

Pursuant to due call and notice thereof, a North Mankato Port Authority Commission meeting was held in the Council Chambers of the Municipal Building on Monday, August 7, 2023.

President Olenius called the meeting to order at 5:00 p.m. The following were present: Commissioners Peterson, Whitlock, Carlson, Olenius, Steiner, and Oachs, Executive Vice President McCann, Assistant Treasurer Ryan, and Secretary Van Genderen.

Approval of the Minutes

Commissioner Steiner moved, seconded by Commissioner Oachs, to approve the minutes of the Port Authority meeting of July 17, 2023. Vote on the motion: Carlson, Olenius, Steiner, Oachs, Peterson, and Whitlock, aye, no nays. Motion carried.

Approval of Bills

Commissioner Oachs moved, seconded by Commissioner Steiner, to Approve the bills. Vote on the motion: Carlson, Olenius, Steiner, Oachs, Peterson, and Whitlock, aye, no nays. Motion carried.

Resolution No. 4-23 Authorizing Setoff of Lease Deposit

Executive Vice President McCann introduced Adam Niblick from Taft Law, who was hired to protect the City's interests during the HyLife bankruptcy. He reviewed the lease and noted that HyLife deposited a security deposit in the amount of \$200,000. HyLife also deposited an escrow fund of \$520,000 with the City for the purpose of supplemental security to hold HyLife to its obligations under the Lease. The lease expired, and Hylife surrendered the property to the Authority on June 24, 2023. HyLife did not surrender the Property in as good a state or condition as required by the lease. HyLife has conditionally agreed to the City and Authority collectively withholding Deposit funds in the amount of \$280,000 (the setoff). HyLife has also filed for bankruptcy and the parties must execute certain legal instruments in order to obtain the Court's consent to effectuate the setoff. The resolution presented authorizes the property officers of the authority to execute all necessary agreements and documents to obtain the setoff. Commissioner Steiner moved, seconded by Commissioner Oachs, to Adopt Res. No. 4-23 Authorizing Setoff of Lease Deposit. Vote on the motion: Carlson, Olenius, Steiner, Oachs, Peterson, and Whitlock, aye, no nays. Motion carried.

Other Business

None

Open Meeting to the Public

None.

There being no further business, Commissioner Steiner moved, seconded by Commissioner Peterson, to adjourn. Vote on the motion: all ayes. Motion carried. The meeting was adjourned at 5:09 p.m.

President

Secretary



City of North Mankato, MN

Port Authority Claims

By Fund

Payment Dates 8/10/2023 - 8/23/2023

| Vendor Part Number | Vendor Name | Payment Date | Amount |
|---|----------------------------|--------------|--|
| Fund: 228 - PORT AUTHORITY | | | |
| | ABDO FINANCIAL SOLUTIONS | 08/21/2023 | 24.38 |
| | | | Fund 228 - PORT AUTHORITY Total: 24.38 |
| Fund: 240 - JOINT ECONOMIC DEVELOPMENT | | | |
| | BOLTON & MENK, INC. | 08/23/2023 | 560.00 |
| | BOLTON & MENK, INC. | 08/23/2023 | 619.00 |
| | NORTHLAND SECURITIES, INC. | 08/21/2023 | 4,875.00 |
| | | | Fund 240 - JOINT ECONOMIC DEVELOPMENT Total: 6,054.00 |
| | | | Grand Total: 6078.38 |

Authorization Signatures

Port Authority

The above claims list for 8/21/2023 is approved by:

SCOTT CARLSON - COMMISSIONER

JAMES WHITLOCK - COMMISSIONER

WILLIAM STEINER - COMMISSIONER

SANDRA OACHS - COMMISSIONER

MATT PETERSON - COMMISSIONER

DUANE OLENIUS - COMMISSIONER

BENJAMIN KAUS - COMMISSIONER

NORTH MANKATO PORT AUTHORITY COMMISSION

RESOLUTION NO. _____

RESOLUTION APPROVING DEVELOPMENT AGREEMENT
AND ASSOCIATED DEVELOPMENT PLANS AND SPECIFICATIONS.

WHEREAS, the North Mankato Port Authority Commission (the "Authority") was created pursuant to Minnesota Statutes, Sections 469.048 through 469.068, as amended, and Section 469.079 (the "Act") and was authorized to transact business and exercise its powers by resolution of the City Council of the City of North Mankato, Minnesota (the "City"); and

WHEREAS, on February 6, 2023, the Authority, following a duly noticed public hearing, approved the sale of certain real property located in the City commonly known as 1111 Range Street (the "Property") to 1111 Holdings of Mankato, LLC (the "Developer") and authorized the execution of an Agreement of Purchase and Sale (the "Agreement"); and

WHEREAS, the Act and Agreement, collectively, condition the sale of the Property upon Developer providing the Authority development plans and specifications, Developer receiving a conditional use permit pursuant to Chapter 156 of the North Mankato Code of Ordinances, and Developer entering into a development agreement (the "Development Agreement") with the City; and

WHEREAS, the Act and Agreement similarly condition the sale upon the Authority approving, in writing, the Development Agreement terms and conditions and the associated development plans and specifications for the Property; and

WHEREAS, Developer made application to the City for a conditional use permit (the "PUD Application") supported by development plans and specifications for the Property, and the City has conditionally approved the PUD Application in accordance with Chapter 156 of the City of North Mankato Code of Ordinances.

NOW THEREFORE BE IT RESOLVED, BY THE NORTH MANKATO PORT AUTHORITY COMMISSION, as follows:

1. The Authority hereby approves the Development Agreement in substantially the form on file with City.
2. The Authority hereby approves the development plans and specifications making up Developer's PUD Application.
3. The Authority hereby authorizes the officers, staff, and legal counsel for the Authority to take any actions necessary to carry out the terms of the sale, the Agreement, and this Resolution.

Approved by the Board of Commissioners of the North Mankato Port Authority Commission this _____ day of _____, 2023.

President

Secretary

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF NORTH MANKATO, MINNESOTA

AND

1111 HOLDINGS OF MANKATO, LLC

This document drafted by:

TAFT STETTINIUS & HOLLISTER LLP
2200 IDS Center, 80 South 8th Street
Minneapolis, Minnesota 55402

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement"), made as of the 21st day of August, 2023 by and between the City of North Mankato, Minnesota (the "City"), a municipal corporation existing under the laws of the State of Minnesota, and 1111 Holdings of Mankato, LLC a Minnesota limited liability company (the "Developer"),

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 to 469.133, the City has heretofore established Municipal Development District No. 2 (the "Development District") and has adopted a development program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (hereinafter, the "Tax Increment Act"), the City has heretofore established, within the Development District, Tax Increment Financing (Redevelopment) District No. 2-2 (Hotel Redevelopment) (the "Tax Increment District") and has adopted a tax increment financing plan therefor (the "Tax Increment Plan") which provides for the use of tax increment financing in connection with certain development within the Tax Increment District and the Development District; and

WHEREAS, in order to achieve the objectives of the Development Program and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to assist the Developer with the financing of certain costs of a Project (as hereinafter defined) to be constructed within the Tax Increment District as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the redevelopment and construction of the Project (as hereinafter defined), and the fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of the residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Law, Minnesota Statutes, Section 116J.993 through 116J.995, apply to this Agreement; and

WHEREAS, the City has adopted criteria for awarding Business Subsidies that comply with the Business Subsidy law, after public hearings for which notices were published; and

WHEREAS, the City Council of the City has approved this Agreement as a subsidy agreement under the Business Subsidy Law; and

WHEREAS, Developer made application for a conditional use permit for a planned unit development upon the Development Property (the "PUD Application"); and

WHEREAS, the City Council of the City has conditionally approved the PUD Application, with certain conditions (the “Approval”) in accordance with the PUD Ordinance (as hereinafter defined); and

WHEREAS, this Agreement is entered into for purpose of memorializing the understandings and agreements of the Parties concerning the Project, the Site Improvements, and use of the Development Property as a planned unit development in accordance with the Approval and PUD Conditional Use Permit.

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

ARTICLE I

DEFINITIONS

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

Agreement means this Development Agreement by and between the City and the Developer as the same may be from time to time modified, amended or supplemented;

Approval means the City Council's passage of Business Item CU-1-23 1111 Range Street-Norwood Inn on April 17, 2023, conditionally approving the PUD Application;

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

Business Subsidy means the term as defined by Minnesota Statutes, Section 116J.993, Subdivision 3;

Business Subsidy Law means Minnesota Statutes, Section 116J.993 through 116J.995;

City means the City of North Mankato, Minnesota;

County means Nicollet County, Minnesota;

Developer means 1111 Holdings of Mankato, LLC, a Minnesota limited liability company, its successors and assigns;

Development District means Municipal Development District No. 2, including the real property described in the Development Program;

Development Program means the development program approved in connection with the Development District;

Development Property means the real property described in Exhibit A, attached to this Agreement;

Event of Default means any of the events described in Section 4.1 hereof;

Legal and Administrative Expenses means the fees and expenses incurred by the City in connection with the review and analysis of the development proposed under this Agreement with the adoption and administration of the Tax Increment Financing Plan and establishment of the Tax Increment District, the preparation of this Agreement, the issuance of the TIF Note, including, but not limited to, attorney and municipal advisor fees and expenses;

Note Payment Date means August 1, 2026, and each February 1 and August 1 thereafter to and including February 1, 2052; provided, that if any such Note Payment Date should not be a Business Day, the Note Payment Date shall be the next succeeding Business Day;

Prime Rate means the rate of interest from time to time publicly announced by U.S. Bank National Association in Minneapolis, Minnesota, as its "reference rate" or any successor rate, which rate shall change as and when that prime rate or successor rate changes;

Project means the redevelopment of an existing sub-standard building and construction of new space providing for sixty-one (61) new apartments units, 30,000 square feet of commercial space, including restaurant and retail space on the Development Property by the Developer;

PUD Application means Developer's application to the City pursuant to the PUD Ordinance, including all Project narratives, schematic designs, and site plans;

PUD Conditional Use Permit means the permit issued to the Developer by the City Community Development Director in accordance with the Approval and attached hereto as Exhibit D;

PUD Ordinance means Chapter 156 of the City of North Mankato Code of Ordinances;

Sign Code means Chapter 154 of the City of North Mankato Code of Ordinances;

Site Improvements means the site improvements undertaken or to be undertaken on the Development Property, more particularly described on Exhibit C attached hereto;

State means the State of Minnesota;

Tax Increments means in years 2026 to 2031 98% of the tax increment derived from the Development Property; in years 2031 to 2035 95% of the tax increments derived from the Development Property; and in years 2036 to 2051 90% of the tax increments derived from the Development Property, which have been received and retained by the City in accordance with the provisions of Minnesota Statutes, Section 469.177;

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

Tax Increment District means Tax Increment Financing (Redevelopment) District No. 2-2 (Hotel Redevelopment) located within the Development District, a description of which is set forth in the Tax Increment Financing Plan, and qualified as an redevelopment district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District by the City Council on July 17, 2023, and any future amendments thereto;

Termination Date means the earlier of (i) February 1, 2052, (ii) the date the TIF Note is paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms;

TIF Note means the Tax Increment Revenue Note (Hotel Redevelopment) to be executed by the City and delivered to the Developer pursuant to Article III hereof, a form of which is attached hereto as Exhibit B; and

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

(1) The City is a municipal corporation, duly organized, and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Increment District is a "redevelopment district" within the meaning of Minnesota Statutes, Section 469.174, Subdivision 10, and was created, adopted and approved in accordance with the terms of the Tax Increment Act.

(3) The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4) To finance certain costs within the Tax Increment District, the City agrees, subject to the further provisions of this Agreement, to apply Tax Increments to reimburse the Developer for a portion of the costs of the acquisition of the Development Property and construction of Site Improvements incurred in connection with the Project as further provided in this Agreement.

(5) The City makes no representation or warranty, either expressed or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's or Developer's purposes or needs.

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

(1) The Developer is a Minnesota limited liability company and has the power and authority to enter into this Agreement and to perform its obligations hereunder and doing so will not violate its articles of organization, member control agreement or operating agreement, if any, or the laws of the State and by proper action has authorized the execution and delivery of this Agreement.

(2) The Developer shall construct the Project in accordance with the terms of this Agreement, the Development Program, Tax Increment Financing Plan, Approval, PUD Conditional Use Permit, and all applicable local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

(3) The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(4) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not have been or be economically feasible within the

reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

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

(6) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(7) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(8) The construction of the Project shall commence no later than October 1, 2023 and barring Unavoidable Delays, the Project will be substantially completed by October 1, 2025.

(9) The Developer acknowledges that Tax Increment projections contained in the Tax Increment Financing Plan are estimates only and the Developer acknowledges that it shall place no reliance on the amount of projected Tax Increments and the sufficiency of such Tax Increments to reimburse the Developer for a portion of the costs of the construction of the Site Improvements as provided in Article III.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1 Project, Site Improvements; and Costs. The parties agree that the acquisition of the Development Property by the Developer and the Site Improvements to be constructed by the Developer are essential to the successful completion of the Project. The costs of the acquisition of the Development Property and the Site Improvements shall be paid by the Developer. The City shall reimburse the Developer for the lesser of (a) \$2,616,000, or (b) the cost of acquisition of the development property and making the Site Improvements actually incurred and paid by the Developer (the "Reimbursement Amount") as further provided in Section 3.3.

Section 3.2 Limitations on Undertaking of the City. Notwithstanding the provisions of Section 3.1, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the Reimbursement Amount, if the City, at the time or times such payment is to be made is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured.

Section 3.3 Reimbursement: TIF Note. The City shall reimburse for the costs identified in Section 3.1 through the issuance of the City's TIF Note in substantially the form attached to this Agreement as Exhibit B, subject to the following conditions:

(1) The TIF Note shall be dated, issued and delivered when the Developer shall have (a) demonstrated in writing to the reasonable satisfaction of the Authority and the City that the construction of the Project has been completed and the Developer has paid the costs of the acquisition of the Development Property and the construction of the Site Improvements, as described in and limited by Section 3.1; and (b) shall have submitted a settlement statement or other evidence of payment of the costs of the acquisition of the Development Property and paid invoices for the costs of construction of the Site Improvements in an amount not less than the Reimbursement Amount.

(2) The unpaid principal of the TIF Note shall bear simple non-compounding interest from the date of issuance of the TIF Note, at 5.00% per annum. Interest shall be computed on the basis of a 360-day year consisting of twelve (12) 30-day months.

(3) The principal amount of the TIF Note and the interest thereon shall be payable solely from the Tax Increments.

(4) On each Note Payment Date and subject to the provisions of the TIF Note, the City shall pay, against the principal and interest outstanding on the TIF Note, the Tax Increments received by the City during the preceding six (6) months. All such payments shall be applied to accrued interest and then to reduce the principal of the TIF Note.

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

(6) The City's obligation to make payments on the TIF Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirement that there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement.

(7) The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF Note and the terms of this Section 3.3, the terms of the TIF Note shall govern. The issuance of the TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the TIF Note may require in connection therewith, are hereby authorized and approved by the City.

Section 3.4 Prohibition Against Transfer of Project and Assignment of Agreement. The Developer represents and agrees that prior to the Termination Date the Developer shall not transfer the Project or any part thereof or any interest therein, without the prior written approval of the City. The City shall be entitled to require as conditions to any such approval that:

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

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

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

Section 3.5 Real Property Taxes. The Developer shall, so long as this Agreement remains in effect, pay all real property taxes which are payable pursuant to any statutory or contractual duty that shall accrue until title to the property is vested in another person. The Developer agrees that for all real property taxes, so long as this Agreement remains in effect:

(1) It will not seek a reduction in the market value as determined by the Nicollet County Assessor of the Project or any facilities located or to be located on the Development Property, pursuant to the provisions of this Agreement, for so long as the TIF Note remains outstanding.

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

(3) It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Development Property

determined by any tax official to be applicable to the Project or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Development Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax.

(4) It will not seek any tax deferral or abatement, either presently or prospectively authorized under State or federal law, of the ad valorem property taxation of the Development Property so long as this Agreement remains in effect.

Section 3.6 Legal and Administrative Expenses. The Developer shall reimburse the City for its actual out of pocket Legal and Administrative Expenses.

Section 3.7 Business Subsidies Law.

(1) In order to satisfy the Business Subsidy Law, the Developer acknowledges and agrees that: (i) the amount of the Business Subsidy granted to the Developer by the City under this Agreement is \$2,616,000, which consists of the Reimbursement Amount and (ii) the Business Subsidy is needed because the Project is not sufficiently feasible for the Developer to undertake without the Business Subsidy. The public purpose of the Business Subsidy is to preserve and increase the tax base in the City, and redevelop sub-standard buildings in the City. The Developer agrees that it will meet the following goals (the "Goals") in connection with the development of the Development Property: the Developer will create at least ten (10) new full-time jobs within the earlier of (i) two years of the Developer's occupancy of the Project or (ii) the Benefit Date, at an average hourly wage of at least \$16 per hour plus benefits.

(2) If no Goals are met, the Developer agrees to repay the City the amount of the Business Subsidy (\$2,616,000 plus interest ("Interest") set at the implicit price deflator defined in Minnesota Statutes, Section 275.70, Subdivision 2, accruing from and after the Benefit Date, compounded semiannually. If the Goals are met in part by the Developer, the Developer will repay a portion of the Business Subsidy (plus Interest) determined by multiplying the Business Subsidy by a fraction, the numerator of which is the number of jobs in the Goals which were not retained or created at the wage level set forth above and the denominator of which is ten (10) (i.e. number of jobs set forth in the Goals).

(3) The Developer agrees to (i) report its progress on achieving the Goals to the City until the later of the date the Goals are met or ten (10) years from the Benefit Date, or, if the Goals are not met, until the date the Business Subsidy is repaid, (ii) include in the report the information required in Section 116J.994, Subdivision 7 of the Business Subsidies Law on forms developed by the Minnesota Department of Employment and Economic Development, and (iii) send completed reports to the City. The Developer agrees to file these reports no later than March 1 of each year for the previous year, commencing March 1, 2026, and within 30 days after the deadline for meeting the Goals. The City and the Authority agree that if reports are not received by the City, the City will mail the Developer a warning within one week of the required filing date. If within 14 days of the post marked date of the warning the reports are not made, the Developer agrees to pay to the City a penalty of \$100 for each subsequent day until the report is filed up to a maximum of \$1,000.

- (4) There is no parent corporation of the Developer.
- (5) The Developer agrees to continue operations on the Development Property for at least five (5) years after the Benefit Date.
- (6) The Developer certifies that it does not appear on the Minnesota Department of Employment and Economic Development's list of developers that have failed to meet the terms of a business subsidy agreement.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1 Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay any ad valorem real property taxes assessed, special assessments, or other applicable City charges with respect to the Development Property when due and payable.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions, and limitations of this Agreement.

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

(4) The holder of any mortgage on the Project commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(5) If the Developer shall:

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

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

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

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

Section 4.2 Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the Developer, but only if the Event of Default has not been cured within said thirty (30) days:

(1) The City may suspend its performance under this Agreement and the TIF Note until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(2) The City may cancel and rescind the Agreement and the TIF Note.

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

Section 4.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5 Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the fees of such attorneys and such other expenses so incurred by the City.

Section 4.6 Indemnification of City.

(1) The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the Indemnified Parties that are not contemplated by this Agreement.

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

indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or penalty is paid by the City at a rate equal to the Prime Rate) as a result of the Developer operating the Project so that the Tax Increment District does not qualify or cease to qualify as a "redevelopment district" under Section 469.174, Subdivision 10, of the Act, or (ii) to violate limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4j.

(3) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

ARTICLE V

DEVELOPER'S OPTION TO TERMINATE AGREEMENT

Section 5.1 Developer's Option to Terminate. This Agreement may be terminated by Developer, if (i) the Developer is in compliance with all material terms of this Agreement and no Event of Default has occurred; and (ii) the City fails to comply with any material term of this Agreement, and, after written notice by the Developer of such failure, the City has failed to cure such noncompliance within ninety (90) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within ninety (90) days, of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Developer, that such noncompliance will be cured as soon as reasonably possible.

Section 5.2 Action to Terminate. Termination of this Agreement pursuant to Section 5.1 must be accomplished by written notification by the Developer to the City within sixty (60) days after the date when such option to terminate may first be exercised. A failure by the Developer to terminate this Agreement within such period constitutes a waiver by the Developer of their rights to terminate this Agreement due to such occurrence or event.

Section 5.3 Effect of Termination. If this Agreement is terminated pursuant to this Article VI, this Agreement shall be from such date forward null and void and of no further effect; provided, however, the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination.

ARTICLE VI

ADDITIONAL PROVISIONS

Section 6.1 Restrictions on Use; Planned Unit Development. The Developer agrees for itself, its successors and assigns and every successor in interest to the Project that during the term of this Agreement the Developer and its successors and assigns shall operate, or cause to be operated, the Project as contemplated in this Agreement, shall devote the Project to, and in accordance with, the uses specified in this Agreement, and shall use, operate, or cause to be operated, the Project in accordance with the Approval, PUD Conditional Use Permit, and PUD Ordinance. Developer hereby acknowledges the following conditions imposed upon the Project by the Approval:

- (1) All signage upon the Development Property shall conform to the City's Sign Code;
- (2) Developer shall submit to the City, for its review and approval, a detailed landscaping plan and install said plan, as approved and/or modified by the City, as part of the Site Improvement;
- (3) All parking surfaces upon the Development Property shall be resurfaced and striped;
- (4) All outdoor garbage, refuse, rubbish, trash, and waste collection areas upon the Development Property shall be enclosed;
- (5) There shall be no outdoor storage of materials related to any commercial or residential uses upon the Development Property;
- (6) The number of required off-street parking spaces, as required for the Project by the City of North Mankato Code of Ordinances and the Approval, shall be provided upon the Development Property or upon the parcel of land abutting and immediately north of the Development Property; and
- (7) All licenses, as required by Chapter 151 of the City of North Mankato Code of Ordinances, shall be obtained and maintained for all rental property located upon the Development Property.

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

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

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

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

1111 Holdings of Mankato, LLC
212 Madison Avenue, Suite 100
Mankato, MN 56001

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

City of North Mankato
Attention: Community Development Director
1001 Belgrade Avenue
PO Box 2055
North Mankato, MN 56002

with a copy to:

Taft Stettinius & Hollister LLP
Attention: Mary Ippel
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

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

Section 6.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 6.6 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 6.7 Expiration. This Agreement shall expire on the Termination Date.

Section 6.8 Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 6.9 Assignability of TIF Note. The TIF Note may only be assigned pursuant to the terms of the TIF Note.

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

CITY OF NORTH MANKATO, MINNESOTA

By: _____
Its: Mayor

By: _____
Its: City Administrator

This is a signature page to the Development Agreement by and between the City of North Mankato, Minnesota and 1111 Holdings of Mankato, LLC

1111 HOLDINGS OF MANKATO, LLC

By: _____

Its: _____

This is a signature page to the Development Agreement by and between
the City of North Mankato, Minnesota and 1111 Holdings of Mankato, LLC

EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

Property located in the City of North Mankato, Nicollet County, Minnesota with the following description:

LOT ONE (1), BLOCK ONE (1), D D D SUBDIVISION, CITY OF NORTH MANKATO, NICOLLET COUNTY, MINNESOTA.

[PID: 18.513.0010]

EXHIBIT B

FORM OF TIF NOTE

No. R-1

\$ _____

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTIES OF NICOLLET AND BLUE EARTH
CITY OF NORTH MANKATO

TAX INCREMENT REVENUE NOTE
(PROJECT)

The City of North Mankato, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to 1111 Holdings of Mankato, LLC or its registered assigns (the "Developer" or "Registered Owner"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The principal amount of this Note shall equal from time to time the principal amount stated above, as reduced to the extent that such principal installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the principal amount listed above shall in no event exceed \$2,616,000 as provided in that certain Development Agreement, dated as of August 21, 2023, as the same may be amended from time to time (the "TIF Agreement"), by and between the City and the Developer. The unpaid principal amount hereof shall bear interest from the date of this Note at the simple non-compounded rate of four percent (5.00%) per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

The amounts due under this Note shall be payable on August 1, 2026, and on each February 1 and August 1 thereafter to and including February 1, 2052, or, if the first should not be a Business Day (as defined in the TIF Agreement), the next succeeding Business Day (the "Payment Dates"). On each Payment Date the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the sum of the Tax Increments (hereinafter defined) received by the City during the six (6) month period preceding such Payment Date. All payments made by the City under this Note shall first be applied to accrued interest and then to principal. This Note is prepayable by the City, in whole or in part, on any date.

The Payment Amounts due hereon shall be payable solely from 98% of the tax increments (the "Tax Increments") in years 2026 to 2030; 95% of the Tax Increments in years 2031 to 2035; and 90% of the Tax Increments in years 2036 to 2051, from the Development Property (as defined in the Development Agreement) within the City's Tax Increment Financing (Redevelopment) District No. 2-2 (Hotel Redevelopment) (the "Tax Increment District") within its Municipal Development District No. 2 which are paid to the City and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same

may be amended or supplemented from time to time (the "Tax Increment Act"). This Note shall terminate and be of no further force and effect following the termination of the Tax Increment District, on any date upon which the City shall have terminated the Development Agreement under Section 4.2(2) thereof or the Developer shall have terminated the Development Agreement under Article V thereof, or on the date that all principal and interest payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, expressed or implied, that the Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.3 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City of North Mankato, Minnesota, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except the above-referenced Tax Increments, is or shall be a source of payment of the City's obligations hereunder.

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

This Note may be assigned only with the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation thereon.

IN WITNESS WHEREOF, City of North Mankato, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Council President and City Administrator and has caused this Note to be issued on and dated _____, 20__.

City Administrator

Mayor

DO NOT EXECUTE UNTIL PAID INVOICES, A SETTLEMENT STATEMENT OR OTHER EVIDENCE OF PAYMENT FOR LAND ACQUISITION AND SITE IMPROVEMENTS ARE GIVEN TO THE CITY - REFER TO SECTION 3.3(1).

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note, as originally issued on _____, 2023, was on said date registered in the name of 1111 Holdings of Mankato, LLC, and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

NAME AND ADDRESS OF
REGISTERED OWNER

DATE OF
REGISTRATION

SIGNATURE OF
CITY ADMINISTRATOR

1111 Holdings of Mankato, LLC
212 Madison Avenue, Suite 100
Mankato, MN, 56001

EXHIBIT C

SITE IMPROVEMENTS

Engineering
Foundations and Footings
Grading/earthwork
Landscaping, including irrigation
Onsite Utilities
Onsite Road, Curb, Gutter, Driveway, Sidewalk and Streetscape Improvements
Parking
Site Preparation
Site Utilities
Storm Water/Ponding
Survey

EXHIBIT D

PUD CONDITIONAL USE PERMIT

Attached.