

REDEVELOPMENT

AND

TAX INCREMENT FINANCING AGREEMENT

THIS REDEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT (the "Agreement"), made on or as of the ___th day of _____, 2010, by and between the CITY OF PARK RAPIDS, MINNESOTA (the "City"), a political subdivision of the Slate of Minnesota, and ECHOPOINT DESIGN & DEVELOPMENT, LLC, a Minnesota limited liability company (the "Developer").

RECITALS

WHEREAS, the Developer is the fee owner of a parcel of real property located in the City of Park Rapids, Hubbard County, Minnesota, with Parcel Identification (PID) No- 32.37.05500, and located at 203 South Park Avenue, which is legally described on Exhibit A attached hereto and incorporated herein by reference (the "Development Property"); and

WHEREAS, the Developer has sought to redevelop the Development Property. The redevelopment of the Development Property generally consists of refurbishing the existing building, the Park Rapids Armory, on the Development Property by exterior and interior improvements to the existing building and bring the building up to code (the "Armory Square Project," or "Project"); and

WHEREAS, the City has designated Redevelopment Tax Increment Financing District 10, (the "District" or "TIF District") pursuant to Minnesota Statutes, Section 469.174 subdivision 10 ("Tax Increment Financing Districts"), and such "TIF District" having been certified under the applicable Minnesota statutes 469.174-199 on _____, under which the City is authorized to create a Tax Increment Financing District pursuant to the statutes; and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of Tax Increment Financing on the Development Property to abate the tax increment on the Development Property resulting from the Project for a period not to exceed twenty five (25) years, specifically with respect to the taxes payable 2011 through 2036 property taxes; and

WHEREAS, following notice and a public hearing the City adopted **Resolution _____** **dated _____**, (the "Tax Increment Financing Resolution") agreeing to provide, in accordance with the referenced Resolution and this Agreement, Tax Increment Financing of the incremental property taxes on the Development Property resulting from the Project subject to the terms and conditions contained in the above-referenced Resolution and this Agreement (the "Tax Increment Financing Resolution" or "TIF Resolution"); and

WHEREAS, in accordance with the TIF Resolution and subject to the terms and conditions of the this Agreement regarding payment, the City has granted Tax Increment Financing in a maximum amount over the duration of this Agreement (the "Tax Increment Amount"), and

WHEREAS, the Developer's tax increment financing request does not constitute a business subsidy as that term is defined in Minnesota Statutes, Sections 116J.993 since the assistance is provided for the purpose of renovating old or decaying building stock and bringing it up to code and the assistance is equal to or less than 50 percent of the total cost of the Project; and

WHEREAS, the City believes that the Project will meet the conditions of the Tax Increment Finance District and City Policy in that: (a) the City expects the benefits to the City from this Agreement to equal or exceed the costs to the City of this Agreement; and (b) the City finds that granting the Tax Increment Financing Assistance is in the public interest because it will increase or preserve the City's tax base, will help redevelop or renew blighted areas in the City, help retain and expand commercial and industrial enterprise in the City, and provide employment opportunities in the City; and

WHEREAS, the City's Policy and Ordinances in connection with the proposed Project, contemplate that the City negotiate and enter into this Redevelopment and Tax Increment Financing Assistance Agreement with the Developer, and that the Developer pursue with the City the obtaining of all requisite specific approvals for the Project and related matters pursuant to this Agreement (all of which shall be referred to herein as the "City Approval Process"), which City Approval Process may change from time to time; and

WHEREAS, the City has determined that the Project: (a) will promote and carry out the objectives for which development in the City has been undertaken; (b) will be in the vital best interests of the City and the health, safety, morals and welfare of its residents; and (c) is in accord with the public purposes and provisions of the applicable state and local laws, including requirements of the City's Code, under which development in the City has been undertaken and is being assisted; and

WHEREAS, the Developer and the City, desire to enter into this Agreement in satisfaction of applicable City requirements and to set out the undertakings and obligations of each party from this point forward with respect to the Project and with respect to the City Approval Process, all as required by the City's Code of Ordinances (the "Code").

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

ARTICLE 1 DEFINITIONS AND CONTINGENCIES

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

1.1.1. "Certificate of Completion" means the Certificate of Completion substantially in the form attached hereto as Exhibit B;

1.1.2. "Event of Default" means any of the events described in Article 5 or otherwise described in this Agreement;

1.1.3. "State" means the State of Minnesota;

1.1.4. "Project Plans" means all submissions required by the City Ordinances, or this Agreement with respect to the Project and all plans, drawings, plats and related documents for the construction of the Project, approved by the City and Developer, irrespective of whether the Developer's and/or the City's final approval of any such documents occurs before or after the execution and delivery of this Agreement. Without in any way limiting the generality of the foregoing, Project Plans shall include plans and submissions identified in this Agreement and on the various Exhibits attached to this Agreement.

1.1.5. "Project Improvements" shall mean each and all of the improvements to be constructed on the Development Property as part of the Project, pursuant to the Project Plans and this Agreement. The timing of Developer's construction of the Projects is described in more detail in remaining portions of this Agreement- All Project Improvements shall be completed to City specifications as

provided in the Project Plans, this Agreement, and the Code.

1.1.6. "Ancillary Agreement(s)" shall mean any agreement(s) or instrument(s) duly approved by the City and required to be executed and delivered by any party hereto in the form of or substantially in the form of any exhibit to this Agreement, any schedule to this Agreement, any other instrument(s) or agreement(s) relating to the Project, executed and delivered, or to be executed and delivered pursuant to this Agreement.

Section 1.2. Contingencies. This Agreement is contingent upon the following, which must be met and satisfied as a condition of the parties being obligated to proceed with the Project and the TIF assistance in accordance with the terms and conditions hereof:

1.2.1. Approval by the parties of the Project Plans. Any approvals required hereunder will not be unreasonably withheld.

1.2.2. Completion on Project Improvements. Project Improvements completed to City specifications.

1.2.3 Governmental Approvals. Issuance by necessary governmental authorities of all licenses, permits, authorizations and governmental approvals, satisfactory to Developer and required for the lawful pursuit and completion of the Project.

1.2.4. Ancillary Agreement(s). Agreement(s) by the parties on all of the ancillary and/or related matters referred to in this Agreement.

1.2.5. Continued Compliance. Developer's construction of the Project in a manner acceptable to the City in accordance with the Project Plans and the Developer's continued compliance in all material respects with the terms and conditions of this Agreement, Project Plans, and the provisions of the City's Policy and Code, including without limitation the Zoning Ordinances-Subdivision Ordinances and City Standards, Specifications and Details, as adopted from time to time.

1.2.6. Truth of Representations, Each of the warranties and representations made by the respective parties hereto shall be true and accurate in all material respects on the date of this Agreement and continuing thereafter.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

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

2.1.1. The City is a municipal corporation and a political subdivision of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

2.1.2. The City Tax Increment District was created, adopted and approved in accordance with the terms of the Tax Increment Financing District governing statutes 469.174-179.

2.1.3. The City has made the findings required by the TIF District Statutes and the City Tax Increment Financing Assistance Policy regarding the Development Property and the Project thereon.

2.1.4. The City shall cooperate with developer in acquiring rights to the property adjacent to the armory (PID 32.37.07011) currently in use as the Senior Citizen's Center, and shall relinquish all rights of reversion currently reserved unto itself under the terms of the deed of record.

2.1.5. This Agreement has been duly approved by the City Council of the City and the execution and delivery of this Agreement has been authorized by such City Council.

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

2.2.1. Developer is a limited liability company duly organized, in good standing, and validly existing under the laws of this State and has the power to enter into this Agreement and all agreements ancillary hereto, including, without limitation, the Ancillary Agreements, and to perform its obligations hereunder and is not in violation of its articles, bylaws or any local, State or federal laws.

2.2.2. Developer will cause the Project to be constructed in accordance with the terms of this Agreement, the Project Plans, and all local, State and federal laws and regulations (including, but not limited to and without limitation, environmental, zoning, energy conservation, building code, public health laws and regulations, City Policy and Code, and the City's Standards, Specifications and Details relating to such improvements as adopted by the City from time to time).

2.2.3. Developer is the fee owner of the Development Property and Developer has made no agreements with prior owners of the Development Property or any other third party, which would materially affect the Developer's ability to enter into or perform all of the terms and conditions of this Agreement or which would limit or otherwise effect the City's performance hereunder.

2.2.4. Developer shall make diligent efforts to obtain financing for the construction of the Project. If for any reason all or part of such financing should become unavailable, Developer agrees to attempt to obtain sufficient alternate financing for the construction of the Project; and Developer will, in any event, make best efforts to complete the Project according to the terms of this Agreement and the Project Plans whether or not such alternate financing is obtained.

2.2.5. Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations, which must be obtained or met before the Project may be lawfully constructed. Without in any way limiting the foregoing, the Developer will request and seek to obtain from the City, if necessary, such approvals, variances, conditional use permits, zoning changes and other required City approvals as may be applicable.

2.2.6. The Project will, as of the date the Certificate of Completion (Exhibit B) is issued and subject to the issuance of City approvals as herein contemplated, contain only uses permitted under the Code.

2.2.7. At such time or times as may be required by law developer will, in connection with the Project, have complied and will have caused its contractors to comply with all local, State and federal environmental laws and regulations. Developer has not received notice or communication from any local, State and federal official indicating that the activities of the Developer may be or will be in violation of any environmental law or regulation. The Developer is not aware of any facts the existence of which would cause the Developer to be in violation of any local, State or federal environmental law, regulation or review procedure or which would give any person a valid claim under the Minnesota Environmental Rights Act. The Developer hereby discloses that toxic or hazardous substances or wastes, pollutants or contaminants including without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products and any hazardous substances as defined in CERCLA, 42 U.S.C.S. 9601-9657, as amended, are present on the Development Property, or have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Development Property.

To the best of Developer's knowledge there are no substances or conditions in or on the Development Property that may support a claim or cause of action under any State, federal or local environmental statute, regulation, ordinance or other environmental regulatory requirements. Developer also discloses that an underground tank is located in or about the Development Property or is located under, in or about the Development Property and subsequently has not been removed or filled.

2.2.8. The construction of the Project would not be completed by the Developer and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the Tax Increment Financing assistance and benefit to the Developer provided for in this Agreement

2.2.9. 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 of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

2.2.10. Developer will cooperate fully with the City and the with respect to any litigation commenced with respect to the Project, but only to the extent that the City and the Developer are not adverse parties to the litigation.

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

ARTICLE 3 TAX INCREMENT FINANCING

Section 3.1. Terms of Tax Increment Financing Assistance. The City and Developer hereby agree that the Tax Increment Financing Assistance herein shall be subject to the following terms and conditions:

3.1.1 Compliance. The Tax Increment Financing Assistance provided to Developer shall be in accordance with and subject to the conditions contained in the Tax Increment Financing Resolution, the City's Economic Development Loan Assistance Policy and the Minnesota Statutes for the creation and administration of Tax Increment Financing Districts.

3.1.2. Duration. The Tax Increment Financing Assistance as provided on the Development Property legally described herein for the Project shall be for a duration not to exceed the certification of Park Rapids' Tax Increment Financing District 10 as certified by Minnesota Statute, and shall apply to the tax increment above the original net tax capacity as defined in Minnesota Statute 469.174 Sub division 7, reflecting the increase in such taxes attributable to the Development Property as a result of the Project. Tax Abatement shall commence with taxes payable 2011 and continue for the duration of the certification of the Tax Increment District.

3.1.3. Tax Increment Financing Assistance Amount. The City and the Developer hereby agree that, for the period stated in Paragraph 3.1.2 and commencing property taxes generated and paid by the Developer in 2011 with respect to the Development Property, the City shall provide assistance in the amount of _____ dollars at the commencement of this Development Agreement in the form an Interfund Loan as authorized by Minnesota Statute 469.178 Sub division 7, and the City of Park Rapids Economic Development Authority. The terms and conditions of this Interfund Loan are hereby incorporated into this Development Agreement by reference. Notwithstanding any calculation, formula or provision to the contrary, the amount of Tax Increment Financing Assistance paid by the City to the Developer shall not be less than _____ over a duration not to exceed that provided in Paragraph 3.1.2. The Tax Abatement

shall terminate automatically at such time that the Tax Increment District is decertified at the end of its term according to the term of its original certification by the State of Minnesota.

3.1.4. **Payment Method and Timing.** The method and timing for payment of taxes abated by the City to the Developer for a taxes payable year covered by this Agreement, as calculated in Paragraph 3.1.3, shall be made by making a semiannual payment to the Developer as provided herein. Subject to the limitations on duration and amount of Tax Abatement contained in this Agreement, upon the provision of written notice to the City by the Developer requesting reimbursement of the tax increment share of property taxes attributable to the Development Property as a result of the Project hereby abated, along with evidence that Developer has fully paid the property taxes attributable to the Development Property for the applicable period in which such taxes are due and payable, the City shall, within 90 days of the date of receipt of such notice and evidence, reimburse the Developer for that portion of the tax increment paid by the Developer for the prior sixth month period in the amount hereby abated and calculated in paragraph 3.1.3., Except that the City shall have the right of offset to apply the tax increment to the unpaid balance of the Interfund Loan as provided for in the terms of the Loan Agreement.

3.1.5. **No Modification.** The Tax Abatement may not be modified or changed during the term set forth in paragraphs 3.1.2 and 3.1.3 above, except with the express prior written consent of the City.

3.1.6. **Default on Obligations.** In order to be entitled to the Tax Increment Financing Assistance provided in this Agreement, the 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 at the time the Interfund Loan is made to Developer. Notwithstanding the other provisions of this Article, the City shall not have any obligation to the Developer with respect to the Abatement of taxes hereunder if the City, at the lime or times such obligation is required is entitled to exercise any of the remedies set forth in this Agreement as a result of an Event of Default, which has not been cured.

3.1.7. **Reporting.** Even though the Tax Abatement is not a defined business subsidy requiring a subsidy agreement, the reporting requirements in law remain applicable, and as a result, the Developer shall comply with the business subsidy reporting requirements contained in law.

ARTICLE 4 UNDERTAKINGS AND OBLIGATIONS OF DEVELOPER

Section 4.1. Construction. The Project including all Project Improvements shall be constructed in accordance with the following:

4.1.1. **Standard of Construction.** The Developer agrees that it will construct the Project on the Development Property in a good and workmanlike manner in accordance with the Project Plans.

4.1.2. **Commencement and Completion of Construction.** The Developer agrees that the construction of the Project shall be commenced on or before May 31, 2011, and subject to Unavoidable Delays (*See* Paragraph 4.1.3 below) shall be completed by May 31, 2015. The costs of the acquisition and construction of the Project, including the Project Improvements, shall be paid by the Developer or its designee.

4.1.3. **Unavoidable Delays,** "Unavoidable Delays" means delays outside the control of the party claiming its occurrence, including, without limitation, delays which are the direct results of default hereunder by the other party, the unscheduled delay by the other party hereunder in the performance of its covenants and obligations hereunder, strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation

commenced by third parties which by injunction or other similar judicial action or by the exercise of reasonable discretion directly results in delays, or acts of any federal, State or local governmental unit which directly result in delays. Time lost as a result of Unavoidable Delays shall be added to extend the dates set forth in Paragraph 4.1.2. above.

4.1.4. **Certificate of Completion.** The Developer shall notify the City when the construction of the Project in accordance with this agreement and the Project Plans has been completed. Promptly after notification by the Developer of substantial completion of construction, the City shall inspect the construction to determine whether the Project has been substantially completed in accordance with the terms of this Agreement, the Project Plans approved by the City, and all uniformly applied local, State and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations). In the event that the City is satisfied that the construction was completed in accordance with this Agreement and applicable Project Plans, laws and regulations, the City will, at the request of the Developer, furnish the Developer with a Certificate of Completion in the form of Exhibit B attached hereto and incorporated herein by reference (the "Certificate of Completion"). The Certificates of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Developer to construct the Project; provided, however, that any such issuance of a Certificate of Completion pursuant to this Section shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any building, zoning or other ordinances or regulation of the City or any other obligation or undertaking required by this Agreement.

4.1.5. **Failure to Construct.** In the event that construction of the Project is not commenced or completed as provided in this Agreement, the City may give written notice of such failure to commence or complete and if within sixty (60) days after the giving of such notice the Developer has not cured such failure or failures the Developer shall be deemed to be in default under this Agreement.

4.1.6. **Impracticability.** If, despite Developer's best efforts and due diligence, and the Developer acts in good faith, and in the reasonable judgment of the Developer that the project is becomes commercially impracticable, then failure to construct shall not be a default under the terms of this agreement.

Section 4.2. Real Property Taxes and Assessments Obligation. The Developer acknowledges that it is obligated under law to pay all real property taxes and special assessments payable with respect to all parts of the Development Property acquired and owned by it which are payable pursuant to this Agreement, State law and any other statutory or contractual duty that shall accrue subsequent to the date of its acquisition of title to the Development Property (or part thereof) and until title to the property is vested in another person.

Section 4.3. Operation and Maintenance of Project. The Developer agrees that, at all times prior to the termination of this Agreement, it will operate and maintain, preserve and keep the Project and Development Property or cause the Project and Development Property to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

Section 4.4. Damage and Destruction. In the event of damage or destruction of the Project or Development Property, the Developer shall repair or rebuild the Project on the Development Property, unless otherwise determined impracticable under 4.1.6.

Section 4.5. Change in Use of Project. The obligations of the City pursuant to this Agreement shall be subject to the continued operation of the Project on the Development Property by the Developer.

Section 4.6. No Prohibition Against Transfer of Project and Assignment of Agreement. The City agrees that prior to the termination date of this Agreement, the Developer shall have the right to transfer or assign the Project, the Development Property, or any part thereof or any interest therein, with the prior written approval of the City. Such approval by the City may not be unreasonably withheld. The City shall be entitled to require as conditions to any such approval that:

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

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

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

ARTICLE 5 EVENTS OF DEFAULT

Section 5.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

5.1.1. Failure to Pay. Failure by the Developer to timely pay when due the payments required to be paid or secured under any provision of this Agreement or any Ancillary Agreement hereto or otherwise required, including the payment of any ad valorem real property taxes, special assessments, utility charges or other governmental impositions with respect to the Development Property. Project or any portion thereof or otherwise required by this Agreement or such Ancillary Agreements.

5.1.2. Failure to Perform.

5.1.2.1. Failure by the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder, after written notice to the Developer as provided in this Agreement or any Ancillary Agreement.

5.1.2.2. Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement. Unless, in the reasonable judgment of the Developer, the Developer determines that construction of the Project is not practicable or otherwise economically feasible. If developer makes such determination by written notice to the City that the project is not practicable, such determination by the Developer shall not be a default, and the Developer's duty to perform shall be limited to repayment of the Interfund Loan under the original terms and conditions of the note, regardless of any other provision to the contrary.

5.1.3. Insolvency. If the Developer shall admit in writing its inability to pay its debts generally as they become due, or shall file or be involuntarily named as a debtor in a petition in bankruptcy, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver of itself or of the whole or any substantial part of the Development Property.

5.1.4. Court Order. If the Developer, on a petition in bankruptcy filed against it, be adjudicated bankrupt, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of the Developer, a receiver of the Developer or of the whole or substantially all of its property, or approve a petition filed against the Developer seeking reorganization or

rearrangement of the Developer under the federal bankruptcy laws, and such adjudication, order or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

5.1.5. Mortgage Default. If the Developer is in default under any mortgage and has not entered into a workout agreement with the Mortgagee within sixty (60) days after such default.

The above list of Events of Default is not intended to be exclusive of any other such events otherwise provided in this Agreement.

Section 5.2. Remedies on Default. Whenever any Event of Default referred to in Section 5.1 or otherwise in the Agreement occurs, the City, in addition to any other remedies or rights given the City under this Agreement, after the giving of thirty (30) days' written notice to the Developer citing with specificity the item or items of default and notifying the Developer that it has thirty (30) days within which to cure said Event of Default, may take any one or more of the following actions:

5.2.1. Suspend Performance. The City may suspend its performance under this Agreement including the payment of any Tax Abatement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

5.2.2. Cancel and Rescind. The City may cancel and rescind this Agreement.

5.2.3. Enforce Agreement. The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement; provided that any exercise by the City of its rights or remedies hereunder shall always be subject to and limited by- and shall not defeat, render invalid or limit in any way the lien of any mortgage authorized by this Agreement; and provided further that should any Mortgagee succeed by foreclosure of the mortgage or deed in lieu thereof in respect to the Developer's interest in the Development Property, the Mortgagee shall, notwithstanding the foregoing, be obligated to perform the obligations of the Developer to complete construction of the Project described and in the manner required hereunder, but only to the extent that the same have not theretofore been performed by the Developer.

5.2.4. Withhold Certificate or Permit. Withhold any certificate or permit required hereunder including, without limitation the Certificate of Completion.

5.2.5. Grant of License. The Developer grants the City, its agents, employees, officers and contractors a license to enter the Development Property to perform all necessary work and/or inspections deemed appropriate by the City during the construction of the Project pursuant to **this** Agreement and the Project Plans until the Project has been accepted by the City. **I** his Paragraph is a license for the City to act. and it shall not be necessary for the City to **seek** a Court order for permission to enter the land when the City does any . work. The **City** may, in addition, **to** its other remedies or other requirements of this Agreement, assess the cost in whole or in part under Minnesota Statutes.

The notice of an Event of Default required in this Section shall be effective on the date mailed or hand delivered to the Developer-

Section 5.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City **is** intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity **or** by statute. No delay or omission **to** exercise any right or power accruing

upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient- Except as expressly set forth herein, it shall not be necessary to give notice to exercise a remedy, other than such notice as may be required in this Article.

Section 5.4. No Implied Waiver. In the event any agreement contained in this Agreement or any Ancillary Agreement should be breached by either party hereto and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder or under such Ancillary Agreement.

Section 5.5. Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that they shall, on demand therefore, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 5.6. Release and Indemnification Covenants. Developer hereby expressly releases from and covenants and agrees to indemnify and hold the City, its officers, employees, agents and all members of the City Council, planning commission, park board and other board or commission from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the Project, the performance of work at the development site and elsewhere pursuant to this Agreement or any Ancillary Agreement, and further releases such officers, employees, agents and members from any personal liability in connection with handling funds pursuant to the terms of this Agreement or any Ancillary Agreement. The indemnification provided hereunder shall not apply to intentional acts or the gross misconduct of the individual or entity so indemnified. The Developer further agrees to protect, aid and defend the City and their respective governing body members, officers- agents, servants and employees, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from a breach of the obligations of the Developer under this Agreement, or any Ancillary Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Project. Neither the City, including their governing body members, officers, agents, servants and employees, shall be liable for any damages or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project due to any act of negligence of any person. The Developer is not an agent or employee of the City and this Agreement or any Ancillary Agreement shall not be construed as creating a joint venture, partnership or other joint arrangement between the Developer and the City relating to the Development.

ARTICLE 6 ADDITIONAL PROVISIONS

Section 6.1. Conflicts of Interest/No Personal Liability. No member of the governing body or other official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement, which affects his or her persona) interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount that may become due to the Developer for any obligations under the terms of this Agreement.

Section 6.2. Non-Discrimination. Developer shall not violate any law applicable to it with respect to civil rights and non-discrimination including, without limitation, Minnesota Statutes, Section 181.59.

Section 6.3. No Merger. None of the provisions of this Agreement or any Ancillary Agreement are intended to be or shall be merged by reason of any deed transferring any interest in any part of the

Development Property and any such deed shall not be deemed to affect or impair the provisions of this Agreement or any Ancillary Agreement.

Section 6.4. Cleanup. The Developer shall promptly clear or cause to be cleared from the Development Property and any public streets or property, any soil, earth or debris or unnecessary personal property or equipment resulting from construction work by the Developer or its agents or assigns- If Developer fails to do so within two (2) business days of receipt of telephone or personally delivered personal notice from the City. the City shall be entitled to undertake such corrective action as it deems necessary and to charge the Developer for the cost of such corrective action. This remedy is in addition to any other remedy available to the City hereunder. Developer's failure to pay such charges when billed by the City shall be an additional Event of Default under this Agreement.

Section 6.5. Responsibility For Costs. Developer shall be responsible for the following costs incurred with respect to this Agreement, which costs shall be paid as set forth below:

6.5.1. The Developer shall reimburse the City for reasonable, administrative and out-of-pocket costs- expenses and disbursements incurred in the enforcement of this Agreement or any Ancillary Agreement, including engineering and attorney's fees.

6.5.2. The Developer shall pay in full all bills submitted to it by the City within thirty (30) days after receipt. If the bills are not paid on time, the City may without further notice to Developer exercise any one or more of the remedies provided to the City by Article 5 hereunder.

Section 6.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid return receipt requested, or delivered personally:

6.6.1. In the case of the Developer, is addressed to or delivered personally to:

Echopoint Design & Development, LLC
ATTN: Alan Zemek
P.O. Box 411
Park Rapids, MN 56470

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

6.6.2. In the case of the City, is addressed to or delivered personally to the City at:

City of Park Rapids
ATTN: City Administrator
212 St. W.
Park Rapids, MN56470-1507

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

Section 6.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 6.8. Amendment and Supplementation. This Agreement may only be amended by a written agreement signed by the parties hereto and otherwise in accordance with the City's Code.

The parties acknowledge that this Agreement may be supplemented after its execution by additional, replacement or supplementary exhibits or schedules which, when dated and signed by the parties hereto

shall supplement or replace such exhibit or schedule and which shall be incorporated into this Agreement.

Section 6.9. Separability. If any Article, section, sentence, clause or other part of this Agreement or any Ancillary Agreement shall be adjudged void and of no effect, for any reason whatsoever, such decision shall not affect the validity of the other portions of this Agreement or any Ancillary Agreement.

Section 6.10. Duration. This Agreement shall remain in effect, with respect to the City, through the earlier of the date on which the Developer has received the City Tax Abatement or December 31, 2019, unless earlier terminated or rescinded in accordance with its terms.

Section 6.11. Provisions Surviving Rescission or Expiration. Sections 5.5 and 5.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 6.12. Rules of Interpretation.

6.12.1. Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota,

6.12.2. Includes Entire Agreement. The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision refer to this Agreement as a whole rather than any particular section or subdivision hereof.

6.12.3. Original Sections. References herein to any particular article, section or paragraph hereof are to the section or subdivision of this Agreement as originally executed.

6.12.4. Headings. Any headings, captions, or titles of the several parts, articles, sections, and paragraphs of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provision.

6.12.5. Conflict Between Agreements. In the event of any conflict between the terms, conditions and provisions of this Agreement and the terms, conditions and provisions of any other instrument, the terms, conditions and provisions of this Agreement shall control and take precedence.

6.12.6. Entire Agreement. This Agreement including any Schedules and Exhibits hereto contain the entire agreement of the parties relating to the subject matter herein, and no other prior or contemporary agreements, oral or written, shall be binding upon the parties hereto.

6.12.7. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as provided and as conditioned in this Agreement.

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

BY:

Echopoint Design & Development, LLC

City of Park Rapids

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

EXHIBIT B

CERTIFICATE OF COMPLETION

WHEREAS, Echopoint Design & Development, LLC, a Minnesota limited liability company (the "Developer") is the fee owner of a parcel of real property located in the City of Park Rapids (the "City"), Hubbard County, Minnesota, PID No. 32.41.00601, located at 104 North Park Avenue (the "Development Property"); and

WHEREAS, the Developer has sought to redevelop the Development Property. The redevelopment of the Development Property generally consists of refurbishing the existing building on the Development Property by exterior and interior improvements to the existing building and bring the building up to code (the "Project"); and

WHEREAS, the Development Property is subject to the provisions of a certain Redevelopment and Tax Abatement Agreement, dated as of June 24, 2008 (the "Agreement"), between the Developer and the City; and

WHEREAS, the Developer has fully and duly performed all of the covenants and conditions of Developer under the Agreement with respect to the construction of the Project (as defined in the Agreement) on the Development Property.

NOW, THEREFORE, it is hereby certified that all requirements of the Developer under the Agreement with respect to the construction of the Project on the Development Property have been completed, and this instrument is to be conclusive evidence of the satisfactory termination of the covenants and conditions of the Agreement as they relate to the construction of the Project on the Development Property, and is released and forever discharged from its obligations to construct under such above-referenced Agreement. This certificate shall not release Developer from any other obligation or undertaking required by the Agreement.

Dated this ___ day of _____

CITY OF PARK RAPIDS, MINNESOTA

By _____

Nancy Carroll, Its Mayor

By _____

Margie Vik, Its City Clerk

STATE OF MINNESOTA)
) ss. COUNTY OF HUBBARD)

The foregoing instrument was acknowledged before me this ___ day of ___ by Nancy Carrolll, Mayor, and Margie Vik, City Clerk, for the City of Park Rapids, a Minnesota municipal corporation, on behalf of the City.

Notary Public