

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

between

CITY OF DULUTH

and

INDEPENDENT SCHOOL DISTRICT NO. 709

Dated as of _____, 202__

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment"), effective as of the date of attestation hereof by the City Clerk, is 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").

WHEREAS, on August 3, 2022, Developer and City entered into a Development Agreement (as amended by this First Amendment, the "Development Agreement") in relation to the property owned by Developer that is to be legally described (upon completion of the replatting process) as set forth on the attached Exhibit A (the "Property").

WHEREAS, the Development Agreement was registered in the Office of the St. Louis County Registrar of Titles on _____, 20__ as Document No. _____ and recorded in the Office of the St. Louis County Recorder on _____, 20__ and Document No. _____; and

WHEREAS, Developer and City wish to amend the Development Agreement as set forth in this First Amendment.

NOW, THEREFORE, City and Developer agree to amend the Development Agreement as follows:

1. Capitalized terms used in this First Amendment that are not defined in this First Amendment have the meanings set forth in the Development Agreement.

2. Paragraph 4.A. of the Development Agreement is amended and replaced in its entirety with the following paragraph 4.A.:

A. Recording of Agreement. Immediately following recording of the Plat, Developer shall record this Agreement, and any then-existing amendments hereto, against the District Development Property in the Offices of the County Recorder and the Registrar of Titles for St. Louis County, Minnesota and shall deliver recorded copies of this Agreement and

all amendments to City's Director of Planning and Economic Development (the "Director").

3. The following paragraph 22 is added to the Development Agreement:

22. Dedication of Public Easement for Roadway Purposes. Within 60 days of a written request by City, Developer shall dedicate to City, its successors and assigns, in trust for the benefit of the public, a permanent easement (the "Future Road Easement") for roadway purposes over, under and across that portion of the District Development Property legally described and depicted on the attached Exhibit B (the "Future Road Easement Area"). The Future Road Easement shall be recorded in the St. Louis County real estate records by City, at City's expense. The Future Road Easement shall be granted (i) at no cost to City; and (ii) free and clear of all mortgages, liens and other encumbrances. City and Developer acknowledge and agree that the existing pavement and other improvements within the Future Road Easement Area do not meet the minimum standards for a city street and the existing roadway has not been constructed, maintained or opened as a public street. Notwithstanding the provisions of Paragraph 6 above, Developer and successor owners of the District Development Property shall not be responsible for costs relating to the initial construction or subsequent maintenance, repair, or replacement of a public street and related public improvements on the Future Road Easement Area (collectively, the "Future Road Costs"); EXCEPT AS FOLLOWS: (1) if (a) initial construction of a public street or related public improvements is required solely for the development or use of the District Development Property, or any portion thereof, and (b) a change in use on all or a portion of the District Development Property necessitates public access over a public street in the Future Road Easement Area, then City may require the owner of the portion of the District Development Property on which the change in use will take place to pay the Future Road Costs for

the initial construction and/or subsequent maintenance, repair, or replacement of a public street and related public improvements on the Future Road Easement Area, and (2) if (a) initial construction of a public street or related public improvements on the Future Road Easement Area has been completed, and (b) a change in use on all or a portion of the District Development Property necessitates public access over a public street in the Future Road Easement Area, then City may require the owner of the portion of the District Development Property on which the change in use will take place to pay a reasonable share of the Future Road Costs for subsequent maintenance, repair, or replacement of a public street and related public improvements. The obligations and benefits of this Paragraph 22 shall run solely with the District Development Property (and no other land within the Plat) and shall not terminate upon the written certification to be delivered by the Director and the City Engineer pursuant to Paragraph 16 above. Developer's obligation to grant the Future Road Easement shall terminate upon the recording of the Future Road Easement.

4. Except as specifically amended pursuant to this First Amendment, the Development Agreement remains in full force and effect. In the event of a conflict between the provisions of this First Amendment and the provisions of the Development Agreement, the provisions of this First Amendment shall govern.

5. This First Amendment 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.

[Signature pages follow]

EXHIBIT A

Legal Description of the Property

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