

TO: MAYOR AND CITY COUNCIL

FROM: Neil Jensen, City Administrator

SUBJECT: Timber Ridge Tax Abatement Agreement and Note (Public Hearing) for Endres Canon Falls LLC

MEETING DATE: November 7, 2023

BACKGROUND

In the negotiations with Leon Endres to redevelop the “Old Sandstone Ridge” property the city offered a tax abatement to remove the existing curb and gutter in the development. The estimated cost of curb and gutter removal is \$50,000. The note for the abatement is for \$50,000 plus interest at prime rate on the date of signing. The duration will be 15 years (2024-2039) interest bearing at the prime rate for the first 10 years, the last 5 years will be without interest to total 15 years. If there is any unpaid balance due it will be waived and the abatement will be complete after the 15-year period. There was a request from the developer to add the additional 5 years interest free due to rising interest rates and the housing slow down that is currently underway. It is the hope that the additional 5 years will bridge this higher interest rate / inflationary period. City staff will administer the abatement which will be paid out on February 1st of each year. There will be a 10% administrative fee due on each payment paid to the city. Likewise, if the \$50,000.00 note is paid early the abatement will be completed.

A public hearing is required to abate taxes and to take input on the proposed project. After the hearing a motion to approve the Tax Abatement Agreement and Tax Abatement Revenue Note would be appropriate.

STAFF RECOMMENDATION

Please make a motion to approve the Timber Ridge Tax Abatement Agreement and Tax Abatement Revenue Note with Endres Canon Falls LLC.

REQUESTED COUNCIL ACTION

Please make a motion to approve the Timber Ridge Tax Abatement Agreement and Tax Abatement Revenue Note with Endres Canon Falls LLC.

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2715

**RESOLUTION APPROVING PROPERTY TAX ABATEMENTS
AND AUTHORIZING EXECUTION OF A TAX ABATEMENT AGREEMENT**

WHEREAS, Endres Canon Falls LLC (“**Developer**”) has a purchase agreement and intends to acquire in fee and develop real property lying within the City and legally described on the attached Exhibit A (the “**Tax Abatement Property**”).

WHEREAS, the Developer proposes to establish a project consisting of the acquisition, construction, and equipping of single-family lots, an active City Park, and passive City Park with trails (the “**Project**”);

WHEREAS, the Property is currently underdeveloped. It is expected that the Project will provide additional housing opportunities in the City, increasing tax base, finance public infrastructure, and protect the general health and welfare of the community by providing public infrastructure;

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, as amended (the “Tax Abatement Act”), and a Tax Abatement Agreement, the form of which has been submitted to the City Council for its consideration and approval (the “Tax Abatement Agreement”), the City has determined a need to grant a property tax abatement on the Abatement Property (the “Abatement”) to the Developer in order to assist in financing a portion of the costs of the Project. The terms of the Abatement are set forth in the attached Agreement as Exhibit A;

WHEREAS, on November 7, 2023 the City Council held a Public Hearing on the question of the Abatement, and said hearing was preceded by more than 10 days but less than 30 days prior published notice;

WHEREAS, notice was provided to the public of the November 7, 2023 City Council hearing on the matter and of the opportunity to present their views orally or in writing; and

WHEREAS, the City finds that providing the Abatement will (1) increase the tax base, (2) provide employment opportunities within the City, and (3) provide public infrastructure.

**NOW THEREFORE, BASED UPON THE FOREGOING, IT IS HEREBY
RESOLVED BY THE CITY COUNCIL OF CANNON FALLS, MINNESOTA AS
FOLLOWS:**

- 1) The Abatement is authorized by the Tax Abatement Act; and
- 2) The Tax Abatement Agreement is hereby approved and the Mayor and Administrator are authorized and directed to execute the same

ADOPTED by the City Council this 7th day of November 2023.

Matt Montgomery, Mayor

ATTEST: _____
Neil L. Jensen, City Administrator

EXHIBIT A

TAX ABATEMENT PROPERTY

Lots 1-8 Block 1, Lots 1-4 Block 2, Outlot B, all in Sandstone Ridge, according to the recorded plat thereof, Goodhue County, Minnesota.

Together with

Lots 1-8 Block 1 Sandstone Ridge Second Addition, according to the recorded plat thereof, Goodhue County, Minnesota.

Together with

All the vacated right of ways of Sandstone Road, Sandstone Circle, and Decorah Drive as dedicated on the plat of Sandstone Ridge, according to the recorded plat thereof, Goodhue County, Minnesota.

PROPERTY TAX ABATEMENT AGREEMENT

By and Among

CANNON FALLS, MINNESOTA

and

ENDRES CANON FALLS LLC

Dated: _____, 2023

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EXHIBIT A Development Property

EXHIBIT B City Resolution

EXHIBIT C Tax Abatement Note

THIS AGREEMENT made and entered into as of this ____ day of _____, 2023, by and among CANNON FALLS, MINNESOTA, a body corporate and politic under the laws of Minnesota (“City”) and ENDRES CANON FALLS LLC, a Minnesota limited liability company (“Developer”).

RECITALS

WHEREAS, the City intends to provide to the Developer a property tax abatement pursuant to Minnesota Statutes, Sections 469.1812-469.1815 (the “Statute”) for certain real property (the “Development Property”) located in the City of Cannon Falls and described on the attached Exhibit A; and

WHEREAS, the proposed property tax abatement (the “Abatement”) is to assist the Developer in financing the redevelopment of “Sandstone Ridge” which will be replatted to be “Timber Ridge”; and

WHEREAS, the Developer agrees to construct such improvements to the Development Property as provided in this Agreement along with the approved Timber Ridge PUD Agreement and Developer’s Agreement; and

WHEREAS, pursuant to the Statute, the City is authorized to provide financial assistance in order to increase tax base, complete necessary public improvements, and provide employment opportunities within the City of Cannon Falls; and

WHEREAS, the City believes that the property tax abatement contemplated herein and fulfillment of this Agreement, as referenced herein, is in the best interests of the City, and the health, safety, morals and welfare of their residents, and is in accord with the public purposes and provisions of the Statute and other applicable State and local laws and requirements under which the Agreements are made; and

WHEREAS, the amount of Abatement is less than \$150,000 and is to assist in in the development of housing; and, therefore the requirements of Minn. Stat. § 116J.993, do not apply.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein, the parties agree as follows:

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Agreement” or “Developer’s Agreement” means this Property Tax Abatement Development Agreement by the Developer in favor of the City, dated _____, 2023 and

recorded with the City as document number _____, as the same may be from time to time modified, amended, or supplemented.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed on the Development Property which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted and reasonably approved by the City Engineer.

“City” means Cannon Falls, Minnesota.

“City Resolution” means the resolution adopted by the City on XXXXX, 2023 authorizing this Agreement, attached hereto as Exhibit B.

“Developer” means Endres Canon Falls, LLC.

“Development Property” means the real property described as such in Exhibit A of this Agreement. After construction of the Improvements, the term means the Development Property as improved.

“Event of Default” means an action or inaction by the Developer listed in Article IX of this Agreement.

“Holder” means the owner of a Mortgage.

“Mortgage” means any mortgage made by the Developer which is secured, in whole or in part, with the Development Property and which is a permitted encumbrance pursuant to the provisions of Article VIII of this Agreement.

“Minimum Improvements” are those improvements to be made to the Development Property shown on the Construction Plans.

“State” means the State of Minnesota.

“Tax Abatement Act” means Minn. Stat. §§ 469.1812 to 469.1815, as amended.

“Tax Abatement Note” means the Tax Abatement Note attached hereto as Exhibit C.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“Termination Date” means the earlier of: (i) December 31, 2033, (ii) the date the parties mutually agree to terminate this Agreement, or (iii) the date on which the Developer has been paid the full amount to which it is entitled under this Agreement.

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertaking on its part herein contained:

(a) The City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The activities of the City are undertaken for the purposes of increasing the tax base of the City, promoting economic development, completing necessary public improvements, and creating employment opportunities.

Section 2.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a Minnesota Limited Liability Company in good standing under the laws of Minnesota and has the power to enter into this Agreement.

(b) The Developer is constructing and will operate and maintain, at all times prior to the Termination Date, the Minimum Improvements in accordance with the terms of this Agreement and all local, state, and federal laws and regulations.

(c) The Developer has received no notice or communication from any local, state, or federal official that the activities of the Developer or the City pursuant to this Agreement may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state, or federal environmental law, regulation or review procedure.

(d) The Developer has or will timely obtain 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 Minimum Improvements may be lawfully constructed.

(e) 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 restriction or any evidences 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.

(f) Whenever any Event of Default (as defined below) occurs and if the City shall incur expenses for the enforcement of performance or observance of any obligation or agreement on the

part of the Developer under this Agreement, the Developer agrees that it shall, within thirty (30) days of written demand by the City, pay to the City the reasonable expenses so incurred by the City.

Section 2.3. Soil Conditions. The Developer acknowledges that the City makes no representations or warranties as to the condition of the soils on the Development Property or its fitness for construction of the Improvements or any other purpose for which the Developer may make use of the Development Property, provided further that in any event the Developer agrees that it will indemnify, defend, and hold harmless the City, and its governing body members, officers, agents, and employees.

ARTICLE III

Acquisition and Conveyance of Property; Assessments and Land Acquisition

City and Developer have signed a purchase agreement dated September 12, 2023, for the Development Property, which property requires certain demolition and reconstruction of the curb from the previous Sandstone development, in the amount of \$50,000. The Tax Abatement provided herein is to defray the cost of such work.

Section 3.1. City Tax Abatement.

(a) In furtherance of the objectives set forth herein and in the City Resolution, the Developer shall be reimbursed in accordance with the Tax Abatement Note, attached as Exhibit C.

(b) The City makes no warranties or representations that the City Tax Abatement will yield \$50,000 or be sufficient to pay any or all costs incurred by the Developer. The Developer agrees and understands that the City Tax Abatement is subject to calculation by the City and change in State law, and that a significant portion of the Developer's costs may remain unpaid after the Termination Date. The Developer further agrees and understands that estimates of the projected amount of the City Tax Abatement provided by the City, and their agents, officers, or employees are estimates only and not intended for the Developer's reliance.

Section 3.2. Records.

(a) The City may at all reasonable times, after reasonable notice, inspect, examine and copy all books and records of the Developer relating to the Improvements. The Developer shall use its best efforts to cause the contractor or contractors, all subcontractors, and their agents and lenders to make their books and records relating to the Improvements available to the City upon reasonable notice, for inspection, examination and audit. These records shall be kept and maintained by the Developer for a period of five (5) years following completion of construction of the Improvements. Said records shall show expenditures for the Minimum Improvements including demolition activity.

(b) Subject to Audit (Minn. Stat. § 16C.05, subd. 5). The books, records, documents, and accounting procedures and practices of the Developer or other party, that are relevant to this

Agreement are subject to examination by the City, and either the legislative auditor or the state auditor, as appropriate, for the term of the Tax Abatement Note and five (5) years thereafter. If the City requests that the state auditor examine the books, records, documents, and accounting procedures and practices of the Developer or other party pursuant to this subdivision, the City shall be liable for the cost of the examination. If the Developer requests that the state auditor examine the books, records, documents, and accounting procedures and practices related to this Agreement, the Developer or other party that requested the examination shall be liable for the cost of the examination.

Section 3.3. Data Privacy. All applications and supporting documents shall become the property of the City, and the classification, retention, destruction, and/or disclosure of the data shall be governed by the Minnesota Data Practices Act, Minn. Stat. § 13.01, *et. seq.*, and other Minnesota Statutes as applicable.

ARTICLE IV

Measurable, Specific and Tangible Goals

Section 4.1. Construction of Minimum Improvements. The Developer will construct the Minimum Improvements on the Development Property in accordance with the terms of this Agreement and all applicable local, state, and federal laws and regulations (including, but not limited to, environmental, zoning, building code, and public health laws and regulations).

Section 4.2. Maintenance of Minimum Improvements. The Developer will at all times prior to the Termination Date operate and maintain, preserve and keep the Minimum Improvements or cause the Improvements to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

Section 4.3. Failure to Meet Goals. If the Developer fails to meet the goals described in this Article IV, and such failure continues for a period of thirty (30) days after written notice from the City to Developer of such failure (unless a cure of such failure is not reasonably practicable within said 30-day period, in which event Developer shall have such additional time as is reasonably necessary to perform such cure, such failure shall be an Event of Default hereunder, and, without limitation of any other remedy available to the City, the Developer shall repay to the City upon written demand by the City, an amount equal to the amount of City Tax Abatement paid to the Developer pursuant to this Agreement, with interest thereon at a rate equal to the rate independent, pursuant to Minn. Stat. § 549.09.

ARTICLE V

Insurance and Condemnation

Section 5.1. Insurance. (a) From the Approval Date through the Termination Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the City shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses; and

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$1,000,000, and shall be endorsed to show the City as additional insured; and

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure.

(b) All insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the City policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement, each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the City at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(c) The Developer agrees to notify the City immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

(d) The Developer shall forthwith complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction and restoration shall be the property of the Developer.

ARTICLE VI

Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the City is providing substantial aid and assistance in furtherance of the development. The Developer understands that the funds intended to be provided by the City to the Developer pursuant to this Agreement are derived solely from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the 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 Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the City to sue the 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 city auditor.

Section 6.2. Use of Taxes. Except for its obligations under this Agreement and the City shall be free to use any taxes received from the Property for any purpose for which such taxes may lawfully be used, and the City shall have no obligations to the Developer with respect to the use of such taxes.

Section 6.3. Real Property Taxes. The Developer shall, so long as this Agreement remains in effect, pay all real property taxes with respect to all parts of the Development Property owned by it which are payable pursuant to any statutory or contractual duty that shall accrue until title to the property is vested in another person. The Developer agrees that for tax assessments so long as this Agreement remains in effect:

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

(b) It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any Tax Official to be applicable to the Development Property or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Development Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax; and

(c) It will not seek any tax deferral or abatement, either presently or prospectively authorized under Minnesota Statutes, Section 469.181, or any other State or

federal law, of the ad valorem property taxation of the Development Property so long as this Agreement remains in effect.

Section 6.4. Duration of Abatement Program. The tax abatement program set forth herein shall exist for a period of up to fifteen (15) years beginning with real estate taxes payable in 2024 through 2039. On or before February 1 of each year commencing February 1, 2024 until the earlier of the date that the Developer shall have received the amount of the Abatement or February 1, 2039, the City shall pay the Developer the amount of the Abatement received by the City in the previous twelve month period. The City may terminate this Agreement at an earlier date if an Event of Default occurs and the City rescinds or cancels this Agreement pursuant to this Agreement.

ARTICLE VII

Mortgage Financing

Section 7.1. Option to Cure Default on Mortgage. In the event that there occurs a default under any Mortgage authorized pursuant to this Agreement, the Developer shall cause the City to receive copies of any notice of default received by the Developer from the holder of such Mortgage. Thereafter, the City shall determine in their respective sole discretion, have the right, but not the obligation, to cure any such default on behalf of the Developer within such cure periods as are available to the Developer under the Mortgage documents.

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development. The Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of development of the Development Property and not for speculation in land.

Section 8.2. Developer's Transfer of Property and Assignment of Agreement. Except for routine sales of residential property for purposes of residential construction within the Development Property, the Developer may not transfer or assign the part or portion of the Development Property without the prior written consent of the City, prior to the Termination Date, which consent shall not be unreasonably withheld, conditioned, or delayed. In the event of a requested transfer, the Developer shall provide all information requested by the City concerning the proposed assignee. If assignment or transfer is granted by the City, the transferee or assignee is bound by all the Developer's obligations hereunder. The Developer shall submit to the City written evidence of any such transfer or assignment, including the transferee or assignee's express assumption of the Developer's obligations under this Agreement. If the Developer fails to provide such evidence of transfer and assumption, the Developer shall remain bound by all its obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants. (a) The Developer releases from and covenants and agrees that the City, and the governing body members, officers, agents, servants, and employees thereof shall not be liable for, and agrees to defend, indemnify and hold harmless the City, and the governing body members, officers, agents, servants, and employees thereof, against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements or the Development Property, except to the extent caused by the gross negligence or willful misconduct of the City.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to protect and defend the City, and the governing body members, officers, agents, servants, and employees thereof, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby, or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements, or any action by any individual or governmental entity seeking recoupment from or repayment by the City of any City Tax Abatement paid to the Developer or otherwise expended by the City pursuant to this Agreement, and to reimburse the City, to the fullest extent permitted by law, for any City Tax Abatement recouped by or repaid for a period beginning upon the mutual execution of this Agreement and terminating twelve (12) months after the Termination Date.

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

ARTICLE IX

Events of Default

Section 9.1. 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 (unless the context otherwise provides), any failure by any party to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder, under the Tax Abatement Note, or under the terms of the Developer’s Agreement.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs on the part of the Developer, the City may, after providing thirty days written notice to the other parties of the Event of Default, but only if the Event of Default has not been cured within said thirty days or, if the Event of Default is by its nature incurable within thirty days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) Suspend its performance under this Agreement until it receives assurances that the Developer will cure its default and continue its performance under this Agreement.

(b) Be released from any further obligation under this Agreement.

(c) Take whatever action, including legal, equitable or administrative action, 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 under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City, or the Developer in this Agreement 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. In order to entitle or the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.4. No Additional Waiver Implied by Particular Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by another 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.

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; City Representatives Not Individually Liable. The City, and the Developer, to the best of their respective knowledge, represent and agree that no member, 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 personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

Section 10.2. Restrictions on Use. The Developer agrees that the Developer, and its successors and assigns, shall not discriminate upon the basis of race, color, creed, sex, national origin, or other unlawful classification in the sale, lease, or rental, or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.3. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 1505 River Shore Drive, Hastings, MN 55033, Attn: Leon Endres; and

(b) in the case of the City, is addressed to or delivered personally to the City at 918 River Road, Cannon Falls, MN 55009, Attn: Neil Jensen;

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

Section 10.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.7. Recording. The City may record this Agreement and any amendments thereto. The Developer shall pay all costs for recording.

Section 10.8. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota with jurisdiction and venue as provided by law, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 10.9. Incorporation; Amendment. The City Resolution are hereby incorporated by reference and attached as exhibits. This Agreement may only be modified or amended by a writing signed by all the parties hereto. Any modification or amendment is subject to the restrictions on modifications and amendments set forth in the City Resolution.

Section 10.10. Effective Date. This Agreement shall be in full force and effect when both parties sign this Agreement. The signed Agreement along with a certified copy of the resolutions authorizing the Agreement, shall be recorded in the Goodhue County Recorder's office. Prior to the effective date of this Agreement, any signatory may rescind its approval.

[SIGNATURE PAGE FOLLOWS]

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

ENDRES CANON FALLS, LLC

By _____
Leon Endres, Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by Leon Endres, the Manager of Endres Canon Falls, LLC, a Minnesota limited liability company, on behalf of such limited liability company.

Notary Public

CANNON FALLS, MINNESOTA

By _____
Matt Montgomery, Mayor

By _____
Neil Jensen, City Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023 by Matt Montgomery, Mayor of Cannon Falls, and Neil Jensen, City Administrator, on behalf of the City of Cannon Falls, Minnesota.

Notary Public

Approved as to Form and Execution:

Shelley M. Ryan, Cannon Falls City Attorney

EXHIBIT A

DEVELOPMENT PROPERTY

Lots 1-8 Block 1, Lots 1-4 Block 2, Outlot B, all in Sandstone Ridge, according to the recorded plat thereof, Goodhue County, Minnesota.

Together with

Lots 1-8 Block 1 Sandstone Ridge Second Addition, according to the recorded plat thereof, Goodhue County, Minnesota.

Together with

All the vacated right of ways of Sandstone Road, Sandstone Circle, and Decorah Drive as dedicated on the plat of Sandstone Ridge, according to the recorded plat thereof, Goodhue County, Minnesota.

EXHIBIT B

(City Resolution with original signature page as attached)

EXHIBIT C

Tax Abatement Note

27467470v2

EXHIBIT C

FORM OF TAX ABATEMENT NOTE

**STATE OF MINNESOTA
COUNTY OF GOODHUE
CITY OF CANNON FALLS**

TAXABLE ABATEMENT REVENUE NOTE (ENDRES CANON FALLS, LLC PROJECT)

Original Principal
Amount
\$50,000.00

The City of Cannon Falls, Minnesota (the “Issuer”), hereby acknowledges itself to be indebted and, for value received, promises to pay to the order of Endres Canon Falls, LLC (the “Owner”), solely from the source, to the extent and in the manner hereinafter provided, the principal sum in an amount not to exceed \$50,000.00, with interest payable as set forth herein. This Note is given in accordance with that certain Tax Abatement Agreement between the Issuer and the Owner, dated as of _____, 2023 (the “Agreement”). Capitalized terms used and not otherwise defined herein shall have the meaning provided for such terms in the Agreement unless the context clearly requires otherwise.

Payments of principal on this Note (each a “Payment”) shall be payable in annual installments payable on each February 1 (the “Payment Dates”), provided that if any such Payment Date is not a Business Day the Payment Date shall be the next succeeding Business Day, commencing on February 1, 2024 and ceasing the earlier of (i) February 1, 2039; or (ii) any earlier date the Agreement is cancelled in accordance with the terms thereof; or (iii) the date the principal of this Note is paid or deemed paid in full in accordance with the terms hereof, the “Final Maturity Date.” Upon termination, no further payments are due under this Note.

Each Payment shall be in an amount equal to the amount of Tax Abatements (as defined below) actually received by the City in the 12-month period before each Payment Date. Notwithstanding anything to the contrary herein, the Tax Abatement payments under this paragraph in each year may not exceed the Tax Abatements. Payments are subject to prepayment at the option of the Issuer in whole or in part on any date after the Date of Original Issue stated above. The Owner will provide, prior to payment of any amounts hereunder, with an accounting showing expenditures for curb or other authorized public improvements in at least the amount of the Abatement payment sought.

Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by check or draft made payable to the Owner and mailed to the Owner at its postal address within the United States which shall be designated from time to time by the Owner.

Payments on this Note are payable solely from “Tax Abatements,” which shall mean the amount of the property tax allowable to the City paid on behalf of the Development Property, an

amount equal to the total City tax rate multiplied by the total net tax capacity for the Development Property described on Exhibit A, less 10% to be retained by the City for administrative costs. The pledge of Tax Abatements is subject to all the terms and conditions of the Agreement. In no event shall payments exceed \$50,000.00 plus interest as calculated herein. After the first Tax Abatement is paid and continuing until February 1, 2034, the remaining principal balance of the Note shall bear simple interest at the rate of ____ [insert on closing date based on prime rate]. Accrued interest shall be paid with the Tax Abatement payment due on February 1, 2034; provided, however, that no interest shall be paid in an amount greater than the available Tax Abatement in 2034. No interest shall accrue after February 1, 2034.

The Issuer shall have no obligation to make any Payment on any Payment Date if, as of such date there has occurred and is continuing any Event of Default on the part of the Owner as defined in the Agreement. If the Event of Default is thereafter cured in accordance with the Agreement, the Tax Abatements as of such Payment Date shall be deferred, without interest, and paid on the next Payment Date after the Event of Default is cured. If an Event of Default is not timely cured and the Issuer elects to terminate its obligation under the Agreement, the Issuer shall have no further obligations to make Payments hereunder from the Tax Abatements. If an Event of Default is not timely cured and the Issuer terminates its obligation under the Agreement, the Agreement and the Note shall be deemed terminated and the Issuer shall have no further obligations hereunder. Payments under this Note may also be suspended or reduced as otherwise provided in the Agreement, in which case the Owner shall deliver this Note in exchange for a new note in the adjusted principal amount upon the request of the Issuer.

This Note shall terminate and be of no further force and effect as of, and the Issuer shall have no obligation to pay any portion of the Payments that remains unpaid after, the Final Maturity Date. Any estimates of Abatement prepared by the Issuer or its municipal advisor in connection with the Tax Abatements and the Agreement are for the benefit of the Issuer only and are not intended as representations on which the Developer may rely. **THE ISSUER MAKES NO REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, THAT THE TAX ABATEMENTS WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE AMOUNTS WHICH ARE OR MAY BECOME DUE AND PAYABLE HEREUNDER.**

This Note is issued pursuant to Minn. Stat. §§ 469.1812 to 469.1815, and pursuant to the resolution of the Issuer adopted on November 7, 2023 (the “Resolution”) duly adopted by the Issuer pursuant to and in full conformity with the Constitution and laws of the State of Minnesota. This Note is a limited obligation of the Issuer, payable solely from moneys pledged to the payment of the Note under the Resolution. The Note shall not be deemed to constitute a general obligation of the State of Minnesota, or any political subdivision thereof, including, without limitation, the Issuer. Neither the State of Minnesota, nor any political subdivision thereof, including, without limitation, the Issuer, shall be obligated to pay the principal of this Note or other costs incident hereto except from the revenues and receipts pledged therefor, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof, including, without limitation, the Issuer, is pledged to the payment of the principal of this Note or other costs incident hereto.

This Note is issuable only as a note without coupons. This Note is transferable upon the books of the Issuer kept for that purpose at its principal office.

This Note shall not be transferred to any person or entity except in accordance with Section 8.2 of the Agreement and unless the Issuer has been provided with an opinion of counsel or a certificate of the transferor, in a form satisfactory to the Issuer, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. Transfer of the ownership of this Note to a person other than one permitted by this paragraph without the written consent of the Issuer shall relieve the Issuer of all of its obligations under this Note.

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

IN WITNESS WHEREOF, the City Council of the City of Cannon Falls, Minnesota has caused this Note to be executed by the manual signatures of the Mayor and City Administrator of the Issuer and has caused this Note to be dated as of the Date of Original Issue specified above.

CITY OF CANNON FALLS, MINNESOTA

By: _____
Matt Montgomery, Mayor

By: _____
Neil Jensen, City Administrator