

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF PERHAM

AND

JP Place, LLC

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THIS AGREEMENT, made as of the _____ day of _____, 20____, by and between the City of Perham, Minnesota (the “City”), and a municipal corporation organized and existing under the laws of the State of Minnesota and **JP Place, LLC**, its successors and assigns (the “Developer”).

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 through 469.134, the City has formed Municipal Development District No. 2 (the “Development District”) and has adopted a development program therefore (the “Development Program”); and

WHEREAS, pursuant to the provisions of Minnesota Statutes 469.174 through 469.179, as amended, (hereinafter the “Tax Increment Act”), the City has created, within the Development District, Tax Increment District No. 2-42 (the “Tax Increment District”), and has adopted a tax increment financing plan therefore (the “Tax Increment Plan”) which provides for the use of tax increment financing in connection with certain development within 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 development and construction Project, and fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted.

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 Agreement, as the same may be from time to time modified, amended or supplemented;

City means the City of Perham, Minnesota;

County means Otter Tail County, Minnesota;

Developer means **JP Place, LLC**, its successors and assigns;

Development District means 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 legally described in Exhibit A attached to this agreement;

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

Eligible Improvements means any costs that are eligible to be reimbursed with increments according to the TIF Plan and the Tax Increment Act. This includes site improvements as described below and all improvements specifically described in Exhibit C.

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 costs associated with the acquisition of the land described in Exhibit A, along with the construction of a mixed-use facility on the aforementioned parcels. The facility will include approximately 10,796 sf basement parking with approximately 27 stalls, 9,900 sf office/retail on ground level and approximately 34,296 sf of residential apartments on floors 2-5 as well as a ground level parking lot with approximately 28 stalls.

Site Improvements means the site preparation 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 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, Section 469.174 through 469.179 as amended;

Tax Increment District means Tax Increment District No. **2-42** located within the Development District, which was qualified as a Redevelopment District under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District on October 12, 2020;

Termination Date means **twenty-five (25)** years from the date of receipt of the first Tax Increment, when the District is decertified, or when Eligible Improvements are reimbursed in full, whichever occurs first;

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; and

Wage and Job Goal means the wage and job goals established by the City with respect to the Project pursuant to Minnesota Statutes, Section 116J.914, which are set forth in the attached Exhibit B.

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 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.
3. The City has created, adopted and approved the Tax Increment District and Tax Increment Financing Plan in accordance with the provisions of the Tax Increment Act.
4. The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.
5. To finance certain costs within the Tax Increment District, the City proposes, subject to the further provisions of this Agreement, to apply Tax Increments to reimburse the Developer for a portion of the cost of the Development Property and Site Improvements as further provided in this Agreement.
6. The City makes no representation or warranty, either express 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 purpose or needs.

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

1. The Developer is an LLC and has the power to enter into this Agreement and to perform its obligations hereunder and is not in violation of the laws of the State.
2. The Developer will cause the Project to be installed in accordance with the terms of this Agreement, the Development Program, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).
3. The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.
4. The Developer will use its best efforts to 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.

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 will commence on or before **June 1, 2021** and, barring Unavoidable Delays, the Project will be substantially completed by **December 1, 2022**.
9. The Developer agrees, represents, and warrants that the Project and any further additions, modifications or replacements shall at all times be connected to and utilize City owned utilities including but not limited to water, sewer and natural gas. This provision shall survive the terms of this Agreement and shall be binding upon all assigns, heirs, successors who may have or acquire an interest in the Project or the Development Property.
10. The Developer agrees to obtain permits and to construct and operate the Development Property in conformance with all applicable zoning and building ordinances of the City. Nothing in this section shall be construed to prevent the Developer from utilizing various conditional use permits or other authorized exceptions or options for the development property that are allowable under applicable zoning and building ordinances, provided appropriate permits are obtained.
11. The Developer agrees to develop the property in conformity with Tax Increment District No. **2-42**.
12. The Developer agrees to pay an application fee equal to the direct costs to set up the district, including consultant and legal fees. Costs attributed to this Project include the following:

1. Reimbursement of costs from Ehlers and Associates related to formation of Tax Increment District No. 2-42, \$10,000

2. Reimbursement of building inspection costs related to Graco Services for formation of 2-42, \$1,000

3. Reimbursement of costs from Ehlers and Associates related to establishment of this Agreement, \$500

These costs can be paid outright by Developer or can be deducted from increment until

they are fully reimbursed.

Outright	<u>\$11,500</u>
Deducted from increment	<u> </u>

13. The Developer acknowledges that the Tax Increment projections contained in this Agreement are estimates only and the Developer acknowledges that it shall place no reliance on the amount of the projected Tax Increments and the sufficiency of such Tax Increments to reimburse the Developer for the acquisition of the Development Property, construction of Site Improvements, and construction of the multi-use facility constructed on the Development Property and the costs to the City.

14. The Developer agrees that it will not, prior to February 1, 2049, seek exemption from property tax for the Development Property or convey or transfer or allow conveyance or transfer of the Development Property to any entity that is exempt from payment of real property taxes under State law.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1 Reimbursement of Costs. As consideration for the execution of this Agreement and the construction of the Project by the Developer, subject to the further provisions of this Agreement, including but not limited to the limitations on source of reimbursement and amount set forth in Section 3.3 hereof, the City agrees to reimburse the Developer for the costs of land acquisition, site improvements and public improvements, described in Exhibit C of this Agreement, and are actually incurred and paid by the Developer in an amount not to exceed **\$1,251,258**, which is the agreed upon estimate of Tax Increment the Project would generate over a 26-year period and as presented in the Tax Increment projections in Exhibit D, OR the actual Eligible Improvements, which ever is less (the "Reimbursement Amount").

Upon completion of the Eligible Improvements, the Developer shall submit to the City paid invoices for the Eligible Improvements. The City shall not be obligated to pay the Developer the Reimbursement Amount until the City has received the paid invoices for the Eligible Improvements.

Section 3.2 Limitations on Undertaking of the City. Notwithstanding the provisions of Sections 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 4.1 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 Limitation of Cost: Methods of Payment.

1. The sole source of funds from which the City is obligated to reimburse the Developer for the Reimbursement Amount limited to Tax Increments and nothing herein shall be construed to obligate the City to use any of its general funds or other municipal funds to reimburse the Developer for such costs.
2. Provided that no Event of Default shall have occurred and be continuing hereunder, the City shall reimburse the Developer the Reimbursement Amount from Tax Increments in the following manner:

On February 1 and August 1 in each year, in which increment is collected, the City shall pay to the Developer **80%** of the Tax Increments that is received and retained during the preceding 6-month period. Such payments by the City to the Developer shall continue until the earlier of the Termination Date or until the Developer has received the Reimbursement Amount.

Section 3.4 Use of Tax Increments. The City shall be free to use the Tax Increments, other than those to which the Developer is entitled pursuant to the provisions of Section 3.3 hereof, for any purpose for which the Tax Increments may lawfully be used pursuant

to applicable provisions of State law.

Section 3.5 Business Subsidy Criteria & Wage and Job Goals.

A. Business Subsidy Criteria:

Business Subsidy Criteria: The City adopted Business Subsidy Criteria on March 1, 2004, and the Project meets the following Criteria:

1. Project optimizes the private development potential of a site
2. Project has obtained the highest amount of private financing that can be supported by the business and is available through private sources
3. Without assistance the project could not proceed in the manner as proposed
4. Project redevelops a blighted area of the community, as established in Perham City Resolution 2020-39, passed unanimously by city council October 12, 2020, “Resolution if the City of Perham Finding a Parcel to be Occupied by a Structurally Substandard Building”
5. Because of the exception for housing and the finding that the Developer’s investment in the purchase of the site and site preparation is 70% or more of the assessor’s current year’s EMV, the entire Project is exempt from the business subsidy requirements of Minnesota Statutes, Section 116J.994.

B. Wage and Job Goals:

1. The City has established Wage and Job Goals with respect to the Project as set forth in Exhibit B.
2. The Developer shall provide for development of the Development Property so that the number of jobs created, and the wages paid for such jobs will meet the Wage and Job Goals. On or before January 1 of each year the Developer shall report to the City the number of jobs and the wages for such jobs in the preceding calendar year.
3. If the Developer fails to meet the Wage and Job Goals, the Developer and the City shall enter into an agreement providing for repayment to the City of the financial assistance provided by the City to the Developer pursuant to this 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.

- a. Failure by the Developer to timely pay any ad valorem real property taxes assessed, special assessments or other charges with respect to the Development Property when due and payable.
- b. Failure by the Developer to cause the installation of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.
- c. 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.
- d. The holder of any mortgage on the Development Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.
- e. Failure of the developer to pay City obligations including utility charges, charges for City sewer, assessment, and other fees when due to the City with respect to the project or the development property.
- f. 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 a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within 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 thirty (30) days' written notice to the Developer, but only if the Event of Default has not been cured within said thirty (30) days:

- a. The City may suspend its performance under this Agreement 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.
- b. The City may cancel and rescind the Agreement.
- c. The City may take any action, including legal or administrative action, in law or equity, which 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 or any remedy available to the Developer 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 and the City 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 therefore, pay to the City the reasonable 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 if 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 the 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 Project causing the Tax Increment District to not qualify as a "Redevelopment District" under Section 469.124, Subdivision 10 of the Act, or to violate this limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4C.

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, as the case may be.

ARTICLE V

DEVELOPER'S OPTION TO TERMINATE AGREEMENT

- Section 5.1** The 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.
- Section 5.3** Effect of Termination. If this Agreement is terminated pursuant to this Article V, 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. Upon termination of this Agreement pursuant to this Article V, the Developer shall be free to proceed with the Project at its own expense and without regard to the provisions of this Agreement; provided, however, that the City shall have no further obligations to the Developer with respect to reimbursement of the expenses set forth in Section 3.2.

ARTICLE VI

ADDITIONAL PROVISIONS

Section 6.1 Restrictions on Use. The Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof that the Developer and such successors and assigns shall operate, or cause to be operated, the Project as a mixed-use facility of housing and commercial and shall devote the Development Property to, and in accordance with this Agreement.

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

- a. in the case of the Developer is addressed to or delivered personally to:

JP Place, LLC
745 31st Ave E, Ste 105
West Fargo, ND 58078

- b. in the case of the City is addressed to or delivered personally to the City at

City of Perham
125 Second Avenue NE
PO Box 130
Perham, MN 56573

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 earlier of February 1, 2049 or the date the Developer has received in full the Reimbursement Amount, or the date this Agreement is terminated or rescinded in accordance with its terms.

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 Assignment or Transfer: This Agreement may not be transferred or assigned without the approval of the City. Any transfer or assignment request from the Developer must be accompanied by documentation, sufficient to the City, demonstrating the continued need for assistance.

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 in its name and on its behalf, on or as of the date first above written.

THE CITY OF PERHAM

By _____
Its Mayor

By _____
Its City Manager

DEVELOPER

By _____
Its _____

By _____
Its _____

This is a signature page to the Development Agreement by and between the City of Perham and Epic Companies.

STATE OF MINNESOTA)
) :ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____ the Mayor and the City Manager,
respectively, of the City of Perham, Minnesota, a Minnesota municipal corporation.

Notary Public

STATE OF MINNESOTA)
) :ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____
Developer

Notary Public

EXHIBIT A

Legal Description of Development Property

Sect-14 Twp-136 Range-039 ORIGINAL PLAT-PERHAM
W 48' OF LOT 4 BLK 9

PID: 77000990053000

Sect-14 Twp-136 Range-039 ORIGINAL PLAT-PERHAM
NELY 81.95' LOTS 5 & 6 BLK 9

PID: 77000990054000

Sect-14 Twp-136 Range-039 ORIGINAL PLAT-PERHAM
SWLY 68.05' LOTS 5 & 6 BLK 9

PID: 77000990054001

EXHIBIT B

Wage and Job Goals

Job & Wage Goals Not Required based on MS 116J.993 Subd. 3

Job & Wage Goals Listed Below:

1. **Base jobs at the date of execution:**
2. **New jobs to be created within two years of execution of the Agreement or at the time the improvements are occupied or put into service (which ever is sooner)**
3. **Wages for new hires:**
4. **Hourly value of benefits for new jobs created**

EXHIBIT C

ELIGIBLE IMPROVEMENTS

TAX INCREMENT ELIGIBLE ITEMS	COST
Land Acquisition (including paper transfer price from one partnership to another)	\$1,150,000
Soil Corrections	\$0
Grading	\$0
Public Roads	\$0
Private Roads	\$0
Sewer and Water to Building	\$20,000
Curb and Gutter	\$0
Sidewalks	\$0
Parking Lot Preparation and Paving	\$75,000
Landscaping	\$0
Engineering Costs	\$0
Consultant and Attorney's Costs for Tax Increment Items	\$11,500
Outstanding Special Assessments	\$0
Footings	\$150,000
Demolition	\$100,000
	\$0
Other – Deposit for TIF setup	\$0
TOTAL	\$1,506,500

EXHIBIT D
TIF Projection Schedule (Ehlers)

