generally as they become due; or

(d) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within 60 days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within 60 days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section 5.2 Remedies on Default. Whenever any Event of Default referred to in Section 5.1 occurs and is continuing, the City and the Authority may take any one or more of the following actions after the giving of written notice to the Developer citing with specificity the item or items of default and notifying the Developer that it has 30 days within which to cure said Event of Default. If the Event of Default has not been cured within said 30 days or a reasonable period of time, not exceeding 90 days, then:

(1) The City and the Authority may suspend its performance under this Agreement until they receive written assurances from the Developer, deemed adequate by the City and the Authority, that the Developer will cure its default and continue its performance under this Agreement.

(2) The City may suspend its performance under the TIF Note and the Tax Abatement Note until it receives written assurances from the Developer, deemed adequate by the City, that the Developer will cure its default, and no interest shall accrue on the TIF Note or the Tax Abatement Note, as applicable, for the benefit of the Developer while performance is suspended in accordance with this Section 5.2.

(3) The City and the Authority may terminate this Agreement.

(4) The City may terminate the TIF Note, and/or the Tax Abatement Note.

(5) The Authority may demand the Land Write Down be repaid in part or in full.

(6) If the Event of Default constitutes a breach of the condition subsequent as set forth in Exhibit A attached to the Deeds transferring the Development Property to the Developer, the Authority may exercise its Right of Re-entry (as defined in the Purchase Agreements).

(7) The City and the Authority may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 5.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City and the Authority 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.

Section 5.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 5.5 Indemnification of the City and the Authority.

(1) The Developer releases from and covenants and agrees that the City, the Authority and their governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties 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 Project or any other loss, cost expense, or penalty.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the Developer's acquisition, construction, installation, ownership and operation of the Project.

(3) All covenants, stipulations, promises, agreements and obligations of the City and the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and

obligations of the City and the Authority, as applicable, and not of any governing body member, officer, agent, servant or employee of the City or the Authority, as the case may be.

Section 5.6 Reimbursement of Attorneys' Fees. If the Developer shall default under any of the provisions of this Agreement, and the City or the Authority shall employ attorneys or incur other reasonable expenses for the collection of payments due hereunder, or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer contained in this Agreement, the Developer will within 30 days reimburse the City and the Authority, as applicable, for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

ARTICLE VI

ADDITIONAL PROVISIONS

Section 6.1 Insurance.

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

(a) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to 100% of the aggregate principal amount of the Tax Abatement Notes, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interests of the City shall be protected in accordance with a clause in form and content satisfactory to the City;

(b) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) together with an Owner's Protective Liability 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 City shall be listed as additional insured parties on the policy; and

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

(2) Upon completion of construction of the Project and prior to the Termination Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the City shall furnish proof of the payment of premiums on, insurance as follows:

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

(b) Comprehensive 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 as an additional insured.

(c) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(d) All insurance required in this Agreement shall be taken out and maintained in responsible insurance companies selected by the Developer that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the City, 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 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 Developer, the City at least 30 days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Project.

(e) The Developer agrees to notify the City immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty. In such event the Developer will forthwith repair, reconstruct, and restore the Project 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 Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

(1) The Developer shall complete the repair, reconstruction and restoration of the Project regardless of whether the net proceeds of insurance received by the Developer 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 Developer.

(2) A failure to promptly repair, reconstruct and restore the Project as required by this Section 6.1(e) will be considered an Event of Default under this Agreement and the City may suspend payments on the City Tax Abatement Note or the TIIF Note, as applicable, or exercise any other remedies provided in Section 5.2 hereof.

All of the insurance provisions set forth in this Section shall terminate upon the termination of this Agreement.

Section 6.2 Conflicts of Interest. No member of the governing body or other official of the City or the Authority shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City or the Authority shall be personally liable to the City or the Authority in the event of any default or breach by the Developer or successor of any obligations under the terms of this Agreement.

Section 6.3 Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 6.4 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) in the case of the Developer is addressed to or delivered personally to:

SE 7th Ave Distribution LLC
P.O. Box 280

Grand Rapids, MN 55744
Attn: CEO

- (b) in the case of the City is addressed to or delivered personally to the City at:

City of Grand Rapids, Minnesota
420 North Pokegama Avenue
Grand Rapids, MN 55744
Attn: City Administrator

- (c) in the case of the Authority is addressed to or delivered personally to the Authority
at:

Grand Rapids Economic Development Authority
420 North Pokegama Avenue
Grand Rapids, MN 55744
Attn: Executive Director

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

Section 6.5 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 6.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 6.7 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 6.8 Term; Termination. Unless this Agreement is terminated earlier in accordance with its terms this Agreement shall terminate on the Termination Date. Early termination upon a written request from the Developer shall be in the City and the Authority's sole discretion. After the Termination Date, if requested by the Developer, the City and the Authority will provide a termination certificate as to the Developer's obligations hereunder.

Section 6.9 Provisions Surviving Rescission, Expiration or Termination. Sections 6.5 and 6.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 6.10 Amendment. This Agreement may be amended only by written agreement approved by the City, the Authority and the Developer.

Section 6.11 Superseding Effect. This Agreement, together with the Purchase Agreement, reflects the entire agreement of the parties with respect to the development of the Development Property, and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to the development of the Development Property.

Section 6.12 Relationship of Parties. Nothing in this Agreement is intended, or shall be construed, to create a partnership or joint venture among or between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement. All covenants, stipulations, promises, agreements and obligations of the City and the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and the Authority, as applicable, and not of any governing body member, officer, agent, servant or employee of the City or the Authority.

Section 6.13 Venue. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota, and the Developer agrees that all legal actions initiated by the Developer, the City, or the Authority with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State of Minnesota, Itasca County, District Court and shall not be removed therefrom to any other federal or state court.

Section 6.14 Interpretation; Concurrence. The language in this Agreement shall be construed simply according to its generally understood meaning, and not strictly for or against any party and no interpretation shall be affected by which party drafted any part of this Agreement. By executing this Agreement, the parties acknowledge that they (a) enter into and execute this Agreement knowingly, voluntarily and willingly of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had a sufficient amount of time to consider this Agreement's terms and conditions, and to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms, appreciate the significance of those terms and have made the decision to accept them as stated herein; and (d) have not relied upon any representation or statement not set forth herein.

Section 6.15 Recording. The City may record this Agreement and any amendments thereto with the County recorder. The Developer shall pay all costs for recording.

Section 6.16 Government Data. The Developer has been required to provide certain data to the City, the Authority or their consultants in connection with applying for financial assistance in constructing the Project. It is also likely that the Developer will be required to provide additional data to the City or consultants in the course of administering the TIF District to ensure compliance with this Agreement and the TIF Act. All data provided to the City, the Authority or their consultants is government data within the meaning of the Minnesota Statutes, Chapter 13 (the "MGDPA"). The parties recognize that some of the data provided by the Developer to the City, the Authority or their consultants may be nonpublic data as defined by the MGDPA. The parties acknowledge that the City and the Authority are subject to the MGDPA and will handle all government data in its possession in accordance with the MGDPA, notwithstanding any other agreement or understanding to the contrary.

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

CITY OF GRAND RAPIDS, MINNESOTA

By _____
Its Mayor

By _____
Its City Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF ITASCA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Dale Christy, the Mayor of the City of Grand Rapids, Minnesota (the “City”), a municipal corporation and political subdivision, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF ITASCA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Tom Pagel, the City Administrator of the City of Grand Rapids, Minnesota (the “City”), a municipal corporation and political subdivision, on behalf of the City.

Notary Public

Signature page to Development Assistance Agreement

**GRAND RAPIDS ECONOMIC DEVELOPMENT
AUTHORITY**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF ITASCA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Sholom Blake, the President of the Grand Rapids Economic Development Authority Minnesota (the “Authority”), a body corporate and politic, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF ITASCA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Rob Mattei, the Executive Director of the Grand Rapids Economic Development Authority Minnesota (the “Authority”), a body corporate and politic, on behalf of the Authority.

Notary Public

SE 7TH AVE DISTRIBUTION LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of SE 7th Ave Distribution LLC, a Minnesota limited liability company, on behalf of the corporation.

Notary Public

EXHIBIT A

Description of TIF District

The area encompassed by the TIF District shall also include all street or utility rights-of-way located upon or adjacent to the property located in the City of Grand Rapids, Itasca County, Minnesota legally described as:

COUNTY PID NUMBER 91-033-4120

The North 500 feet of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$), Section Thirty-three (33), Township Fifty-five (55) North, Range Twenty-five (25), LESS the South 220 feet of the West 300 feet thereof.

COUNTY PID NUMBER 91-033-1430

South Twenty acres of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) LESS AND EXCEPT the East 330' of the South Half of the Southeast Quarter of Northeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$) all in Section Thirty-three (33) Township Fifty-five (55) North of Range Twenty-five (25) West of the Fourth Principal Meridian, Itasca County, Minnesota

COUNTY PID NUMBER 91-033-1406

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, according to the plat thereof on file and of record in the office of the Register of Deeds of said county and state, subject to reservations, restrictions, and easements of record.

COUNTY PID NUMBER 91-033-1410

Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), Section Thirty-three (33), Township Fifty-five (55) North, Range Twenty-five (25), West of the Fourth Principal Meridian, LESS the following three (3) tracts: Tract 1: South Twenty (20) acres thereof; Tract 2: North 198 feet of West 440 feet thereof; Tract 3: East 330 feet of North Half thereof, Itasca County, Minnesota

EXHIBIT B

Description of Development Property

The property located in the City of Grand Rapids, Itasca County, Minnesota legally described as:

COUNTY PID NUMBER 91-033-4120

The North 500 feet of the Northeast Quarter of the Southeast Quarter (NE1/4 SE1/4), Section Thirty-three (33), Township Fifty-five (55) North, Range Twenty-five (25), LESS the South 220 feet of the West 300 feet thereof.

COUNTY PID NUMBER 91-033-1430

South Twenty acres of the Southeast Quarter of the Northeast Quarter (SE1/4 NE1/4) LESS AND EXCEPT the East 330' of the South Half of the Southeast Quarter of Northeast Quarter (S1/2 SE1/4 NE1/4) all in Section Thirty-three (33) Township Fifty-five (55) North of Range Twenty-five (25) West of the Fourth Principal Meridian, Itasca County, Minnesota

COUNTY PID NUMBER 91-033-1406

East 330 feet of the South one-half (S1/2) of the Southeast Quarter, Northeast Quarter (SE1/4 NE1/4) of Section Thirty-three (33), Township Fifty-five (55), Range Twenty-five (25) west of the Fourth Principal Meridian, according to the plat thereof on file and of record in the office of the Register of Deeds of said county and state, subject to reservations, restrictions, and easements of record.

COUNTY PID NUMBER 91-033-1410

Southeast Quarter of the Northeast Quarter (SE1/4 NE1/4), Section Thirty-three (33), Township Fifty-five (55) North, Range Twenty-five (25), West of the Fourth Principal Meridian, LESS the following three (3) tracts: Tract 1: South Twenty (20) acres thereof; Tract 2: North 198 feet of West 440 feet thereof; Tract 3: East 330 feet of North Half thereof, Itasca County, Minnesota

EXHIBIT C

Form of TIF Note

No. R-1

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ITASCA
CITY OF GRAND RAPIDS, MINNESOTA

TAXABLE TAX INCREMENT REVENUE NOTE
(L & M SUPPLY PROJECT)

<u>Rate</u>	<u>Date of Issuance</u>	<u>Principal Amount</u>
6.50%	_____, 20__	\$ _____

The City of Grand Rapids, Minnesota (the “City”), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the “Payment Amounts”) to SE 7th Ave Distribution LLC, a Minnesota limited liability company (the “Developer”), or its registered assigns (the “Registered Owner”), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

This Note is issued pursuant to that certain Development Assistance Agreement, dated as of October 26, 2023, as the same may be amended from time to time (the “Agreement”), by and between the City, the Grand Rapids Economic Development Authority, and the Developer. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

Simple, non-compounding interest shall accrue on the outstanding principal amount of the Note at a rate equal to 6.50% per annum; provided that no interest shall accrue on this Note during any period that an Event of Default has occurred, and such Event of Default is continuing, under the Agreement and City has exercised its remedy under the Agreement to suspend payment on the Note. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

The amounts due under this Note shall be payable on each February 1 and August 1 commencing August 1, 2026 and thereafter to and including the Final TIF Payment Date (as defined in the Agreement) (collectively, the “TIF Payment Dates”). On each TIF Payment Date, the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last Business Day preceding such TIF Payment Date an amount equal to 90% of the Tax Increments as defined in the Agreement received by the City during the 6-month period preceding such TIF Payment Date (the “Pledged Tax Increments”).

Payments on this Note shall be payable solely from the Pledged Tax Increments. All payments made by the City under this Note shall first be applied to accrued interest and then to principal. If Pledged Tax Increments are insufficient to pay any accrued interest due, such unpaid interest shall be carried forward without interest.

This Note shall terminate and be of no further force and effect following the Final TIF Payment Date defined above, or any date upon which the City shall have terminated the Agreement under Section

5.2 thereof or on the date that all principal and interest payable hereunder shall have been or deemed paid in full, whichever occurs earliest. This Note may be prepaid in whole or in part at any time without penalty.

The City makes no representation or covenant, express or implied, that the Pledged Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder. There are risk factors in the amount of Tax Increments that may actually be received by the City and some of those factors are listed on the attached Exhibit 1. The Registered Owner acknowledges these risk factors and understands and agrees that payments by the City under this Note are subject to these and other factors.

The City's payment obligations hereunder subject to the conditions that (i) no Event of Default under Section 5.1 of the Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, and (ii) the Agreement shall not have been terminated pursuant to Section 5.2 thereof, and (iii) all conditions set forth in Section 3.2(2) of the Agreement have been satisfied as of such date. Any such suspended and unpaid amounts shall become payable, without interest accruing thereon in the meantime, if this Note has not been terminated in accordance with Section 5.2 of the Agreement and said Event of Default shall thereafter have been cured in accordance with Section 5.2 of the Agreement. If pursuant to the occurrence of an Event of Default under the Agreement the City elects, in accordance with the Agreement to cancel and rescind the Agreement and/or this Note, the City shall have no further debt or obligation under this 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 City to pay the principal of this Note and the interest thereon, and said provisions are hereby incorporated into this Note as though set out in full herein.

THIS NOTE IS A SPECIAL, LIMITED REVENUE OBLIGATION OF THE CITY AND NOT A GENERAL OBLIGATION OF THE CITY AND IS PAYABLE BY THE CITY ONLY FROM THE SOURCES AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS NOTE IS NOT A GENERAL OBLIGATION OF THE CITY, AND THE FULL FAITH AND CREDIT AND TAXING POWERS OF THE CITY ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE AND NO PROPERTY OR OTHER ASSET OF THE CITY, SAVE AND EXCEPT THE ABOVE-REFERENCED PLEDGED TAX INCREMENTS, IS OR SHALL BE A SOURCE OF PAYMENT OF THE CITY'S OBLIGATIONS HEREUNDER.

The Registered Owner shall never have or be deemed to have the right to compel any exercise of any taxing power of the City or of any other public body, and neither the City nor any person executing or registering this Note shall be liable personally hereon by reason of the issuance or registration thereof or otherwise.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the TIF Act.

This Note may be assigned only as provided in Section 4.8 of the Agreement and subject to the assignee executing and delivering to the City the Acknowledgment Regarding TIF Note in the form set forth in Exhibit 2 attached hereto. Additionally, in order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records maintained by the City for the Note. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

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 have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other

indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the City of Grand Rapids, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Administrator and has caused this Note to be dated as of _____.

By _____
Its Mayor

By _____
Its City Administrator

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note was, as of the latest date listed below, registered in the name of the last Registered Owner noted below on the books kept by the undersigned for such purposes and any prior registrations are null and void as of such date.

NAME AND ADDRESS OF
REGISTERED OWNER

DATE OF
REGISTRATION

SIGNATURE OF
FINANCE DIRECTOR

SE 7th Ave Distribution LLC
P.O. Box 280
Grand Rapids, MN 55744

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Exhibit 1
To Taxable TIF Note

RISK FACTORS

Risk factors on the amount of Tax Increments that may actually be received by the City include but are not limited to the following:

1. Value of Project. If the contemplated Project (as defined in the TIF Agreement) constructed in the tax increment financing district is completed at a lesser level of value than originally contemplated, it will generate fewer taxes and fewer tax increments than originally contemplated.
2. Damage or Destruction. If the Project is damaged or destroyed after completion, its value will be reduced, and taxes and tax increments will be reduced. Repair, restoration or replacement of the Project may not occur, may occur after only a substantial time delay, or may involve property with a lower value than the Project, all of which would reduce taxes and tax increments.
3. Change in Use to Tax-Exempt. The Project could be acquired by a party that devotes it to a use which causes the property to be exempt from real property taxation. Taxes and tax increments would then cease.
4. Depreciation. The Project could decline in value due to changes in the market for such property or due to the decline in the physical condition of the property. Lower market valuation will lead to lower taxes and lower tax increments.
5. Non-payment of Taxes. If the property owner does not pay property taxes, either in whole or in part, the lack of taxes received will cause a lack of tax increments. The Minnesota system of collecting delinquent property taxes is a lengthy one that could result in substantial delays in the receipt of taxes and tax increments, and there is no assurance that the full amount of delinquent taxes would be collected. Amounts distributed to taxing jurisdictions upon a sale following a tax forfeiture of the property are not tax increments.
6. Reductions in Taxes Levied. If property taxes are reduced due to decreased municipal levies, taxes and tax increments will be reduced. Reasons for such reduction could include lower local expenditures or changes in state aids to municipalities. For instance, in 2001 the Minnesota Legislature enacted an education funding reform that involved the state increasing school aid in lieu of the local general education levy (a component of school district tax levies).
7. Reductions in Tax Capacity Rates. The taxable value of real property is determined by multiplying the market value of the property by a tax capacity rate. Tax capacity rates vary by certain categories of property; for example, the tax capacity rates for residential homesteads are currently less than the tax capacity rates for commercial and industrial property. In 2001 the Minnesota Legislature enacted property tax reform that lowered various tax capacity rates to “compress” the difference between the tax capacity rates applicable to residential homestead properties and commercial and industrial properties.
8. Changes to Local Tax Rate. The local tax rate to be applied in the tax increment financing district is the lower of the current local tax rate or the original local tax rate for the tax increment financing district. In the event that the Current Local Tax Rate is higher than the Original Local Tax Rate, then the “excess” or difference that comes about after applying the lower Original Local Tax Rate instead of the Current Local Tax Rate is considered “excess” tax increment and is distributed by Hennepin County to the other taxing jurisdictions and such amount is not available to the City as tax increment.

9. Legislation. The Minnesota Legislature has frequently modified laws affecting real property taxes, particularly as they relate to tax capacity rates and the overall level of taxes as affected by state aid to municipalities.

Exhibit 2
To Taxable TIF Note

ACKNOWLEDGMENT REGARDING TIF NOTE

The undersigned, _____ a _____ (“Note Holder”), hereby certifies and acknowledges that:

A. On the date hereof the Note Holder has [acquired from]/[made a loan (the “Loan”) [to/for the benefit] of] SE 7th Ave Distribution LLC, a Minnesota limited liability company (the “Developer”), [secured in part by] the Taxable Tax Increment Revenue Note (L & M Supply Project), a pay-as-you-go tax increment revenue note in the original principal amount of \$_____, dated _____, 20__ of the City of Grand Rapids, Minnesota (the “City”), a copy of which is attached hereto (the “Note”).

B. The Note Holder has had the opportunity to ask questions of and receive all information and documents concerning the Note as it requested, and has had access to any additional information the Note Holder thought necessary to verify the accuracy of the information received. In determining to [acquire the Note]/[make the Loan], the Note Holder has made its own determinations and has not relied on the City or information provided by the City.

C. The Note Holder represents and warrants that:

1. The Note Holder is acquiring [the Note]/[an interest in the Note as collateral for the Loan] for its own account, and without any view to resale or other distribution.

2. The Note Holder is (i) the owner of the Development Property or (ii) a financial institution or an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, and as further described in **Exhibit 1A** hereto and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of acquiring [and holding the Note] [an interest in the Note as collateral for the Loan].

3. The Note Holder understands that the Note is a security which has not been registered under the Securities Act of 1933, as amended, or any state securities law, and must be held until its sale is registered or an exemption from registration becomes available.

4. The Note Holder is aware of the limited payment source for the Note and interest thereon and risks associated with the sufficiency of that limited payment source.

D. The Note Holder understands that the Note is payable solely from certain tax increments derived from certain properties located in a tax increment financing district, if and as received by the City. The Note Holder acknowledges that the City has made no representation or covenant, express or implied, that the revenues pledged to pay the Note will be sufficient to pay, in whole or in part, the principal and interest due on the Note. Any amounts which have not been paid on the Note on or before the final maturity date of the Note shall no longer be payable, as if the Note had ceased to be an obligation of the City. The Note Holder understands that the Note will never represent or constitute a general obligation, debt or bonded indebtedness of the City, the State of Minnesota, or any political subdivision thereof and that no right will exist to have taxes levied by the City, the State of Minnesota or any political subdivision thereof for the payment of principal and interest on the Note.

E. The Note Holder understands that the Note is payable solely from certain tax increments, which are taxes received on improvements made to certain property (the “Improvements”) in a tax increment financing district from the increased taxable value of the property over its base value at the time that the tax increment financing district was created, which base value is called “original net tax capacity”. There are risk factors in relying on tax increments to be received, which include, but are not limited to, the following:

1. Value of Improvements. If the contemplated Improvements constructed in the tax increment financing district are completed at a lesser level of value than originally contemplated, they will generate fewer taxes and fewer tax increments than originally contemplated.

2. Damage or Destruction. If the Improvements are damaged or destroyed after completion, their value will be reduced, and taxes and tax increments will be reduced. Repair, restoration or replacement of the Improvements may not occur, may occur after only a substantial time delay, or may involve property with a lower value than the Improvements, all of which would reduce taxes and tax increments.

3. Change in Use to Tax-Exempt. The Improvements could be acquired by a party that devotes them to a use which causes the property to be exempt from real property taxation. Taxes and tax increments would then cease.

4. Depreciation. The Improvements could decline in value due to changes in the market for such property or due to the decline in the physical condition of the property. Lower market valuation will lead to lower taxes and lower tax increments.

5. Non-payment of Taxes. If the property owner does not pay property taxes, either in whole or in part, the lack of taxes received will cause a lack of tax increments. The Minnesota system of collecting delinquent property taxes is a lengthy one that could result in substantial delays in the receipt of taxes and tax increments, and there is no assurance that the full amount of delinquent taxes would be collected. Amounts distributed to taxing jurisdictions upon a sale following a tax forfeiture of the property are not tax increments.

6. Reductions in Taxes Levied. If property taxes are reduced due to decreased municipal levies, taxes and tax increments will be reduced. Reasons for such reduction could include lower local expenditures or changes in state aids to municipalities. For instance, in 2001 the Minnesota Legislature enacted an education funding reform that involved the state increasing school aid in lieu of the local general education levy (a component of school district tax levies).

7. Reductions in Tax Capacity Rates. The taxable value of real property is determined by multiplying the market value of the property by a tax capacity rate. Tax capacity rates vary by certain categories of property; for example, the tax capacity rates for residential homesteads are currently less than the tax capacity rates for commercial and industrial property. In 2001 the Minnesota Legislature enacted property tax reform that lowered various tax capacity rates to “compress” the difference between the tax capacity rates applicable to residential homestead properties and commercial and industrial properties.

8. Changes to Local Tax Rate. The local tax rate to be applied in the tax increment financing district is the lower of the current local tax rate or the original local tax rate for the tax increment financing district. In the event that the Current Local Tax Rate is higher than the Original Local Tax Rate, then the “excess” or difference that comes about after applying the lower Original Local Tax Rate instead of the Current Local Tax Rate is considered “excess” tax increment and is

distributed by Itasca County to the other taxing jurisdictions and such amount is not available to the City as tax increment.

9. Legislation. The Minnesota Legislature has frequently modified laws affecting real property taxes, particularly as they relate to tax capacity rates and the overall level of taxes as affected by state aid to municipalities.

F. The Note Holder acknowledges that the Note was issued pursuant to a Development Assistance Agreement between the City, the Grand Rapids Economic Development Authority, and the Developer, dated October 26, 2023 (“Development Agreement”), and that the City has the right to suspend payments under this Note and/or terminate the Note upon an Event of Default under the Development Agreement.

G. The Note Holder acknowledges that the City makes no representation about the tax treatment of, or tax consequences from, the Note Holder’s acquisition of [the Note]/[an interest in the Note as collateral for the Loan].

WITNESS our hand this ___ day of _____, 20__.

Note Holder:

By _____
Name: _____
Its _____

EXHIBIT D

FORM OF TAX ABATEMENT NOTE

**UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ITASCA
CITY OF GRAND RAPIDS**

No. R-1

\$ _____

**TAXABLE ABATEMENT REVENUE NOTE
(L & M SUPPLY PROJECT)**

Interest Rate:
_____ %

Date of
Original Issue

The City of Grand Rapids, Minnesota (the “City”), hereby acknowledges itself to be indebted and, for value received, promises to pay to the order of SE 7th Ave Distribution LLC, or registered assigns (the “Owner”), solely from the source, to the extent and in the manner hereinafter provided, the principal sum in an amount not to exceed \$ _____ together with interest at the rate of _____ per annum from the Date of Original Issue stated above. This Taxable Abatement Revenue Note (L & M Supply Project) (this “Note”) is given in accordance with that certain Development Assistance Agreement between the City, the Grand Rapids Economic Development Authority, and the Owner, dated as of October 26, 2023 (the “Agreement”). Capitalized terms used and not otherwise defined herein shall have the meaning provided for such terms in the Agreement unless the context clearly requires otherwise.

Payments of principal and accrued interest on this Note (each a “Payment”) shall be payable in semi-annual installments payable on each February 1 and August 1 (the “Abatement Payment Dates”) provided that if any such Abatement Payment Date is not a Business Day the Abatement Payment Date shall be the next succeeding Business Day, commencing on August 1, 2035 and continuing until the Final Abatement Payment Date as defined in the Agreement (“Final Maturity Date”).

Each Payment shall be in an amount equal to the amount of Pledged Tax Abatements (as defined in the Agreement) actually received by the City in the 6-month period before each Abatement Payment Date. Notwithstanding anything to the contrary herein, the payments of Tax Abatements under this paragraph in each year may not exceed the Statutory Cap and the payment on each Abatement Payment Date shall be subject to the qualification described in Section 3.6 of the Agreement in the case of a pending Tax Appeal. Payments are subject to prepayment at the option of the City in whole or in part on any date after the Date of Original Issue stated above. All payments shall be applied first to accrued interest and second to principal. Notwithstanding anything herein to the contrary, total payments of principal and interest under the Tax Abatement Note shall not exceed \$3,734,740 which is the maximum amount of Tax Abatements set forth in the Tax Abatement Program.

Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by check or draft made payable to the Owner and mailed to the Owner at its postal address within the United States which shall be designated from time to time by the Owner.

Payments on this Note are payable solely from Pledged Tax Abatements. The pledge of Pledged Tax Abatements is subject to all the terms and conditions of the Agreement.

The City's payment obligations hereunder subject to the conditions that (i) no Event of Default under Section 5.1 of the Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, and (ii) the Agreement shall not have been terminated pursuant to Section 5.2 thereof, and (iii) all conditions set forth in Section 3.3 of the Agreement have been satisfied as of such date. Any such suspended and unpaid amounts shall become payable, without interest accruing thereon in the meantime, if this Note has not been terminated in accordance with Section 5.2 of the Agreement and said Event of Default shall thereafter have been cured in accordance with Section 5.2 of the Agreement. If pursuant to the occurrence of an Event of Default under the Agreement the City elects, in accordance with the Agreement to cancel and rescind the Agreement and/or this Note, the City shall have no further debt or obligation under this 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 City to pay the principal of this Note and the interest thereon, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note shall terminate and be of no further force and effect as of, and the City shall have no obligation to pay any portion of the Payments that remains unpaid after, the Final Maturity Date. Any estimates of Tax Abatements prepared by the City or its municipal advisor in connection with the Pledged Tax Abatements and the Agreement are for the benefit of the City only and are not intended as representations on which the Developer may rely. **THE CITY MAKES NO REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, THAT THE PLEDGED TAX ABATEMENTS WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE AMOUNTS WHICH ARE OR MAY BECOME DUE AND PAYABLE HEREUNDER.**

This Note is issued pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, as amended, and pursuant to the resolution duly adopted by the City Council of the City on September 25, 2023 (the "Resolution"), and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota.

THIS NOTE IS A LIMITED OBLIGATION OF THE CITY, PAYABLE SOLELY FROM MONEYS PLEDGED TO THE PAYMENT OF THIS NOTE UNDER THE RESOLUTION. THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING, WITHOUT LIMITATION, THE CITY. NEITHER THE STATE OF MINNESOTA, NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING, WITHOUT LIMITATION, THE CITY, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THIS NOTE OR OTHER COSTS INCIDENT HERETO EXCEPT FROM THE REVENUES AND RECEIPTS PLEDGED THEREFOR, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF MINNESOTA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING, WITHOUT LIMITATION, THE CITY, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE OR OTHER COSTS INCIDENT HERETO.

This Note is issuable only as a fully registered note without coupons. This Note is transferable upon the books of the City kept for that purpose at the principal office of the Registrar, by the Owner hereof in person or by such owner's attorney duly authorized in writing, upon surrender of this Note together with

a written instrument of transfer satisfactory to the City, 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 City with respect to such transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount, bearing interest at the same rate, and maturing on the same dates.

This Note shall not be transferred to any person or entity except in accordance with Section 4.8 of the Agreement and unless the City has been provided an investor letter and a certificate of the transferor, in a form satisfactory to the City, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. Transfer of the ownership of this Note to a person other than one permitted by this paragraph without the written consent of the City shall relieve the City of all of its obligations under this Note.

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 have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the City Council of the City of Grand Rapids, Minnesota has caused this Note to be executed by the manual signatures of the Mayor and City Administrator of the City and has caused this Note to be dated as of the Date of Original Issue specified above.

CITY OF GRAND RAPIDS, MINNESOTA

By: _____
Its: Mayor

By: _____
Its: City Administrator

REGISTRATION PROVISIONS

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

<u>Date of Registration</u>	<u>Registered Owner</u>	<u>Signature of City Administrator</u>
_____	SE 7th Ave Distribution LLC Federal ID # 41-0856419	_____

EXHIBIT E

CERTIFICATE OF COMPLETION

WHEREAS, the City of Grand Rapids, Minnesota (the “City”), the Grand Rapids Economic Development Authority, and SE 7th Ave Distribution LLC, a Minnesota limited liability company (the “Developer”), have executed a Development Assistance Agreement, dated as of October 26, 2023 (the “Development Agreement”), with respect to the completion by the Developer of certain improvements (the “Project”), more specifically described in the Development Agreement; and

WHEREAS, the Developer has performed its obligations under the Development Agreement to substantially complete the Project in a manner deemed sufficient by the City to permit the execution of this certificate pursuant to Section 4.4 of the Development Agreement.

NOW, THEREFORE, this is to certify that the Project has been completed in substantial conformance with the terms of the Development Agreement.

CITY OF GRAND RAPIDS, MINNESOTA

By _____
Its _____

Dated: _____, 20____

EXHIBIT F

PUBLIC DEVELOPMENT COSTS

Land Acquisition

Excavation

Grading

Filling

Curb and gutter

Site Preparation

Utility improvements and extensions

Parking

Other TIF eligible costs as determined by the City in its sole discretion