ABATEMENT CONTRACT

Between

CITY OF SHAKOPEE, MINNESOTA,

and

SAM'S EAST, INC.,

Dated: April 18, 2023

This document was drafted by:
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ABATEMENT CONTRACT

THIS ABATEMENT CONTRACT (the "Agreement"), is made and entered into as of this ___ day of _____, 2023, by and between the CITY OF SHAKOPEE, MINNESOTA, a political subdivision under the laws of the State of Minnesota (the "City") and SAM'S EAST, INC., a _____ corporation, or an affiliate (the "Developer").

RECITALS

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 to 469.1815, as amended (the "Act"), the City is authorized to abate property taxes in order to increase or preserve the tax base, provide employment opportunities, and help provide access to services for residents of the City; and

WHEREAS, pursuant to Minnesota Statutes, Sections 116J.993 through 116J.995, as amended (the "Business Subsidy Act"), the City is authorized to grant a business subsidy to facilitate development, and to increase the tax base of the City and the State; and

WHEREAS, the Developer plans to lease the real property located at 7070 Cretex Avenue East (the "Property") for use as a warehouse; and

WHEREAS, the Developer intends to make various tenant improvements to the Property which will cost approximately $8,000,000 (the "Minimum Improvements"); and

WHEREAS, the Developer has applied for a property tax abatement from the City to help finance the Minimum Improvements to be located on the Property and the Developer desires to construct the Minimum Improvements on the Property as provided in this Agreement; and

WHEREAS, the public purposes of the property tax abatement contemplated herein are to increase the tax base of the City and bring additional jobs to the City; and

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

WHEREAS, the Developer agrees to complete the Minimum Improvements in accordance with the terms hereof; and

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

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ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

"Abatement" means the real property taxes generated in any tax-payable year by extending the City's total tax rate for that year against the tax capacity increase resulting from the tenant improvements (estimated at $8,000,000), excluding the tax capacity of the land in the amount of $10,400,000, the tax capacity of the existing building prior to the tenant improvements being completed, as established in tax payable year 2023, and excluding the portion of the tax capacity attributable to the areawide tax under Minnesota Statutes, Chapter 473F, all as of January 2 in the prior year.

"Abatement Resolution" means Resolution No. _____, adopted by the City Council of the City on April 18, 2023, regarding abatement of property taxes on the Property and approval of this Agreement.

"Abatement Volume Cap" means the maximum amount of property taxes that may be abated in any year by the City under Section 469.1813, subdivision 8 of the Act. As of the date of this Agreement, the Abatement Volume Cap for the City is the greater of $200,000 or ten percent (10%) of the net tax capacity of the City for the taxes payable year to which the abatement applies.

"Act" means Minnesota Statutes, Sections 469.1812 to 469.1815, as amended.

"Agreement" means this Abatement Contract, as the same may be from time to time modified, amended, or supplemented.

"Available Abatement" means, on each Payment Date, the Abatement generated in the preceding six (6) months with respect to the Property or such lesser amount as shall cause the cumulative principal amount of the Abatement paid to the Developer during the term of this agreement to be no more than $286,591.00. The maximum amount of Abatement provided to the Developer each year is $28,659.10.

"Benefit Date" means the earlier of the date of issuance of the Certificate of Completion for the Minimum Improvements or the date the Developer occupies the Minimum Improvements.

"Business Day" means any day except a Saturday, Sunday, legal holiday, a day on which the City or County is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

"Business Subsidy Act" means Minnesota Statutes, Sections 116J.993 through 116J.995, as amended.

"City" means the City of Shakopee, Minnesota.

"Compliance Date" means two years following the Benefit Date.

"Developer" means Sam's East, Inc., a _____ corporation, or its permitted successors and assigns.

"Property" means the real property legally described in EXHIBIT A attached hereto.

"Event of Default" means an action by the Developer listed in Section 9.1 hereof.

"Holder" means the owner of a Mortgage.

"Minimum Improvements" means construction of the tenant improvements in the amount of $8,000,000.

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

"Payment Date" means each February 1 and August 1, commencing August 1, 2025; provided, that if any such Payment Date is not a Business Day, the Payment Date shall be the next succeeding Business Day.

"State" means the State of Minnesota.

"Transfer" has the meaning given in Section 8.2 hereof.

"Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, 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 (other than the City in exercising their rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer's obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.2 hereof.

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ARTICLE II

Representations and Warranties

Section 2.1. Representations by the City The City makes the following representations and warranties as the basis for its covenants herein:

(a) The City is a statutory city of the State, duly organized and existing under the laws of the State. Under the provisions of the Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City proposes to grant an abatement of taxes for the Minimum Improvements for the purposes of increasing the tax base and creating employment opportunities in the City.

Section 2.2. Representations and Warranties by the Developer. The Developer makes the following representations and warranties as the basis for its covenants herein:

(a) The Developer is a _____ corporation in good standing under the laws of the State, is not in violation of any provisions of its Articles of Organization or Operating Agreement, is duly authorized to transact business in the State, has the power to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement by proper action of its governing body.

(b) Subject to obtaining the permits and approvals therefore, the Developer will construct, operate, and maintain the Minimum Improvements in accordance with the terms of this Agreement and all local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health 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 may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the City is aware). 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 will use commercially reasonable efforts to obtain, 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 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 corporate 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, which default or breach might prevent the Developer from performing its obligations hereunder.

(f) The Developer shall promptly advise the City in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting

Developer or its business which may delay or require changes in construction of the Minimum Improvements.

(g) The Developer is not currently in default under any business subsidy agreement with any grantor, as such terms are defined in the Business Subsidy Act.

(h) The Developer represents that the completion of the Minimum Improvements would not be financially feasible without the assistance provided to the Developer pursuant to this Agreement.

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ARTICLE III

Status of Property; Property Tax Abatement

Section 3.1. Status of the Property. As of the date of this Agreement, the Developer shall lease the Property. The City shall have no obligation to acquire any interest in the Property.

Section 3.2. Property Tax Abatement.

(a) Generally. In order to make the Minimum Improvements economically feasible, the City will grant the Abatement to the Developer. In no event shall the Abatement exceed more than ten years or exceed a cumulative amount of more than $286,591 over the term of the Abatement. The Abatement will reimburse the Developer for a portion of the costs of the tenant improvements required for the Minimum Improvements. Subject to the Abatement Volume Cap, the City shall pay the Developer the Available Abatement on or before each February 1 and August 1 (each a "Payment Date"), commencing on August 1, 2025, and terminating on or before February 1, 2035.

(b) Limitations. The pledge of Available Abatement is subject to all the terms and conditions of the Abatement Resolution. The Available Abatement is payable solely from and to the extent of the Abatement, and nothing herein shall be construed to obligate the City to make payments from any other funds. The City makes no warranties or representations as to the amount of the Available Abatement. Any estimates of Available Abatement amounts prepared by the City's financial consultants are for the benefit of the City only, and the Developer is not entitled to rely on such estimates.

The Developer further acknowledges that the total property tax abatements payable by the City in any year may not exceed the Abatement Volume Cap pursuant to Section 469.1813, subdivision 8 of the Act. The City does not warrant or represent that the Abatement in the amounts pledged hereunder will be within the Abatement Volume Cap. As of the date of this Agreement, the City currently has one abatement outstanding under the Act. The City agrees that if the City grants any additional abatements under the Act during the term of this Agreement, the Abatement Capacity will be allocated first to the abatements granted prior to the date of this Agreement, next and to the Abatement pledged pursuant to this Agreement, and then to any additional abatements.

Section 3.3. Business Subsidy Agreement. The provisions of this Section constitute the "business subsidy agreement" for the purposes of the Business Subsidy Act.

(a) General Terms. The parties agree and represent to each other as follows:

(1) The business subsidy provided to the Developer consists of the principal amount of the Abatement described in Section 3.2 hereof.

(2) The public purposes of the subsidy are increase the tax base and employment in the City.

(3) The goals for the subsidy are to secure the development of the Minimum Improvements on the Property; to maintain such improvements for the time period described in clause (6) below; and to create the jobs and wage levels described in Section 3.3(b).

(4) If the goals described in clause (3) above are not met, Developer must make the payments to the City described in Section 3.3(c) hereof.

(5) The subsidy is needed to increase the City's tax base and provide up to 130 new jobs in the City.

(6) The Developer must continue operation of the Minimum Improvements for at least five years after the Benefit Date (defined hereinafter), subject to the continuing obligation described in Section 10.3 of this Agreement. During any period when the Minimum Improvements are vacant and not operated for the aforementioned qualified uses, the Minimum Improvements will not meet the requirements of this Section 3.3(a)(6).

(7) The Developer parent company is Walmart.

(8) The Developer has not received and does not expect to receive financial assistance from any other "grantor" as defined in the Business Subsidy Act in connection with the construction of the Minimum Improvements.

(b) Job and Wage Goals. Within two years after the Benefit Date, the Developer shall cause to be created: (i) at least 130 full-time equivalent jobs; and (ii) wages for each such full-time job of no less than $21.00 with an average wage of $24.00 per hour. Notwithstanding anything to the contrary herein, if the wage and job goals described in this paragraph are met by the Compliance Date, those goals are deemed satisfied despite the Developer's continuing obligations under Sections 3.3(a)(6) and 3.3(d). The City may, after a public hearing, extend the Compliance Date by up to one year, provided that nothing in this section will be construed to limit the City's legislative discretion regarding this matter. The jobs and wages described in this Section 3.3(b) must continue for at least five years after the Compliance Date.

(c) Remedies. If the Developer fails to meet the goals described in Section 3.3(a)(3) hereof, the Developer shall repay to the City upon written demand from the City a "pro rata share" of the outstanding principal amount of the Abatements together with interest based on the rate set forth in Section 116J.994, subd. 6 of the Business Subsidy Act, accrued from the date of the default to the date of payment. The term "pro rata share" means a percentage calculated as follows:

(1) if the failure relates to the number of jobs, the jobs required less the jobs created, divided by the jobs required;

(2) if the failure relates to wages, the number of jobs required less the number of jobs that meet the minimum wages, divided by the number of jobs required;

(3) if the failure relates to maintenance of the Minimum Improvements in accordance with Section 3.3(a)(6), 60 less the number of months of operation as a warehouse facility, commencing on the date of the certificate of completion and ending with the date the facility ceases operation as determined by City staff, divided by 60; and

(4) if more than one of clauses (1) through (3) apply, the sum of the applicable percentages, not to exceed 100%.

Nothing in this Section shall be construed to limit the City's remedies under Article IX hereof. In addition to the remedy described in this Section and any other remedy available to the City for failure to meet the goals stated in Section 3.3(a)(3), the Developer agrees and understands that it may not receive a business subsidy from the City or any grantor (as defined in the Business Subsidy Act) for a period of five years from

the date of the failure or until the Developer satisfies its repayment obligation under this Section, whichever occurs first.

(d) Reports. The Developer must submit to the City a written report regarding business subsidy goals and results by no later than February 1 of each year, commencing March 1, 2024, and continuing until the later of (i) the date the goals stated Section 3.3(a)(3) are met; (ii) 30 days after expiration of the period described in Section 3.3(a)(6); or (iii) if the goals are not met, the date the subsidy is repaid in accordance with Section 3.3(c). The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The City will provide information to the Developer regarding the required forms. If the Developer fails to timely file any report required under this Section, the City will mail the Developer a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, the Developer fails to provide a report, the Developer must pay to the City a penalty of $100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this Section is $1,000.

Section 3.4. Payment of Administrative Costs. The Developer will pay to the City all reasonable out of pocket costs incurred by the City (including without limitation attorney and fiscal consultant fees) in the negotiation and preparation of this Agreement and other documents and agreements in connection with the development contemplated hereunder (collectively, "Administrative Costs"). Administrative Costs shall be evidenced by invoices, statements or other reasonable written evidence of the costs incurred by the City. If Administrative Costs exceed the application deposit, the Developer shall pay all additional Administrative Costs from time to time within thirty (30) days after receipt of written notice thereof from the City.

Section 3.5. Records. The City and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine, and copy all books and records of the Developer relating to the Minimum Improvements. The Developer shall also use its best efforts to cause the general contractor to make their books and records relating to the Minimum Improvements available to the City, upon reasonable notice, for inspection, examination and audit. Such records shall be kept and maintained by the Developer until the termination of this Agreement.

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ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements in accordance with the provisions of this Agreement and will at all times during the term of this Agreement operate and maintain, preserve and keep the Minimum Improvements or cause such improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

Section 4.2. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer shall commence construction of the Minimum Improvements by 2023. Subject to Unavoidable Delays, the Developer shall complete the Minimum Improvements by _____, 2023. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Property shall be in conformity with the City zoning ordinances and the Developer shall obtain all required permits.

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ARTICLE V

Insurance and Subordination

Section 5.1. Insurance. (a) During the term of this Agreement, 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 Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(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 $1,500,000, and shall be endorsed to show the City as an additional insured.

(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; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(b) All insurance required under this Article 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 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. Notwithstanding the foregoing, if such a provision is not available from the Developer's insurer, Developer may provide such notices. 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 will 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 promptly 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.

The Developer shall 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.

(d) All of the insurance provisions set forth in this Article shall terminate upon the termination of this Agreement.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the City with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage allowed pursuant to Article VII of this Agreement.

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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 Minimum Improvements pursuant to this Agreement. The Developer understands that the Abatement pledged to pursuant to this Agreement is derived from real estate taxes on the 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 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 County auditor. In any such suit, the City shall also be entitled to recover its costs, expenses and reasonable attorney fees.

Section 6.2. Reduction of Taxes. Prior to the termination of this Agreement, the Developer will not (a) cause a reduction in the real property taxes paid in respect of the Property through willful destruction of the Minimum Improvements or any part thereof; or (b) fail to reconstruct the Minimum Improvements if damaged or destroyed, as required under Section 5.1(c) hereof.

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ARTICLE VII

Financing

Section 7.1. Generally. The Developer warrants and represents to the City that it has or will have available funds sufficient to construct the Minimum Improvements.

Section 7.2. Subordination. If the Developer requires mortgage financing for the development of the Minimum Improvements, the City agrees to subordinate its rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing and the City agrees to consent to such subordination, in accordance with the terms of a subordination agreement approved by the City.

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ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Prohibition Against Assignment and Transfer.

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to completing the Minimum Improvements under this Agreement, and for the purpose of refinancing such debt, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or assignment, conveyance, or lease, or transfer in any other mode or form of or with respect to this Agreement, the Minimum Improvements, the Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity whether or not related in any way to the Developer (collectively, a "Transfer"), without the prior written approval of the City unless the Developer remains liable and bound by this Agreement in which event the City's approval is not required. Any such Transfer shall be subject to the provisions of Section 8.1(b) of this Agreement. Notwithstanding anything to the contrary in this Section, the Developer may assign its rights under this Agreement to the Holder of a Mortgage, provided the assignment is done in written form and is approved by the City.

(b) In the event the Developer, upon Transfer, seeks to be released from its obligations under this Agreement, the City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such release that:

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

(ii) Any proposed transferee, by instrument in writing satisfactory to the City, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Minimum Improvements, the Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls provided in this Agreement; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Minimum Improvements, the Property, or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements or the Property that the City would have had, had there been no such transfer or change. In the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the completion of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement, the Minimum Improvements, or the Property governed by this Article, shall be in a form reasonably satisfactory to the City.

(c) Notwithstanding the foregoing, any Transfer to a person or persons leasing a townhome shall not be subject to Section 8.1(a) or (b).

Section 8.2. Release and Indemnification Covenants. (a) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, the City and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties") shall not be liable for and the Developer shall indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Property or the Minimum Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Property or the Minimum Improvements.

(c) The Indemnified Parties shall not be liable for any damage or injury to the property of the Developer or its officers, agents, servants or employees or any other person who may be about the Property or Minimum Improvements.

(d) 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 such entity and not of any governing body member, officer, agent, servant or employee of such entity in the individual capacity thereof.

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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, any one or more of the following events, after the non-defaulting party provides thirty (30) days written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within such thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) failure by the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder;

(b) commencement by the Holder of any Mortgage on the Property or any improvements thereon, or any portion thereof, of foreclosure proceedings as a result of default under the applicable Mortgage documents;

(c) if the Developer sells or otherwise disposes of the Minimum Improvements or the Property without the written approval of the City, which shall not be unreasonably withheld;

(d) if the Developer shall

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law; or

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

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

(iv) be adjudicated bankrupt or insolvent.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 thereof occurs, the City may exercise any of the following rights under this Section after providing thirty (30) days written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the Developer does not, within such thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default 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 reasonably satisfactory assurances that the Developer will cure its default and continue its performance under this Agreement.

(b) Cancel and rescind or terminate its obligations 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 of the Developer under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to any party 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 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.

Section 9.4. No Additional Waiver Implied by One 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.

Section 9.5. Attorney Fees. Whenever any Event of Default occurs and if the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, the Developer shall, within ten (10) days of written demand by the City, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 9.6 Default by City. Notwithstanding anything to the contrary herein, in the event the City fails to perform any covenant, condition, obligation or agreement on its part, and such failure has not been cured within thirty (30) days after receipt of written notice to the City from the Developer, or if such failure is by its nature incurable within thirty (30) days, the City does not, within such thirty (30) day limit, provide assurances reasonably satisfactory to the Developer that the failure will be cured as soon as reasonably possible, then the Developer may exercise such remedies as may be available at law or in equity with respect to the defaulting party.

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ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; 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. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, state and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that until the Maturity Date, the Developer, and such successors and assigns, shall use the Property and the Minimum Improvements thereon only as a day care facility (as defined in Section 3.3 hereof), provided that after expiration of the five-year period described in Section 3.3(a)(6), the repayment remedy described in Section 3.3(c) may not be imposed on Developer for default under this Section, and City is limited to any other remedies available under Article IX hereof. Further, the Developer shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

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 2101 SE Simple Savings Drive, Bentonville, AR, 72712, Attn: Kevin Porter, Senior Manager, Tax.

(b) in the case of the City, is addressed to or delivered personally to the City at the Government Center, 218 North Meridian Street, P.O. Box 129, Shakopee, MN 56011, Attn: City Administrator;

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 with the County Recorder of Scott County. The Developer shall pay all costs for recording.

Section 10.8. Amendment. This Agreement may be amended only by a written agreement approved by all parties hereto.

Section 10.9. Governing Law. 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 Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 10.10. Severability. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications that can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.

Section 10.11. Entire Agreement. This Agreement, together with EXHIBIT A, which is incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, concerning this Agreement, provided that nothing contained herein shall impair the rights of the City or the obligations of the Developer under any other agreement between the City and the Developer. This Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by both parties hereto. Without limitation of the foregoing, any modification is subject to the restrictions on modifications set forth in the Abatement Resolution.

(The remainder of this page is intentionally left blank.)

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.

CITY OF SHAKOPEE, MINNESOTA

By _____
Its Mayor

By _____
Its City Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Matt Lehman, the Mayor of the City of Shakopee, Minnesota, on behalf of the City.

_____
Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by William Reynolds, the City Administrator of the City of Shakopee, Minnesota, on behalf of the City.

_____
Notary Public

Execution page of the Developer to the Abatement Contract, dated as of the date and year first written above.

SAM'S EAST, INC.

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of Sam's East, Inc., a _____ corporation, on behalf of said corporation.

_____
Notary Public

EXHIBIT A

PROPERTY Parcel ID Number 275030010

Lot 1, Block 1, Hentges Industrial Park Subdivision

2021 Values Payable 2022

Land $10,400,000

Improvement $14,600,000

Total $25,000,000

2022 Values Payable 2023

Land $14,040,000

Improvement $33,210,000

Total $47,250,000

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