

**Joint Meeting of the
HERMANTOWN CITY COUNCIL**

**And the
HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY**

AGENDA

**Wednesday, June 8, 2022 at 5:00 p.m.
Council Chambers
Governmental Services Building**

- 1. ROLL CALL**
- 2. MINUTES** – Approval or correction
 - A. May 18, 2022 Joint City Council - HEDA Minutes
- 3. JOINT PUBLIC HEARING ON PROPOSED AMENDMENT TO THE HERMANTOWN BUSINESS SUBSIDY POLICY AND A PUBLIC HEARING ON A PROPOSED BUSINESS SUBSIDY AGREEMENT**
- 4. CITY RESOLUTIONS**
 - 2022 – 80** Resolution Approving An Amendment To The Hermantown Business Subsidy Policy, A Business Subsidy Agreement, A Property Tax Abatement, A Development Contract And An Assessment Agreement For The Pillars Of Hermantown Senior Living Project
- 5. HEDA RESOLUTIONS**
 - 2022 - 05H** Resolution Approving An Amendment To The Hermantown Business Subsidy Policy, Business Subsidy Agreement And Development Contract Between The Hermantown Economic Development Authority, The City Of Hermantown And KTJ 360, LLC For The Pillars Of Hermantown Senior Living Project
- 6. RECESS**

JUNE 8 ACTION OUTLINE

City Council Meeting

- Call City Council meeting to order
- Roll call
- Motion to combine City Council public hearing with HEDA public hearing with the Mayor acting as the chair of the combined public hearing and recess the City Council meeting to the combined public hearing

HEDA Meeting

- Call HEDA meeting to order
- Roll call
- Motion to combine the HEDA public hearing with the City Council public hearing with the Mayor acting as chair of the combined public hearing and recess the HEDA meeting to the combined public hearing

Public Hearing Held

- Mayor calls the combined public hearing to order
- Public hearing held
- When public hearing is closed, City Council reconvenes City Council meeting and then takes action on the Pillars Resolution and then recesses the City Council meeting to June 20
- After the City Council approves the Resolution HEDA reconvenes the HEDA meeting and takes action on the Pillars Resolution
- After action is taken, HEDA adjourns the HEDA meeting

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

May 18, 2022

5:00 p.m.

JOINT MEETING OF CITY COUNCIL AND HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY - MEETING CONDUCTED IN PERSON

ROLL CALL: Commissioners Geissler, Nelson, Peterson, Ronchetti

CITY STAFF: John Mulder, City Administrator; Eric Johnson, Community Development Director; Steve Overom, Attorney

ABSENT: Commissioners Haapanen, Hauschild, Mayor Boucher

VISITORS: Heidi Timm-Bijold

City Council Motion made by Councilor Peterson, seconded by Councilor Nelson to combine the City Council meeting with the HEDA meeting. Motion carried on a voice vote. Councilor Hauschild, Mayor Boucher absent.

HEDA Motion made by Commissioner Peterson, seconded by Commissioner Nelson to combine the City Council meeting with the HEDA meeting. Motion carried on a voice vote. Commissioners Haapanen, Hauschild, Mayor Boucher absent.

MINUTES

Motion made by Commissioner Peterson, seconded by Commissioner Nelson, to approve the March 23, 2022 HEDA Minutes. Motion carried on a voice vote. Commissioners Haapanen, Hauschild, Mayor Boucher, absent.

RESOLUTIONS – CITY COUNCIL

A. RESOLUTION 2022-70 Resolution Calling For A Public Hearing On Proposed Tax Abatement Program For The Pillars Of Hermantown Senior Living Project And Calling For A Public Hearing On An Amended Business Subsidy Policy And Calling For A Public Hearing On Proposed Business Subsidy Agreement

Motion made by Councilor Peterson, seconded by Councilor Nelson to adopt Resolution 2022-70 Calling For A Public Hearing On Proposed Tax Abatement Program For The Pillars Of Hermantown Senior Living Project And Calling For A Public Hearing On An Amended Business Subsidy Policy And Calling For A Public Hearing On Proposed Business Subsidy Agreement. Motion carried on a voice vote. Councilor Hauschild, Mayor Boucher absent.

RESOLUTIONS – HEDA

A. RESOLUTION 2022-04H Resolution Calling For A Public Hearing On Proposed Amendment To The Hermantown Business Subsidy Policy And A Public Hearing On A Proposed Business Subsidy Agreement

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May 18, 2022

5:00 p.m.

Motion made by Commissioner Ronchetti, seconded by Commissioner Nelson to adopt Resolution 2022-04H Calling For A Public Hearing On Proposed Amendment To The Hermantown Business Subsidy Policy And A Public Hearing On A Proposed Business Subsidy Agreement. Motion carried on a voice vote. Commissioners Haapanen, Hauschild, Mayor Boucher absent.

Motion made by Councilor Nelson, seconded by Councilor Peterson to recess the City Council until June 6, 2022. Motion carried on a voice vote. Councilor Hauschild, Mayor Boucher absent.

HEDA AGENDA

A. RESOLUTION 2022-3H Resolution Approving The Proposal From Townsquare Media For A Three Month Digital Marketing Campaign

Motion made by Commissioner Peterson, seconded by Commissioner Nelson to adopt Resolution 2022-03H Approving the proposal from Townsquare Media for a three month digital marketing campaign for The Total Consideration of \$10,000. Motion carried on a voice vote. Commissioners Haapanen, Hauschild, Mayor Boucher absent.

WORK SESSION

- A. Update on Hwy 53 Business Park:** Heidi Timm-Bijold provided an update on the business park work to date. An on-site investigation was conducted by Braun and Eric Johnson as part of the phase 1 work. The next step will be to bring equipment on site to conduct soil borings as part of the phase 2 work.

Heidi stated that she and Eric Johnson will be working on an Alternative Urban Areawide Review (AUAR) request for proposals with the goal of having this sent to planning/environmental firms in the next few weeks to solicit information and projected costs. HEDA will bear the initial cost of the AUAR with the goal of recouping a portion of the cost from the benefitting property owner(s).

Heidi also informed the board of the meeting between staff and the property owners on May 12, 2022. The meeting was successful as the property owners were generally supportive of the idea of an overall business park concept. Future meetings with this group will continue to occur.

- B. Update on Comprehensive Planning Process:** Eric Johnson informed the HEDA board that the City received proposals from TKDA, WSB, HKGI and SRF. The next step is to conduct interviews with the applicants. Staff is currently working on members of the interview committee. He also informed the board that there will be a steering committee/task force of 8-10 people formed as part of the process. There is the opportunity for 1-2 members of HEDA to be on this committee.

Motion made by Commissioner Peterson, seconded by Commissioner Ronchetti to close the Regular meeting of the Hermantown Economic Development at 5:43 p.m. and go into a closed

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

May 18, 2022

5:00 p.m.

Session pursuant to the following statute and stated reason: Minnesota Statutes §§ 13D.05, subd. 3(c)(1) and 13D.05, subd. 3(c)(3) to develop and consider an offer or counteroffer for the sale of real property located 4818 Maple Grove Road within the City of Hermantown. Motion carried on a voice vote. Commissioners Haapanen, Hauschild, Mayor Boucher absent.

Motion made by Commissioner Peterson, seconded by Commissioner Nelson to return to open session. Motion carried. Commissioners Haapanen, Hauschild, Mayor Boucher absent.

Next meeting scheduled for Wednesday, June 8th, 5:00 p.m.

RECESS

Motion made by Commissioner Nelson, seconded by Commissioner Peterson to recess at 6:15 p.m. Motion carried.

Recorded by:

Eric Johnson, Community Development Director

**RESOLUTION APPROVING AN AMENDMENT TO THE HERMANTOWN BUSINESS
SUBSIDY POLICY, A BUSINESS SUBSIDY AGREEMENT, A PROPERTY TAX
ABATEMENT, A DEVELOPMENT CONTRACT AND AN ASSESSMENT
AGREEMENT FOR THE PILLARS OF HERMANTOWN SENIOR LIVING PROJECT**

BE IT RESOLVED by the City Council (the “City Council”) of the City of Hermantown, Minnesota (the “City”), as follows:

1. Recitals.

1.1. KTJ 360, LLC (“Developer”) has proposed to construct a 105 unit senior living project (“Project”) in the City of Hermantown (“City”) which is located on the property identified as Parcel 395-0010-04210 (“Property”).

1.2. The City, the Hermantown Economic Development Authority (“HEDA”) desire to enter into the proposed Development Contract (“Development Contract”) attached hereto as Exhibit A with respect to the Project.

1.3. KTJ 360, LLC (the “Developer”) has requested the City abate the City’s share of property taxes applicable to the increase in property taxes caused by the Project to be generated for seven (7) years (specifically, with respect to the payable 2024 through 2030 property taxes) on the “Property”. The estimated completed market value of the Project is \$14,842,800. Abatement assistance may be used for costs related to public and on-site utilities and infrastructure improvements.

1.4. On June 8, 2022, the City Council held a public hearing (“Abatement Public Hearing”) on the question of granting an abatement to support the Project (the “Abatement”), and said hearing was preceded by at least ten (10) days but not more than thirty (30) days prior published notice hereof. The Abatement was approved by motion following the public hearing.

1.5. One June 8, 2022, the City Council held a public hearing (“Business Subsidy Public Hearing”) on a proposed amended Business Subsidy Policy and a proposed Business Subsidy Agreement for the Project.

1.6. The Abatement is authorized under Minnesota Statutes, Sections 469.1812 through 469.1815 (the “Abatement Law”).

1.7. A proposed Business Subsidy Agreement (“Business Subsidy Agreement”) reflecting the assistance provided to Developer through the Abatement was discussed and is attached hereto as Exhibit B; and

1.8. A proposed amended Hermantown Business Subsidy Policy (“Amended Business Subsidy Policy”) has been prepared to reflect the terms of the Abatement for future projects and is attached hereto as Exhibit C; and

2. **Findings for the Abatement.** The City Council hereby reaffirms and makes the following findings:

2.1. The City Council expects the benefits to the City of the Abatement to at least equal the costs thereof.

2.2. Granting the Abatement is in the public interest because it will increase or preserve the tax base of the City and help provide an impetus for residential development, which is desirable or necessary for increased population and an increased need for life-cycle housing within the City.

2.3. Granting the Abatement will result in needed infrastructure improvements and the grant of an easement for the City’s trail system.

2.4. The Council expects the public benefits described in 2.2 and 2.3 above to be derived from the Abatement.

2.5. The Property is not located in a tax increment financing district.

2.6. In any year, the total amount of property taxes abated by the City by this, and other resolutions does not exceed ten percent (10%) of the current net tax capacity or \$200,000, whichever is greater.

3. **Terms of Abatement.** The Abatement is hereby approved, and the terms of the Abatement are as follows:

3.1. The Abatement shall be for a maximum of 7 years and shall apply to the taxes payable in the years 2024 through 2030, inclusive.

3.2. The Abatement shall be for the City’s share of the increase in ad valorem property taxes generated by the Property which are attributable to the Project. The increase in property taxes will be over the 2022 base tax capacity of \$55,800.

3.3. The abatement for the 7-year period shall not exceed \$600,000.

3.4. The abatement may not be modified or changed during the term set forth in Section 3.1 above, except with the prior approval of the City Council of the City.

3.5. The Abatement shall be subject to all the terms and limitations of the Abatement Law and the Development Contract by and between the City, the HEDA and Developer.

3.6. In order to be entitled to the Abatement, Developer shall not be in default within the City of any of its payment obligations respecting any taxes, assessments, utility charges or other governmental impositions.

4. **Amendment to Business Subsidy Policy.** The City Council of the City of Hermantown duly considered the Amended Business Subsidy Policy and believes it to be in the best interests of the City of Hermantown to approve the Amended Business Subsidy Policy.

5. **Terms of Business Subsidy.** The City Council of the City of Hermantown has duly considered the following with regard to the Business Subsidy Agreement:

5.1. **Increase in Tax Base.** The net increase in property taxes estimated to be generated by the Project.

5.2. **Compliance with Comprehensive or Other Plans.** Whether the Project is compatible with the comprehensive plan.

5.3. **Design and/or Other Amenities.** Whether, as a result of the business subsidy, the Project will include design and/or amenity features not otherwise required by law.

5.4. **Utilization of Existing Infrastructure Investment.** Whether and to what extent (a) the Project will utilize existing public infrastructure capacity and (b) the Project will require additional infrastructure improvements.

5.5. **Leveraged Funds.** The ratio of every dollar of business subsidy to be provided for the project to, the amount of private funds which will be applied towards the cost of the Project.

5.6. **Community Services.** Whether the Project will provide services in the City that are needed.

5.7. **Other Factors.** Such other factors as the City Council deemed relevant in evaluating the Project and the business subsidy proposed for it.

6. The attorney for City and HEDA in connection with the Project prepared the proposed Amended Business Subsidy Policy, the proposed Business Subsidy Agreement, the proposed Development Contract and a proposed Assessment Agreement.

7. The City Administrator and City staff have reviewed the Amended Business Subsidy Policy, Abatement, Business Subsidy Agreement, Development Contract and Assessment Agreement and recommend that the City Council approve them.

8. **Approval.** The City Council approves the Amended Business Subsidy Policy, Abatement, Assessment Agreement, the Business Subsidy Agreement, and the Development Contract. The Mayor and City Clerk are authorized and directed in the name and on behalf of the

City to execute the Development Contract, Business Subsidy Agreement and Assessment Agreement with such changes as do not materially change the substance thereof as the City Administrator, in consultation with legal counsel, shall deem necessary and appropriate. The City Council hereby authorizes and directs the City Administrator to perform all actions and execute all instruments necessary to satisfy the terms and conditions set forth in the Development Contract.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted.

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. 2022-05H

HEDA Member _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING AN AMENDMENT TO THE HERMANTOWN BUSINESS SUBSIDY POLICY, BUSINESS SUBSIDY AGREEMENT AND DEVELOPMENT CONTRACT BETWEEN THE HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF HERMANTOWN AND KTJ 360, LLC FOR THE PILLARS OF HERMANTOWN SENIOR LIVING PROJECT

WHEREAS, KTJ 360, LLC (“Developer”) has proposed to construct an 105 unit senior living project (“Project”) on the property identified as Parcel 395-0010-04210; and

WHEREAS, the City of Hermantown (“City”), the Hermantown Economic Development Authority (“HEDA”) desire to enter into the proposed Development Contract (“Development Contract”_ attached hereto as Exhibit A with respect to the Project; and

WHEREAS, Developer requested the establishment of a Tax Abatement Program (“Abatement”) pursuant to Minnesota Statutes §§ 469.1812 through 469.1815 granting an abatement of the increase in property taxes caused by the Project on the land, and this tax abatement would correspond with eligible project costs pursuant to Minnesota Statutes; and

WHEREAS, on June 8, 2022, a public hearing (“Abatement Public Hearing”) was held with respect to the proposed Abatement and such Abatement was approved by the Hermantown City Council following the Abatement Public Hearing; and

WHEREAS, a proposed amended Hermantown Business Subsidy Policy in the form attached hereto as Exhibit B (“Amended Business Subsidy Policy”) has been prepared by HEDA’s legal counsel and was considered at a public hearing held by HEDA on June 8, 2022 (“Business Subsidy Public Hearing”); and

WHEREAS, at the Business Subsidy Public Hearing, a proposed Business Subsidy Agreement (“Business Subsidy Agreement”) reflecting the assistance provided to Developer through the Abatement in the form of the attached hereto as Exhibit C was reviewed and discussed; and

WHEREAS, the HEDA Commissioners have duly considered the following:

1. Increase in Tax Base. The net increase in property taxes estimated to be generated by the Project.

2. Compliance with Comprehensive or Other Plans. Whether the Project is compatible with the comprehensive plan.

3. Design and/or Other Amenities. Whether, as a result of the business subsidy, the Project will include design and/or amenity features not otherwise required by law.

4. Utilization of Existing Infrastructure Investment. Whether and to what extent (a) the Project will utilize existing public infrastructure capacity and (b) the Project will require additional infrastructure improvements.

5. Leveraged Funds. The ratio of every dollar of business subsidy to be provided for the Project to, the amount of private funds which will be applied towards the cost of the Project.

6. Community Services. Whether the Project will provide services in the City that are needed.

7. Other Factors. Such other factors as HEDA deemed relevant in evaluating the Project and the business subsidy proposed for it; and

WHEREAS, The attorney for the City and HEDA for the Project has prepared a proposed Development Contract for the Project, and

WHEREAS, Developer has advised HEDA that the Business Subsidy Agreement and Development Contract are acceptable to Developer; and

WHEREAS, the HEDA Commissioners have duly considered the Amended Business Subsidy Policy, Business Subsidy Agreement and Development Contract and believe that it is in the best interests of HEDA that the Amended Business Subsidy Agreement, Business Subsidy Agreement and Development Contract be approved.

NOW, THEREFORE, BE IT RESOLVED by commissioners of HEDA as follows:

1. The Development Contract substantially in the form attached hereto as Exhibit A is hereby approved.

2. The Amended Business Subsidy Policy substantially in the form attached hereto as Exhibit B is hereby approved.

3. The Business Subsidy Agreement substantially in the form attached hereto as Exhibit C is hereby approved.

4. The President and Secretary of HEDA are hereby authorized and directed to execute and deliver the Business Subsidy Agreement and Development Contract on behalf of the Hermantown Economic Development Authority with such non-substantiative changes thereto as are approved by the City Administrator and HEDA attorney.

The motion for the adoption of the foregoing resolution was duly seconded by HEDA Member _____ and, after full discussion thereof and upon a vote being taken thereon, the following HEDA Members voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Dated this _____ day of _____, 2022.

HEDA Administrator

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BUSINESS SUBSIDY POLICY

Section 1. Public Purpose. The following business subsidy criteria are intended to satisfy the requirements of Minnesota Statutes, §§116J.993 through 116J.995 (the "Act"). The term "City" means both the City of Hermantown ("COH") and the Hermantown Economic Development Authority ("HEDA"). The term "project" means the property and/or activity with respect to which the business subsidy is provided. The City will use various tools to accomplish its goals of economic development. These goals include facilitating projects that result in the creation, retention, attraction, and expansion of business in the COH, and the increase of the tax base.

Section 2. Public Benefit. The public benefit of a project must be expected to exceed the costs to the City and the project must meet:

- 2.1 Increase or preserve the COH tax base; and/or
- 2.2 Provide or help acquire or construct public facilities; and/or
- 2.3 Help redevelop or renew blighted areas within the COH; and/or
- 2.4 Finance or provide public infrastructure.

Section 3. Minimum Requirements For All Projects. All projects must comply with all the following criteria in order to receive a business subsidy or other financial assistance (as defined in Section 8.1.6) ("OFA") from the City:

- 3.1 Eligibility The recipient must not have failed to meet the requirements of a previous business subsidy agreement from the City or some other location. The City must verify eligibility with the DEED.
- 3.2 Economic Feasibility. The project must demonstrate to the satisfaction of the City that it is adequately financed and that the project will be completed in a timely fashion.
- 3.3 Compliance with Act. The business subsidy or OFA from the City must satisfy all requirements of the Act and all other applicable laws, rules and regulations.
- 3.4 Wage Criteria: If a goal of the project is the creation or retention of jobs, the wage for each part-time and full-time job created or retained must be at least equal to the federal minimum wage.

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Section 4. Eligible/Ineligible Projects.

- 4.1 Eligible projects include:
 - 4.1.1 Retail
 - 4.1.2 Manufacturing
 - 4.1.3 Assembly plants
 - 4.1.4 Professional Offices
 - 4.1.5 Restaurants
 - 4.1.6 Housing
- 4.2 Ineligible business include
 - 4.2.1 Speculative Real Estate
 - 4.2.2 Agriculture

Deleted: 4.2.3 - Housing

Section 5. Allowable Uses.

- 5.1 Land and building acquisitions
- 5.2 Building renovation or demolition
- 5.3 New building construction
- 5.4 Land improvements (infrastructure, wetland mitigation, stormwater controls)

Section 6. Preliminary Screening Process.

6.1 The proponent of the project must make an application for a business subsidy to the City of Hermantown on a form provided by the City.

6.2 All applications shall be submitted to the City Administrator or be initially reviewed by the City Administrator. The City Administrator will preliminary determine the ability of the applicant to comply with the requirements of this Business Subsidy Policy. If the City Administrator reasonably believes that the applicant will be able to comply with the requirements, the application will be presented to the Fast Track Review Committee.

6.3 The Fast Track Review Committee will fully consider any applications presented to it by the City Administrator. The applicant will provide, if reasonably possible, to Fast Track Review Committee:

- 6.3.1 A comprehensive business plan, including an initial sources and uses of funds, three (3) years projections of the activities of the business, including pro forma balance sheets and income statements;
- 6.3.2 Financial Statements for the immediate past three (3) years, including a balance sheet and profit-and-loss statement current to the most recent calendar quarter. Where available, audited financial statements (including footnotes) should be provided for the past three (3) years. If the project will be a new business, then financial information shall be provided for the

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principal owners of the new business and if individual(s), current personal financial statement(s).

- 6.3.3 If the Fast Track Review Committee determines that the requirements of this Business Subsidy Policy will be able to be met by the applicant it shall give due consideration to the items in Section 3 of this Business Subsidy Policy and make findings with respect to each such requirements.
- 6.3.4 If the Fast Track Committee makes positive findings with respect to the requirements of this Business Subsidy Policy, then the City Administrator will determine whether to proceed further with the consideration of a business subsidy for the project.
- 6.3.5 A determination by the City Administrator to proceed further with the consideration of a business subsidy for a project does not constitute an approval of any other permits required for the development of the project or an approval of a business subsidy agreement for the project, but only constitutes the preliminary determination that the City Administrator will continue to work with the project proponent with respect to the City considering providing a business subsidy for the project. The City will then typically require that the applicant enter into an Inducement Agreement with the City with respect to further work on the project.
- 6.3.6 Nothing herein shall require the City to approve the application of a business that meets the requirements of this Business Subsidy Policy. The City need not approve the application of an applicant that meets all the requirements of this Business Subsidy Policy unless the City in its sole discretion determines that it is in the best interests of the City to provide a business subsidy for the project. The approval or denial of one project does not act as a precedent for approval or denial of another project even if it is the same or similar.
- 6.3.7 Neither the City Administrator nor the Fast Track Committee can make any binding obligations on the City. Only the City Council is authorized to approve contracts and agreements on behalf of the City.

Section 7. Evaluation Policy.

7.1 Because it is not possible to anticipate all the needs and requirements of every type of project and the ever-changing needs of the City and in order to retain the flexibility necessary to respond to all proposed projects, the City retains the right to approve projects and business subsidies which may vary from the principles and criteria set forth herein. The reason for any deviation from the principles set forth herein will be documented in writing by the City and will be submitted to the Department of Employment and Economic Development (“DEED”) in accordance with the Act.

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Section 8. Evaluation Procedure.

8.1 The City will consider one or more of the criteria listed in Section 9 of this Business Subsidy Policy in determining whether to provide financial or other assistance to a project as a business subsidy. In order for a project to receive financial or other assistance as a business subsidy, it must satisfy the minimum requirements of Section 3. In applying the criteria in Section 9 to a specific project, the following will apply:

- 8.1.1 The City may consider the requirements of any other business subsidy received, or to be received, from a grantor other than the City.
- 8.1.2 If the business subsidy is a guaranty, the amount of the business subsidy may be valued at the principal amount of the guaranteed payment obligation.
- 8.1.3 If the business subsidy is real or personal property, the amount of the subsidy will be the fair market value of the property as determined by the City.
- 8.1.4 If the business subsidy is to be paid over time, the City may value the subsidy at its present value using a discount rate equal to an interest rate which the City determines is fair and reasonable under the circumstances or it may use the gross amount of the stream of payments or any combination of the foregoing.
- 8.1.5 If the business subsidy amount exceeds \$150,000.00, a public hearing must be held. A public notice must be printed in the legal newspaper of the City and include: the date, time and place of hearing, and where printed information on the business subsidy, including a summary of the terms of the subsidy is available and otherwise be in compliance with the provisions of the Act.
- 8.1.6 Reports by the City to DEED are required for financial assistance of \$25,000.00 and greater that is excluded from the definition of "business subsidy" by Section 116J.993, Subd. 3, clause (1) and of \$75,000.00 and greater that is excluded from the definition of "business subsidy" by Section 116J.993, Subd. 3, clause (21). The report is specified in 116J.994, Subd. 8(b).

8.2 As used herein "benefit date" means the date the business subsidy is received. If the business subsidy involves the purchase, lease, or donation of physical equipment, then the benefit date occurs when the recipient puts the equipment into service. If the business subsidy is for improvements to property, then the benefit date refers to the earliest date of either: when the improvements are finished for the entire project; or when a business occupies the property.

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Section 9. Evaluation Criteria. The project review and evaluation criteria are the following:

9.1 Tax Base, Development Features.

- 9.1.1 Increase in Tax Base. The net increase in property taxes estimated to be generated by the project in the first full year of full property taxes on the project.
- 9.1.2 Compliance with Comprehensive or Other Plans. Whether the project is more compatible with the comprehensive plan than other permitted uses for the property. For example, the project may involve a "clean" industry such as a technology or service business which is preferred over other permitted uses.
- 9.1.3 Marginal Property. Whether the project is located on property which needs but is not likely to be developed or redeveloped because of blight or other adverse conditions of the property. For example property may be so blighted that the cost of making land ready for redevelopment exceeds the property's fair market value.
- 9.1.4 Design and/or Other Amenities. Whether, as a result of the business subsidy, the project will include design and/or amenity features not otherwise required by law. For example, the project may, at the request of the City, include landscaping, open space, public trails, or day care facilities which serve a public purpose but are not required by law.

9.2 Impact on Existing and Future Public Investment.

- 9.2.1 Utilization of Existing Infrastructure Investment. Whether and to what extent (a) the project will utilize existing public infrastructure capacity and (b) the project will require additional infrastructure improvements.
- 9.2.2 Direct Monetary Return on Public Investment. Arrangements made or to be made for the City to receive a direct monetary return on its investment in the project. For example, the business subsidy may be in the form of an interest bearing loan or may involve a profit sharing arrangement.

9.3 Economic Development.

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- 9.3.1 Leveraged Funds. The ratio of every dollar of business subsidy to be provided for the project to, the amount of private funds which will be applied towards the cost of the project should be considered.
- 9.3.2 Spin Off Development. The dollar amount of non-subsidized development the project is expected to generate in the surrounding area and the need for and likelihood of such spin off development.

9.4 Quality of Life.

- 9.4.1 Community Services. Whether the project will provide services in the COH that are needed in the COH. For example, the project may provide health services, retail convenience services such as a nearby grocery store, or social services needed in the COH.

9.5 Other

- 9.5.1 Other Factors. Depending on the nature of the project, such other factors as the City may deem relevant in evaluating the project and the business subsidy proposed for it.

Section 10. Requirements After Approval of Projects.

10.1 Business Subsidy Agreement The City and the recipient must enter into a written agreement before the City grants the business subsidy. The agreement is to be drafted by the City Attorney. The agreement must contain the terms and provisions required by the Act and such other terms and provisions as are necessary to protect the interests of the City. A business subsidy agreement is required even for financial assistance of \$25,000.00 and greater that is excluded from the definition of “business subsidy” by Section 116J.993, Subd. 3, clause (1) and of \$75,000.00 and greater that is excluded from the definition of “business subsidy” by Section 116J.993, Subd. 3, clause (21).

10.2 Monitoring and Annual Reports.

- 10.2.1 The business must complete a report on forms developed by the DEED and submit those forms to the City by March 1 for the previous year. The City must submit these reports to DEED by April 1 of each year.
- 10.2.2 The City must submit a businesses’ report to the DEED by April 1 of each year. If a business fails to submit its report to the City, the City must mail a warning to the business. After 14 days, the City must impose an

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administrative penalty of \$100.00 per day until it receives the report, with a maximum administrative penalty of \$1000.00

10.2.3 The City must submit its own report (“Annual Report”) to the DEED by April 1 of each year, which will include a list of those businesses that did not complete reports, and a list of those businesses that have not met wage and job goals within two years, and what the City is doing in response and whatever other information is required by the Act.

Section 11 Amendments. Amendments to this Business Subsidy Policy are subject to the public hearing requirements in Minnesota Statutes §116J.994.

Section 12 Action of the City of Hermantown and Hermantown Economic Development Authority. City, when used herein, means both the City of Hermantown (“COH”) and Hermantown Economic Development Authority (“HEDA”). The COH and HEDA can act independently of one another, subject to the applicable laws, rules and regulations, in providing business subsidies and financial assistance to or for projects.

BUSINESS SUBSIDY AGREEMENT
BY AND AMONG
HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY
AND
CITY OF HERMANTOWN
(COLLECTIVELY “GRANTOR”)
AND
KTJ 360, LLC
(“RECIPIENT”)

Approved: _____, 2022

This document was drafted by:

Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue, Suite 101
Duluth, Minnesota 55802
(218) 625-8460

BUSINESS SUBSIDY AGREEMENT

THIS BUSINESS SUBSIDY AGREEMENT made effective this ____ day of _____, 2022 by and among **Hermantown Economic Development Authority**, an economic development authority created under Chapter 469 of the Minnesota Statutes (“HEDA”) and the **City of Hermantown** (the “City”), a Minnesota statutory city (HEDA and City which are also hereinafter collectively referred to as the “Grantor”) with both having addresses at 5105 Maple Grove Road, Hermantown, Minnesota 55811 and **KTJ 360, LLC**, a Minnesota limited liability company, (“Recipient”) having its principal offices at 400 Water Street, Suite 200, Excelsior, MN 55331 is in response to the following situation:

A. HEDA, as Grantor, has the authority pursuant to Minnesota Statutes, sections 469.124 through 469.133, inclusive, as amended to carry out development projects that provide a public benefit to the City.

B. City, as Grantor, has the authority, pursuant to Minnesota Statutes §§412.211 and 412.221, Subd. 6, Subd. 7 and Subd. 11 and §412.321 to carry out projects that provide a public benefit to the City.

C. Grantor, when providing financial assistance to projects that provide a public benefit to the City and to the State, is subject to the requirements of Minnesota Statutes, Sections 116J.993 to 116J.995, inclusive, as amended, (“Business Subsidy Act”) and is defined therein as a Grantor.

D. Even though the assistance for housing that is provided to Recipient pursuant to this Business Subsidy Agreement is exempt from the Business Subsidy Act is Grantor desires to utilize the criteria in its Business Subsidy Policy (“Grantor’s Business Subsidy Policy”) to guide it in providing Business Subsidy to Recipient.

E. Grantor is required under Grantor’s Business Subsidy Policy to hold a hearing regarding the subsidy proposed to be provided by this Agreement and then enter into this subsidy agreement to set forth the terms and conditions of the Business Subsidy (the “Business Subsidy Agreement”).

F. The City Council of City (“City Council”) and the Commissioners of HEDA (“Commissioners”) held a joint public hearing on June 8, 2022 to consider this Agreement.

G. The City Council approved this Agreement on June 8, 2022 and the Commissioners approved this Agreement on June 8, 2022.

H. Recipient proposes to construct a 105-unit senior citizen housing complex (the “Project”) on property located in the City.

I. Recipient is required by Grantor’s Business Subsidy Policy to set forth in this Business Subsidy Agreement its goals that will result from receipt of the Business Subsidy.

J. Grantor finds the Project will promote the development of a 105-unit senior citizen housing complex which will provide life cycle housing in the City which will also provide or incentivize other residential housing sales and development, provide an increase in the real estate tax

base, provide needed infrastructure improvements and the grant of an easement for the City trail system.

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

THE AGREEMENT

Section 1. Definitions.

“Agreement” or “Subsidy Agreement” means this Business Subsidy Agreement.

“Benefit Date” means the date the Recipient receives the Business Subsidy. For improvements to property, the benefit date refers to the earliest date of either (i) when the improvements are finished for the entire project, or (ii) when a business occupies the property. For purchase or lease of equipment, the benefit date refers to when the Recipient puts the equipment into service.

“Business Subsidy” means the tax abatement financing assistance provided by Grantor to the Recipient.

“Business Subsidy Act” means Minnesota Statutes, sections 116J.993 to 116J.995, inclusive, as hereinafter amended.

“City”, referred to under the Business Subsidy Act means the City of Hermantown.

“Development Contract” means that certain Development Contract between Recipient and Grantor with respect to the development of the Project and the payment of Grantor of amounts advanced by Recipient to pay for the Infrastructure Improvements. Any terms defined in the Development Contract shall have the meanings set forth in the Development Contract unless the context clearly requires otherwise.

“Easement” means an easement on the Property for the City trail system.

“Grantor” means HEDA and the City.

“HEDA PAYG Note” means the HEDA PAYG Note means the Note by Grantor to Recipient to pay for costs incurred by the Recipient under the terms of the Development Contract.

“Infrastructure Improvements” means the improvements to the City water system and the installation of sidewalks, road and utilities serving the Project, environmental mitigation and stormwater control.

“Property” means the real estate legally described on Exhibit A attached hereto.

“Project” means a 105-unit senior citizen housing complex.

“Recipient” means KTJ 360, LLC, a Minnesota limited liability company.

“State” means the State of Minnesota.

Section 2. Subsidy Agreement Requirements.

2.1 Grantor and Recipient recognize and agree that the financial benefit of the HEDA PAYG Note is defined as a Business Subsidy under Grantor’s Business Subsidy Policy and is subject to the provisions thereof.

2.2 The Business Subsidy will be generated from tax abatement approved by the City with respect to the Project. Tax abatement for the Project will continue for up to seven (7) years for taxes payable in 2024 through 2030 or until the HEDA PAYG Note is satisfied, whichever is sooner. The Business Subsidy may not exceed Six Hundred Thousand and No/100 Dollars (600,000.00).

2.3 The public purposes of the Business Subsidy with respect to the Project is to promote the development of a 105-unit senior citizen complex which will provide housing for individuals and to provide an increase in the real estate tax basis. Grantor finds the Project will promote the development of a 105-unit senior citizen housing complex which will provide life cycle housing in the City which will also provide or incentivize other residential housing sales and development, provide an increase in the real estate tax base, and provide needed infrastructure improvements and the include the grant of an easement for the City trail system.

2.4 The goal of the Business Subsidy is to the cause the Project and Infrastructure Improvements to be constructed and the Easement granted.

2.5 If the goals described in Section 2.4 are not met, the Recipient must make the payment described in Section 3 hereof.

2.6 Recipient has demonstrated to the satisfaction of HEDA and City that it is adequately financed and the Project and Infrastructure Improvements will be completed in a timely fashion.

2.7 The Recipient agrees that it will continue operations at the Project in the City of Hermantown for at least five (5) years after the Benefit Date.

2.8 The Recipient has not previously received a Business Subsidy from Grantor and it has not failed to meet the terms of any business subsidy agreement as defined in the Business Subsidy Act and Recipient is eligible to receive a Business Subsidy under Grantor’s Business Subsidy Policy.

Section 3. Remedies.

If Recipient fails to meet the goals described in Section 2.4, then upon written notice delivered by Grantor to Recipient, Recipient must pay Grantor: (a) its “pro rata share” of the amount of any Business Subsidy; plus (b) interest on such principal amount of the Business Subsidy at the implicit price deflator rate for government consumption expenditures and gross investment for local and state governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31 of the previous year, accrued from the Benefit Date to the date of payment. The term “pro rata share” means if the failure relates to maintenance of the business in accordance with Section 2.7, 60 less the number of months of

operation (where any month in which the business is in operation for at least 15 days constitutes a month of operation), commencing on the Benefit Date and ending on the date the business ceases operation as determined by the HEDA, divided by 60.

In addition to the remedies described in this Section and any other remedy available to the Grantor for failure to meet the goals stated in Section 2.4, Recipient agrees and understands that it may not receive a Business Subsidy from the Grantor or any other grantor for a period of five years from the date of the failure or until Recipient satisfies its repayment obligation under this Section, whichever occurs first.

Section 4. Reports.

Recipient must submit to HEDA and City a written report with respect to the Business Subsidy goals and results on the form attached hereto, by March 1 of each year, commencing March 1, 2024 and continuing until the later of (i) the date the goals stated Section 2.4 are met; or (ii) March 1, 2031; or (iii) if the goals are not met, the date the Business Subsidy is repaid in accordance with Section 3.

HEDA and City will provide information to Recipient regarding the required forms. If Recipient fails to timely file any report required under this Section, HEDA and City will mail the Recipient a warning within one week after the required filing date. If, after fourteen (14) days of the postmarked date of the warning, the Recipient fails to provide a report, the Recipient must pay to the Grantor a penalty of One Hundred and No/100 Dollars (\$100.00) per month for each month that the report is delinquent.

A failure by HEDA and/or City to provide such reports or warnings hereunder shall not affect HEDA's and City's rights under this Business Subsidy Agreement, the Agreement or any applicable law, rule or regulation.

Section 5. Attorney Fees.

If Grantor employs attorneys or incurs other expenses for the collection of payments due or for the enforcement or observance of any obligation or agreement on the part of Recipient under this Agreement or the Agreement, the Recipient agrees that it will, within 10 days of written demand by the HEDA or City, pay the reasonable fees of such attorneys and any other expenses so incurred by Grantor.

Section 6. Project Compliance Information. Recipient shall provide to Grantor any information reasonably requested or needed by Grantor to monitor Project implementation for compliance with Minnesota law and its guidelines.

Section 7. Nondiscrimination. The provisions of Minnesota Statutes, Section 181.59, which relate to civil rights and discrimination, shall be considered a part of this Agreement as though wholly set forth herein and the Recipient shall comply with each such provision throughout the term of this Agreement.

Section 8. Miscellaneous.

8.1 Choice of Law and Venue. This Agreement is made and shall be governed in all respects by the laws of the State. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of the State, venued in St. Louis County, Minnesota if in State Court and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

8.2 Severability. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

8.3 Notice. All notices required hereunder shall be given by depositing in the U.S. mail, postage prepaid, certified mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

To HEDA: Hermantown Economic Development Authority
5105 Maple Grove Road
Hermantown, MN 55811
Attn: John Mulder, Executive Director

To City: City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811
Attn: John Mulder, City Administrator
Ph: (218) 729-3600
Email: jmulder@hermantownmn.com

To Recipient: KTJ 360, LLC
400 Water Street
Suite 200
Excelsior, MN 55331
Attn: Ryan Grover
Ph: (612) 810-9481
Email: ryan@oppidan.com

8.4 Entire Agreement. This Agreement, is made pursuant to and as part of the Agreement. The Agreement, this Agreement and all other documents and agreements executed pursuant to the Agreement constitute the complete and exclusive statement of all mutual understandings between the parties with respect to the Project, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, pertaining to the subject matter of this Agreement.

8.5 Headings. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

8.6 Conflict of Interests; Representatives Not Individually Liable. No officer, employee or contractor of Grantor may acquire any financial interest, direct or indirect, in this Agreement, or in any contract related to the Project. No officer, agent, or employee of the Grantor shall be personally liable to the Recipient or any successor in interest in the event of any default or breach by Grantor or for any amount that may become due to Recipient or on any obligation or term of this Agreement.

8.7 Effect on Other Agreements. Nothing in this Agreement shall be construed to modify any term of any other agreement to which Grantor and Recipient are parties.

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

8.9 Agreement. Grantor shall have no obligations to provide a Business Subsidy to Recipient unless and until the Agreement has been entered into by the parties.

8.10 No Waiver. No remedy conferred upon or reserved to Grantor is intended to be inclusive 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 Business Subsidy Agreement, the Agreement or now or hereafter existing at law or in equity or by statute. Further no decision by Grantor to exercise any remedy or give it hereunder, under the Agreement or by statute shall constitute a waiver of any rights afforded Grantor upon any subsequent or continuing default, action or non-action by Recipient.

8.11 No Parent Corporation. There is no parent corporation of the Recipient.

8.12 Job Goals. The creation of jobs was not determined to be a goal of the Business Subsidy so there are no job goals within this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

City of Hermantown

By _____
Its Mayor

And By _____
Its City Clerk

[SIGNATURES CONTINUE ON NEXT PAGE]

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

Hermantown Economic Development Authority

By _____
Its President

And By _____
Its Secretary

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, Recipient has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

KTJ 360, LLC

By _____
Its _____

[END OF SIGNATURES]

City of Hermantown
 5105 Maple Grove Road
 Hermantown, MN 55811
 Phone: 218-729-3600
 Fax: 218-729-3620

City of Hermantown Business Assistance Recipient Report

Section 1: Recipient Information

1.1. Name of business or organization receiving subsidy or financial assistance: _____	1.2. Address where business subsidy or financial assistance will be used Street address: _____ City, State, Zip Code: _____
1.3. Does the recipient have a parent corporation? <i>(Mark one.)</i> <input type="checkbox"/> Yes <i>(Indicate name and address of parent corporation below. If more than one, indicate ultimate owner.)</i> <input type="checkbox"/> No Name of parent corporation: _____ Street address: _____ City, State, Zip Code: _____	
1.4. Industry of recipient's facility (Mark one.): <input type="checkbox"/> Manufacturing <input type="checkbox"/> Services <input type="checkbox"/> Finance, Insurance, Real Estate <input type="checkbox"/> Retail Trade <input type="checkbox"/> Wholesale Trade <input type="checkbox"/> Construction <input type="checkbox"/> Other (please specify):	
1.5. Did the recipient relocate as a result of signing this agreement? (Mark one.) <input type="checkbox"/> Yes (Indicate city and state of previous address and reason recipient did not complete this project at that address.) <div style="margin-left: 40px;"> <ul style="list-style-type: none"> City/State of previous address: Reason project not completed at previous address: Indicate total number of employees who ceased to be employed by recipient when the recipient relocated to become eligible for the business subsidy. # </div> <input type="checkbox"/> No (Go to Question 1.6.)	
1.6. What would recipient have done without business subsidy or financial assistance? (Mark one): <input type="checkbox"/> Remain at previous location, but not expand <input type="checkbox"/> Remain at previous location but expand at the location <input type="checkbox"/> Relocate to different Minnesota location <input type="checkbox"/> Relocated outside Minnesota <input type="checkbox"/> Other:	
1.6.1. Was the project a result of eminent domain? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Section 2: Goals and Public Purpose Identified in the Agreement

2.1. Minn. Stat. §116J.994 requires that business subsidy and financial assistance agreements state a public purpose. Which of the following public purposes were stated in the agreement? <i>(Mark all that apply.)</i> <input type="checkbox"/> Enhancing economic diversity <input type="checkbox"/> Increasing tax base (cannot be only purpose) <input type="checkbox"/> Creating high-quality job growth <input type="checkbox"/> Job retention <input type="checkbox"/> Other (please specify): _____ <input type="checkbox"/> Stabilizing the community

2.2. Indicate whether the agreement included the following types of goals, and whether the recipient had attained those goals at the time of this report. (Fill in the boxes and attainment date(s) for each goal.)

	Goals established?	Target attainment dates (month & year)	All goals attained?
A) Specific wage and job goals to be attained within 2 years	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No
B) Other job-creation and/or retention goals	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No
C) Other wage goals	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No
D) Goals other than wage and job goals	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No

2.5. Has the recipient achieved all goals (see Question 2.1 and 2.2) and fulfilled all obligations stipulated in the agreement (Mark one.)

Yes No

Section 3: Agreement Information

3.1. Total dollar value of business subsidy or financial assistance
Please separate value by type in Questions 3.5 and 3.6):

3.2. Date agreement signed (In addition to the agreement date, indicate any dates the agreement was amended.): _____

3.3. Benefit date (Indicate the date the recipient receives the business subsidy. If the subsidy involves physical equipment, then the benefit date is the date the equipment is placed into service. If the business subsidy involves property improvements, the benefit date is when the improvements are finished or when the business occupies the property): _____

3.4. Does the agreement provide a business subsidy or one of the four types of financial assistance (see Question 3.6) required to be reported? (Mark one.)

business subsidy

financial assistance

3.5. If the agreement provided a business subsidy, please indicate the **type(s) and total dollar value for each type.**

not applicable, agreement provided financial assistance

- loan (only principal) \$ _____
- grant (i.e., forgivable loan) \$ _____
- tax abatement \$ _____
- TIF or other tax reduction or deferral* \$ _____
- guarantee or payment \$ _____
- contribution of property or infrastructure \$ _____
- preferential use of governmental facilities \$ _____
- land contribution \$ _____
- other (Specify subsidy type.): _____ \$ _____

3.6. If the assistance was one of the four types of financial assistance, please indicate the type(s).

not applicable, agreement provided a business subsidy

- assistance for property by contaminants \$ _____
- assistance for renovating building stock or bringing it up to code, and assistance provided for designated historic preservation districts, when 50 percent or less of total cost \$ _____
- assistance for pollution control or abatement \$ _____
- assistance for a TIF soils condition district \$ _____

3.7. If the assistance included tax increment financing, please indicate the type of TIF district. *(Mark one.)*

- not applicable, assistance was not in the form of TIF
- redevelopment
- renewal and renovation
- soils condition
- economic development
- mined underground space
- hazardous substance subdistrict

3.7A. If assistance included JOBZ benefits, please indicate type of assistance. *(Mark all that apply and please also submit the JOBZ MBAF form.)*

- JOBZ
- JOBZ AgZone
- Biozone

3.8. Are any other grantors providing a business subsidy or financial assistance to the same project? *(Mark one.)*

- Yes *(Specify each grantor and the value of their assistance below; attach an additional sheet if necessary.)*

Grantor: _____ Value (\$): _____

Grantor: _____ Value (\$): _____

- No

Recipient Name:

Authorized Officer

DEVELOPMENT CONTRACT

BY AND AMONG

KTJ 360, LLC

AND

CITY OF HERMANTOWN

AND

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

Dated as of the ____ day of _____, 2022

This document was drafted by:

Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue, Suite 101
Duluth, Minnesota 55802
(218) 625-8460

DEVELOPMENT CONTRACT

THIS DEVELOPMENT CONTRACT (“Agreement”), made on or as of the ____ day of _____, 2022, by and among the **City of Hermantown** (“City”), the **Hermantown Economic Development Authority** (“HEDA”) and **KTJ 360, LLC**, a Minnesota limited liability company (“Developer”), is in response to the following situation:

A. Developer desires to construct a 105-unit senior citizen housing complex and related improvements which will provide housing for senior citizens (“Project”).

B. City desires that a water extension (“Water Improvements”) constructed as part of the Project be dedicated as party of the City’s water system.

C. City desires that Developer construct the Water Improvements and Infrastructure Improvements and perform the Environmental Mitigation in connection with the construction of the Project.

D. City also desires that Developer provides City with an easement for a trail access on Developer’s Property (“Trail Easement”).

E. Developer is willing to construct the Water Improvements as provided in this Agreement and provide City with the Trail Easement.

F. HEDA is willing to reimburse Developer for a portion of the cost of the Water Improvements, Infrastructure Improvements and Environmental Mitigation Costs as provided for in this Agreement.

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

ARTICLE I **DEFINITIONS**

Unless the context requires otherwise, when used in this Agreement the terms and phrases listed in this Article shall have the following meanings:

1.1 “2020 Development Agreement” means the Development Agreement dated May 5, 2020 between Developer and the City that was recorded on June 8, 2020 with the St. Louis County Recorder as Document No. 01381803.

1.2 “Approval” or “Endorsed” shall, if City, mean the appropriate approval at the appropriate level of government which shall not be unreasonably withheld or, if by Developer, the approval by a representative of Developer, which shall not be unreasonably withheld.

1.3 “Approved City Plans and Specifications” means the plans and specifications for the Water Improvements that have been approved in writing by the City Engineer.

1.4 “Approved Drawings” means the drawings Developer submitted to City for the Project that were approved by the Planning Commission of the City in connection with the zoning approvals for the PUD for the Project.

1.5 “As-Built Plans” means the as-built plans (record drawings) on paper and electronically in auto-cad format for the work for which as-built plans are required.

1.6 “Assessment Agreement” means the agreement in the form of the one attached hereto as Exhibit 1.5.

1.7 “Available City Tax Abatement” means the tax abatement approved by the City that is payable to HEDA pursuant to the City Abatement Resolution. The Available City Tax Abatement includes all of the real estate taxes on the Land that are legally able to be abated by City pursuant to City Abatement Resolution.

1.8 “Business Subsidy Agreement” means that certain Business Subsidy Agreement between City, HEDA and Developer in the form of the one attached hereto as Exhibit 1.7.

1.9 “City” shall mean the City of Hermantown with its administrative offices being located at 5105 Maple Grove Road, Hermantown, Minnesota 55811.

1.10 “City Abatement Resolution” means the Resolution No. _____ approved by the City Council on _____, 2022 establishing and approving the abatement that is payable by HEDA to Developer under the HEDA PAYG Note.

1.11 “City Engineer” shall mean the person or firm from time to time designated by the City as its City Engineer. At this time, the City Engineer is David Bolf of Northland Consulting Engineers L.L.P.

1.12 “Community Development Director” shall mean the Community Development Director of the City of Hermantown, who at this time is Eric Johnson.

1.13 “Development Land” or “Land” means the real property described in Exhibit 1.12 attached hereto.

1.14 “Environmental Mitigation” means the work described on Exhibit 1.13 attached hereto.

1.15 “Environmental Mitigation Costs” means the items described in Exhibit 1.13 attached hereto. Exhibit 1.13 will be completed and attached to this Development Contract before the start of construction.

1.16 “HEDA PAYG Note” means the pay-as-you-go note to be provided by HEDA to Developer pursuant to and subject to the terms of this Agreement as more fully described in herein.

1.17 “Infrastructure Improvements” means the engineering and construction costs for the internal roads, parking areas, stormwater retention systems and internal utilities for the Project.

1.18 “Project Administrator” means the City Administrator of City of Hermantown.

1.19 “State” means the State of Minnesota.

1.20 “Stormwater Certificate” means the Stormwater Certificate to be issued to Developer by the Community Development Director.

1.21 “Stormwater System” means the entire stormwater control and disposal system for the Project.

1.22 “Term” means the duration of this Agreement as provided in Article XXIV of this Agreement.

1.23 “TAF Eligible Costs” means the engineering costs and construction costs for the Water Improvements, Infrastructure Improvements and Environmental Mitigation Costs.

1.24 “Trail Easement” means the easement for the City Trail described in Section 2.14.

1.25 “TAF Payments” means any payments made under the HEDA PAYG Note.

1.26 “Water Improvements” means the extensions to the City water system as shown on Exhibit 1.25 attached hereto.

1.27 “Zoning Approvals” means the planned unit development (“PUD”) that was approved by the City with respect to the Project.

1.28 “Water Improvements Easement” shall mean the easement required to be provided to City by Developer pursuant to Section 3.2 hereof.

ARTICLE II **REPRESENTATIONS AND WARRANTIES AND COVENANTS**

Developer represents and warrants, covenants and agrees that:

2.1 If a building permit is applied for and issued to Developer for the Project, Developer will construct at Developer’s cost in accordance with the terms of this Agreement the Approved Drawings and Approved City Plans and Specifications and all applicable local, state and federal laws and regulations.

2.2 Developer has received no notice or communication from any local, state or federal official that the activities of Developer pursuant to this Agreement may be or will be in violation of any environmental law or regulation regarding the Land. Developer is aware of no facts, the existence of which would cause it to be in violation of any local, state or federal environmental law, regulation or review procedure regarding the Land.

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

2.4 Developer is a limited liability company, duly organized and in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its articles of incorporation or bylaws, is duly qualified as a domestic corporation and authorized to transact business within the State, has power to enter into this Agreement and has duly authorized the execution, delivery, and performance of this Agreement by any required proper action of its members.

2.5 City, through any authorized representatives, shall have the right at all reasonable times after reasonable notice to inspect, audit, examine and copy any pertinent books and records of Developer and compliance with the specific requirements of this Agreement, the Business Subsidiary Agreement or applicable State law.

2.6 Developer will promptly pay or cause to be paid all real estate taxes and assessments at any time levied upon or against it or the Project.

2.7 Developer agrees to comply with the terms of the Stormwater Certificate issued by the City for the Project.

2.8 Developer agrees that the terms and provisions of any National Pollutant Discharge Elimination System Permit issued by the Minnesota Pollution Control Agency for the Project are hereby incorporated into this Agreement and deemed to be terms and provisions and conditions running in favor of the City.

2.9 As a condition of the issuance of the building permit for the Project, Developer shall provide the City and HEDA with security in the amount of Two Hundred Seventy-five Thousand and No/100 Dollars (\$275,000.00) (“Security”) to guarantee that the Project will be constructed pursuant to the Stormwater Certificate and this Agreement. The Security shall be in form and substance reasonably acceptable to the HEDA Attorney, City and HEDA. The Security shall be maintained until released by the City and HEDA as provided upon satisfaction of the requirements of the Stormwater Certificate.

2.10 Prior to the issuance of a building permit for the Project, Developer will provide the Community Development Director and the Project Administrator or his/her designee with an

operation and maintenance plan for the Stormwater System that includes regular sweeping and cleaning of the parking lot, flushing of storm drains, etc. and perform the activities under such plan.

2.11 Developer and its successors and assigns must at its cost and expense, maintain and repair the Stormwater System so that it continues to perform its designed storm water functions. Developer and its successors and assigns shall keep records for up to six years, or as required under applicable law, of inspection, maintenance and monitoring of the Stormwater System and provide such records to the City within thirty (30) days after receipt of written notice.

In the event that Developer or its successors and assigns fails to repair and/or maintain the Stormwater System in accordance with applicable codes, regulations, laws, and statutes, then in that event, the City may, following sixty (60) days prior written notice to all of the then owners of the Land, perform the required repairs or maintenance work on the Stormwater System and charge the reasonable costs of such work to the Land in accordance with the provisions of Minnesota Statutes Section 429.021, subd. 1(2) and the special assessment procedures of Chapter 429 of Minnesota Statutes. In the event of an uncured default for which the City elects to perform the required repairs and maintenance work on the Stormwater System, the City shall do so strictly in accordance with all laws, rules and regulations applicable to Developer, the Project, and the Land, including without limitation, all applicable stormwater regulations.

2.12 Developer shall retain the ownership of the entire Stormwater System and shall be responsible for the repair and maintenance of the entire Stormwater System. City shall not be responsible for the maintenance and repair of any part of the Stormwater System, including without limitation any ponds or outlet structures located on the Land. Developer hereby grants a permanent license to City for access to any portion of Stormwater System for the purposes of City performing testing and monitoring of the Stormwater System and performing maintenance and repairs permitted to be made by City under Section 2.11 hereof.

2.13 After completion of the Water Improvements, Developer shall provide the City, HEDA and City Engineer As-Built Plans for the Water Improvements, the Stormwater System and all utility service lines on the Land. City will not release the Security provided to it under Section 2.9 hereof until the As-Built Plans have been provided to City as required by this Section 2.13.

2.14 Developer shall execute and deliver an easement for a trail over the part of the Land as shown on Exhibit 2.14 attached hereto. (“Trail Easement”) City will prepare the legal description for the Trail Easement.

2.15 Developer shall complete the construction of the Project by January 2, 2024. The construction of the Project shall be deemed completed upon the issuance of a Certificate of Occupancy for the Project pursuant to Section 13.2 hereof.

ARTICLE III
CONSTRUCTION PLANS

3.1 Approved Drawings. Developer has submitted plans for the construction of the Project as part of an application to City's Planning and Zoning Commission for the Zoning Approvals. The plans for the Project, as approved by the City shall constitute the Approved Drawings for purposes of this Agreement and any requirements relating to City's approval. If Developer desires to make any material change in the Approved Drawings, Developer shall submit the proposed change to City officials through the regular process and approval by them will constitute City approval.

3.2 Construction of Water Improvements.

3.2.1 Developer shall prepare plans and specifications for the Water Improvements and shall submit them to the City for approval, which approval shall not be unreasonably withheld and shall be deemed granted if the City fails to respond in writing with specific revisions within ten (10) days after receipt of the plans and specifications. The plans and specifications shall include a survey drawing and legal description showing a twenty foot (20') easement for the Water Improvements ("Water Improvements Easement"). Developer will execute and deliver the Water Improvements Easement in recordable form to City. Developer shall construct the Water Improvements at Developers cost and expense.

3.2.2 The Public Works Director or City Engineer may inspect the installation of the Water Improvements at any time the Public Works Director or City Engineer deems reasonably necessary. The Public Works Director or City Engineer will review all the Developer's material testing results. In addition, the Public Works Director or City Engineer will oversee the bacteria test, hydrostatic test and continuity test of the Water Improvements. Upon completion of the Water Improvements in accordance with the Approved City Plans and Specifications, the Public Works Director or City Engineer will direct the City in writing to take ownership of the Water Improvements. If the Water Improvements have not been constructed in conformance with the Approved City Plans and Specifications, the Public Works Director or City Engineer will provide formal written notice to the Developer of the need for repair or replacement before the City assumes ownership of the Water Improvements.

ARTICLE IV
TAXES

City does not make any representation whatsoever with respect to the amount of real estate taxes payable by Developer from and after the date hereof or with respect to the classification of the Project for real estate tax purposes.

ARTICLE V
ASSIGNMENT AND TRANSFER

5.1. Representation as to Development. Developer represents and agrees that its undertakings pursuant to the Agreement, are, and will be, for the purpose of development of the Project on the Land and not for speculation in land holding. Developer further recognizes that, in view of (i) the importance of the development of the Project to the general welfare of the community; and (ii) the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of Developer is of particular concern to the community and City (iii) that City is entering into the Agreement with Developer, and, in so doing, is willing to accept and rely on Developer for the faithful performance of all undertakings and covenants hereby by Developer to be performed, that the provisions of this Article V are being included in this Agreement.

5.2 Prohibition Against Transfer of Property and Assignment of Agreement. For the foregoing reasons, Developer represents and agrees that, prior to the completion of the construction of the Project:

5.2.1 Except for the granting of easements necessary for the Project and except as permitted by this Section 5.2.1 or 5.2.2, and except only by way of security for, and only for, the purpose of obtaining financing necessary to enable Developer, to perform the obligations with respect to constructing the Project or any other purpose authorized by the Agreement, Developer (except as so authorized) has not made or created, and that it will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or lease, or any trust or power, or transfer in any other mode or form of, or with respect to, the Agreement or the Land or any part thereof or any interest therein, or any contract or agreement to do any of the same without the prior written approval of City, which approval will not be unreasonably withheld. Notwithstanding anything to the contrary set forth in this Agreement, a transfer to (a) a related entity under control of Developer or an affiliate of Developer or (b) an entity that acquires all or substantially all of the assets of Developer, shall not be in violation hereof or require the consent of the City or compliance with Section 5.2.2, but such a transfer shall be noticed to City in advance of its occurrence.

5.2.2 City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any approval for a transfer that requires the City's consent, the following:

5.2.2.1 Any proposed transferee shall have the qualifications and financial capability, as reasonably determined by City, necessary and adequate to fulfill the obligations undertaken in the Agreement by Developer (or, in the event the transfer is of or relates to part of the Land, such obligations to the extent that they relate to such part).

5.2.2.2 Any proposed transferee, by instrument in writing reasonably satisfactory to City and in form recordable in the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City expressly assume all of the obligations of Developer under the Agreement and agree to be subject to all the conditions and restrictions to which

Developer is subject (or, in the event the transfer is of or relates to part of the Land, such obligations, conditions and restrictions to the extent that they relate to such part).

ARTICLE VI
CITY COVENANTS AND OBLIGATIONS

6.1 Within thirty (30) days after the completion of the construction of the Project, and Developer satisfies the requirements of Section 10.7 hereof, the City shall provide Developer with the HEDA PAYG Note. The principal amount of the HEDA PAYG Note shall be equal to the lesser of (i) Six Hundred Thousand and No/100 Dollars (\$600,000.00) or (ii) the TAF Eligible Costs.

6.2 Notwithstanding anything to the contrary contained herein, the duration limit for the Available City Tax Abatement will be seven (7) years for taxes payable in 2024 through 2030.

ARTICLE VII
NO CLAIMS

Developer represents and warrants to City that neither Developer nor any agent, subcontractor or any other party affiliated with Developer has any existing claims or causes of action against City in connection with this Agreement or the construction of the Project.

ARTICLE VIII
FEES

Developer shall, prior to the delivery of a building permit for the Project, pay the following fees to the City:

8.1 Park dedication fees in the amount of Fifty-seven Thousand Seven Hundred Fifty and No/100 Dollars (\$57,750.00).

8.2 WLSSD Capacity Availability Fee (“CAF”) in the amount of Sixty-two Thousand Nine Hundred Eighty and No/100 Dollars (\$62,980.00), which amount City acknowledges has been paid. The CAF is determined by and payable to the Western Lake Superior Sanitary District but the check is delivered to City.

8.4 Building Permit – Eighty-six Thousand Two Hundred Thirty-five and 39/100 Dollars (\$86,235.39), which amount City acknowledges has been paid.

8.5 Water Extension – Forty-eight Thousand Five Hundred Forty-one and 58/100 Dollars (\$48,541.58) for crossing Maple Grove Road to the Site.

8.6 The Security required by Section 2.9 related to the Stormwater Improvements.

8.7 Water Connection Fee, Commercial Building – One Thousand Five Hundred Seventeen and 25/100 Dollars (\$1,517.25), plus a Fifty and No/100 Dollars (\$50.00) permit fee, which amount City acknowledges has been paid.

8.8 Sanitary Sewer Connection Fee, Commercial Building – Two Thousand Two Hundred and No/100 Dollars (\$2,200.00), plus Fifty and No/100 Dollars (\$50.00) per toilet/urinal, plus Fifty and No/100 Dollars (\$50.00) permit fee, which amount City acknowledges has been paid.

8.9 Water Connection Fee for additional meters (i.e. sprinkler system).

8.10 Storm Water Certificate Application Fees.

8.11 Sign Permit Fees.

8.12 Sanitary Sewer Trunkline Connection fee in the amount of 50% of the WLSSD CAF fee.

8.13 All fees, including HEDA Costs, incurred in connection with that certain Inducement Agreement entered into by Developer dated March 23, 2022.

ARTICLE IX **NO APPROVAL OR ISSUANCE OF OTHER PERMITS**

Except for the approvals provided herein, nothing herein shall be construed as a permit or approval by City or an agreement by City to issue or provide any permit or approval to Developer with respect to the construction of the Project. Without limiting the generality of the foregoing, Developer acknowledges and agrees that even if it satisfies all of the requirements imposed on it under this Agreement that the retail store that is part of the Project may not be opened unless and until all other required permits are obtained by Developer from all relevant governmental agencies.

ARTICLES X **TAX ABATEMENT PAYMENTS**

10.1 **Background.** Developer did not request any financial assistance from HEDA for the Project until Developer withdrew its building permit application and determined to not pursue the development of the Project. At that time, City and HEDA made inquiry if HEDA or City could assist the Developer to allow the Project to proceed.

10.2 **Public Interest.** City and HEDA believe that the construction of the Project will be in the public interest as it will result in increase the tax base of City and the Project will promote the development of a 105-unit senior citizen housing complex which will provide life cycle housing in the City which will also provide or incentivize other residential housing sales

and development, provide an increase in the real estate tax base, provide needed infrastructure improvements, construction of the Water Improvements and the grant of an easement for the City trail system.

10.3 Tax Abatement. HEDA has agreed to provide tax abatement to Developer to reimburse Developer for TAF Eligible Costs. HEDA has agreed to provide tax abatement financing assistance within the limits and subject to the provisions of this Agreement. The HEDA tax abatement financing assistance shall be considered partial assistance or partial reimbursement for the TAF Eligible Costs.

10.4 Sufficient Fund Financing. Developer represents that the tax abatement financial assistance provided by HEDA hereunder, together with the funds to be contributed to the Project by Developer and bank financing, will be sufficient to pay the cost of constructing and operating the Project.

10.5 No Representative of City or HEDA is Interested in this Agreement. Neither Developer, HEDA nor the City has any knowledge that a Council person, Council member or other member, official, or employee of City or HEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement or in any transactions concluded in connection with this Agreement. No member, official or employee of City or HEDA shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or HEDA or for any amount which may become due to Developer or its successor, or on any obligations under the terms of this Agreement.

10.6 Developer to File Correct and Complete Information. Developer shall reasonably cooperate with the City and HEDA to cause any information, document, certificate, statement in writing, or report required under this Agreement and/or otherwise delivered to City or HEDA, or to third parties, under this Agreement, to be true, correct and complete in all material respects.

10.7 Condition to First Payment by HEDA. HEDA's obligation to Developer to execute and deliver the HEDA PAYG Note in the principal amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) to Developer shall be subject to the delivery to HEDA of the following:

10.7.1 A certificate of Developer's Engineer to the effect that the construction of the Water Improvements have been completed in material conformance with the Approved City Plans and Specifications;

10.7.2 The Water Improvements Easement in recordable form has been provided to the City; and

10.7.3 The City Engineer has directed City to take ownership of the Water Improvements pursuant to Section 3.2.2.

10.7.4 A certificate from Developer as to the actual costs, including, without limitation, construction costs, engineering costs, incurred by Developer to construct the Water

Improvements, Infrastructure Improvements and Environmental Mitigation Costs and a certificate from Developer's Engineer that such costs are directly related to performing the construction of the Water Improvements, Infrastructure Costs and Environmental Mitigation Costs ("TAF Eligible Costs").

10.7.5 Developer has entered into the Business Subsidy Agreement.

10.7.6 A temporary or final Certificate of Occupancy has been issued for Project.

10.7.7 City confirms that current real estate taxes on the Land have been paid.

10.7.8 The Trail Easement in recordable form has been provided to the City.

10.7.9 The operations and maintenance plan for the Stormwater Improvements have been provided pursuant to Section 2.10.

10.8 Requirements for Subsequent Payments by HEDA. HEDA's obligation to pay any subsequent installment of Payments under the HEDA PAYG Note is subject to the terms of the HEDA PAYG Note.

10.9 Restoration of Improvements. In the events the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct and restore to substantially the same condition as existed prior to the event causing damage or destruction. Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete such repair, reconstruction and restoration of the Project whether or not the proceeds, if any, of any insurance received by Developer are sufficient to pay for such repair, restoration or reconstruction.

10.10 Representations and Obligations of City.

10.10.1 City Tax Abatement. City adopted the City Abatement Resolution to allow the Available City Tax Abatement to be paid to HEDA so HEDA may make payments on the HEDA PAYG Note.

10.10.2 HEDA PAYG Note. Upon receipt by the City of all documents listed in Section 10.7 of this Agreement, Developer shall be entitled to receive the payments under the HEDA PAYG Note, subject to the terms thereof. The HEDA PAYG Note shall be pay-as-you-go and the payments due for any given year shall be payable only to the extent of the Available City Tax Abatement for such year; said payments not paid when due on the HEDA PAYG Note will be deferred and paid to Developer to the extent of the Available City Tax Abatement for subsequent years. No payment shall be made after the taxes payable in 2030.

Subject to the terms of Section 10.7 and this Section 10.10.2, HEDA shall pay on or before August 1 and February 1 of each year beginning in the first year that abatement is available, all of the then Available City Tax Abatement as the payments on the HEDA PAYG Note. The obligations of HEDA to make such payments shall be set forth in the HEDA PAYG

Note in the form attached hereto as Exhibit 10.10.2. No interest shall accrue or be payable on the HEDA PAYG Note.

No asset or revenue of City or HEDA shall be available to make payments on the HEDA PAYG Note other than the Available City Tax Abatement. Developer hereby acknowledges, declares and covenants that payments on the HEDA PAYG Note are revenue obligations solely payable from Available City Tax Abatement, if any and are not a general obligation of the State or City or HEDA and neither the full faith and credit, assets, or taxing power of the State or City or HEDA is pledged for the payments on the HEDA PAYG Note. Developer acknowledges, understands and agrees that the Available City Tax Abatement may not be sufficient to allow the HEDA PAYG Note to be paid in full to Developer. Developer understands that any unpaid amount of the HEDA PAYG Note at the end of the Term will never be paid to Developer by HEDA.

Developer understands and acknowledges that neither City nor HEDA makes any representations or warranties regarding the amount of Available City Tax Abatement that will be generated by the Project or it will be sufficient to pay all or any of the amounts due to Developer under this Agreement. City and HEDA and their officers, agents and employees make no representation or warranty as to the amount or sufficiency of the Available City Tax Abatement.

10.11 Right to Collect Delinquent Taxes. Developer understands that the payments on the HEDA PAYG Note are derived from real estate taxes on the Land, which taxes must be promptly and timely paid. To that end, Developer agrees, for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Land and the Project. Developer acknowledges that this obligation creates a contractual right on behalf of City and/or HEDA to sue Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County Auditor. In any such suit, City and/or HEDA shall also be entitled to recover its costs, expenses and reasonable attorney fees.

10.12 Review of Taxes. Developer agrees that prior to the end of the Term it will not cause a reduction in the real property taxes paid in respect of the Land, Project through willful destruction of the Project or any part thereof. Developer also agrees that it will not, prior to the end of the Term, seek exemption from property tax for the Land, Project or any portion thereof or transfer or permit the transfer of the Land, Project to any entity that is exempt from real property taxes and state law, or apply for a deferral of property tax on the Land pursuant to any law. Notwithstanding anything contained herein, Developer shall retain, subject to the provisions of the Assessment Agreement, the Constitutional and statutory right to contest property tax valuation with respect to the Land and Project, pursuant to Chapter 278 of the Minnesota Statutes or its succeeding replacement statutes. Developer must commit, however, in advance of commencing such proceedings, to keep all taxes current while the proceedings are pending. The provisions of this Section 10.12 are to be read as supplementary to and not in replacement of the provisions of the Assessment Agreement.

ARTICLE XI
LIMITATION OF PUBLIC UNDERTAKING

It is hereby understood and agreed that the public undertakings and the public expenditures are limited to those undertakings and expressly set forth in this Agreement.

ARTICLE XII
CONNECTION FEES

Developer shall make application to City for connections to the water system and sewer system on the standard forms for water and sewer connections and shall pay the then connection fees and permit fees to City, subject to the terms of this Agreement. The City hereby acknowledges that Developer has paid all such connection and permit fees.

ARTICLE XIII
**COMMENCEMENT OF CONSTRUCTION AND
CERTIFICATE OF OCCUPANCY CONDITIONS**

13.1 Commencement of Construction. Prior to the commencement of construction of the Project, the following conditions must be satisfied:

13.1.1 This Agreement must be executed and delivered to the City and HEDA by Developer.

13.1.2 The Security required by Section 2.9 has been provided to the City.

13.1.3 The provisions of Article VIII are satisfied.

13.1.4 All requirements for the issuance of a building permit under the City Building Code are satisfied.

13.1.5 No uncured event of default exists with respect to the terms of this Agreement which materially relates to the health and safety of the occupants or users of the Project.

13.1.6 Developer has entered into the Business Subsidy Agreement.

13.1.7 Developer has entered into the Assessment Agreement.

13.1.8 This Agreement and the Zoning Approval have been recorded with the appropriate land title recording office.

13.1.9 Exhibit 1.13 will be completed and approved by City, HEDA and Developer.

13.2 Prior to the issuance of a Temporary or Final Certificate of Occupancy for the Project, the following must be satisfied:

13.2.1 The conditions of the Zoning Approvals have been satisfied.

13.2.2 Developer is not on default under this Agreement past the expiration of all applicable cure periods.

13.2.3 Developer has satisfied all other obligations of Developer under this Agreement to be satisfied by Developer on or before such date.

13.2.4 The Water Improvements have been completed in accordance with this Agreement and As-Built Plans for the Water Improvements and other Improvements and have been provided to City as required herein.

13.2.5 The provisions of Sections 2.10 (operation and maintenance plan) for the Stormwater System are satisfied.

13.2.6 The Trail Easement has been executed and delivered to City by Developer.

13.2.7 The Water Improvements Easement has been executed by Developer and delivered to City by Developer.

ARTICLE XIV **COMPLIANCE WITH ROAD REQUIREMENTS**

Developer agrees to comply at its sole cost and expense with all requirements imposed on the Project by any government entity for signage, dust control and/or cleaning of Stebner Road and Maple Grove Road prior to the City's acceptance of the Water Improvements.

ARTICLE XV **NOTICES**

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed sent by U.S. Certified Mail to the following name and address:

Developer: KTJ 360, LLC
400 Water Street
Suite 200
Excelsior, MN 55331
Attn: David Scott
Ph: (952) 294-1255
Email: dave@oppidan.com

With an additional
copy to: Kathleen Ritter
400 Water Street
Suite 200
Excelsior, MN 55331
Ph: (952) 294-0353
Email: kathleen@oppidan.com

City: City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811
Attn: John Mulder, City Administrator
Ph: (218) 729-3600
Email: jmulder@hermantownmn.com

HEDA: Hermantown Economic Development Authority
5105 Maple Grove Road
Hermantown, MN 55811
Attn: John Mulder, Executive Director
Ph: (218) 729-3600
Email: jmulder@hermantownmn.com

ARTICLE XVI
BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon City, HEDA and Developer and their respective successors and assigns. It is intended and agreed that such agreements and covenants shall be covenants running with the Land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of City and HEDA and enforceable by City and HEDA against Developer and successors and assigns. City and/or HEDA will record this Agreement with the appropriate land title recording office.

ARTICLE XVII
AMENDMENTS, CHANGES AND MODIFICATIONS

Neither this Agreement nor any other document to which Developer is a party, or which is made for the benefit of City and HEDA, relating to the transactions contemplated hereunder may be effectively amended, changed, modified, altered or terminated, nor may any provision be waived hereunder, except upon the written approval of City and HEDA or except as otherwise expressly set forth herein.

ARTICLE XVIII
SEVERABILITY

In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

ARTICLE XIX
LIMITATION ON CITY LIABILITY

No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by City or HEDA contained in any document executed by City or HEDA in connection with this Agreement and the transactions contemplated herein or therein, shall give rise to any charge against its general credit or taxing powers.

ARTICLE XX
LAWS GOVERNING

This Agreement shall be interpreted in accordance with and governed by the laws of the State.

ARTICLE XXI
HEADINGS

The titles of articles and sections herein are for convenience only and are not a part of this Agreement.

ARTICLE XXII
DEFAULT

If Developer fails to perform its obligations hereunder and such failure continues after sixty (60) days written notice of such default is given to Developer by City or HEDA, then, in that event, City and/or HEDA may take any one or more of the following actions:

22.1 Suspend its performance under this Agreement until it receives adequate assurances from Developer that Developer will cure the default and continue its performance under this Agreement.

22.2 Take whatever action, at law or in equity, which may appear necessary or desirable to City and/or HEDA to collect any payments due it hereunder including reasonable attorney's fees incurred in connection with such actions or under this Agreement, or to enforce performance and observance of any obligation, agreement or covenant of Developer under this Agreement.

Notwithstanding the foregoing, if Developer's failure to perform its obligations hereunder reasonably requires more than sixty (60) days to cure, such failure shall not constitute a default provided that the curing of such failure is promptly commenced upon receipt by Developer of the notice of the failure, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Developer keeps City informed of its progress in curing the failure.

ARTICLE XXIII
COUNTERPARTS

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

ARTICLE XXIV
TERM

This Agreement shall terminate on the earlier of (i) February 1, 2031; (ii) the latest date on which the Available City Tax Abatement may be received by City under the City Abatement Resolution; or (iii) the date that the Available City Tax Abatement may not be provided under the City Abatement Resolution under the laws of the Minnesota as currently enacted or as such laws are amended from time to time (future law changes may not grandfather the ability of HEDA to make Payments to Developer and may limit HEDA's ability to make Payments to Developer) and any remaining Payments will be deemed forgiven and waived and shall not be accrued or otherwise due in the future.

ARTICLE XXV
FORCE MAJEURE

All obligations of Developer hereunder shall be extended by events of “Force Majeure.” The term “Force Majeure” means any delays that are the direct result of strikes, other labor troubles, war, terrorist acts, natural disasters, adverse weather conditions, fire or other casualty, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit that results in delays and delays described in any force majeure provision that is contained in Developer’s construction contract for any such work, the effect of such provision which is to extend the time allowed the contractor under such construction contract to complete the work, or any other event not within the reasonable control of Developer.

ARTICLE XXVI
PRIOR DEVELOPMENT AGREEMENT

The terms and provisions of this Development Contract are to be read as supplementary to the terms of the 2020 Development Agreement , provided that if there are any inconsistent provisions between the 2020 Development Agreement and this Development Contract, the terms and provisions of this Development Contract shall govern. Without limiting the foregoing, the provisions of Section 4.1.8, 4.1.10, 6.1.8, 6.1.9, 6.3, 6.4.4. and 6.4.5 and Article VII of the 2020 Development Agreement remain applicable; the blank in Section 13.1.9 of the 2020 Development Agreement is filled in with Ninety-six Thousand Nine Hundred Ninety-seven and No/100 Dollars (\$96,997.00) and the second blank is filled in with January 2, 2024; and the first blank in Section 13.1.11 of the 2020 Development Agreement is filled in with Two Hundred Seventy-five Thousand and No/100 Dollars (\$275,000.00) and the second blank is filled in with January 2, 2024.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

City of Hermantown

By _____
Its Mayor

And By _____
Its City Clerk

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

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ and _____, the Mayor and City Clerk, respectively, of the City of Hermantown on behalf of the City of Hermantown.

Notary Public

[SIGNATURES CONTINUE ON NEXT PAGE]

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

Hermantown Economic Development Authority

By _____
Its President

And By _____
Its Secretary

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

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ and _____, the President and Secretary, respectively, of Hermantown Economic Development Authority on behalf of Hermantown Economic Development Authority.

Notary Public

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, Developer has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

KTJ 360, LLC

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

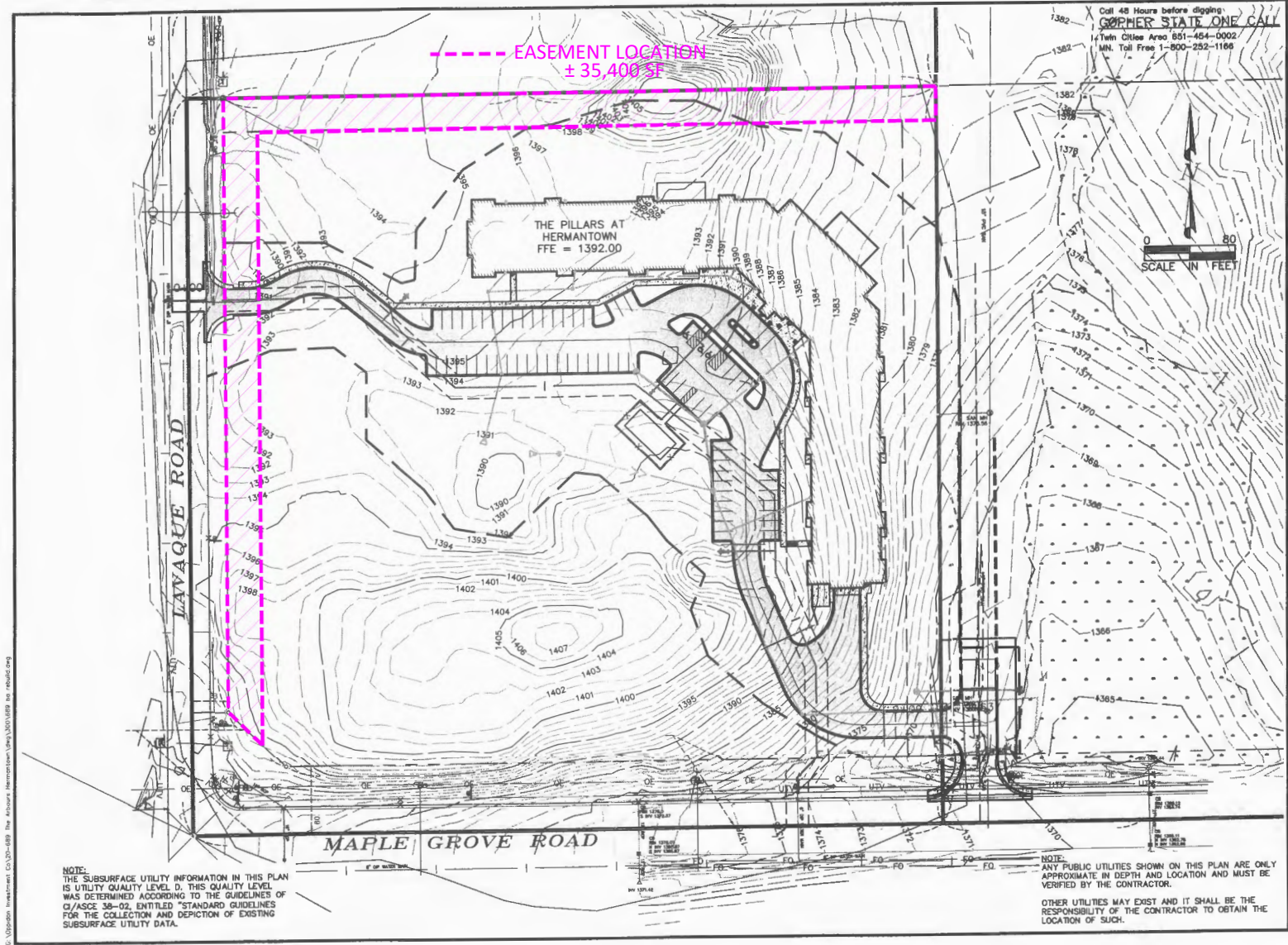
The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____, of KTJ 360, LLC on behalf of KTJ 360, LLC, a Minnesota limited liability company.

Notary Public

[END OF SIGNATURES]

EXHIBIT OUTLINE

<u>Exhibit 1.5</u>	Assessment Agreement
<u>Exhibit 1.7</u>	Business Subsidy Agreement
<u>Exhibit 1.12</u>	“Development Land” or “Land”
<u>Exhibit 1.13</u>	Environmental Mitigation Costs
<u>Exhibit 1.25</u>	Water Improvements
<u>Exhibit 2.14</u>	Trail Easement
<u>Exhibit 10.10.2</u>	HEDA PAYG Note



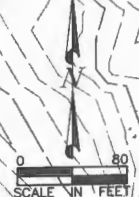
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NOTE:
THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF OJ/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA."

NOTE:
ANY PUBLIC UTILITIES SHOWN ON THIS PLAN ARE ONLY APPROXIMATE IN DEPTH AND LOCATION AND MUST BE VERIFIED BY THE CONTRACTOR.

OTHER UTILITIES MAY EXIST AND IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN THE LOCATION OF SUCH.

Call 48 Hours before digging:
COPPER STATE ONE CALL
Twin Cities Area 651-454-0002
MN Toll Free 1-800-252-1166



Engineering
Land Surveying
Site Development

JPI ENGINEERING, INC
425 Grant Street
Hibbing, MN 55746
(218) 262-5528

5670 Miller Trunk Hwy
Duluth, MN 55811
(218) 720-6219

www.jpjeng.com

THE PILLARS
AT HERMANTOWN
HERMANTOWN, MINNESOTA

OVERALL
SITE PLAN

REVISION DATE:	DESCRIPTION:

SURVEYED	DRS
DESIGNED	SC
DRAWN	SC
CHECKED	JFJ

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Minnesota.

John P. Jamnick
JOHN P. JAMNICK, P.E.

DATE 7-28-21 LIC. NO. 18907

20-689 PROJECT NO. C1.1



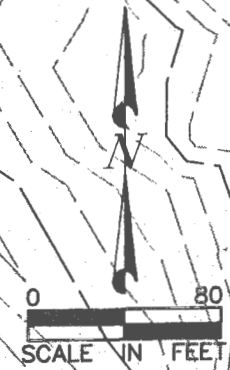
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**THE PILLARS
AT HERMANTOWN**
HERMANTOWN, MINNESOTA

**OVERALL
SITE PLAN**

REVISION DATE:	DESCRIPTION:

SURVEYED	DRS
DESIGNED	SC
DRAWN	SC
CHECKED	JPJ

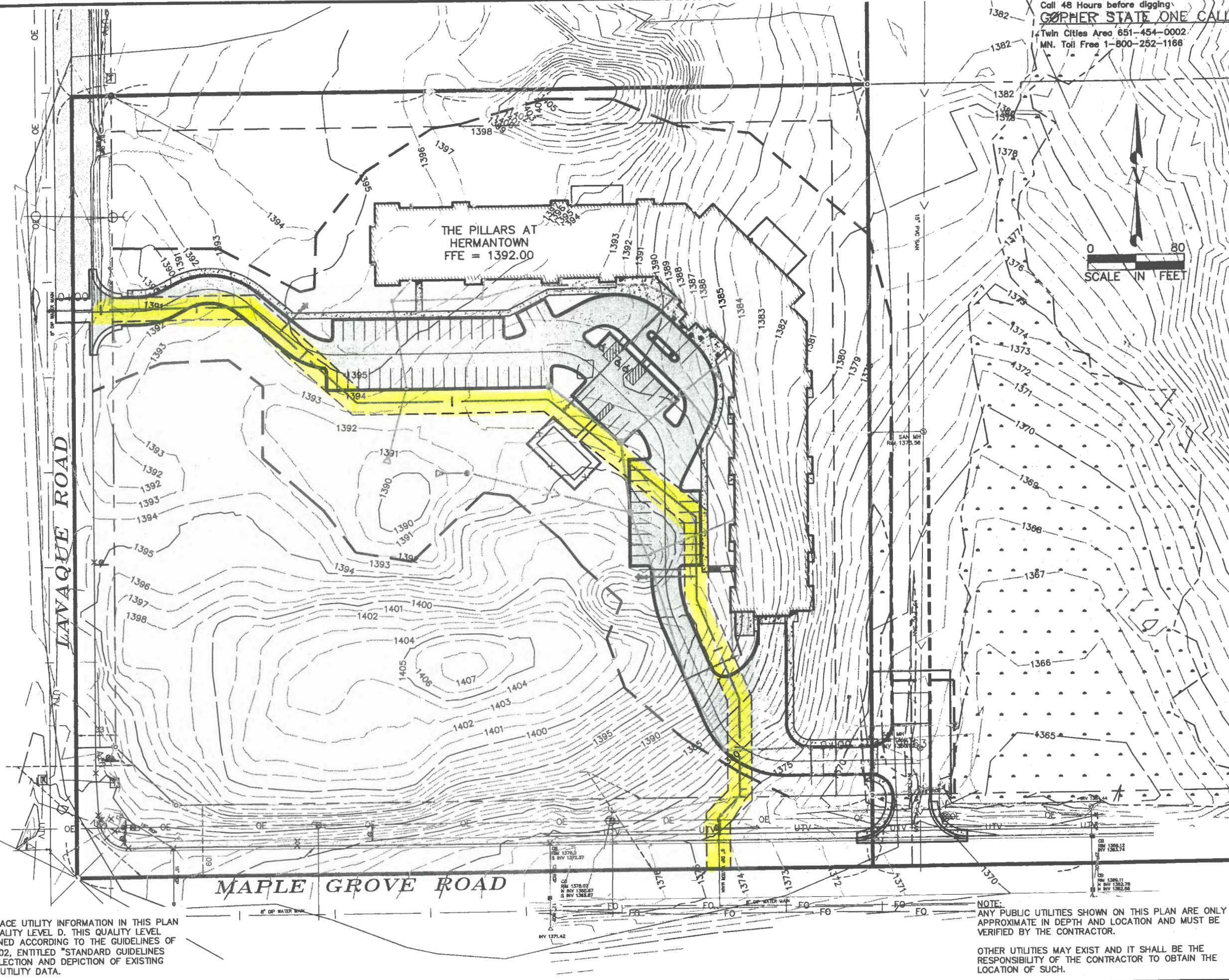
I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Minnesota.

John P. Jamnick
JOHN P. JAMNICK, P.E.

DATE 7-28-21 LIC. NO. 19907

20-689
PROJECT NO.

C1.1



NOTE:
THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF CI/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA."

NOTE:
ANY PUBLIC UTILITIES SHOWN ON THIS PLAN ARE ONLY APPROXIMATE IN DEPTH AND LOCATION AND MUST BE VERIFIED BY THE CONTRACTOR.

OTHER UTILITIES MAY EXIST AND IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN THE LOCATION OF SUCH.

ASSESSMENT AGREEMENT

BY AND BETWEEN

KTJ 360, LLC

AND

CITY OF HERMANTOWN

Dated as of the _____ day of _____, 2022

This document was drafted by:

Steven C. Overom
Overom Law, PLLC
802 Garfield Avenue, Suite 101
Duluth, Minnesota 55802
(218) 625-8460

ASSESSMENT AGREEMENT

THIS ASSESSMENT AGREEMENT, dated as of the ____ day of _____, 2022 by and between the **City of Hermantown** (“City”) and **KTJ 360, LLC**, a Minnesota limited liability company (the “Developer”), and certified by the County Assessor for St. Louis County, Minnesota (the “Assessor”) is in response to the following situation:

A. City, Hermantown Economic Development Authority (“HEDA”) and Developer have entered into a certain Development Contract, dated as of _____, 2022 (the “Development Contract”), regarding certain real property located in the City of Hermantown, St. Louis County, Minnesota (the “Property”), which property is legally described on the Exhibit A attached to and made a part of this Assessment Agreement. Defined terms not otherwise defined herein shall be defined as set forth in the Development Contract.

B. The Development Contract provides that Developer will construct a 105-unit senior citizen housing complex and improvements (the “Project”) on the Property.

C. City and Developer desire to establish certain minimum market values for the Property upon completion of the Project pursuant to Minnesota Statutes, Section 469.177, Subdivision 8.

D. Developer, City, and the Assessor have reviewed the plans for the Project.

NOW, THEREFORE, the parties to this Assessment Agreement, in consideration of the promises, covenants and agreements herein, do hereby agree as follows:

1. Effective as of January 2 of the year following the year that the Project is completed and continuing on each January 2 through the term of this Assessment Agreement, the minimum market value which shall be assigned to and assessed for the Project for purposes of real estate property taxation shall be not less than \$14,800,000.00 (the “Minimum Market Value”).

2. The term of this Assessment Agreement shall expire and the Minimum Market Value herein established shall be of no further force and effect shall terminate upon the earlier of (i) the termination of the Development Contract or (ii) the date that the HEDA PAYG Note is paid in full (the “Termination Date”).

3. This Assessment Agreement is contingent upon the continuing payment to Developer of the amounts payable under the HEDA PAYG Note unless the non-payment to Developer was due to Developer not paying taxes when due.

4. This Assessment Agreement shall be promptly recorded by City, with the County Recorder and/or the Registrar of Titles (as applicable) of St. Louis County, Minnesota, and shall be filed against the Property. The parties shall execute and record a termination of this Assessment Agreement upon the Termination Date.

5. Neither any preamble nor any provision of this Assessment Agreement is intended to modify the terms of this Assessment Agreement.

6. This Assessment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties, shall be governed by and interpreted pursuant to Minnesota law, and may be executed in counterparts, each of which shall constitute an original hereof and all of which shall constitute one and the same instrument.

7. Nothing herein shall be deemed to waive Developer's right to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value assigned below the Minimum Market Value established herein during the term of this Assessment Agreement.

8. This Assessment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

9. Each of the parties has authority to enter into this Assessment Agreement and to take all actions required of it, and has taken all actions necessary to authorize the execution and delivery of this Assessment Agreement.

10. In the event any provision of this Assessment Agreement shall be held invalid and unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

11. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Property or the Project or for carrying out the expressed intention of this Assessment Agreement, including, without limitation, any further instruments required to delete from the description of the Property such part or parts as may be included within a separate assessment agreement.

12. This Assessment Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

13. This Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

City of Hermantown

By _____
Its _____

And By _____
Its _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ and _____, the Mayor and City Clerk, respectively, of the City of Hermantown on behalf of the City of Hermantown.

Notary Public

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, Developer has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

KTJ 360, LLC

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2022, by _____, the _____ of KTJ 360, LLC, a Minnesota limited liability company, on behalf of said company.

Notary Public

[END OF SIGNATURES]

CERTIFICATION BY COUNTY ASSESSOR

The undersigned, having reviewed certain plans for the Project to be constructed and the market value assigned to the land upon which the Project to be constructed, as described in this Assessment Agreement, hereby states as follows: The undersigned Assessor, being legally responsible for the assessment of the above-described property, hereby certifies that the \$14,800,000.00 market value hereinabove assigned to the Project is reasonable.

County Assessor for St. Louis County

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

This instrument was acknowledged before me on _____, 2022, by _____, the County Assessor of St. Louis County.

Notary Public

EXHIBIT A
Legal Description

UNITED STATE OF AMERICA
STATE OF MINNESOTA
ST. LOUIS COUNTY
CITY OF HERMANTOWN

No. HEDA 2022-1

\$600,000.00

TAX ABATEMENT PAY-AS-YOU-GO REVENUE NOTE
SERIES 2022
(HEDA PAYG NOTE)

Interest Rate

Date of Original Issue

0.00%

_____, 2022

The **Hermantown Economic Development Authority** (“HEDA”), for value received, certifies that it is indebted and hereby promises to pay to **KTJ 360, LLC**, or registered assigns (the “Owner”), the principal sum of Six Hundred Thousand and No/100 Dollars (\$600,000.00) without interest.

1. Payments. Principal payments will be paid on August 1, 2024, and each February 1 and August 1 thereafter to and including February 1, 2031 (“Payment Dates”), in the amounts and solely from the sources set forth in Section 3 herein. Payments will be applied solely to principal because there is no interest payable on this HEDA PAYG Note. The Payments will be equal to all Available City Tax Abatement on any Payment Date. Payments are payable by mail to the address of the Owner or any other address as the Owner may designate upon thirty (30) days written notice to HEDA. Payments on this HEDA PAYG Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. There is no interest due or payable on this HEDA PAYG Note.

3. Available City Tax Abatement. Payments on this HEDA PAYG Note are payable on each Payment Date in the amount of and solely payable from the Available City Tax Abatement as defined in that certain Development Contract between Owner, HEDA and City dated _____, 2022 (the “Development Contract”). HEDA will have no obligation to make payments on this HEDA PAYG Note on any Payment Date from any source other than Available City Tax Abatement, and the failure of HEDA to pay the entire amount on this HEDA PAYG Note on any Payment Date will not constitute a default hereunder as long as HEDA makes payment hereon to the extent of the Available City Tax Abatement as set forth herein.

4. Optional Prepayment. The amount payable under this HEDA PAYG Note is prepayable in whole or in part at any time by HEDA without premium or penalty. No partial prepayment will affect the amount or timing of any other regular payment otherwise required to be made under this HEDA PAYG Note.

5. Nature of Obligation. This HEDA PAYG Note is in the total principal amount of \$600,000.00 and is issued in reliance on the City Abatement Resolution No. 2022-___ and approved by the Hermantown City Council on _____, 2022 pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.1812

through 469.1815 inclusive. This HEDA PAYG Note is a limited obligation of HEDA which is payable solely from Available City Tax Abatement. This HEDA PAYG Note will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the City or HEDA. Neither the State of Minnesota, nor any political subdivision thereof will be obligated to make payments on this HEDA PAYG Note except out of the Available City Tax Abatement, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to make payments on this HEDA PAYG Note or other costs incident hereto.

6. Estimated Available City Tax Abatement. Any estimates of the Available City Tax Abatement prepared by HEDA or City or its financial advisors in connection with the Development Contract are for the benefit of HEDA or City, and are not intended as representations on which the Owner may rely. HEDA MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE CITY TAX ABATEMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL AMOUNT OF THIS HEDA PAYG NOTE. HEDA HAS NO OBLIGATION TO PAY ANY PRINCIPAL HEREON THAT IS NOT PAID FROM AVAILABLE CITY TAX ABATEMENT.

7. Registration and Transfer. This HEDA PAYG Note is issued only as a fully registered note without coupons. This HEDA PAYG Note is transferable upon the books of HEDA kept for that purpose at the principal office of the Finance Director of the City, by the Owner hereof in person or by the Owner's attorney duly authorized in writing, upon surrender of this PAYG Note together with a written instrument of transfer reasonably satisfactory to HEDA, duly executed by the Owner. Upon the transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by HEDA, including Minnesota Statutes, Sections 469.1812 through 469.1815 inclusive, with respect to the transfer or exchange, there will be issued in the name of the transferee a new HEDA PAYG Note of the same aggregate principal amount, bearing no interest and maturing on the same dates. This HEDA PAYG Note will not be transferred to any person other than an affiliate, or other related entity, of the Owner unless HEDA has been provided with an investment letter or a certificate of the transferor, in a form reasonably satisfactory to HEDA, that the transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws.

8. Subject to Terms of Agreement. This HEDA PAYG Note is subject to the terms and provisions of the Development Contract. If there is any inconsistency between the terms and provisions of this HEDA PAYG Note and the terms and provisions of the Development Contract, the terms and provisions of the Development Contract shall govern. All capitalized terms when used herein shall have the meaning given them in the Development Contract, unless the context clearly requires otherwise.

9. Revenue Nature Payments. The Payments shall be pay-as-you-go and the Payments shall be payable only to the extent of the Available City Tax Abatement. Any Payments not paid when due will be deemed deferred and paid when there is sufficient Available City Tax Abatement to make such Payments. No Payment shall be made after the earlier of (i) February 1, 2031; (ii) the latest date on which the Available City Tax Abatement may be received by City under the City Abatement Resolution; or (iii) the date that the Available City Tax Abatement may not be provided under the City Abatement Resolution under the laws of the Minnesota as currently enacted or as such laws are amended from time to time (future law changes may not grandfather the ability of HEDA to make Payments to Owner and may limit HEDA's ability to make Payments to Owner) and any remaining Payments will be deemed forgiven and waived and shall not be accrued or otherwise due in the future.

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 exist, to happen, and to be performed in order to make this HEDA PAYG Note a valid and binding limited obligation of HEDA according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Commissioners of the HEDA have caused this HEDA PAYG Note to be executed with the manual signatures of its President and Secretary, all as of the Date of Original Issue specified above.

HERMANTOWN ECONOMIC DEVELOPMENT AUTHORITY

By _____
Its President

And by _____
Its Secretary