

PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made by and between INDEPENDENT SCHOOL DISTRICT #709, a public corporation and political subdivision of the State of Minnesota ("Seller"), and CHESTER CREEK VIEW, LLC, a _____ limited liability company ("Buyer").

RECITALS

This Agreement relates to the following, collectively the "Property":

(a) Land. That certain real property located at in Duluth, St. Louis County, Minnesota, depicted as Lots 2 and 3, Block 1 and Lot 1, Block 2 on the Preliminary Plat of Central Overlook attached to this Agreement as Exhibit 1.(a) attached hereto and all rights, privileges, easements and appurtenances thereto (the "Land").

(b) Improvements. Except as provided in Section 3.(g), all improvements, structures and fixtures now existing on the Land (the "Improvements").

(c) Real Property. The Land and the Improvements are collectively referred to herein as the "Real Property".

(d) Plans. Seller's assignable interest, if any, in all originals and copies of as-built blueprints, plans, surveys, and specifications regarding the Real Property, if any ("Plans").

(e) Reports. Seller's assignable interest, if any, in any third-party reports or studies regarding the Real Property, regarding environmental condition, physical condition, soil condition, surveys of the Real Property, maintenance, repairs, and capital improvements ("Reports").

AGREEMENT

In consideration of the Agreement, Seller and Buyer agree as follows:

1. Purchase and Sale. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller's right, title and interest in and to the Property, all according to the terms and provisions shown in this Agreement.

1.1 Effective Date. The date this Agreement is fully executed by both Buyer and Seller and the Earnest Money has been received by Title shall be the "Effective Date."

2. Purchase Price and Manner of Payment. The total purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property shall be \$8,000,000.00, and shall be payable as follows:

(a) \$250,000.00 as earnest money ("Earnest Money") to be paid by cash or cash equivalent check or wire to the escrow account of Riverside Abstract Title Insurance Company. ("Title") at its offices in Duluth, Minnesota, as escrow agent, which shall be deposited in an interest earning escrow for application to the Purchase Price on the Closing Date;

(b) if Buyer exercises its right to extend the Due Diligence Period pursuant to Section 3.(b), \$50,000.00 as earnest money ("Additional Earnest Money") to be paid by cash or cash equivalent check or wire to the escrow account of Title as escrow agent, which shall be deposited in an interest earning escrow for application to the Purchase Price on the Closing Date and which, once deposited, shall become a part of the Earnest Money for all purposes;

(c) The Earnest Money shall be non-refundable and no Earnest Money will be returned to Buyer unless (i) this Agreement is terminated pursuant to and as permitted in Sections 3.(b), 3.3.1, or 18 or (ii) a condition precedent set forth in Section 3 or 3.2 is not satisfied, waived or deemed waived by Buyer; and

(d) The balance of the Purchase Price shall be paid by cash, cashier's check, wire transfer or other immediately available funds at or before Closing.

3. Buyer's Contingencies. The obligation of Buyer to close this transaction is contingent upon the following:

(a) Title. Title shall have been found acceptable, been made acceptable or been accepted, in accordance with the requirements and terms of Section 3.3 below.

(b) Due Diligence. Buyer shall have until 5:00 P.M., Central Standard Time on the date 60 days after the Effective Date within which to examine the Property (the "Due Diligence Period"). Buyer may, for any reason or no reason whatsoever, terminate this Agreement by giving written notice of termination to Seller and Title (the "Inspection Termination Notice") prior to the expiration of the Due Diligence Period. In the event of an Inspection Termination Notice: (a) this Agreement shall be null and void, except for those provisions specifically shown to survive the termination of this Agreement, and (b) the Earnest Money shall be refunded to Buyer, less any amounts due to Title from Buyer pursuant to this Agreement, without further instruction from the parties. If Buyer does not provide the Inspection Termination Notice, then the contingency set forth in this Section 3(b) shall be deemed to have been waived.

The Buyer may extend the Due Diligence Period once by thirty (30) days by both giving written notice of extension to Seller and Title and depositing the Additional Earnest Money not less than five (5) business days before the scheduled expiration of the Due Diligence Period.

Within five (5) business days of the Effective Date, Seller shall make available to Buyer all of the items listed on Schedule 3(b).

Buyer and its agents, representatives, consultants, contractors or invitees (collectively, "Agents") may enter upon the Real Property during reasonable business hours during the Due Diligence Period and thereafter prior to the Closing to perform such inspections and tests of the Real Property and any structural or mechanical systems within any Improvements as Buyer deems necessary or desirable, all at Buyer's sole cost and expense. Buyer and its Agents, shall, in performing Buyer's inspections, comply with any and all laws, ordinances, rules, regulations applicable to the Real Property and will not engage in any activities which would violate any permit, license, or environmental law or regulation. Buyer agrees to conduct such inspections in a manner which will not unreasonably interfere with Seller's normal operations on the Real Property and that such inspections will be conducted in accordance with the following procedures: (a) all persons, entities and Agents performing any tests will be properly licensed and qualified and will have obtained all appropriate permits for performing such tests; (b) Buyer will advise Seller two (2) days in advance of the dates of all tests and inspections and will schedule all tests and inspections during normal business hours whenever feasible unless otherwise requested by Seller; (c) Seller will have the right to have a representative of Seller accompany Buyer and its Agents while they are on the Real Property; (d) Buyer will promptly pay when due the costs of all entry and inspections, tests and examinations done with regard to the Real Property; (e) Buyer will, at its sole cost and expense, repair and restore the Real Property to its original condition before any such entry upon the Real Property and inspection, test or examination was undertaken. Buyer shall keep the Real Property free and clear of any mechanics', materialmen's or similar liens related to Buyer's right of inspection and its due diligence activities. Buyer shall indemnify, defend (with counsel reasonably satisfactory to Seller) and hold Seller and Seller's direct and indirect affiliates, members, partners, subsidiaries, shareholders, trustees, managers, investors, officers, officials, directors, representatives, agents and successors and assigns (collectively, the "Seller-Related Parties") harmless for, from and against any claims, damages, costs, liabilities, and losses arising out of any entry on the Real Property by Buyer or its Agents or Buyer's inspections or tests of the Real Property, whether or not a Closing occurs. Buyer will cause any person accessing the Real Property hereunder to be covered by not less than \$2,000,000 commercial general liability insurance (with, in the case of Buyer's coverage, a contractual liability endorsement, insuring its indemnity obligation under this Agreement), insuring all activity and conduct of such person while exercising such right to access and naming Seller as an insured, issued by a licensed insurance company qualified to do business in Minnesota and otherwise reasonably acceptable to Seller. It is specifically agreed that the obligations of the Buyer to pay any sums and the indemnity provided for in this Section 3. (b) shall survive any termination or cancellation of this Agreement and shall survive the Closing. Buyer will immediately provide to Seller a copy of any report Buyer receives from any third party.

Buyer shall be responsible for arranging for any required point of sale inspections, including, without limitation, any inflow and infiltration inspection required by the City of Duluth.

(c) Delivery by Seller to Buyer of each of the Seller's Closing Documents.

(d) All representations made by Seller pursuant to this Agreement shall be true in all material respects as of the Closing Date.

(e) Seller shall have performed all of Seller's obligations and covenants pursuant to this Agreement.

(f) There shall exist no actions, suits, arbitrations, claims, assignments for the benefit of creditors, insolvencies, bankruptcies, reorganizations or other proceedings, pending or threatened against Seller that would materially and adversely affect Seller's ability to perform its obligations under this Agreement or which would have a material adverse effect upon the Property or Buyer's ownership or use thereof. There shall exist no pending suit or proceeding with respect to Seller before any court, governmental or administrative agency which seeks to restrain or prohibit or to obtain damages or a discovery order with respect to this Agreement or the consummation of the transaction contemplated hereby.

(g) Seller shall demolish the existing Central High School Building on the Real Property (the "High School Building") depicted and highlighted in green on Exhibit 3(g) attached to this Agreement. The standard for demolition (the "Demolition Standard") is (i) demolishing and removing the Central High School Building and all foundations and other below grade improvements, if any, (ii) debris removal, (iii) back filling to an ordinary compaction with onsite materials, and (iv) grading and seeding. The High School Building does not include sidewalks, roads, utility conveyances, or other improvements that are not within the footprint of the High School Building but the Seller may, in its sole discretion, demolish and remove some or all of these.

(h) Seller shall have obtained final plat approval for the Plat of Central Overlook ("Plat") and shall have recorded the Plat in the offices of the St. Louis County Recorder and St. Louis County Registrar of Titles.

The conditions set forth in this Section 3 are for Buyer's benefit and may be waived by Buyer, provided, however, that Buyer's waiver of the condition set forth at 3.(g) shall not prohibit or limit the right of the Seller to demolish the High School Building.

3.1 **Seller's Conditions Precedent to Closing.** The obligation of Seller to close this transaction is contingent upon the following:

(a) Delivery to Seller by Buyer of each of Buyer's Closing Documents.

(b) All representations made by Buyer pursuant to this Agreement shall be true in all material respects as of the Closing Date

The conditions set forth in this Section 3.1 are for Seller's benefit and may be waived by Seller.

3.2 Mutual Conditions Precedent to Closing. The obligation of both Buyer and Seller to close this transaction is contingent upon the following:

(a) Seller shall have entered into a Development Agreement (the "DEDA Development Agreement") with the Duluth Economic Development Authority ("DEDA") in substantially the form provided to Buyer by Seller before the execution of this Agreement, a copy of which is annexed as Exhibit 3.2(a).

(b) Seller shall have entered into a Development Agreement (the "City Development Agreement") with the City of Duluth, Minnesota ("City") in substantially the form provided to Buyer by Seller before the execution of this Agreement a copy of which is annexed as Exhibit 3.2(b).

(c) Seller's School Board shall have approved the execution of and performance under this Agreement.

(d) City shall have approved the sale contemplated herein on or before five (5) business days prior to the Closing. Seller shall use commercially reasonable efforts to obtain the approval of the City.

The condition set forth in this Section 3.2 are for the benefit of both Seller and Buyer and may only be waived by Seller and Buyer.

When the DEDA Development Agreement has been signed by Seller and DEDA, Seller shall deliver a copy of the signed DEDA Development Agreement to Buyer. Buyer shall have five (5) business days after it receives a copy of the executed DEDA Development Agreement to terminate this Agreement by giving written notice of termination to Seller and Title (the "DEDA Termination Notice") if it reasonably determines that the DEDA Development Agreement is not in substantially the form provided to Buyer by Seller before the execution of this Agreement. If Buyer does not timely provide a DEDA Termination Notice, then Buyer shall be deemed to have waived the contingency set forth in this Section 3.2 with respect to the DEDA Development Agreement.

When the City Development Agreement has been signed by Seller and City, Seller shall deliver a copy of the signed City Development Agreement to Buyer. Buyer shall have five (5) business days after it receives a copy of the executed City Development Agreement to terminate this Agreement by giving written notice of termination to Seller and Title (the "City Termination Notice") if it reasonably determines that the City Development Agreement is not in substantially the form provided to Buyer by Seller before the execution of this Agreement. If Buyer does not timely provide a City Termination Notice, then Buyer shall be deemed to have waived the contingency set forth in this Section 3.2 with respect to the City Development Agreement.

In the event that this Agreement is terminated because of the failure of the condition set forth in this Section 3.2 or because Buyer has timely given a DEDA Termination Notice or a City Termination Notice: (a) this Agreement shall be null and void, except for those provisions specifically shown to survive the termination of this Agreement, and (b) the Earnest Money shall be refunded to Buyer, less any amounts due to Title from Buyer pursuant to this Agreement,

without further instruction from the parties. Nothing in this Section 3.2 shall limit the right of Buyer to provide an Inspection Termination Notice under Section 3(b).

3.3 **Title.** Seller shall reasonably cooperate with Title so that Title may, issue and deliver to Buyer within twenty one (21) calendar days of the Effective Date, a commitment covering the Real Property (the "Commitment") to issue an ALTA owner's policy of title insurance, together with legible copies of all items shown in Schedule B thereof. Buyer shall have twenty-one (21) calendar days after the receipt of the Commitment (and copies of all Schedule B items), but not later than the expiration of the Due Diligence Period (the "Title Examination Period"), within which to disapprove of or object to any specific item or exception shown in the Commitment ("Unpermitted Exceptions"). Any such disapproval or objection shall be in writing (the "Objection Notice") and shall be given to Title and to Seller. Any item or exception to which Buyer does not so object, together with real estate taxes and assessments not yet due and payable, are referred to as "Permitted Exceptions." If Buyer fails to deliver an Objection Notice within the Title Examination Period, Buyer shall be deemed to have waived its right to object to the condition of title reflected in the Commitment, and items and exceptions noted in the Commitment shall thereafter be deemed Permitted Exceptions. Within five (5) calendar days following the receipt of an Objection Notice (the "Seller Notice Period") from Buyer, Seller shall give notice (the "Response Notice") advising Buyer whether Seller, at Seller's cost and expense, will cause any of the Unpermitted Exceptions to be removed or cured from the Commitment at or prior to Closing. If Seller fails to give the Response Notice, or if Seller fails to respond to a specific Unpermitted Exception in the Response Notice, during the Seller Notice Period, Seller shall be deemed to have elected that it will not cause such Unpermitted Exceptions to be removed or cured from the Commitment. If Seller delivers to Buyer a Response Notice but fails to remove or cure, to Buyer's satisfaction, at no cost to Buyer, any Unpermitted Exception set forth in such notice, then Buyer, in its sole discretion, may elect to (i) waive in writing the removal of such Unpermitted Exception and proceed to Closing without any abatement to the Purchase Price, or (ii) terminate this Agreement by giving written notice to Seller and Title pursuant to Section 3.3.1.

3.3.1 **Title Termination Notice.** Unless Seller notifies Buyer that Seller agrees to cause all of the Unpermitted Exceptions to be removed from the Commitment or to otherwise address the Unpermitted Exceptions to the satisfaction of Buyer, Buyer may terminate this Agreement by giving notice in writing to Seller and Title (the "Title Termination Notice") within five (5) calendar days of the sooner of (i) expiration of the Seller Notice Period or (ii) Buyer's receipt of the Response Notice, but in no event later than the Closing Date. If Buyer gives a Title Termination Notice: (a) the Earnest Money shall be paid to Buyer, less any amounts due to Title from Buyer pursuant to this Agreement (it being understood the parties shall each pay fifty percent (50%) of the escrow and title fees, if any, incurred to the date of the Title Termination); and (b) this Agreement shall become null and void, except for those provisions specifically shown herein to survive the termination of this Agreement. If Buyer does not give a Title Termination Notice within the period set forth above, the Unpermitted Exceptions will thereafter be deemed Permitted Exceptions, and this Agreement shall remain in full force and effect.

4. **Closing.** The closing on the purchase and sale contemplated by this Agreement (the "Closing") shall occur on the latest to occur of (i) the date 30 days after the expiration of the

Due Diligence Period (as it may have been extended pursuant to Section 3.(b)) or (ii) the date 10 days after Seller has provided written confirmation from a licensed engineer or architect that demolition of the Central High School Building has been completed and meets the Demolition Standard (the "Closing Date"), at the offices of Title in Duluth, Minnesota, which shall act as closing agent, at such time as the parties shall mutually agree. The parties shall deliver to Title an executed copy of this Agreement, which shall constitute instructions. If required by Title, the parties shall execute any printed form escrow instructions used by Title; any provisions of such instructions which conflict with this Agreement shall be governed by this Agreement. Seller agrees to deliver possession of the Property immediately after Closing.

(a) Seller's Closing Documents. On the Closing Date, Seller shall execute and/or deliver to Buyer the following (collectively, "Seller's Closing Documents"):

(i) Seller's Affidavit. Such standard owner's affidavit as is reasonably required by title relating to liens and possession.

(ii) FIRPTA Affidavit. A non-foreign affidavit, properly executed and in recordable form, containing such information as is required by IRC Section 1445 (b)(2) and its regulations.

(iii) Quitclaim Deed. A Quitclaim Deed in substantially the form of the Minnesota Uniform Conveyancing Blank subject to the Permitted Exceptions. Said deed shall be subject to a restriction, enforceable by the Seller, that prohibits the Grantee, its successors or assigns from using the property as a school for the purpose of conducting programs for children between the ages of 5 and 18. Said deed shall provide the Seller the right to an injunction and the Seller shall have the right to attorney's fees and other costs and disbursements and actual damages if the Seller prevails. The Buyer agrees that the Seller shall sustain irreparable harm and damages if this restriction is violated and that the Seller shall have the right to a Temporary Restraining Order, a Temporary Injunction and a Permanent Injunction and that the grounds exist for the issuance of such orders.

(iv) Other Documents. All other documents reasonably determined by Title on or before the Closing Date to be necessary to transfer the Property to Buyer on the terms stated herein.

(v) Evidence of Authority. Such evidence that Seller has authorized this transaction and the execution of the Seller's Closing Documents as may be reasonably required by Title.

(b) Buyer's Closing Documents. On the Closing Date, Buyer shall execute and/or deliver to Seller the following (collectively, "Buyer's Closing Documents"):

(i) Purchase Price. The balance of the Purchase Price.

(ii) Title Documents. Such affidavits of purchaser or other documents as may be reasonably required by Title in order to record the Seller's Closing Documents and issue the title insurance policy required by this Agreement.

5. Prorations. Seller and Buyer agree to the following prorations and allocations of costs regarding this Agreement:

(a) Title and Closing Fees. Seller shall pay all costs of the Title Commitment. Buyer shall pay all premiums required for the issuance of any title policy. Seller and Buyer shall each pay one-half of any reasonable and customary closing fee or charge imposed by the closing agent, if any.

(b) Taxes. General real estate taxes and installments of special assessments due and payable in all years prior to the year of Closing shall be paid by Seller. General real estate taxes and installments of special assessments due and payable in all years subsequent to the year of Closing shall be paid by Buyer. General real estate taxes and installments of special assessments due and payable in the year of Closing shall be prorated as of the Closing Date, with Seller to pay that portion attributable to those days in the year having elapsed prior to the Closing Date. Seller shall pay the deed tax. Buyer shall pay all mortgage registry and similar taxes.

(c) Recording Costs. Seller shall pay the cost of recording all documents necessary to address Unpermitted Exceptions. Buyer shall pay the cost of recording all other documents.

(d) Other Costs. All operating costs of the Property shall be allocated between Seller and Buyer as of the Closing Date so that Seller pays that part of such operating costs attributable to the period before the Closing Date and Buyer pays that part of such operating costs attributable to the Closing Date and thereafter.

(e) Attorneys' Fees. Each of the parties shall pay its own attorneys' fees, except that a party defaulting under this Agreement shall pay the reasonable attorneys' fees and court costs incurred by the non-defaulting party, including such fees and costs incurred to enforce its rights regarding such default.

(f) Seller's Broker. If a Closing occurs, Seller shall pay any fee or commission Seller owes to Seller's Broker.

(g) Point of Sale Inspections. Buyer shall pay for any required point of sale inspections.

6. Operation and Maintenance. Except as provided in this Agreement, after the Effective Date and until the earlier of the Closing Date or termination of this Agreement, Seller shall (a) continue to manage, operate and maintain the Property in the same manner in which it is

presently managed, operated and maintained except for the demolition of the High School Building; (b) provide prompt written notice to Buyer of any casualty or condemnation affecting any portion of the Property after the date of this Agreement, or any matter relating to zoning changes, rent control or increase in tax assessments; (c) deliver to Buyer, promptly after receipt by Seller, copies of all notices of violation issued by any governmental authority with respect to the Real Property received by Seller after the date of this Agreement; and (d) advise Buyer promptly of any new litigation, arbitration or other judicial or administrative proceeding commenced after the Effective Date which concerns or affects the Property.

7. Seller's Representations. Seller represents to Buyer, as of the date of this Agreement, the following:

(a) Transaction Authorized. The execution of this Agreement by Seller and the transactions contemplated hereby have been duly authorized by all requisite action on the part of Seller.

(b) Power and Authority. Seller is a public corporation and political subdivision of the State of Minnesota, duly organized, validly existing and in good standing under the laws of the State of Minnesota. Seller has the capacity and authority to enter into this Agreement and consummate the transactions herein provided and nothing prohibits or restricts the right or ability of Seller to close the transactions contemplated hereunder and carry out the terms hereof.

(c) No Violation of Instruments. The execution, delivery and performance of this Agreement by Seller and the consummation of the transaction contemplated herein will not constitute a material default under any indenture, mortgage, deed of trust or other material agreement or instrument to which Seller is a party or by which Seller is bound.

(d) Bankruptcy. There are no actions or proceedings pending or, to Seller's knowledge, threatened to liquidate, reorganize, place in bankruptcy or dissolve Seller. Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due, or made an offer of settlement, extension or composition to its creditors generally.

(e) No Broker. Seller has not engaged or dealt with any broker or finder in connection with the sale contemplated by this Agreement except for Follmer Commercial Real Estate ("Seller's Broker"). Seller shall indemnify and hold harmless Buyer from any claims, costs, damages or liabilities (including reasonable attorneys' fees) arising from any breach of the representation contained in this Section 7.(e).

(f) Wells. Seller does not know of any "wells" on the Real Property within the meaning of Minn. Stat. §103I. This representation is intended to satisfy the requirements of the statute.

(g) Subsurface Sewage Treatment Systems. Solely for the purpose of satisfying the requirements of Minn. Stat. §115.55, Seller certifies that there is no "subsurface sewage treatment system" within the meaning of that statute on or serving the Real Property. Seller certifies that sewage generated on the Property goes to a facility permitted by the Minnesota Pollution Control Agency.

(h) Methamphetamine Disclosure. To Seller's knowledge, methamphetamine production has not occurred on the Property.

(i) Tanks. To Seller's knowledge, there are no above ground or underground tanks on the Property except, if at all, as set forth in a Tank Affidavit attached to this Agreement as Exhibit 9.1(i).

(j) No Proceedings. No legal or administrative proceeding has been commenced against Seller which would adversely affect its right to convey the Property to Buyer as contemplated in this Agreement. To Seller's knowledge, there are no condemnation or eminent domain proceedings pending or threatened with respect to the Property.

(k) Contracts With Third Parties. Seller has not entered into any contract for the sale of the Property or granted any rights of first refusal or options to purchase the Property or any other rights to others that might prevent the consummation of this Agreement.

For purposes of subsections (f) through (k) above the phrase "Seller's knowledge" means and is limited to the actual knowledge of David Spooner as of the Effective Date and without any duty to investigate the matter to which such actual knowledge or the absence thereof pertains. David Spooner shall have no personal liability to Buyer or any other person or entity for any breach of any representation by Seller in this Purchase Agreement or in any Date Down Certificate. David Spooner is acting for and on behalf of Seller and is in no manner expressly or impliedly making any representations in an individual capacity. Buyer waives any right to sue or seek any personal judgment or claim against David Spooner.

7.1 Survival of Seller's Representations. The representations made by Seller in this Agreement shall survive the recording of the Deed for a period expiring on the date that is nine (9) months following the Closing (the "Survival Date") and any action for a breach of Seller's representations must be made and filed by the Survival Date. Any Buyer claim for a breach of Seller's representations which is not made and filed by Buyer prior to the Survival Date shall, from and after the Survival Date, be deemed to have been waived by Buyer and rendered null and void and of no further force and effect; provided, however, that Buyer shall not make or bring any claim for breach of Seller's representations unless the amount of such claim equals or exceeds \$50,000 and provided further that the full extent of Seller's liability for all representations shall not exceed 5% of the Purchase Price in the aggregate. Buyer's sole remedy after the delivery of the Deed for a breach of Seller's representations is an action for damages pursuant to this Section 7.1 and Buyer waives all other causes of action and claims including, without limitation, any action to rescind this Agreement.

7.2 As Is Provisions. Buyer is purchasing the Property "AS IS" and "WHERE IS", and with all faults, and except as expressly set forth in Section 7, Seller makes no representations

or warranties, whether express or implied, by operation of law or otherwise, with respect to the quality, physical condition or value of the Property, the compliance of the Property with applicable building or fire codes or other laws or regulations. Buyer agrees that Seller is not liable or bound by any guarantees, promises, statements, representations or information pertaining to the Property made or furnished by Seller or any agent, officer, director, employee or other person representing or purporting to represent Seller, except as and to the extent expressly set forth in Section 7. To the fullest extent allowed by Minnesota and Federal law, Buyer and Seller agrees as follows: Buyer expressly waives the requirement of any disclosure not expressly contained in this Agreement (including, without limitation, any disclosure required pursuant to Minn. Stat. §513.52-513.60), and Buyer agrees to take the Property "As Is" notwithstanding any matter set forth in any disclosure statement required by Minnesota law.

BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO:

- (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY;
- (B) THE INCOME TO BE DERIVED FROM THE PROPERTY;
- (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON;
- (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCE OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY OR ANY FRANCHISE LICENSE OR AGREEMENT OR ANY GRANT OR SIMILAR AGREEMENT;
- (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY;
- (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY;
- (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY;
- (H) THE AVAILABILITY OF WATER OR OTHER RESOURCES OR UTILITIES; OR

(I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION OR POLLUTION RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING SOLID WASTE, AND INCLUDING THE DISPOSAL, RELEASE OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS SUBSTANCE.

7.3 Buyer's Representations. Buyer hereby makes the following representations: which representations are true in all respects as of the date hereof and shall be true in all respects on the Closing Date:

(a) Good Standing. The Buyer has full power and authority to own its property and carry on its business as it is now being conducted, and as it is proposed to be conducted. The Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of _____.

(b) Authority for this Agreement. Buyer has full power and authority to enter into this Agreement and to perform as required herein. Buyer has duly and validly taken all necessary action to authorize the execution, delivery and performance of this Agreement by Buyer. The individuals executing this Agreement on behalf of Buyer have the requisite right, power, legal capacity and authority to execute and enter into this Agreement on behalf of Buyer, to legally bind Buyer to the terms and provisions of this Agreement and to execute all other documents and take all other actions as may reasonably be necessary to perform each and all of Buyer's obligations under this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer, and (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws effecting the rights of creditors generally or general equitable principles) is enforceable as to Buyer in accordance with its terms.

(c) No Violation of Instruments. The execution, delivery and performance of this Agreement by Buyer and the consummation of the transaction contemplated herein will not result in a breach or violation of the terms and provisions of the articles, bylaws, operating agreement and/or other governing documents of the Buyer in effect on the date hereof (the "Organizational Documents") and will not constitute a material default under any indenture, mortgage, deed of trust or other material agreement or instrument to which the Buyer is a party or by which the Buyer is bound.

(d) PATRIOT Act.

(1) Buyer is in compliance with the requirements of the Order and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Orders. Further, Buyer covenants and agrees to make its policies, procedures and practices regarding compliance with the Orders, if any, available to Seller for its review and inspection during normal business hours and upon reasonable prior notice.

(2) Neither Buyer nor any beneficial owner of Buyer:

(a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other Lists;

(b) is a person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or

(c) is owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

(3) Buyer hereby covenants and agrees that if Buyer obtains knowledge that Buyer or any of its beneficial owners becomes listed on the Lists or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Buyer shall immediately notify Seller in writing, in such event, Seller shall have the right to terminate this Agreement without penalty or liability to Buyer immediately upon delivery of written notice thereof to Buyer and in such event the Earnest Money shall be immediately released to Seller.

(e) No Broker. Buyer has not engaged any broker or finder other than Seller's Broker in connection with the sale contemplated by this Agreement. Buyer shall indemnify and hold harmless Seller from any claims, costs, damages or liabilities (including reasonable attorney's fees) arising from any breach of the representations contained in this Section 7.3(e).

7.4 Independent Investigation. The consummation of this transaction shall constitute Buyer's acknowledgment that Buyer has independently inspected and investigated the Property and has made and entered into this Agreement based upon such inspection and investigation and its own examination of the condition of the Property. Upon Closing, Buyer shall assume the risk that adverse matters, including but not limited to construction defects and adverse physical and environmental conditions and the suitability or unsuitability of the Property for Buyer's intended uses, may not have been revealed by Buyer's investigations. Buyer, upon Closing, shall be deemed to have waived, relinquished and released Seller and its employees, agents, Board members and attorneys (collectively, the "Seller-Related Parties") from and against, and covenanted not to sue any of the foregoing with regard to, any and all claims, demands, causes of action (including causes of action in tort or under any environmental law), losses, damages, liabilities (whether based on strict liability or otherwise), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against Seller and/or the Seller-Related Parties at any time (including without limitation to the extent covered by or that would be covered by [as opposed to paid] by insurance) by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws

(including, without limitation, any environmental laws), the suitability of the Property for any purposes contemplated by Buyer and any and all other acts, omissions, events, circumstances or matters regarding the Property. The foregoing shall not be interpreted to waive any claim of Buyer with respect to any breach by Seller of any express representations made by Seller in Section 7 that expressly survive Closing pursuant to this Agreement.

7.5 **Buyer Reliance.** Buyer is experienced in and knowledgeable about the ownership, development, and management of real estate, and it has relied and will rely exclusively on its own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the Property, its condition, value and potential. The Purchase Price and other terms and conditions contained in this Agreement are the result of arm's-length negotiations between sophisticated parties experienced in transactions of this kind, and the Purchase Price and other terms and conditions contained in this Agreement take into account the fact that Buyer is not entitled to rely on any information provided by Seller, any of its agents, or any other person acting for or on behalf of Seller, except as expressly set forth in Section 7. All information, whether written or oral, previously, now, or hereafter made available to Buyer by Seller, its agents, or any other person acting for or on behalf of Seller, whether in the form of appraisals, market studies, projections, brochures, maps, surveys, soil reports, engineering studies, environmental studies, inspection reports, plans and specifications, and all other information and materials have been or will be furnished by Seller to Buyer solely as an accommodation, and neither Seller nor its agents has verified the accuracy of such information or the qualifications of the persons preparing such information, except as expressly set forth in Section 7. Buyer agrees that, notwithstanding the fact that Buyer has received certain information from Seller, or its respective agents or consultants, Buyer has relied solely upon and will continue to rely solely upon its own analysis and will not rely on any information provided by Seller, or its agents or consultants, except as expressly set forth in Section 7.

7.6 **Buyer's Efforts Are for Buyer's Benefit Only.** Buyer acknowledges that all actions taken or to be taken and all expenses or payments made or to be made and all obligations entered into or incurred or to be entered into or incurred by or on behalf of or at the direction or request of Buyer relating to this Agreement or Buyer's acquisition of the Property or Buyer's use, possible use or intended use of the Property are, have been and shall be solely for Buyer's benefit and not for the benefit of or with the intention of benefitting Seller. This includes, without limitation, those relating to (i) Buyer's due diligence, (ii) Buyer's efforts to seek any governmental, quasi-governmental or other approval or entitlement, including, without limitation, any subdivision approval, zoning change, license, permit, approval, consent, utility reservation, water allocation or other entitlement of any kind or nature whatsoever ("Approval"), (iii) the preparation of any drawings, plans, specifications, surveys or architectural or engineering renderings (collectively, "Plans"), (iv) any third party report, study, survey, or analysis, including, without limitation, any survey, environmental investigation or report, soil report or traffic report (collectively, "Reports") or (v) any claims, damages, costs, expenses, liabilities, and losses incidental to or arising out of relating thereto. Notwithstanding any obligation of Buyer to provide copies to Seller of any Reports, or any permission received from Seller to take any action, Buyer is not entitled to any compensation or reimbursement of any kind or nature from Seller for actions taken or to be taken or any expenses or payments made or to be made or any obligations entered into or incurred or to be entered into or incurred by or on behalf of or at the direction or request of Buyer relating to this Agreement or Buyer's acquisition of the

Property or Buyer's use, possible use or intended use of the Property. This includes, without limitation, compensation for any services relating to any Approval, Plans, or Reports, any compensation for any improvement of or to the Property, and any increase in value of the Property or any other property of Seller arising out of any improvement or Approval, Plans or Reports on any basis whatsoever including, without limitation, on the basis of any claim based upon agency, partnership, joint venture or enterprise, unjust enrichment, quantum meruit or other quasi-contract theory, whether or not a Closing occurs or this Agreement is terminated or cancelled. This Agreement does not provide for and this transaction does not contemplate that any services will be rendered by Buyer, or by Buyer's agents, contractors or employees to or for the benefit of Seller. Buyer shall indemnify, defend (with counsel reasonably satisfactory to Seller), and hold Seller and the Seller-Related Parties harmless for, from and against any claims, damages, costs, liabilities, losses, mechanic's, materialmen's or other liens, arising out of or in any way related to any claim by any third party for compensation for services relating to this Agreement, Buyer's acquisition of the Property, or Buyer's use, possible use or intended use of the Property, including, without limitation, claims for compensation for any services relating to any Approval, Plans, or Reports, any compensation for any improvement of or to the Property, and any increase in value in the Property or any other property of Seller arising out of any improvement or Approval, Plans or Reports, on any basis whatsoever including, without limitation, on the basis of any claim based upon agency, partnership, joint venture or enterprise, unjust enrichment, quantum meruit or other quasi-contract theory, except to the extent, if at all, that such services or improvements are expressly contracted for by Seller in writing and for Seller's sole benefit.

7.7 **Survival.** Sections 7-7.7 shall survive the Closing and any termination of this Agreement forever.

8. **Damage.** This Agreement shall not be affected by any damage to or destruction of the High School Building.

Promptly upon learning thereof, Seller shall give Buyer written notice of any damage or destruction of the Vo-Tech Building occurring prior to the Closing. If prior to the Closing all or a material portion of Vo-Tech Building is damaged or destroyed by an insured casualty, Buyer shall have the option of either (i) applying the proceeds of any payment under any insurance policies (other than business interruption or rental loss insurance) toward the payment of the Purchase Price to the extent Seller has received such insurance payments and has not spent them as permitted under this Section 8, receiving a credit against the Purchase Price in an amount equal to any applicable outstanding deductible under any such insurance policy, and receiving an assignment from Seller of Seller's right, title and interest in any such awards or payments not theretofore received by Seller, or (ii) terminating this Agreement by delivering written notice of such termination to Seller and Escrow Agent within ten (10) days after Buyer has received written notice from Seller of such material damage or destruction. Seller may use insurance proceeds to provide necessary repairs or necessary demolition, debris removal, and site security (e.g., fencing), and if Buyer does not elect to terminate this Agreement as provided in subsection (ii) above, Buyer will not receive a credit against the Purchase Price with respect to those expenditures. If, prior to the Closing, a portion of Vo-Tech Building is damaged or destroyed by an insured casualty and such portion is not a material portion of the Vo-Tech Building, the

payment and any applicable outstanding deductible under any insurance policies shall be applied toward the payment of the Purchase Price to the extent such condemnation awards or insurance payments have been received by Seller but not spent by Seller pursuant to this Section 8, and Seller shall assign to Buyer all of Seller's right, title and interest in any unpaid awards or payments. If less than a material portion of the Real Property is damaged or destroyed by an insured casualty, Seller may use insurance proceeds to provided necessary repairs or necessary demolition, debris removal, and site security (e.g., fencing), and Buyer will not receive a credit against the Purchase Price with respect to those expenditures. For purposes of this Section 8, the term "material portion" shall mean a reduction in value or cost of repair in the amount of \$400,000.00 or more. If the damage or destruction arises out of an uninsured risk, Seller shall elect, by written notice within ten (10) days of the occurrence of such damage or destruction either to terminate this Agreement or to close the transaction contemplated hereby with a reduction of the Purchase Price equal to the costs of repairing the Vo-Tech Building, as reasonably estimated by an engineer engaged by Seller and reasonably acceptable to Buyer.

9. Assignment. Buyer shall not assign its rights under this Agreement without the consent of Seller, which will not be unreasonably conditioned, withheld or delayed. Notwithstanding the forgoing restriction on assignment, Buyer may assign its rights under this Agreement to another entity directly or indirectly controlled by Luzy Ostreicher. No assignment by Buyer shall relieve the Buyer of its obligations under this Agreement; provided, however, that only the assignee Buyer will be responsible for the obligations of the Buyer after Closing.

10. Waiver of Jury Trial. BUYER AND SELLER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ANY ACTIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER WITH THIS AGREEMENT OR THE PROPERTY (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT OR ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR SELLER TO ENTER INTO AND ACCEPT THIS AGREEMENT AND THE DOCUMENTS TO BE DELIVERED BY BUYER AT CLOSING, AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT. EACH PARTY HEREBY AUTHORIZES AND EMPOWERS THE OTHER TO FILE THIS SECTION AND THIS AGREEMENT WITH THE CLERK OR JUDGE OF ANY COURT OF COMPETENT JURISDICTION AS A WRITTEN CONSENT TO WAIVER OF JURY TRIAL.

11. Notices. Any notice required or permitted to be given by any party upon the other is delivered in accordance with this Agreement (i) two (2) business days after it is deposited in the United States mail; (ii) the next business day after it is deposited with a nationally-recognized over-night courier; (iii) the day it is personally delivered or, if that day is not a business day, the next business day after it is personally delivered; or (iv) the day it is sent by electronic transmission (e.g. facsimile or email) or, if that day is not a business day, the next business day after it is sent by electronic transmission; and addressed as follows:

If to Seller:

Independent School District #709
215 N. 1st Avenue East
Duluth, MN 55802
ATTN: David Spooner
Email: david.spooner@isd709.org

with a copy to:

Daniel D. Maddy
Fryberger, Buchanan, Smith & Frederick, P.A.
302 West Superior Street, Ste. 700
Duluth, Minnesota 55802
Email: dmaddy@fryberger.com

If to Buyer:

Chester Creek View, LLC

ATTN: _____
Email: _____

With a copy to:
Ted Mozes, Esq.
16 Gladwyne Court
Spring valley NY 10977
845 362-6951
Email: TMOZESLAW@GMAIL.COM

If to Title:

Riverside Abstract Title Insurance Company

ATTN: _____
Email: _____

Notices shall be deemed effective on the date they are deemed to be delivered. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.

12. Captions and Recitals. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be

considered in interpreting this Agreement. The recitals set forth in this Agreement are intended to provide definitions and context only and are not intended as representations or warranties of any kind or nature.

13. Entire Agreement Modification. This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver or amendment of any of its terms shall be effective unless in writing executed by the parties. This Agreement or any amendments may be executed in counterparts, which, taken together, shall constitute one original. The parties agree that this Agreement may be transmitted between themselves by electronic transmission (e.g. facsimile or email). The parties intend that electronically transmitted signatures constitute original signatures and that an electronically transmitted agreement or counterparts containing the signatures (original or electronically transmitted) of all the parties is binding upon the parties. Notwithstanding the fact that Seller may deliver one or more unsigned drafts or copies of this Agreement to Buyer or Buyer's agents, this Agreement shall not be binding upon Seller until such time as Seller has received a signed copy of this Agreement from Buyer and Seller has communicated its acceptance of this Agreement to Buyer by delivering to Buyer a copy of this Agreement signed by Seller

14. Binding Effect. This Agreement binds and benefits the parties and their successors and assigns.

15. Choice of Law. This Agreement shall be subject to and governed by the laws of the State of Minnesota and all questions concerning the meaning or intention of the terms of this Agreement or concerning the validity thereof, and questions relating to the performance hereunder shall be adjudged and resolved in accordance with the laws of the State of Minnesota. All actions to enforce the terms and provisions of this Agreement shall be brought and maintained only within the State of Minnesota, and Seller and Buyer each hereby consent to the exclusive jurisdiction of the State Courts, sited in Duluth, Minnesota. Seller and Buyer each hereby expressly waive any and all rights which it may have to make any objection based on (a) jurisdiction, to any suit brought to enforce this Agreement in the State of Minnesota, or (b) venue, to any action brought to enforce this Agreement in Duluth, Minnesota, in each case in accordance with the above provisions. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid pursuant to applicable laws; however, if any part hereof shall be prohibited by applicable law or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity only and without invalidating the remainder thereof.

16. Time of Essence. Time is of the essence in all terms herein.

17. **DEFAULT AND REMEDIES.**

17.1 Buyer's Default. If the closing does not occur on or before the Closing Date for any reason other than a default by Seller or if Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement, by providing ten (10) calendar days written notice

with right to cure, if Minnesota Statute §559.21 does not apply, or by providing written notice of cancellation as provided in Minnesota Statute §559.21. Upon such termination, Seller shall retain the Earnest Money as liquidated damages, time being of the essence of this Agreement. Seller and Buyer agree that Seller's economic detriment resulting from the removal of the Property from the market and the carrying and other costs incurred thereafter and associated therewith, including any costs to be incurred by Seller in order to satisfy the conditions set forth in this Agreement, are impracticable or extremely difficult to ascertain. Seller and Buyer agree that the Earnest Money is a reasonable estimate of such damages in the event of Buyer's failure to perform according to the provisions of this Agreement. Such payment is intended to be liquidated damages and not intended to be a forfeiture or penalty. The termination of this Agreement and retention of the Earnest Money will be the sole and exclusive remedy available to Seller for default by Buyer, and Buyer will not be liable for damages or specific performance for such default. Seller and Buyer acknowledge and agree that any liability of Buyer to Seller under any provision of this Agreement which survives termination will not be limited by this liquidated damages provision.

17.2 **Seller's Default.** If Seller defaults under this Agreement, Buyer shall have the right to terminate this Agreement by giving ten (10) calendar days written notice of termination to Seller, whereupon this Agreement will terminate, and upon such termination, all Earnest Money will be refunded to Buyer. In lieu of terminating this Agreement, Buyer may maintain a suit for specific performance of this Agreement provided, however, that any such suit must be commenced within 180 days of the date of this Agreement. Termination and specific performance pursuant to this Section 17.2 are the sole and exclusive remedies afforded to Buyer and in no event shall Seller be liable for any actual, general, specific, punitive, incidental, speculative, consequential or other damages of any kind or nature.

17.3 **Effect of Termination.** Notwithstanding any provision in this Agreement to the contrary, the following shall survive any termination: (a) any express agreement to indemnify, defend or hold harmless, (b) any agreement to share closing costs, (c) any provision limiting claims for damages, (d) the provisions of Sections 7.1-7.2 and 7.4-7.7, (e) the provisions of this Section 17, (f) the provisions of Sections 10, 11, 12, 13, 14, 15, and 16, (g) any provision relating to the disposition of the Earnest Money and (h) any other provision that expressly survives termination.

18. **Special Provisions Relating to the Development Agreements.** Buyer shall take title to the Property and shall assume and perform the obligations of the "Developer" set forth in the DEDA Development Agreement except for demolition of the High School Building. Buyer shall also take title to the Property subject to and shall assume and perform the obligations of the "Developer" set forth in the City Development Agreement but only with respect to the Property and excluding the obligation of the Seller under the City Development Agreement to complete the "Required Improvements" as that term is used and defined in the City Development Agreement and the Memorandum of Understanding ("MOU") between the City Engineer for the City of Duluth, MN and Seller relative to Portia Johnson and H. Courtney Drive Reconstruction, Duluth, Minnesota dated _____, 2022 as shown in the Construction Plans for : Grading, Base, Bituminous Surfacing, Curbs and Gutters, Sidewalks, ADA Improvements, Storm Sewer and Utilities prepared by Northland Consulting Engineers LLP for Project 20-596

(City of Duluth Project No. 1977) dated 04/26/2022 and consisting of 105 sheets. The Required Improvements do not include any improvement marked as "future". Seller shall remain responsible for and shall construct the Required Improvements to the satisfaction of the City. The provisions of this Section 18 will survive the Closing. Seller shall indemnify, defend (with counsel reasonably satisfactory to Buyer) and hold Buyer harmless for, from and against any claims, damages, costs, liabilities, and losses arising out of Seller's failure to construct the Required Improvements to the satisfaction of the City. The provisions of this Section 19 will survive the Closing.

19. Damage to the Required Improvements. Upon completion and acceptance by the City, some or all of the Required Improvements will be turned over to the City and will become public but will be subject to a two-year warranty from Seller in favor of the City. Buyer shall indemnify, defend (with counsel reasonably satisfactory to Seller) and hold Seller harmless for, from and against any claims, damages, costs, liabilities, and losses arising out of damage to or impairment of the Required Improvements caused by Buyer or Buyer's agents, employees, contractors, or suppliers or by construction activity on the Property. The provisions of this Section 19 will survive the Closing.

20. Additional Covenants.

(a) Seller and its agents shall cease marketing the Property and shall not conduct any negotiations with third parties relating to the purchase of the Property during the term of this Agreement. Seller will not enter into any other contracts for the sale of the Property, nor will Seller grant any rights of first refusal or options to purchase the Property or any other rights to others that might prevent the consummation of this Agreement.

(b) Seller shall not amend any existing or enter into any new agreements or contracts related to or affecting the Property which will be in force and effect after the Closing, including, but not limited to: any maintenance, management and service contracts; and any recorded or unrecorded easements, agreements, restrictions, governmental agreements; all without the written consent of Buyer. Seller shall not convey all or any part of the Property. Seller shall not commit landlord or Buyer to any tenant improvements or allowances therefor or to any common area improvements. Nothing in this Section 20.(b), however, will prevent Seller from entering into the DEDA Development Agreement, the City Development Agreement, any easement required by the City with respect to the platting of the property (including, without limitation, any dedication included in the Plat and a required trail easement), or any contract relating to the Required Improvements.

(c) Seller shall convey the Property to Buyer free and clear of all liens of an ascertainable amount that are created, assumed or otherwise caused by Seller, such as mortgages, deeds of trust, mechanic's liens, judgment liens, utility liens and past due tax liens. Seller agrees to satisfy the requirements of the Title Company necessary to cause the Title Company to insure Buyer's title to the Property without an exception for mechanic's lien that are created, assumed or otherwise caused by Seller prior to Closing.

(d) Seller agrees, at no cost or expense to the Seller, to reasonably cooperate with Buyer in the preparation, filing and processing of any application, plan or request relating to obtaining governmental Approvals for the Property filed by or on behalf of the Buyer prior to the Closing. Seller makes no warranties or representations regarding the ability of Buyer to develop and use the Property for Buyer's intended purposes or the ability of Buyer to obtain the governmental Approvals. Buyer acknowledges that it is relying solely on its own investigations and efforts in order to make such determinations. Seller shall not be obligated to agree to cooperate with respect to any governmental Approval that will affect the Property if a Closing does not occur. Buyer shall not request or obtain any Approval or enter into any agreement with respect to any Approval that is not contingent upon Buyer's acquisition of the Property and Buyer shall indemnify and hold Seller harmless for, from and against any damages, costs, liabilities, expenses and losses, including attorney's fees and court costs, arising out of or in any way relating to any Approval or any agreement relating to any Approval that is asserted to affect the Property if Closing does not occur. Seller shall not be required to cooperate with respect to any Approval that may affect Lot 1, Block 1, of the Plat.

(e) Seller agrees, at no cost or expense to the Seller, to reasonably cooperate with Buyer in obtaining its financing.

(f) Buyer may market the Vo-Tech Building for lease or for sale prior to Closing provided, however, that any agreement for the sale or rental of the Vo-Tech Building must be contingent upon Buyer's acquisition of the Property and Buyer shall indemnify and hold Seller harmless for, from and against any damages, costs, liabilities, expenses and losses, including attorney's fees and court costs, arising out of or in any way relating to any such marketing or agreement.

21. City Required Statement. The following statement is included pursuant to Section 2 of the City Development Agreement:

Buyer must present its development plans to the City's planning department and such plans must comply with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota.

22. Post-Closing Survival. Notwithstanding any provision of this Agreement to the contrary, the following shall survive the Closing and the delivery of the deed and other closing documents: (a) any express agreement to indemnify, defend or hold harmless, (b) any agreement to share costs, (c) any provision limiting claims for damages, (d) the provisions of Sections 7-7.7, (e) the provisions of Sections 5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20(c), 21, and this Section 22, and (f) any other provision that expressly survives Closing.

[Signature Page to Follow.]

Seller and Buyer have executed this Agreement as of the respective dates stated below.

SELLER:

INDEPENDENT SCHOOL DISTRICT #709,
a public corporation and political subdivision of
the State of Minnesota

By _____

Name: _____

Title: _____

Date: _____

BUYER:

CHESTER CREEK VIEW, LLC, a _____
limited liability company

By _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1. (a)
Preliminary Plat of Central Overlook

EXHIBIT 3. (g)
Depiction of High School Building

Schedule 3(b)

Due Diligence Materials

CENTRAL HIGH SCHOOL DOCUMENTS

ASBESTOS REPORT

Central Asbestos Plan

Central HS 2016

BLUE PRINTS/BLUEPRINTS

CENTRAL HS DRAWINGS

1968 SURVEY

1969 CENTRAL HIGH SCHOOL

1969 DOOR & ROOM FINISH SCHEDULES

1969 REVISED DRAWINGS

1971 EXPERIENCE CENTER

1978 ROOF REPLACEMENT

1980 REMODELING PHASE I

1981 REMODELING SECOND FLOOR PHASE II

1986 REPLACEMENT OF DOMESTIC WATER SYSTEM

1988 CONSTRUCTION WORK RELATED TO ACM REMOVAL

1989 WORK RELATED TO ACM REMOVAL (LOCKER ROOMS)

1991 ACM REMOVAL RELATED WORK (OFFICE)

1991 PROPERTY SURVEY (AT TOWER)

1991 REPAIR AND BETTERMENT (SCIENCE)

1993 CONSTRUCTION WROK RELATED TO ACM REMOVAL

1993 DAY CARE AND SHOPS

1993 TECHNICAL ANNEX

1993 TECHNICAL ANNEX ADDDITION

1994 ACM RECONSTRUCTION

1994 ELECTRICAL SITE WORK

1994 REROOFING

1994 WINDOW & DOOR REPLACEMENT

1996 EXTERIOR STONE TUCK POINTING

1997 ASBESTOS ENCAPSULATION RECONSTRUCTION WORK

1997 FIRE PROTECTION SYSTEM

1997 FIRE PROTECTION SYSTEM AS-BUILTS

1999 LOADING DOCK IMPROVEMENTS

1999 REROOFING

1999 TOPO SURVEY

2000 ELECTRONIC FOLDING DOOR (STAGE)

2000 NEW CONCESSION STAND

2000 TENNES COURTS & PARKING LOT PHASE I

2001 ELECTRICAL SITE WORK

2001 SPORTS FACILTY PHASE II

2003 PRESS BOX
2003 ROOF STRUCTURE IMPROVEMENTS (CAFETERIA)
2004 LIGHTING FIXTURES
2004 ROOF REPLACEMENT (CAFETERIA)
2004 SUB SANDWICH SHOP
2005 SECOND ENTRANCE ROAD
2005 SPECIAL NEEDS CLASSROOM
2006 CLASSROOM EXITING PROJECT
Central Blueprints
STC MAIN DRAWINGS
1995 BRONZE PLAQUE
1995 CASEWORK SHOP DRAWINGS
1995 ELECTRICAL
1995 FIRE ALARM AS-BUILTS
1995 KITCHEN EQUIPMENT
1995 KITCHEN SHOP DRAWINGS
1995 MECHANICAL
1995 PLUMBING
1995 SPRINKLER SHOP DRAWINGS
1995 STC
1995 STRUCTURAL
1995 TELEPHONE
1995 UTILITIES
1997 CONSOLIDATION
STC Legal Site Plan
STC UPPER DRAWINGS
1993 TECHNICAL ANNEX
1993 TECHNICAL ANNEX ADDITION
CHS SALE
CHS Site - Aerial View - Option 1
CHS Site - Aerial View - Option 2
CHS Site - Aerial View - Option 3
CHS Site - Plan View - Option 1
CHS Site - Plan View - Option 2
CHS Site - Plan View - Option 3
COUNTY MAPS
Central County Map
CURRENT FLOOR PLANS
Central Floor Plans
Central HS Floor Plans
STC Main Floor Plans
STC Upper Floor Plans
DEED AND FILES
National Tile Work

STC Financing
Certificate 267329 STC Main
Certificate 307177 Central
Property Deeds Map
Warranty Deed 795212 HRA
Certificate of Title No. 302438 HRA
Certificate of Title No. 267329 STC
Document 439499 Muskegon Easement
Document 436177 Bike Pathway Easement
Document 374776 Vacation
Document 12291992 US West Easement
Document 946967-9 Path Easement
Abstract of Title 183543 Swenson's
Warranty Deed 689792 Swenson's Correction
Certificate of Title No. 267330 Main Site
Certificate of Title No. 176792 Great View Lots 7-8
Certificate of Title No. 180909 Clearview Lot 3
Certificate of Title No. 176058 Great View
Certificate of Title No. 176154 Clearview
Certificate of Title No. 270300 Swenson's
Certificate of Title No. 184073 Great View Lots 1-2

JCI FACILITIES REPORT

2006 Central Facilities Report

PARCELS

Central Parcels
Central Utility Locations

SURVEY

The survey (the "Existing Survey") prepared by LHB Inc. dated 4/22/2015, consisting of two sheets.

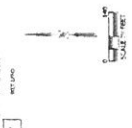
OFFICIAL PLAT

CENTRAL OVERLOOK

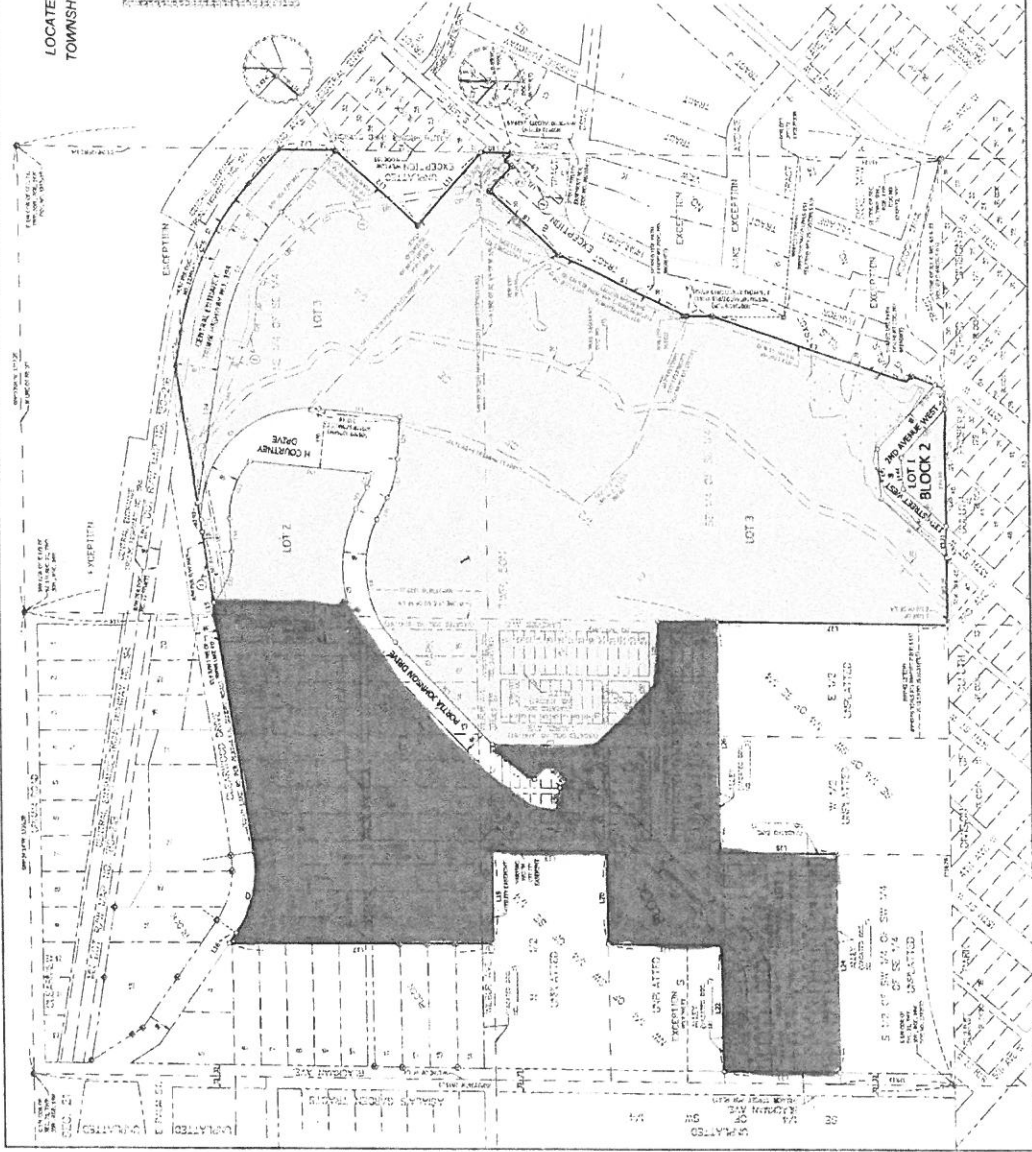
LOCATED IN PART OF THE SOUTHEAST QUARTER OF SECTION 21,
TOWNSHIP 50 NORTH, RANGE 14 WEST OF THE FOURTH PRINCIPAL
MERIDIAN, ST. LOUIS COUNTY, MINNESOTA

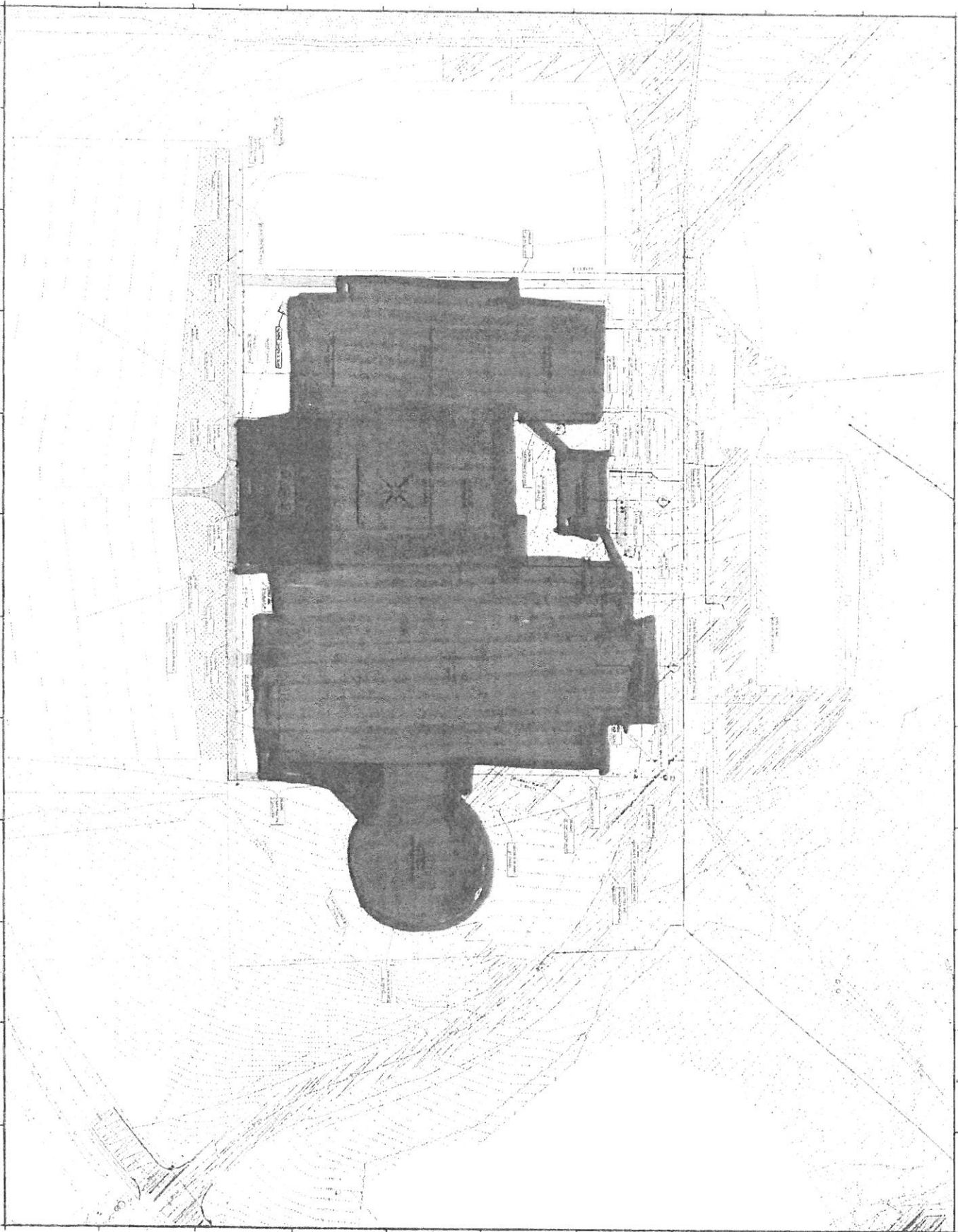
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- LEGEND**
- LOT LINES
 - EXCEPTIONS
 - ...



TALTA
 TOWN AND COUNTY PLATERS
 1100 W. WASHINGTON ST. ST. LOUIS, MO. 63101
 TEL. 435-1111 FAX 435-1112





PROJECT NAME:
Duluth
423 Duluth Schools

DATE: 10/14/14
DRAWN BY: J. J. JENSEN
CHECKED BY: J. J. JENSEN
DATE: 10/14/14
THIS DRAWING IS THE PROPERTY OF ICS AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF ICS.

Project Location:
800 E. Central Entrance
Duluth, MN

Sheet Number:
C002

Draft: 6/29/2022

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

INDEPENDENT SCHOOL DISTRICT NO. 709

Dated as of _____, 2022

DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City"), and Independent School District No. 709 ("Developer").

RECITALS

WHEREAS, Developer proposed to replat and cause to be redeveloped approximately 80 acres of land located on multiple parcels at 800 East Central Entrance Duluth, Minnesota, with the complete legal description attached hereto as Exhibit A (the "Property"); and

WHEREAS, Developer applied to City for approval of a preliminary plat and a final plat to divide the Property into two development lots identified on the Plat of Central Overlook (Block 1, Lots 2, and 3 and Block 2, Lot 1 (the "Third Party Development Property"), and Block 1, Lot 1 (the "District Development Property"), as hereinafter defined; and

WHEREAS, Developer desires to conduct site redevelopment activities on the Property of the hereinafter-described Project: demolition of existing Central High School building, which is located on the Property and the construction of the hereinafter described Required Improvements, all in preparation of the Developer's construction of two (2) large structures (transportation, district services center and renovation of an existing structure) (the "Project"); and

WHEREAS, Developer plans to sell the Third Party Development Property to an entity which may construct at a future date UDC compliant developments; and

WHEREAS, on November 9, 2021, the City Planning Commission approved the Plat subject to certain conditions, one of which required Developer to enter into a Development Agreement with City; and

WHEREAS, Developer has agreed to dedicate to the public for public use the drainage, utility, and right of way easements shown on the Plat, and to construct the Required Improvements as described in the hereinafter-referenced MOU; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

AGREEMENT

1. Definitions. The following term and phrases shall have the meanings hereinafter ascribed to them:
 - A. **Building:** shall mean the existing Central High School building located on the Property.
 - B. **Easements:** shall mean easements as shown and legally described on the Plat.
 - C. **District Development Property:** means Block 1, Lot 1 as identified on the Plat of Central Overlook.
 - D. **Lots:** shall mean the lots as shown and legally described on the Plat.
 - E. **Memorandum of Understanding or MOU:** shall mean that Memorandum of Understanding entered into between the City's City Engineer and Developer for the construction and implementation of the Required Improvements.
 - F. **Plans:** shall mean the plans and specifications for the construction and installation of all elements of the Required Improvements approved by the City Engineer and incorporated into the MOU.
 - G. **Plat:** shall mean the Plat of Central Overlook on file in the office of the County Recorder for St. Louis County, Minnesota, as shown in Exhibit A Proposed Final Plat.
 - H. **Project:** shall mean the dedication of easements for the Required Improvements, as shown on the Plat and MOU, the construction of the Required Improvements, the demolition of the Building, and the construction of two (2) large structures (transportation and district services center) and renovation of a third building located on the District Development Property.

- I. Public Utilities: means sewer, water, gas and stormwater improvements described in the Plans to be constructed in the Easements.
 - J. Property: shall mean that property referenced on Exhibit A attached hereto and made a part hereof, and consists of the District's Development Property and the Third Party Development Property.
 - K. Required Improvements: shall mean the Road Improvements, the Sidewalks, Public Utilities and the implementation of the Stormwater Management Plan, all in accordance with the MOU.
 - L. Road Improvements: shall mean the construction of the public roads to City Engineering standards, all as shown on the Plans.
 - M. Stormwater Improvements: shall mean the Stormwater Management Plan and the drainage easements as shown on the Plans.
 - N. Sidewalks: shall mean all public sidewalks as shown on the Plans.
 - O. Stormwater Management Plan: shall mean that Plan conforming to the requirements of § 50-18.1 E of the Duluth City Code, 1959, as amended, as such plan is approved as part of the MOU.
 - P. Third Party Development Property: means Block 1, Lots 2, and 3 and Block 2, Lot 1 as identified on the Plat of Central Overlook.
 - Q. Third Party Project: means a future development on the Third Party Development Property, to be developed by a purchaser of such property, and not by Developer. It is anticipated that such purchaser will enter into a separate memorandum of understanding and/or a development agreement with the City and City Engineer to govern the Third Party Project.
2. Developer's Duty and Compliance. Development of the Project must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all approvals and permits of any kind required to implement the Project from any governmental agency having jurisdictions with regard thereto, including but not limited to roadway access

permits, wetland permits, storm water management permits, utility construction permits, fill and grading permits, erosion and sediment control permits, and building permits. Developer agrees to include in any purchase and sale agreement of the Third Party Development Property that such purchaser must present its development plans to the City's planning department and such plans must comply with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota.

3. Recording of Plat: The Developer shall have caused to be recorded with the St. Louis County Recorder the fully-executed Plat and shall provide to the City's Director of Planning and Economic Development (the "Director") and the City Engineer two signed copies of Plat along with evidence of recording of the Plat; the City agrees that when requested to execute the Plat in the form approved by the Planning Commission, it shall expeditiously so execute it.

4. Pre-conditions to Issuance of Certificates of Occupancy: Developer agrees that prior to seeking the issuance of a Certificate of Occupancy, or as hereinafter set forth, the following shall have been completed:

A. Recording of Agreement: Developer shall have caused this Agreement to have been recorded against the District's Development Property in the Office of the County Recorder and Registrar of Titles for St. Louis County, Minnesota and shall have caused evidence of such recording to have been presented to the Director, such recording of this Agreement shall be completed within 30 days of the date this Agreement is fully executed by the parties hereto.

B. Plans: Developer shall have prepared and filed with the Director Plans which have been approved by the City Engineer; such Plans have been prepared, filed and approved as of the date hereof.

C. MOU: Developer shall have entered into MOU in the form acceptable to the City Engineer committing to the design and construction of the Required Improvements. Said MOU shall specifically provide that the City will not accept as "public" any of the Required Improvements unless all such improvements

described in the MOU have been completed to the satisfaction of the City Engineer. Such MOU has been completed as required herein.

D. Required Improvement Security. Developer shall have provided financial security in the form of an irrevocable Letter of Credit, cash escrow, or such other form as is acceptable to the Director in the amount of not less than \$10,000 to guarantee completion of construction of the Required Improvements in conformance with the requirements of this Agreement and the MOU, and authorizing the Director to exercise said security and to use the proceeds to complete construction of the Required Improvements if the Developer has not completed such Required Improvements before July 1, 2023.

E. Demolition: Developer expects to enter into a contract to demolish the Building on or about July 29, 2022 which will require demolition of the Building and site restoration to be completed by June 30, 2023. Developer agrees to require the demolition contract to provide payment and performance bonds for such demolition project. Further, the District shall require in the demolition contract that the City is named as an additional obligee under the payment and performance bonds.

F. Demolition by City: In the event that the demolition and site restoration work referenced in Subparagraph E above has not been completed by October 30, 2023, City shall have the right to exercise the bond referenced in that Subparagraph, and to cause said demolition and site restoration work to be completed.

5. Developer's Duty and Compliance. Development of the Project must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all relevant governmental approvals and building permits required.

6. Financing. Developer assumes all risks and agrees to bear all costs and fees related to the design and construction of the demolition of Central High School and all Required Improvements.

7. Property Conveyance and Easements. Developer agrees to convey and to dedicate to the City in trust for the general public the Easements. Developer warrants and represents to City that it has marketable fee title to the Property free and clear of all mortgages, liens and other encumbrances.

8. Sidewalk Maintenance: Developer shall be solely responsible for the maintenance, repair and reconstruction, including snow removal as necessary of the Sidewalks during the term of this Agreement.

9. Inspections. All Required Improvements shall be made in accordance with applicable City construction design standards and specifications and shall be subject to the inspection by and approval of the City. Developer hereby grants City, its agents, employees and contractors a limited license to enter the Property and perform all inspections which the Director in the exercise of his or her reasonable discretion deems appropriate in connection with this Agreement.

10. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, which is not cured following thirty (30) days' written notice from the City, or such longer period of time as may be reasonably required to cure such default, provided Developer is proceeding with diligence to cure such default, the parties hereto agree that no award of damages to City could constitute an adequate remedy for such default. Therefore, City may, in addition to and not in lieu of any other remedies or rights available to it by law or equity:

a. Institute an action for specific enforcement to compel Developer to perform any or all of its obligations under this Agreement. Developer acknowledges that the rights of City to performance of the obligations of Developer pursuant to this Agreement are special and unique, and that, in the event Developer violates, fails or refuses to perform any condition, agreement or provision herein, City may be without an adequate remedy at law.

b. Exercise any other remedy available to the City in law or in equity. No remedy conferred in this Development Agreement is intended to be exclusive. The election of any one or more remedies shall not constitute a waiver of any

other remedy. City may, but is not obligated to, exercise any of the remedies referred to in this paragraph.

11. Insurance. Developer agrees to purchase and maintain, during the term of this Agreement, insurance in the form of Workers Compensation and Employers Liability, Commercial General Liability and Automobile Liability covering operations associated with the Required Improvements and the Project, and Property insurance covering real and personal property interests at or near the Property, with the following limits:

Workers' Compensation	Statutory (MN)
Employers' Liability	\$1,500,000
Auto Liability (owned, hired and non-owned)	\$1,500,000
Commercial General Liability (including Contractual Liability)	
Each Occurrence	\$2,000,000
Aggregate	\$4,000,000
Property Insurance	To Replacement Value

Prior to commencement of construction, Developer agrees to deliver to the City a Certificate of Insurance, naming the City as an Additional Insured, as evidence that the above coverages are in full force and effect.

12. General Indemnity. During the term of this Agreement, Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or Developer, by reason of death of or injury to person or persons or the loss of or damage to property arising out of Developer's performance of its obligations under this Agreement, except to the extent caused exclusively by the willful misconduct or negligence of the City, or someone acting on its behalf, or a breach of this Agreement by the City. On ten (10) days written notice from City, Developer will appear and defend all lawsuits against City relating to or arising from such injuries or damage.

13. Environmental Indemnity. During the term of this Agreement, Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants

At Developer's request, the City will issue a written certificate of completion in recordable form acknowledging that the demolition of Central High School and the construction of the Required Improvements have been completed and that this Development Agreement is terminated.

17. Assignment. Developer may not assign this Agreement without the written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed, provided, however, that Developer may assign this Agreement to an entity controlling, controlled by or under common control with the Developer or its owners and shall provide the City with notice thereof.

18. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

19. Construction of Agreement. Developer and City have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

20. Severability. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

21. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH,
a Minnesota Municipal Corporation

By _____
Emily Larson
Its Mayor

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Emily Larson, the Mayor of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

By _____
Its City Clerk

(date)

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Ian B. Johnson, the Acting City Clerk of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

Countersigned:

Its Auditor

EXHIBIT A
Legal Description of the Property (proposed)

Block 1, Lots 1, 2, and 3, and Block 2, Lot 1, Central Overlook, St. Louis County,
Minnesota.

Draft: 8/3/2022

DEVELOPMENT AGREEMENT

by and between

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

and

INDEPENDENT SCHOOL DISTRICT NO. 709

dated as of

August _____, 2022

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DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") entered into this ____ day of August, 2022, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic and political subdivision created and existing under Minnesota Statutes, Chapter 469 ("DEDA") and INDEPENDENT SCHOOL DISTRICT NO. 709 ("Developer").

RECITALS

WHEREAS, Developer owns certain real property more particularly described in Exhibit A hereto and made a part hereof and which is diagramed on Exhibit A-1 (which property as so described is hereinafter referred to as the "Development Property"), on which are located two buildings, one of which is the former Central High School building located on the Development Property (the hereinafter-defined "Building") and the second of which is the former Secondary Technical Center building located on the Development Property (the "Tech Center") and on which are also located related improvements such as parking lots and the football/track facilities (the "Additional Improvements");

WHEREAS, Developer intends to demolish the Building which DEDA has determined to be a structurally substandard building as defined by M.S. 469.174 Subd. 10(b) and (c) that is required to be cleared to remove an incompatible and obsolete building not suitable improvement or conversion and to provide land to be developed by a third party which may construct, at a future date, UDC compliant developments (the "Project");

WHEREAS, the Building is located on that parcel of the Development Property listed on Exhibit A as Parcel B;

WHEREAS, DEDA and Developer anticipate that the Project may require the creation of a Redevelopment Tax Increment Financing District under Minnesota Statutes, Section 469.174, Subd. 10 (the "TIF District") proposed to include all or a portion of the Development Property, including all or a portion of the hereinafter-defined Parcels;

WHEREAS, the deteriorated condition of the Building and the development of Developer's Project necessitates the demolition and removal of the Building prior to creation of the TIF District;

WHEREAS, Minnesota Statutes, Section 469.174 provides that an economic development authority may create a tax increment financing district as a "redevelopment district" if the authority finds by resolution that parcels consisting of 70% of the area of the TIF District are occupied by buildings, streets, utilities or other improvements, and more than 50% of the buildings, not including out-buildings, are structurally substandard to a degree requiring substantial renovation or clearing;

WHEREAS, Minnesota Statutes, Section 469.174, Subd. 10(a), provides, among other terms, that a parcel may be deemed to be occupied by a structurally substandard building if (1) the parcel or parcels were occupied by a substandard building within three (3) years of the filing

of the request for certification of the parcel as part of the TIF District with the county auditor; (2) the substandard building was demolished or removed by the authority, the demolition or removal was financed by the authority or was done by a developer under a development agreement with the authority; and (3) the authority found by resolution, before the demolition or removal that the parcel was occupied by a structurally substandard building and that after demolition and clearance, the authority intended to include the parcel within the TIF District;

WHEREAS, DEDA has found by Resolution adopted on August 24, 2022, that (i) Parcel B set forth on Exhibit A hereto contains the Building and the Tech Center which are substandard buildings meeting the requirements of Minnesota Statutes, Section 469.174, Subd. 10(b) and (c); and (ii) that the Parcels meet the requirements of Minnesota Statutes, Section 469.174, Subd. 10(a)(1) as Parcels consisting of 93.6% of the area of the proposed TIF District contain buildings, street, utilities, paved or gravel parking lots, or other similar structures;

WHEREAS, this Agreement regarding demolition of the Building will allow DEDA to accomplish its goal of demolition of a substantial building and the avoidance of the spread of blight, while preserving Developer's and its assigns, the ability to request future assistance for the Project; and

WHEREAS, DEDA believes that the redevelopment of the Development Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the proposed project will be undertaken.

AGREEMENT

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

ARTICLE I DEFINITIONS; EXHIBITS

Section 1.1 Definitions. As used in this Agreement, the following terms have the following respective meanings:

"Act" means Minnesota Statutes, Sections 469.090 through 469.108, as amended.

"Agreement" means this Development Agreement, as originally executed or as it may from time to time be modified, amended or supplemented pursuant to the provisions hereof.

"Building" means the Central High School Building located on Parcel B of the Development Property.

"Board" means the Board of Commissioners of DEDA.

"County" means St. Louis County, Minnesota.

“*DEDA*” means the Duluth Economic Development Authority, a public body corporate and politic and political subdivision of the State of Minnesota.

“*Demolition Work*” means the demolition and removal of the Building, including without limitation, removal of all demolition debris and backfilling Parcel B so that such Parcel is left in a safe condition.

“*Developer*” means Independent School District No. 709, or its permitted assigns.

“*Development Property*” means all of or a portion of the real property described in **Exhibit A** of this Agreement and as diagramed on **Exhibit A-1** of this Agreement.

“*Parcels*” means the individual parcels A, B and C and adjacent right-of-way identified on **Exhibit A** hereto and as identified on **Exhibit A-1** of this Agreement.

“*Project*” means the demolition of the Building located on Parcel B and improvements which may be constructed by a third party at a future date consisting of UDC compliant developments on the Development Property.

“*TIF Act*” means Minnesota Statutes, Sections 469.174 to 469.1799, as amended.

Section 1.2 Exhibits. The Exhibits to this Agreement are the following:

- (a) Exhibit A: Legal Description of Development Property
- (b) Exhibit A-1: Diagram of Development Property
- (c) Exhibit B: Form of Certificate of Date of Commencement of Demolition of the Building.

ARTICLE II – REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations, Warranties and Covenants by DEDA. DEDA represents, warrants and covenants that:

(a) DEDA has all the powers of an economic development authority under the laws of the State, including the Act, as limited by DEDA’s Enabling Resolution, and has the power to enter into this Agreement and carry out its obligations hereunder.

(b) No part of this Agreement shall be construed as a representation or warranty of DEDA as to the condition (including soil condition) of the Development Property or as to its suitability for Developer’s purposes and needs.

(c) DEDA will act in a timely manner, consistent with statutory and DEDA’s procedural requirements, with regard to all approvals required under this Agreement.

Section 2.2 Representations, Warranties and Agreements by Developer. Developer represents, warrants and agrees that:

(a) Developer owns and will own the Building prior to and during the Demolition Work on such Building.

(b) Developer will demolish the Building which is located on a portion of the Development Property in accordance with the terms of this Agreement, and all local, state, and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(c) With regard to the Demolition Work, Developer agrees:

(i) Developer shall provide to DEDA a certificate in the form of **Exhibit B**, setting out the date that Demolition Work commenced on the Building;

(ii) Developer hereby certifies that the Building is not occupied for residential or business uses; and

(iii) Developer shall be responsible for all permits necessary for the completion of the Demolition Work, and all other matters concerning coordination of and procurement of the Demolition Work.

(iv) Developer agrees that the Demolition Work shall have been completed by June 30, 2023 unless said date is extended by DEDA's Executive Director in writing.

(d) Developer will cooperate with DEDA with respect to any litigation commenced with respect to the Demolition Work on the Development Property, except for litigation in which DEDA and Developer are adverse parties.

ARTICLE III – ADDITIONAL PROVISIONS

Section 3.1 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 3.2 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under the Agreement by one party to the others shall be sufficiently given or delivered if sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) In the case of Developer, is mailed to or delivered personally to Independent School District No. 709, 4316 Rice Lake Road, Suite 108, Duluth, MN 55811; Attention Manager of Facilities;

(b) In the case of DEDA, is mailed to or delivered personally to 411 West 1st Street, Room 418, Duluth, Minnesota 55802; Attention: Executive Director;

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

Section 3.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 3.4 Law Governing. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota.

Section 3.5 Amendments. This Agreement may be amended in writing upon mutual agreement of DEDA and Developer.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, DEDA and Developer have caused this Agreement to be duly executed as of the date first above written.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By _____
Its President

By _____
Its Secretary

(Signature page to Development Agreement by and between the Duluth Economic Development Authority and Independent School District No. 709)

INDEPENDENT SCHOOL DISTRICT NO.
709

By _____
Its Chair

By _____
Its Clerk

**EXHIBIT A
LEGAL DESCRIPTION
OF
DEVELOPMENT PROPERTY**

The following lots and adjacent right-of-way located in the Plat of Central Overlook, St. Louis County, Minnesota as follows:

- Parcel A – Lot 2, Block 1
- Parcel B – Lot 3, Block 1
- Parcel C – Lot 1, Block 2

**EXHIBIT A-1
DIAGRAM OF DEVELOPMENT PROPERTY**

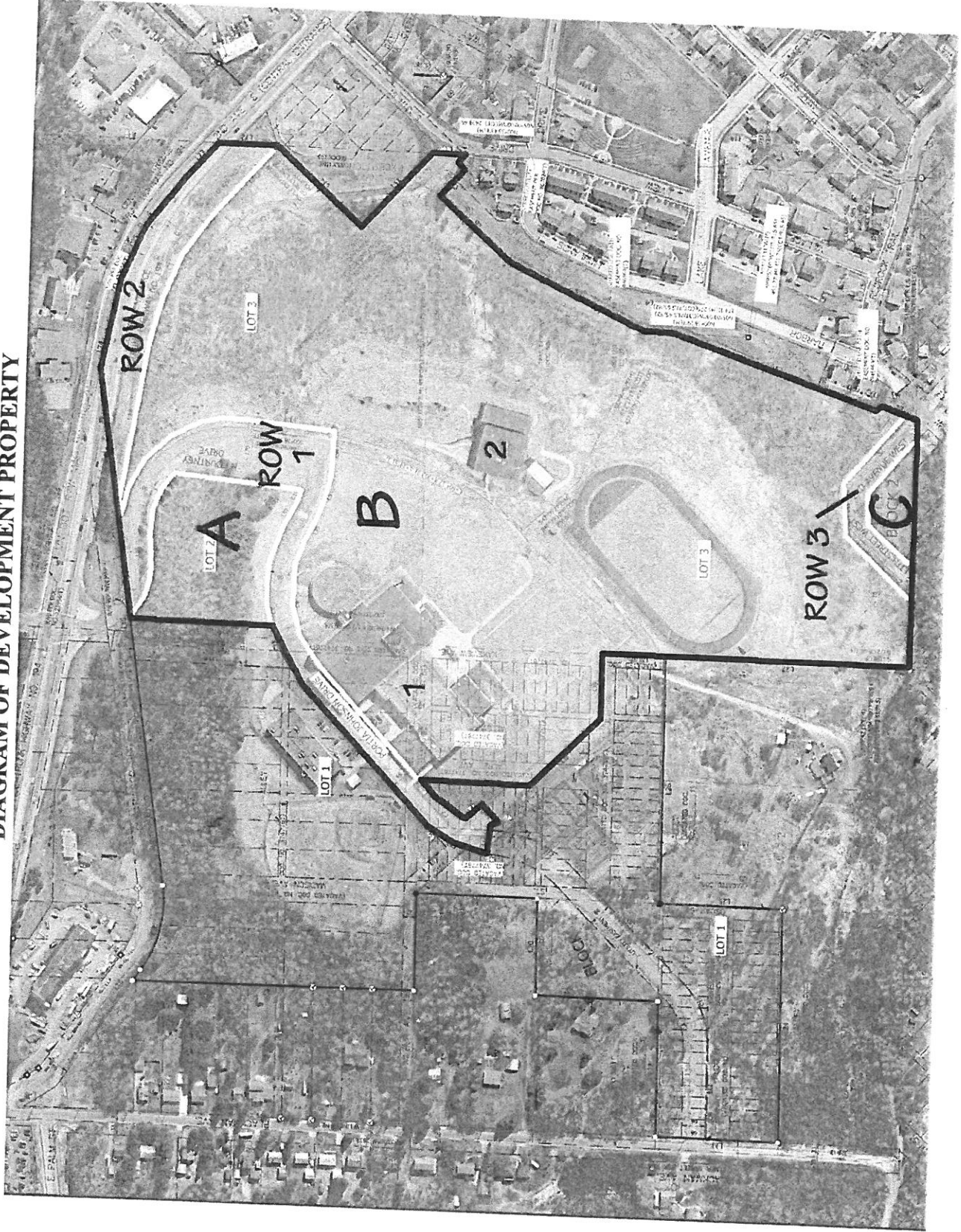


EXHIBIT B
CERTIFICATE OR DATE OF COMMENCEMENT OF DEMOLITION
PARCEL NO. 1

WHEREAS, the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and political subdivision of the State of Minnesota ("DEDA"), has entered into a Development Agreement dated as of August ____, 2022, with INDEPENDENT SCHOOL DISTRICT NO. 709 ("Developer"), regarding the demolition work on the land described on Exhibit A attached hereto in the County of St. Louis and the State of Minnesota (the "Building").

I, the _____ of Developer hereby certify that the Demolition Work on the Building on Parcel B identified on Exhibit A thereto commenced on _____, 2022.

I hereby acknowledge that if the request for certification of the proposed tax increment district is not filed with the St. Louis County Auditor within three years of commencement of the demolition of the Blighted Building on the Parcel, the Parcel will not be deemed be occupied by a substandard building for purposes of qualifying the tax increment district as a redevelopment district.

INDEPENDENT SCHOOL DISTRICT NO.
709

By _____
Its _____

EXHIBIT A
to
FORM OF CERTIFICATE OF COMMENCEMENT OF DEMOLITION WORK

Legal Description

Lot 3, Block 1, Plat of Central Overlook, St. Louis County, Minnesota (Parcel B)