

REDEVELOPMENT AGREEMENT

by and among

THE CITY OF EDINA, MINNESOTA,

**THE HOUSING AND REDEVELOPMENT AUTHORITY
OF THE CITY OF EDINA, MINNESOTA,**

and

EDINA MARKET STREET LLC

**Dated as of
June 27, 2017**

THIS DOCUMENT WAS DRAFTED BY:
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

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REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into this ___ day of June, 2017 (“Effective Date”), among the **CITY OF EDINA, MINNESOTA**, a Minnesota statutory city (the “City”), the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF EDINA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”) and **EDINA MARKET STREET LLC**, a Minnesota limited liability company (the “the Developer”).

RECITALS

WHEREAS, the capitalized terms used, but not defined, in these Recitals have the meanings given in Article I of this Agreement; and

WHEREAS, the Authority owns the Project Area and has determined that the Project Area is currently underutilized, with obsolete structures and physical arrangements, substantial vacant areas and building vacancies, poor soils and potential contamination, inconsistent legal restrictions on redevelopment and outdated and inadequate public infrastructure and circulation; and

WHEREAS, the City and the Authority have determined that redevelopment of the Project Area has been impeded by the difficulty of redevelopment without a consistent overall plan ensuring compatible land uses; and

WHEREAS, the City and the Authority have determined that the Project Area offers significant opportunity within the City to expand and enhance the pedestrian friendly, commercial destination that is the 50th & France District; and

WHEREAS, the Authority has analyzed current land use in the Project Area, including a building-by-building structural analysis, and after appropriate hearings and notices, the City adopted findings and determined that the TIF District is in the public interest and is a “redevelopment district” under the TIF Act; and

WHEREAS, the findings adopted by the City and the Authority include a determination that the proposed redevelopment would not occur solely through private investment within the reasonably foreseeable future and that the increased market value of the site that could reasonably be expected to occur without the use of the tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the project tax increments for the maximum duration of the TIF District permitted by the TIF Plan, that the Redevelopment Plan conforms to the general plan for the development or redevelopment of the City as a whole and that the Redevelopment Plan affords maximum opportunity consistent with the sound needs of the City as a whole, for the development or redevelopment of the TIF District by private enterprise; and

WHEREAS, a component of the proposed Redevelopment Plan is to develop an area of the City which is already built up, to provide employment opportunities, to improve the tax base and to improve the general economy of the State; and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan and to facilitate the development and construction of the Minimum Improvements the Developer has proposed to purchase from the Authority, and the Authority has agreed to convey, pursuant to the terms of this Agreement, certain land within the Project Area and redevelop the same by demolishing and clearing existing blighted structures, and constructing the Minimum Improvements, which include, without limitation, an approximately 110 unit apartment building, approximately 33,500 square feet of integrated commercial elements, two levels of underground parking, and a public plaza; and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan, the Developer, the City, and the Authority, and serve the Minimum Improvements and the greater 50th & France District, the Authority has agreed to construct and pay for the improvement and expansion of an existing public parking ramp within the Project Area; and

WHEREAS, under TIF Act, the Authority is authorized to finance certain Qualified Redevelopment Costs of a redevelopment project with tax increment revenues derived from a tax increment financing district established within a redevelopment project area; and

WHEREAS, consistent with the TIF Act, the City and the Authority held public hearings to consider the need and desirability for adoption of a tax increment financing plan and the creation and establishment of the Project Area as a tax increment financing district pursuant to the TIF Act, and determined that absent such authorization and the provision of certain funds to undertake various qualified redevelopment activities, the redevelopment contemplated herein would not be undertaken, and as a consequence the City and the Authority adopted a TIF plan and established the Project Area as a redevelopment TIF district; and

WHEREAS, the Authority certified the TIF District pursuant to Section 9.1 of this Agreement; and

WHEREAS, upon satisfaction of certain conditions set forth in this Agreement, the Authority will issue the TIF Note subject to the conditions set forth in Article IX of this Agreement; and

WHEREAS, the City and the Authority believe that the Project is in the best interests of the residents of the City.

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

ARTICLE I

DEFINITIONS

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

“**50th & France District**” means the area specified in City Code Section 24-165 as “50th and France Commercial Area.”

“**Affordability Covenant**” has the meaning set forth in Section 9.6(a) and in the form attached hereto as Exhibit I.

“**Affordable Housing Gap**” has the meaning set forth in Section 9.6(b).

“**Affordable Housing Loan Agreement**” means the loan agreement to be entered into between the Developer and the Authority pursuant to Section 9.6(b) and in the form attached hereto as Exhibit M.

“**Agreement**” means this Redevelopment Agreement.

“**Apartment Element**” means approximately 110 unit apartment building to be constructed on the South Site.

“**Architect**” means Mohagen Hansen Architecture/Interiors.

“**Authority**” means the Edina Housing and Redevelopment Authority.

“**Authority Documents**” has the meaning set forth in Section 4.4(a).

“**Authority Representative**” means the Executive Director of the Authority or his or her designee.

“**Available Tax Increment**” means ninety percent (90%) of the Tax Increment received and retained by the Authority from the County during any applicable time frame.

“**Board**” means the Board of Commissioners of the Authority.

“**Centennial Lakes Funds**” has the meaning set forth in Section 6.4(c)(iii).

“**Center Ramp**” means the existing parking ramp located on the South Site.

“**Center Ramp Lease**” has the meaning set forth in Section 4.7 and in the form shown in Exhibit E.

“**Certificate of Completion**” means one of the certificates to be issued by (a) the City Manager of the City and the Executive Director of the Authority pursuant to the terms of Section 5.9, or (b) the Developer to the City and the Authority with regard to the North Site Improvements, in the form attached as Exhibit H.

“**City**” means the City of Edina.

“**City Consultants**” means the financial, engineering, legal, TIF eligibility and other similar advisors to the City and the Authority regarding the Project.

“**City Council**” means the Edina City Council.

“**City Easement**” or “**City Easements**” means one or more of the easements for the use and maintenance of the Shared Plaza Element, the Shared Trash Facility, and UG Parking

Element (Public) granted by the Developer to City pursuant to Section 5.7 and in the forms shown in Exhibits B, C, and D, respectively.

“**City Parties**” means the City and the Authority, and their respective members, employees, agents, independent contractors and attorneys.

“**Commence**” or “**Commencement**” means, with respect to the South Site Vertical Improvements, the first visible improvement to the South Site made in furtherance of the construction of the South Site Vertical Improvements (including, specifically, pouring footings and foundations), and, with respect to the North Site Improvements, the first visible improvement made to the North Site in furtherance of the North Site.

“**Completion**” means, with respect to the South Site Vertical Improvements, the Developer’s receipt of the Certificate of Completion from the City for that Element and, with respect to the North Site Improvements, receipt by the City and the Authority of the Certificate of Completion from the Developer for the North Site Improvements.

“**Completion Date**” means any date a Certificate of Completion with respect to any Elements is delivered.

“**Construction Management Agreement**” means a construction management agreement to be entered into between the Authority and the Construction Manager as described in Section 6.3.

“**Construction Manager**” means the construction manager retained by the Authority under the Construction Management Agreement.

“**County**” means the County of Hennepin, Minnesota.

“**Cure Rights**” means the rights to cure a Default as specified in Section 14.4.

“**Deed**” means a quit claim deed in the Minnesota Uniform Conveyancing Blank form.

“**Default**” means an act or omission by the City, the Authority or the Developer which becomes an Event of Default under this Agreement if it is not cured.

“**Default Date(s)**” means the Commencement and Completion Dates outlined in the Project Timeline in Section 7.1.

“**Developer**” means Edina Market Street LLC, a Minnesota limited liability company.

“**Developer Documents**” has the meaning set forth in Section 4.4(b).

“**Development Contract**” means the development agreement to be negotiated, approved, executed, and recorded against the Minimum Improvements Area by the City and the Developer regarding the Final Development Plan.

“Disbursing Agreement” means construction disbursing agreement to be entered into between the Developer, the Authority, and the Escrow Agent pursuant to Section 6.4(d) and in the form attached hereto as Exhibit K.

“Effective Date” means June 27, 2017.

“Element” means, individually or collectively, the Apartment Element, the South Site Commercial Element, the North Site Commercial Element, the Shared Plaza Element, and the North Ramp Improvements.

“Environmental Law” means any federal, state or local law, rule, regulation, ordinance, or other legal requirement relating to (a) a Release or threatened Release of any Hazardous Material, (b) pollution or protection of public health or the environment or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Materials.

“Escrow Agent” means Commercial Partners Title, LLC.

“Event of Default” or **“Events of Default”** means one or more of the events by the City, the Authority or the Developer described in Article XIV.

“Final Development Plan” means the Final Development Plan for the Minimum Improvements Area prepared by the Developer and approved by the City pursuant to applicable City regulations and ordinances.

“Final Plans” has the meaning set forth in Section 6.3(b)(ii).

“Final Plat” means the final plat or replat for any portion of the Project Area when approved by the City and the County.

“Financing Commitment” means a financing commitment, letter of interest or other evidence of interest from a mortgage lender for the Minimum Improvements in a form reasonably satisfactory to the Authority. The Authority acknowledges and agrees that a financing commitment will be conditioned on items customarily required by lenders (including, without limitation, adequate financial statements, environmental review, appraisals, surveys and title).

“Go-Ahead Letter” means the Developer’s letter to the City and the Authority, substantially in the form attached as Exhibit P, indicating that the Financing Commitment has been received by the Developer and the Developer is prepared to proceed with the acquisition of the South Site and Commencement of the South Site Vertical Improvements, subject to the satisfaction (or the Developer’s written waiver thereof) of the contingencies described in Section 4.2(b).

“Hazardous Material” means petroleum, asbestos-containing materials, and any substance, waste, pollutant, contaminant or material that is defined as hazardous or toxic in any Environmental Law.

“**Hooten Site**” means that part of the North Site generally known as 3944 49 1/2 Street West and legally described on Exhibit A-1.

“**Hooten Work**” has the meaning set forth in Section 6.2.

“**HRA Act**” means Minnesota Statutes, Sections 469.001 to 469.047, as amended.

“**HUD**” has the meaning set forth in Section 9.6(a).

“**IRR**” means the internal rate of return for the Minimum Improvements as calculated in the TIF Pro Forma attached as Exhibit F, where the IRR is calculated as the annualized return on the monthly cash flow over the applicable period as more particularly described in Section 8.3(b)(ii).

“**Land Transfer**” means the South Site Transfer or North Site Transfer, as applicable, as defined in Section 4.1(a).

“**Land Transfer Closing**” means the closing on the South Site Transfer or North Site Transfer, as applicable, pursuant to Article IV.

“**Land Transfer Closing Date**” means, with respect to each of the South Site Transfer and the North Site Transfer the date chosen by the Developer and approved by the Authority after notice of the date from the Developer; provided, however, if the Developer and Authority are unable to agree upon an applicable Land Transfer Closing Date that Land Transfer Closing Date shall be the date 45 days after the Developer notifies the Authority of the Developer's proposed Land Transfer Closing Date or, if such 45th day is a Saturday, Sunday or legal holiday, the next business day following such 45th day.

“**Market Value**” means the market value of real property as determined by the assessor of the County in accordance with Minnesota Statutes, Section 273.11 (or as finally adjusted by any assessor, board of equalization, commissioner of revenue, or any court).

“**Maximum TIF Note Amount**” has the meaning set forth in Section 9.2.

“**Memorandum of Agreement**” means the document described in Section 15.13 and in the form shown in Exhibit N.

“**Minimum Improvements**” means the components of the Project which are described in Section 5.1(a).

“**Minimum Improvements Area**” means the South Site and the land on which the North Site Commercial Elements are to be constructed. The TIF District covers a larger area than the Minimum Improvements Area.

“**Mortgage**” has the meaning set forth in Section 10.1(a).

“**Ninety Percent Plans**” has the meaning set forth in Section 6.3(b)(ii).

“North Ramp” means the existing parking ramp located on the North Site.

“North Ramp Improvements” means the North Ramp Improvements (Initial) and the North Ramp Improvements (Final).

“North Ramp Improvements (Final)” means (i) the final finish work for a fourth parking deck to the North Ramp added as part of the North Ramp Improvements (Initial) and related structural improvements; (ii) a new stairway and elevator to service all four parking levels, to be located on a part of the Vacant Site; and (iii) three (3) levels of additional structured parking to the North of the North Site Commercial Elements on each of the Hooten Site and Vacant Site, integrated with and accessible through the North Ramp, which upon completion the North Ramp will contain approximately 573 parking stalls, of which approximately 311 will be new parking stalls.

“North Ramp Improvements (Initial)” means structural reinforcing of the North Ramp required as a precondition to completion of the North Ramp Improvements (Final) and the addition of a fourth level parking deck to the North Ramp, and corresponding stairway as determined by the Authority and specified by the Architect.

“North Site” means that part of the Project Area generally known as the North Ramp, the Vacant Site and the Hooten Site, each as legally described on Exhibit A-1.

“North Site Budget” has the meaning set forth in Section 6.4(a) and as shown on Exhibit L.

“North Site Commercial Construction Cost” has the meaning set forth in Section 6.4(a).

“North Site Commercial Construction Deposit” has the meaning set forth in Section 6.4(b).

“North Site Commercial Elements” means the two spaces to be used for commercial purposes which are to be located on the North Site, together containing approximately 9,084 square feet of commercial space, and each constituting a separately platted lot, as shown on the Project Site Plan.

“North Site Improvements” means North Ramp Improvements and the North Site Commercial Elements.

“North Site Operating Easement” means the reciprocal easement agreement to be entered into by the Developer and City pursuant to Section 6.3(e).

“North Site Plans” has the meaning set forth in Section 6.3(b)(i).

“North Site Purchase Price” has the meaning set forth in Section 4.1.

“North Site Transfer” has the meaning set forth in Section 4.1.

“Plaza Easement” has the meaning set forth in Section 5.7(a)(i).

“Project” means the Minimum Improvements and the North Ramp Improvements under this Agreement.

“Project Area” means the North Site and the South Site.

“Project Excess Percentage” has the meaning set forth in Section 8.3(b).

“Project Redevelopment Costs” means those Qualified Redevelopment Costs set forth in Section 8.2 and subject to reimbursement under Section 8.2.

“Project Site Plan” is attached as Exhibit A.

“Project TIF Adjustment” has the meaning set forth in Section 8.3(b)(ii).

“Project Timeline” means the timeline established in Section 7.1.

“Qualified Redevelopment Activities” mean the Project-related activities eligible for TIF Assistance, as authorized by this Agreement and the TIF Act.

“Qualified Redevelopment Costs” means the Project Redevelopment Costs specified in Section 8.2, related to the Developer’s Qualified Redevelopment Activities to be paid by the Developer from the Developer sources and in specific cases reimbursed by Available Tax Increment, which costs and expenses as approved herein are set forth in the TIF Pro Forma.

“Redevelopment Plan” means the redevelopment plan to be adopted by the Authority in accordance with Minnesota Statutes, Section 469.027 and approved by the City Council in accordance with Minnesota Statutes, Sections 469.028 and 469.175, subdivision 3.

“Release” means the spilling, leaking, disposing, discharging, emitting, depositing, ejecting, leaching, escaping or any other release, however defined, whether intentional or unintentional, of any Hazardous Material.

“Remediation Costs” mean any and all costs, expenses and fees incurred to conduct actions required by a governmental entity under Environmental Law to: (i) clean up, remove, treat, or in any other way address any Release of Hazardous Material; (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Materials; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care relating to a Release.

“Reverter Closing Date” means thirty (30) days after the Developer’s receipt of the Authority’s notice exercising the Authority’s right of reverter for the South Site as set forth in Section 4.6.

“Reverter Deed” means the limited warranty claim deed through which the Developer will convey the South Site and any improvements thereon back to the Authority upon the Authority’s exercise of its right of reverter as set forth in Section 4.6.

“Serviced Buildings” has the meaning set forth in Section 5.6.

“**Shared Plaza Element**” means an outdoor plaza (approximately 34,000 square feet in area) open and accessible to the public (subject to the terms of the Plaza Easement) as set forth in the Final Development Plan and as generally depicted in Exhibit O.

“**Shared Trash Facility**” has the meaning set forth in Section 5.6.

“**South Site**” means that part of the Project Area generally depicted on the Project Site Plan, each parcel of which is legally described on Exhibit A-1.

“**South Site Commercial Elements**” means each discrete commercial space to be constructed on the South Site, which collectively shall contain approximately 24,448 square feet of commercial space as will be specified in the Final Plans.

“**South Site Purchase Price**” has the meaning set forth in Section 4.1.

“**South Site Transfer**” has the meaning set forth in Section 4.1.

“**South Site Vertical Improvements**” means the UG Parking Element, the Shared Plaza Element, the South Site Commercial Elements, and the Apartment Element.

“**State**” means the State of Minnesota.

“**Tax Increment**” means the tax increment from the TIF District as calculated in accordance with the TIF Act.

“**Tax Official**” means any City or County assessor; County auditor; City, 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.

“**TIF**” means tax increment financing.

“**TIF Act**” means Minnesota Statutes, Sections 469.174 to 469.1799, as amended.

“**TIF District**” or “**District**” means the 50th and France 2 Tax Increment Financing District, which includes the Project Area, as depicted on the Project Site Plan.

“**TIF Note**” or “**Note**” means the TIF Note to be issued by the Authority to the Developer, in the form attached hereto as Exhibit G to pay or reimburse the Developer for the funding of Qualified Redevelopment Costs.

“**TIF Plan**” means the TIF plan to be adopted by the Authority in accordance with Minnesota Statutes, Section 469.175.

“**TIF Pro Forma**” means the detailed TIF pro forma attached as Exhibit D.

“**Transfer**” means any sale, assignment, conveyance, or transfer in any other mode or form of the Developer’s rights under this Agreement or title to the Minimum Improvements Area or any contract or agreement to do any of the same, to any person or entity. The term “Transfer” also includes the sale, assignment, conveyance or transfer in any other mode or form of a

controlling voting interest in the Developer; provided, however, (i) the transfer of financial rights or interests; (ii) the sale or addition of new members or capital of the Developer; or (iii) a joint venture; that do not result in the change of controlling interest of the Developer, do not constitute a Transfer under the terms of this Agreement.

“Trash Facility Easement” has the meaning set forth in Section 5.7(a)(ii).

“UG Parking Easement” has the meaning set forth in Section 5.7(a)(iii).

“UG Parking Element” means construction of two levels of underground parking below the South Site Vertical Improvements, containing approximately 270 parking stalls, including the UG Parking Element (Public) and the parking required under the Final Plans to serve the Apartment Element.

“UG Parking Element (Public)” means approximately 128 parking stalls of the UG Parking Element will be available to the general public and located on the first level below grade and subject to the UG Parking Easement.

“Unavoidable Delays” means delays, outside the control of the party claiming its occurrence, which are the direct result of (a) unusually severe or prolonged bad weather, (b) acts of God, acts of war, civil unrest, terrorism, criminal conduct of third parties, fire or other casualty to the Project, (c) litigation commenced by third parties which directly results in delays, (d) actions or inactions of any federal, State, or local government unit which directly result in delays, (e) strikes, other labor trouble, (f) delays in delivery of materials, or (g) soil conditions within the Minimum Improvements Area.

“Vacant Site” means that part of the North Site generally known as 3930 49 1/2 Street West and legally described on Exhibit A-1.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

(a) The City is a Minnesota municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder. The City has duly authorized the execution, delivery and performance of this Agreement.

(b) There is not pending, nor to the best of the City’s knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that may materially and adversely affect the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder or as contemplated hereby, or the validity or enforceability of this Agreement.

(c) To the best of the City’s knowledge and belief, no member of the City Council or officer of the City, has either a direct or indirect financial interest in this Agreement, nor will any

City Councilmember or officer of the City, benefit financially from this Agreement within the meaning of Minnesota Statutes, Section 469.009, as amended.

(d) The City will reasonably cooperate with the Developer with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the City to incur costs, except as otherwise provided in this Agreement or elsewhere.

(e) The execution, delivery and performance of this Agreement, and any other documents, instruments or actions required or contemplated pursuant to this Agreement by the City does not, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not conflict with or constitute on the part of the City a breach of or default under any existing agreement or instrument to which the City is a party or violate any law, charter or other proceeding or action establishing or relating to the establishment and powers of the City or its officers, officials or resolutions.

Section 2.2 Representations, Warranties and Covenants of the Authority. The Authority makes the following representations, warranties and covenants:

(a) The Authority is a public body corporate and politic and a governmental subdivision of the State, duly organized and existing under State law and the Authority has the authority to enter into this Agreement and carry out its obligations hereunder.

(b) Except as provided in this Agreement, and provided that the Authority will fund fiscal disparities from within the TIF District, in accordance with Minnesota Statutes, Section 469.177, subdivision 3, the Authority agrees to retain all of the captured net tax capacity of the Minimum Improvements Area to finance the Qualified Redevelopment Costs as provided in this Agreement, and will elect that the duration of the District will be the maximum duration permitted by the TIF Act. The Authority will not voluntarily take any action to reduce the amount of captured tax capacity retained to finance the Qualified Redevelopment Costs or to reduce the duration of the District until the amount paid to the Developer from Available Tax Increment reaches the maximum amount specified in Section 9.2.

(c) The execution, delivery and performance of this Agreement and any other documents or instruments required pursuant to this Agreement by the Authority does not, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not, conflict with or constitute on the part of the Authority a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound, (ii) legislative act, constitution or other proceeding establishing or relating to the establishment of the Authority or its officers or its resolutions, or (iii) any Minnesota statute or any provisions of any bond, debenture, loan agreement, regulation or order of the United States of America or the State, or any agency or political subdivisions thereof or any court order or judgment in any proceeding to which the Authority is or was a party by which it is bound.

(d) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that may materially and adversely affect

the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder or as contemplated hereby, or the validity or enforceability of this Agreement.

(e) To the best of the Authority's knowledge and belief, no member of the Board of the Authority or officer of the Authority, has either a direct or indirect financial interest in this Agreement, nor will any Commissioner of the Authority or officer of the Authority, benefit financially from this Agreement within the meaning of Minnesota Statutes, Section 469.009, as amended.

(f) The Authority will reasonably cooperate with the Developer with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the Authority to incur costs, except as otherwise provided in this Agreement or elsewhere.

(g) The Authority owns the Project Area.

(h) The Authority does not know of any wells located on the South Site or the North Site.

(i) To the best of the Authority's knowledge any sewage generated on the South Site or the North Site goes to a facility permitted by the Minnesota Pollution Control Agency and there are no active or abandoned individual sewage treatment systems located on or serving all or any part of the South Site or the North Site.

(j) To the best of the Authority's actual knowledge, neither the South Site nor the North Site have been used for reproduction of methamphetamine.

(k) Promptly following the execution of this Agreement, the City and the Authority will provide the Developer with copies of any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the City or Authority and not previously delivered to the Developer.

(l) From and after the Effective Date until the Land Transfer for the South Site, the Authority will not create, suffer or assume any encumbrance on title to the South Site without the Developer's written consent.

(m) From and after the Effective Date until the Land Transfer Closing for the North Site, the Authority will not create, suffer or assume any encumbrance on title to the property on which the North Site Commercial Elements will be located without the Developer's written consent.

Section 2.3 Representations, Warranties and Covenants of the Developer. The Developer represents, warrants and covenants that:

(a) The Developer is a limited liability company organized and in good standing under the laws of the State of Minnesota, is qualified to do business in the State, is not in violation of any provisions of its operating agreement or other organizational documents or the

laws of the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.

(b) The execution and delivery of this Agreement and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any material terms or conditions of the Developer's organizational documents, any restriction or any agreement or instrument to which the Developer is now a party or by which it is bound or to which any property of the Developer is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or Federal regulatory body having jurisdiction over the Developer or its properties, including its interest in the Minimum Improvements, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Developer contrary to the terms of any instrument or agreement to which the Developer is a party or by which it is bound.

(c) To the best of the Developer's knowledge and belief, the execution and delivery of this Agreement will not create a conflict of interest prohibited by Minnesota Statutes, Section 469.009, as amended.

(d) The Developer would not acquire the Minimum Improvements Area or construct the Minimum Improvements, but for the execution of this Agreement and the TIF Assistance for the Qualified Redevelopment Costs and other public assistance contemplated to be made available hereunder.

(e) The Developer will reasonably cooperate with the City and the Authority with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the Developer to incur costs, except as otherwise provided in this Agreement or elsewhere.

(f) There are no pending or threatened legal proceedings, of which the Developer has notice, contemplating the liquidation or dissolution of the Developer or threatening its existence, or seeking to restrain or enjoin the transactions contemplated by the Agreement, or questioning the authority of the Developer to execute and deliver this Agreement or the validity of this Agreement.

(g) The Developer reasonably expects that it will be able to obtain private financing in an amount sufficient, together with funds provided by the Authority and any other public agencies, to enable the Developer to successfully construct the Minimum Improvements, as provided herein.

ARTICLE III

LAND USE AND DEVELOPMENT CONTROLS

Section 3.1 Restrictions on Development. The Developer may not demolish the Center Ramp or construct or permit construction of any Minimum Improvements (i) unless, as of the date of demolition allowed under Section 3.4, the Developer has not received any Notice of

Default in the performance of its obligations under the Development Contract and (ii) until Developer satisfies the following conditions:

(a) The Developer acquires fee title to the South Site in accordance with Article IV; and

(b) The Developer obtains City approval of the Final Development Plan, the City and the Developer execute and record the Development Contract and, subject to the subordination provisions of Section 10.6, the Developer causes any lien holder with a Mortgage on the South Site to subject its interest in the South Site to the terms of this Agreement and the terms of the Development Contract.

Section 3.2 Zoning and Land Use Approvals. Nothing in this Agreement shall limit the authority of the City with respect to zoning and land use approvals. Subject to the foregoing, the staff of the City and the Authority shall cooperate with the Developer and assist the Developer in the processing and obtaining of zoning and land use approvals. The Developer shall be responsible for applying for and obtaining all land use and zoning approvals necessary for the Minimum Improvements, including, without limitation, the conditions contained in the Final Development Plan and the Development Contract. All zoning and land use approvals shall be by the City Council or the City Planning Commission in accordance with the ordinances of the City.

Section 3.3 Building and Construction Permits. Nothing in this Agreement shall limit the governmental authority of the City with respect to its building and construction permitting process for the Minimum Improvements. The Developer shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits prior to construction.

Section 3.4 Demolition Timing. Subject to Section 3.1, the Developer may demolish the Center Ramp on or after the earlier to occur of the following dates: (a) Completion of the North Ramp Improvements (Initial); or (b) April 1, 2018. If demolition of the Center Ramp occurs before Completion of the North Ramp Improvements, Developer must provide temporary parking solutions until April 24, 2018. If Completion of the North Ramp Improvements has not occurred by April 24, 2018, the Authority, the City and the Developer must negotiate in good faith to provide mutually acceptable temporary parking solutions for the 50th and France District.

Section 3.5 City/Authority Approval. Unless the City Council determines otherwise in its discretion, whenever this Agreement provides for approval by the City or the Authority, such approval shall be given by, respectively, the City Manager or the Executive Director of the Authority (or in either case his/her designee), unless (a) this Agreement explicitly provides for approval by the City Council or the Board of the Authority, (b) approval by the Council or Board is required by law or (c) the approval, in the opinion of the City Manager or the Executive Director, would result in a material change in the terms of this Agreement.

ARTICLE IV

TRANSFER OF PROJECT LAND

Section 4.1 Project Area Acquisition by the Developer.

(a) Property. Subject to the terms and conditions of this Agreement, the Authority will sell and convey to the Developer, and the Developer will purchase and accept from the Authority, fee ownership of the South Site (“South Site Transfer”) and fee ownership of the North Site Commercial Elements (“North Site Transfer”, and together with the South Site Transfer, each a “Land Transfer”).

(b) Time and Place. Subject to the terms and conditions of this Agreement, each Land Transfer Closing shall be on the applicable Land Transfer Closing Date and will be closed through an escrow arrangement with Escrow Agent.

(c) Purchase Prices. The purchase price for the South Site is \$5.1 million (the “South Site Purchase Price”) and the purchase price for the North Site Commercial Elements is \$1.0 million (the “North Site Purchase Price”). The Authority will place the net amount of the South Site Purchase Price and the amount of the North Site Commercial Construction Deposit in escrow with the Escrow Agent and direct the Escrow Agent to hold and disburse those amounts to the Authority to pay construction costs for the North Site Improvements in accordance with Article VI hereof and the Construction Management Agreement.

(d) Title and Survey. The Developer shall be responsible for performing any and all title and survey examination or due diligence of the Project Area that the Developer deems prudent, at the Developer’s sole cost and expense. The Authority will provide marketable title to the South Site and to the North Site Commercial Elements at each respective Land Transfer Closing, but the Authority is otherwise not providing any representations or warranties as to the condition of title and Developer expressly waives any claims the Developer may have against the Authority in connection with any title defects. Notwithstanding the foregoing, the Authority agrees to reasonably cooperate with Developer to cure any title defects that may exist before each respective Land Transfer Closing.

Section 4.2 Contingencies to the Land Transfer Closing for the South Site. The Authority’s and the Developer’s obligations to close on the South Site Transfer is conditioned upon:

(a) Authority Contingencies. The Authority’s obligation to close on the South Site Transfer is expressly conditioned upon each of the following contingencies being satisfied or waived on or before the Land Transfer Closing Date for the South Site Transfer:

(i) The Developer shall have performed all of the obligations this Agreement expressly requires the Developer to perform on or before the Land Transfer Closing Date for the South Site, and the Developer shall not be in Default under the Development Contract or this Agreement.

(ii) The Developer shall have delivered to the Authority all of the documents to be delivered by the Developer and described in Section 4.4(b).

(iii) The Developer shall have delivered a copy of the Financing Commitment and the Go-Ahead Letter to the Authority and the Authority shall have approved the Financing Commitment.

(iv) The City shall have approved the Final Development Plan, subject only to the Developer's acquisition of the South Site and the City and the Developer shall have executed the Development Contract.

(v) The Developer shall have entered into the Center Ramp Lease.

(vi) The Parties shall have entered into a mutually acceptable North Site Operating Agreement.

(b) Developer Contingencies. The Developer's obligation to close on the South Site Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The City and Authority shall have performed all of the obligations required to be performed by the City and Authority under this Agreement as of the Land Transfer Closing Date for the South Site (including, but not limited to, completing the Hooten Work) and shall not be in Default under this Agreement; provided further that the City shall not be in Default under the Development Contract.

(ii) The Authority shall have delivered to the Developer all of the documents to be delivered by Authority and described in Section 4.4(a).

(iii) The Authority shall have approved the Financing Commitment.

(iv) The City shall have approved the Final Development Plan, subject only to the Developer's acquisition of the South Site and the City and the Developer shall have executed the Development Contract.

(v) The Developer shall have examined title to the South Site and the North Site; shall have determined that title to the South Site is and title to the North Site Commercial Element will be acceptable to the Developer in the Developer's reasonable discretion, and Escrow Agent shall be irrevocably committed to issuing to the Developer a 2006 ALTA Owner's Policy of Title Insurance upon the Land Transfer Closing for the South Site insuring the Developer's title to the South Site subject only to exceptions which are acceptable to the Developer in the Developer's reasonable discretion.

(vi) The Developer shall have conducted such investigations as to the environmental and geotechnical condition of the South Site and the North Site Commercial Element and shall have investigated the condition of the improvements located on the South Site and the North Site Commercial Element (if any) and shall be satisfied with the results of such investigations in the Developer's reasonable discretion.

(vii) The representations and warranties of the City and the Authority shall be true and correct as the Land Transfer Closing for the South Site.

(viii) The Authority shall have entered into the Center Ramp Lease.

(ix) The Parties shall have entered into a mutually acceptable North Site Operating Agreement.

(x) The Authority shall have entered into the Affordable Housing Loan Agreement.

(c) Authority and Developer Options. In the event that any of the foregoing contingencies are not satisfied on or before the Land Transfer Closing Date for the South Site Transfer, the Developer or the Authority, as the case may be, must:

(i) terminate this Agreement by written notice to the other party; or

(ii) waive such failure and proceed to close.

Section 4.3 Contingencies to the Land Transfer Closing for the North Site. The Authority's and the Developer's obligations to close on the North Site Transfer is conditioned upon:

(a) Authority Contingencies. The Authority's obligation to close on the North Site Commercial Elements is expressly conditioned upon each of the following contingencies being satisfied or waived as of the Land Transfer Closing Date for the North Site Transfer:

(i) Developer shall have performed all of the obligations required to be performed by Developer under this Agreement, including payment in full of the North Site Commercial Construction Cost by the Developer.

(ii) No Event of Default by the Developer shall exist under the terms of this Agreement or the Development Contract.

(iii) The Developer shall have delivered to the Authority all of the Developer Documents described in Section 4.4(b).

(b) Developer Contingencies. The Developer's obligation to close on the North Site Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) No City Event of Default or Authority Event of Default shall exist under the terms of this Agreement or the Development Contract.

(ii) The Authority shall have delivered to the Developer all of the Authority Documents described in Section 4.4(b).

(iii) The Developer shall have examined title to the North Site; shall have determined that title to the North Site Commercial Element has not been subject to any new defects or encumbrances since the Developer's initial review of title that are not acceptable to the Developer in the Developer's reasonable discretion, and Escrow Agent shall be irrevocably committed to issuing to the Developer a 2006 ALTA Owner's Policy of Title Insurance upon the Land Transfer Closing for the North Site Commercial Element insuring the Developer's title to the North Site Commercial Element subject only to exceptions which are acceptable to the Developer in the Developer's reasonable discretion.

(iv) The representations and warranties of the City and the Authority shall be true and correct as the Land Transfer Closing for the North Site Commercial Elements.

(v) The Authority shall have delivered, at the Land Transfer Closing Date for the North Site Transfer, a Certificate of Completion for the North Site Commercial Elements.

(c) Authority and Developer Options. In the event that any of the foregoing contingencies are not satisfied on or before the Land Transfer Closing Date for the North Site Commercial Elements, the Developer or the Authority, as the case may be, must:

(i) terminate this Agreement by written notice to the other party; or

(ii) waive such failure and proceed to close.

Section 4.4 Land Transfer Closings. Each Land Transfer will close, as outlined herein:

(a) Authority Documents. At the relevant Land Transfer Closing, the Authority shall execute, where appropriate, and deliver all of the following (collectively, the "Authority Documents"):

(i) A Deed properly executed on behalf of the Authority conveying the South Site or the North Site Commercial Elements, as applicable, to the Developer, together with any other documents reasonably required to be delivered by the Authority.

(ii) A Minnesota Uniform Conveyancing Blank Form 50.1.3 Affidavit Regarding Business Entity.

(iii) A resolution of the Authority's Board authorizing Authority's execution and delivery of the Deed and identifying the individuals authorized to execute the Deed on behalf of the Authority.

(iv) A non-foreign affidavit containing such information as required by Internal Revenue Code Section 1445(b)(ii) and any regulations relating thereto.

(v) A Minnesota Well Disclosure Certificate unless the Deed includes this Statement: “Seller certifies that Seller does not know of any wells on the described real property.”

(vi) Such information as required by Buyer or Escrow Agent to permit Buyer or Escrow Agent to file an electronic certificate of real estate value.

(vii) At the Land Transfer Closing for the South Site, the Development Contract properly executed on behalf of the City.

(viii) A settlement statement reflecting the financial provisions of the applicable Land Transfer Closing, consistent with the provisions of this Agreement.

(ix) On the Land Transfer Closing Date for the North Site Commercial Elements, the Authority will cause to be delivered to Developer any and all monies remaining from the North Site Commercial Construction Deposit in the control of Escrow Agent for the Project.

(x) Any other items required by this Agreement or reasonably requested by the Escrow Agent or the Developer for the applicable Land Transfer Closing for the applicable Land Transfer Closing including, with respect to the North Site Land Transfer, a standard form Mechanic’s Lien Indemnity if required by Escrow Agent as a condition of insuring Developer’s title to the North Site Commercial Elements without exception for mechanic’s lien claims.

(xi) At the Land Transfer Closing for the North Site Commercial Elements, a registered land survey sufficient to describe, for purposes of that Land Transfer Closing, the North Site Commercial Elements.

(b) Developer Documents. At the relevant Land Transfer Closing, the Developer shall execute, where appropriate, and deliver all of the following (collectively, the “Developer Documents”):

(i) On the Land Transfer Closing Date for the South Site, the South Site Purchase Price by wire transfer of immediately available funds to the Escrow Agent.

(ii) On the Land Transfer Closing Date for the North Site, the North Site Purchase Price by wire transfer of immediately available funds to the Escrow Agent.

(iii) Such affidavits of the Developer or other documents as may be reasonably required by the Escrow Agent (including a Certificate of Real Estate Value) to record the Authority Documents and issue any title insurance policy required by the Developer.

(iv) a resolution of the members or manager of the Developer authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by an officer of the Developer.

(v) A settlement statement reflecting the financial provisions of the applicable Land Transfer Closing, consistent with the provisions of this Agreement.

(vi) Any other items required by this Agreement or reasonably requested by the Escrow Agent or the Authority or City for the applicable Land Transfer Closing.

(c) Prorations. The Authority and the Developer shall make the following prorations and allocations of costs and expenses of each Land Transfer:

(i) The Developer will be responsible for its and the City Parties' legal, accounting and other expenses associated with the Land Transfers. The Authority will be responsible for any document recording fees required for correction of title. The Developer will be responsible for all document recording fees (including the Deeds), fees associated with the transfer or obtaining of licenses and permits required to operate the Project, title examination costs and title insurance premiums and the cost of its ALTA survey. The Developer will be responsible for all costs and expenses associated with the creation of the Final Plat for the South Site (if any), and the Authority will be responsible for all costs and expenses associated with the creation of the Final Plat for the North Site. The Developer will pay the closing fee and any escrow fees imposed by the Escrow Agent in connection with the Land Transfers.

(ii) The Developer shall pay the state deed tax due on each Deed to be delivered by Authority under this Agreement.

(iii) The Developer shall pay the cost of recording each Deed and all other documents.

(iv) All utility charges will be prorated to applicable Land Transfer Closing Date.

(v) All costs incidental to each Land Transfer Closing not otherwise specifically allocated in this Agreement shall be allocated in accordance with the custom and practice for similar transactions in the area in which the Project is located.

(d) "AS IS" Sale. THE DEVELOPER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE MINIMUM IMPROVEMENTS AREA "AS IS," AND "WITH ALL FAULTS," AFTER SUCH INSPECTION, ANALYSIS, EXAMINATION AND INVESTIGATION THE DEVELOPER CARES TO MAKE AND EXPRESSLY WITHOUT COVENANT, WARRANTY OR REPRESENTATION BY EITHER CITY PARTY AS TO PHYSICAL OR ENVIRONMENTAL CONDITION, TITLE, LEASES, RENTS, REVENUES, INCOME, EXPENSES, OPERATION, FLOOD PLAIN, SHORELAND, WETLANDS, ZONING OR OTHER REGULATION, COMPLIANCE WITH LAW, SUITABILITY FOR PARTICULAR PURPOSES, ALL OTHER MATTERS WHICH THE DEVELOPER DEEMS RELEVANT TO ITS PURCHASE OF THE MINIMUM IMPROVEMENTS AREA OR ANY OTHER MATTERS WHATSOEVER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT

Section 4.5 Land Transfer Environmental Liability. The City Parties agree that Developer will bear no responsibility or liability to the City Parties for any Hazardous Material identified on the transferred parcel after the transfer that is determined by a preponderance of evidence to have been Released prior to the transfer, provided, however, that the City Parties will bear no such responsibility or liability if Developer in constructing the Minimum Improvements undertakes actions that Release or exacerbate the Release of any Hazardous Material present on the transferred parcel prior to the transfer.

Section 4.6 South Site Right of Reverter.

(a) If the Developer fails to cause the Commencement of construction of the South Site Vertical Improvements by December 31, 2018, or such later date than may be established pursuant to the terms of this Agreement if Commencement is subject to an Unavoidable Delay then the Authority may, in addition to such other rights and remedies that are available to the Authority hereunder, require that the South Site be transferred back to the Authority. The Authority may, but shall not be obligated to, cause the Developer to reconvey the South Site and all improvements thereon to the Authority by giving the Developer notice of the Authority's exercise of its right of reverter pursuant to this Section. Such notice shall be subject to the notice and right to cure provisions in Article XIV. The right of reverter under this section for the South Site shall terminate and no longer be of any force and effect upon the Commencement of the South Site Vertical Improvements. The Authority agrees to execute and deliver to the Developer a recordable release of its right of reverter, in a form reasonably acceptable to the Developer, within ten (10) days after Commencement of the South Site Vertical Improvements. The Authority will agree to subject such reversion rights to one or more Mortgages securing one or more loans the proceeds of which are used to finance the Developer's acquisition of the South Site, construction of the Minimum Improvements, or both.

(b) On the Reverter Closing Date, the Developer will convey fee title to the South Site and all improvements thereon to the Authority by the Reverter Deed, as follows:

(i) The Authority will pay the Developer \$1.00 as consideration for receiving the Reverter Deed;

(ii) The Developer will convey the South Site and any improvements thereon to the Authority free and clear of all encumbrances other than encumbrances that existed when the Authority conveyed the South Site to the Developer and easements or other encumbrances which the Authority or the City has previously approved in writing;

(iii) Upon the Developer's delivery of the Reverter Deed to the Authority, this Agreement shall terminate, the Developer shall have no further rights to the South Site or any improvements thereon, and neither the City, the Authority or the Developer will have any rights or obligations under this Agreement other than obligations which, by the express terms of this Agreement, expressly survive a termination of this Agreement;

(iv) On or before the Reverter Closing Date, the Developer will execute and deliver to the Authority a Minnesota Uniform Conveyancing Blank Form 50.3.1 Affidavit Regarding Business Entity confirming that there has been no labor or materials

provided to the South Site since the Authority's conveyance of the South Site to the Developer for which payment has not been made; and

(v) The Developer shall deliver an updated title insurance commitment to the Authority evidencing the status of title to the South Site.

Section 4.7 Center Ramp Lease. Upon the Land Transfer Closing Date for the South Site, the Developer and the Authority will execute the Center Ramp Lease substantially in the form shown in Exhibit E.

ARTICLE V

CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 5.1 Minimum Improvements.

(a) The Developer will cause to be constructed the following Elements, which are collectively referred to herein as the "Minimum Improvements" and are depicted in the Project Site Plan attached as Exhibit A:

- (i) the Apartment Element;
- (ii) the South Site Commercial Elements (including the Shared Trash Facility);
- (iii) the UG Parking Element; and
- (iv) the Shared Plaza Element.

(b) The Developer will construct the Minimum Improvements consistent with this Agreement and the Final Development Plan and Development Contract.

(c) The Developer, the City and the Authority anticipated that upon completion, the Minimum Improvements will have a Market Value of approximately \$52 Million.

(d) Prior to Commencement of the Minimum Improvements, the Developer shall specify an individual to serve as a business liaison to the residents and businesses located within the 50th & France District. This business liaison will be an effective and professional communicator that will (1) provide an electronic update at least weekly available to the residents and business owners located within the 50th & France District and (2) will be generally be available on at least a weekly basis to answer questions residents and business owners located within the 50th & France District from Commencement through issuance of a Certificate of Completion for the Minimum Improvements.

Section 5.2 Submission and Approval of Evidence of Financing. Following approval of the Final Development Plan, but no later than December 1, 2017, the Developer shall provide the Go-Ahead Letter, substantially in the form shown in Exhibit P, or this Agreement shall terminate unless agreed to otherwise by the Parties.

Section 5.3 Construction and Inspection of Minimum Improvements. The Developer will construct the Minimum Improvements according to the Final Development Plans and Development Contract in all material respects. Prior to delivery of the Certificate of Completion to the Developer, upon the request of the Authority, the Developer will, after reasonable advance notice from the Authority, provide the Authority and the City with reasonable access to the Minimum Improvements Area to inspect the Minimum Improvements. Prior to delivery of the Certificate of Completion, the Developer will deliver monthly progress reports to the Authority.

Section 5.4 Effect of Delay. The Developer acknowledges that if construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, this could affect the amount of Available Tax Increment and thus the total amount which may be available to pay the TIF Note. The Developer acknowledges that if the Completion of the construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, there will be no compensation to the Developer or any other party for any reduction in the amount available to pay or refund the TIF Note.

Section 5.5 Additional Responsibilities of the Developer.

(a) The Developer will cause the Minimum Improvements to be constructed, operated and maintained in substantial accordance with the terms of this Agreement, the Final Development Plans and Development Contract, and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).

(b) The Developer will 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.

(c) The Developer will not construct any building or other structures on, over, or within the boundary lines of any public utility easement unless such construction is: provided for in such easement, approved by the utility involved, or approved by the City if no utility is then utilizing the easement area.

(d) The Developer will comply and cause its contractors to comply with all applicable Environmental Law as it relates to the Minimum Improvements Area and the Minimum Improvements.

Section 5.6 Shared Trash Facility. As part of the Minimum Improvements, the Developer will incorporate into the South Site Vertical Improvements a shared trash facility (the “Shared Trash Facility”) to be available for use by the North Site Commercial Elements, South Site Commercial Elements, and the existing buildings located on the city block bordered by 50th Street, Halifax Avenue, 49th 1/2 Street, and France Avenue (collectively the “Serviced Buildings”) pursuant to the terms of the Trash Facility Easement. The Shared Trash Facility will be located in the South Site Vertical Improvements in one or more areas determined by the Developer (subject to the reasonable prior approval of the City) and will be sized to

accommodate the trash, recycling, and organic disposal needs of the Serviced Buildings. Access to and use maintenance, cleaning, repair and replacement of the Shared Trash Facility will be governed by the Trash Facility Easement (defined below). The service provider for the Shared Trash Facility will be determined by the Developer, or its assignee, subject to the consent of the City, which consent shall not be unreasonably conditioned, delayed or withheld. The reasonable costs associated with that service provider will be processed by the City for inclusion within the 50th & France District commercial area maintenance assessments as specified in the City Code.

Section 5.7 City Easements.

(a) Prior to the issuance of a Certificate of Completion for the South Site Vertical Improvements, the Developer shall grant to the City the following easements with respect to the South Site (each a “City Easement”, and collectively the “City Easements”):

(i) A permanent, public easement for access and use of the Shared Plaza Element (the “Plaza Easement”). The Plaza Easement shall be granted pursuant to an easement agreement in the form attached as Exhibit B.

(ii) A permanent easement for access and use of the Shared Trash Facility (the “Trash Facility Easement”). The Trash Facility Easement shall be granted pursuant to an easement agreement in the form attached as Exhibit C.

(iii) A permanent, public easement for access, use and control of the UG Parking Element (Public) (the “UG Parking Easement”). The UG Parking Easement shall be granted pursuant to an easement agreement in the form attached as Exhibit D.

(b) The City will not pay an acquisition cost to the Developer for any of the City Easements. Each City Easement must be recorded by the Developer within seven (7) days after the City delivers each properly signed and notarized City Easement to the Developer. The Developer shall, at the Developer’s sole cost and expense, cause a licensed surveyor to determine the final, actual legal description of the Shared Plaza Element, the Shared Trash Facility, and the UG Parking Element (Public) for the purpose of the granting the City Easements with respect to such Elements. Such legal descriptions will be consistent with the areas and boundaries of the Shared Plaza Element, Shared Trash Facility and the UG Parking Element (Public) as described and depicted in the Final Development Plan and this Agreement.

(c) The Developer will consult with the City when designing the Shared Plaza Element, and the Developer and the City will work together in good faith to design a water feature that will avoid unreasonable future maintenance or repair costs to the City.

(d) Promptly following the Effective Date, Developer shall cause the Architect or a qualified engineer to perform a feasibility study with respect to the use of one or more breakthrough panels, such breakthrough panel or panels designed to accommodate, in aggregate, not less than two standard drive lanes (each approximately twelve (12) to fifteen (15) feet in width) (“Breakthrough Panels”), to be installed during the construction of the Public Parking Level for the purpose of facilitating potential future access from the Public Parking Level to a public or private underground parking facility constructed on property adjacent to the South Site (“Adjacent Parcel”). Such feasibility study shall consider, without limitation, (i) the cost of

incorporating said Breakthrough Panels in the construction of the UG Parking Element; (ii) the structural impact on the South Site Vertical Improvements, the UG Parking Element and the Shared Plaza Element of inclusion of the Breakthrough Panels and any connection to the Adjacent Parcel; (iii) the location and the cost and ability to relocate utility lines and facilities located between the UG Parking Element and the Adjacent Parcel; (iv) operational impacts on the South Site Vertical Improvements, including the UG Parking Element, arising from the construction or operation of a connection between the Public Parking Level and the Adjacent Parcel, including utility interruptions and adverse traffic effects (“Feasibility Study”). The Developer shall use commercially reasonable efforts deliver the Feasibility Study to the Authority within sixty (60) days after the Effective Date. Thereafter, the parties will promptly review the Feasibility Study. If the Feasibility Study concludes that the Breakthrough Panels are not feasible (due to excessive cost, construction constraints, or otherwise) and the Authority agrees with such conclusion, the Developer will not be required to incorporate the Breakthrough Panels in the UG Parking Element. If the Developer and the Authority, each exercising their reasonable judgment, disagree about the conclusions of the Feasibility Study, or following review of the Facility Study otherwise disagree about whether the Breakthrough Panels can or should be incorporated into the UG Parking Element, the parties shall promptly meet and work together in good faith to expeditiously determine a resolution to such issues so as not to delay progress of the design and construction of the Project.

Section 5.8 50th and France Commercial Area Maintenance Assessments. Each parcel in the South Site and North Site Commercial Elements will be assessed its respective share of the 50th & France District commercial area maintenance assessments as specified in the City Code.

Section 5.9 Certificate of Completion. The Developer shall notify the Authority when the final certificate of occupancy (exclusive of tenant build-outs) is received for all Elements of the South Site Vertical Improvements. Upon receipt of each such final certificate of occupancy and the Authority’s inspection of the applicable Element(s) for consistency with this Agreement as set forth in the Certificate of Completion, the Authority will furnish to the Developer a recordable Certificate of Completion in the form of Exhibit H, certifying the completion of all Elements of the South Site Vertical Improvements.

ARTICLE VI

CONSTRUCTION AND FINANCING OF NORTH SITE IMPROVEMENTS

Section 6.1 North Site Improvements. Subject to the contingencies set forth in Section 6.5, the Authority will cause the North Site Improvements to be constructed and will fund the North Ramp Improvements in accordance with this Agreement. The North Ramp, at all times, before, during, and after the construction of the North Ramp Improvements, will remain owned and operated by the Authority.

Section 6.2 Hooten Work. The Authority will cause the work described in this Section 6.2 (the “Hooten Work”) to be completed at its sole cost and expense (other than reimbursement from any available grant sources). The Authority will cause the Hooten Work to be completed no later than December 31, 2017.

(a) Demolition. The Authority will cause the building and other improvements located on the Hooten Site to be demolished and removed from the Project Area.

(b) Environmental Remediation. The Authority will cause the environmental remediation of the Hooten Site as described in detail in the Response Action Plan for the Former Hooten Cleaner Building prepared for the City by Barr Engineering dated March 1, 2017, and approved by the Minnesota Pollution Control Agency on April 11, 2017. The components of the environmental remediation described in detail in the approved Response Action Plan include, in general, demolishing existing buildings, removing the 560-gallon underground storage tank located underneath the out-building, excavating contaminated soil and disposing of the soil off site at a RCRA Subtitle D and MPCA-permitted landfill, backfilling the excavation with clean soil, and compacting the fill as needed to accommodate site redevelopment.

Section 6.3 Design and Construction of the North Site Improvements.

(a) Construction Manager. The Authority shall retain the Construction Manager for the North Site Improvements pursuant to the Construction Management Agreement, and shall cause the North Site Improvements to be designed and constructed. The design and construction of the North Site Improvements shall proceed as provided in this Article VI. The Authority intends to negotiate in good faith with the Developer on mutually acceptable terms of a Construction Management Agreement prior to retaining any other party as Construction Manager.

(b) Design.

(i) The design of the North Site Improvements will be as set forth in the Final Development Plan. The Authority has retained the Architect for the design of the North Site Improvements (“North Site Plans”). The North Site Plans will contain separate scopes for (A) the design of the North Ramp Improvements (Initial) (“North Ramp Improvements (Initial) Plans”) and (B) the design of the North Ramp Improvements (Final) and the North Site Commercial Elements.

(ii) The Authority shall direct the Architect to develop to approximately ninety (90) percent of final construction documents by (A) for the design of the North Ramp Improvements (Initial) and (B) for the design of the North Ramp Improvements (Final) and the North Site Commercial Elements no later than November 1, 2017 (the “Ninety Percent Plans”).

(c) Following completion of the bid packages, the Authority and the Developer shall, consistent with the Project Timeline, consult regarding a schedule for publication of the notice to bidders, award of contracts and Commencement of construction of the North Site Improvements. The Developer will coordinate with and consult with the Authority and the Construction Manager regarding coordination of the North Site Improvements and the Minimum Improvements.

(d) The Authority shall publish the call for bids and, upon receipt of bids, the Authority shall (A) award a contract for construction of North Ramp Improvements (Initial) and (B) award a contract for the North Ramp Improvements (Final) and the North Site Commercial

Elements to the respective lowest responsible bidder or bidders pursuant to the requirements of Minnesota Statutes and City ordinances and policy.

(e) North Site Retail. As part of the North Site Improvements, the Authority will cause the North Site Commercial Elements to be constructed to “gray box condition”. As used in this term sheet “gray box condition” means completion of a water-tight structure with structural roof and walls, roughed-in access to utilities and temporary doors and glazing, and excluding slab on grade floor, utility services or connections, and interior and exterior finishes. Prior to the issuance of the Certificate of Completion for the North Site Improvements, the Developer and the Authority shall enter into a reciprocal operating agreement in connection with the integrated construction the North Ramp Improvements and the North Site Retail Elements (the “North Site Operating Easement”). The North Site Operating Easement must be recorded by the Developer within seven (7) days after the North Site Operating Easement is delivered by the parties in accordance with this Section.

Section 6.4 Financing the North Ramp Improvements. Subject to the contingencies set forth in Section 6.5, the Authority will pay for the North Ramp Improvements as described in this Section 6.4.

(a) Budget. The anticipated cost of the North Site Improvements is set forth in Exhibit L (“North Site Budget”). The North Site Budget includes an estimated amount to construct the North Site Commercial Element to “gray box condition” (the “North Site Commercial Construction Cost”), which estimated amount will be paid by the Developer as provided below.

(b) Sources of Funds of the North Site Commercial Element. The Authority will notify the Developer of the date the Authority will Commence the North Site Improvements (Initial). At the Land Transfer Closing for the South Site, the Developer will deposit in escrow with Escrow Agent one hundred ten percent (110%) of the North Site Commercial Construction Cost (“North Site Commercial Construction Deposit”) to finance the Authority’s construction of the North Site Commercial Element. The North Site Commercial Construction Deposit will be held and disbursed pursuant to the Disbursing Agreement. If after having exhausted all Cure Rights, Authority has failed to Commence the North Ramp Improvements (Final) by the commencement date set forth in Section 7.1, as the same may be extended as a result of Unavoidable Delay, Escrow Agent will, upon written demand from Developer, disburse the North Site Commercial Deposit to Developer. If at any time during the course of construction of the North Site Improvements, the total of the unpaid disclosed cost of the North Site Commercial Elements exceeds the amount of the undisbursed amount of the North Site Commercial Construction Deposit, as calculated by subtracting the total amount previously disbursed by Title Company from the original amount of the North Site Commercial Construction Deposit, the Developer and City have agreed shall promptly meet and work together in good faith to determine on a mechanism to deposit with Title Company the sum necessary to make the available funds equal to the unpaid disclosed cost of the North Site Commercial Elements.

(c) Sources of Funds of the North Ramp Improvements. The Authority will make the following funds available for the design and construction of the North Ramp Improvements in accordance with the North Site Budget:

(i) The net amount of the North Site Commercial Construction Deposit which the Authority will deposit with Escrow Agent in accordance with Section 4.1.

(ii) The net amount of the South Site Purchase Price which the Authority will deposit with Escrow Agent in accordance with Section 4.1.

(iii) Following deposit of the amounts in (i) and (ii) above, up to \$4 million of existing TIF revenue from the Centennial Lakes TIF District (“Centennial Lakes Funds”), which the Authority will deposit with the Escrow Agent on a draw request basis following expenditure of the North Site Purchase Price and South Site Purchase Price.

(iv) The net amount of the North Site Purchase Price which the Authority will deposit with Escrow Agent in accordance with Section 4.1.

(d) Escrow and Disbursement. All sources of funds for the North Site Improvements that are to be deposited with the Escrow Agent in accordance with this Section 6.4 shall be deposited with and held by the Escrow Agent and disbursed for construction costs for the North Site Improvements in accordance with a Disbursing Agreement in the form attached as Exhibit I.

(e) Budget Overruns. Notwithstanding anything to the contrary contained herein, the Developer will accept the Authority’s necessary decisions to value engineer the North Ramp Improvements in order to not exceed the North Site Budget while maintaining all necessary requirements of the Final Development Plan.

(f) Amendment to Final Development Plan. The Authority reserves the right to seek an amendment to the Final Development Plan with respect to the North Site Improvements to accommodate adjacent development needs; provided such amendment will not adversely affect the Developer’s operation of or parking for the Minimum Improvements or reduce the square footage of the North Site Commercial Elements from the square footage identified in the Final Development Plan.

Section 6.5 North Ramp Improvements Contingencies.

The Authority has the obligation under this Agreement to construct the North Site Improvements in accordance with this Article VI; provided, however, such obligation of the Authority is expressly contingent upon, and the Authority will have no obligation to commence construction of the North Ramp Improvements until, (a) the Developer has completed the Land Transfer Closing for the South Site; (b) the Developer deposits the Retail Construction Deposit with Escrow Agent; and (c) the Developer has entered into the Center Ramp Lease.

ARTICLE VII

PROJECT TIMELINE AND DEFAULT

Section 7.1 Commencement and Completion of Project Elements. The Default Dates for Commencement and Completion of the South Site Vertical Improvements and the North Site Improvements are as set forth on the timeline below. Failure to satisfy Commencement or Completion obligations of the South Site Vertical Improvements and the

North Site Improvements by the applicable Default Date, as the same be extended pursuant to this Agreement as a result of Unavoidable Delay, shall be a Default under this Agreement. Following Commencement, construction of any Element must continue in a sequence consistent with normal construction practices.

Project Timeline		
Elements	Commencement	Completion
South Site Vertical Improvements	September 1, 2018	November 1, 2019
North Ramp Improvements (Initial)	February 1, 2018	May 24, 2018
North Ramp Improvements (Final)	May 25, 2018	November 1, 2018

ARTICLE VIII

THE DEVELOPER REIMBURSEMENT OBLIGATIONS; QUALIFIED REDEVELOPMENT COSTS; PERFORMANCE REVIEW

Section 8.1 Developer Reimbursement Obligations. The Developer is obligated to pay all reasonable out of pocket costs of the City and the Authority for the City Consultants in connection with the Project, including but not limited to costs of the development of this Agreement, the Redevelopment Plan, the TIF Plan and creation of the TIF District, the Final Development Plans, the Development Contracts, architectural and engineering studies for the Project, fiscal analysis, legal fees and all costs and expenses related thereto. The Developer must pay such costs monthly upon presentation of invoices and other documentation of such costs, not more than thirty (30) days after the request for payment is delivered to the Developer. All such costs will be Qualified Redevelopment Costs pursuant to the TIF Pro Forma.

Section 8.2 Project Redevelopment Costs.

(a) The Developer costs eligible for TIF Assistance as Project Redevelopment Costs include the following:

- (i) costs for the acquisition of the South Site and the North Site Commercial Element;
- (ii) soil correction costs, studies and improvements (including piling), and general site preparation for the South Site;
- (iii) demolition of the Center Ramp (reduced by any grant funds received for demolition);

- (iv) studies, remediation or abatement of environmental contamination for the South Site (including asbestos, lead based paint, and hazardous materials) (reduced by any grant funds received for the same);
- (v) architectural and engineering design fees for the South Site;
- (vi) sewer and water availability charges imposed by the City and the Metropolitan Council;
- (vii) relocation and updates to utilities serving the South Site and the North Site Commercial Element;
- (viii) landscaping, street lights, site lighting, and sidewalks included within the Project Area;
- (ix) hard costs for the construction of the UG Parking Element (Private);
- (x) reimbursement of predevelopment costs of the City/Authority paid by the Developer; and
- (xi) The Developer incurred professional fees related to (1) Final Development Plan approval, (2) Project TIF, (3) this Agreement, and (4) the Development Contract.

Section 8.3 TIF Lookback.

(a) Generally. The financial assistance to the Developer under this Agreement is based on certain assumptions regarding likely costs and expenses associated with constructing the Minimum Improvements. Specifically, the maximum aggregate principal amount of the TIF Note has been determined based on the amount of assistance needed to make the Project financially feasible, as shown in the TIF Pro Forma attached as Exhibit F. The Authority and the Developer agree that those assumptions will be reviewed at the times described in this Section, and that the amount of Tax Increment assistance provided herein may be adjusted in accordance with this Section.

(b) Lookbacks.

(i) Within thirty (30) days after a sale of any Element to a third party, the Developer shall submit a certified cost and revenue analysis for the sale of that Element to the Authority's financial advisor (Ehlers & Associates or a different financial advisor reasonably acceptable to the Authority) in the form of the TIF Pro Forma attached as Exhibit F hereto and prepared in accordance with generally accepted accounting principles. This analysis will include, without limitation, all acquisition costs, Project Redevelopment Costs, and all other improvements allocated to the Element subject to a sale. The Developer agrees to provide to the Authority and the Authority's consultant any reasonable and relevant background documentation related to the financial data, upon request. The Authority may retain an accountant to audit the submitted TIF Pro Forma, at the Developer's cost. In addition, within ninety (90) days from the fifteenth (15th) anniversary of the Effective Date the Developer shall submit an updated TIF Pro Forma

prepared in accordance with Section 8.3(b)(i) for all the Minimum Improvements, including any Elements previously sold to a third party, as of such date, which will be subject to the calculation of Project TIF Adjustment in Section 8.3(b)(iii). Notwithstanding the foregoing, if all Elements are sold to a third party prior to the fifteenth (15th) anniversary of the Effective Date, then the Developer will submit the updated TIF Pro Forma specified in Section 8.3(b)(iii) within ninety (90) days of the sale of the final Element. If so, the Authority will determine the Project Excess Percentage (if any) following receipt of the updated TIF Pro Forma and forego the review otherwise required following the fifteenth (15th) anniversary of the Effective Date.

(ii) The amount by which the actual IRR for a sale of an Element under 8.3(b)(i) or the actual IRR for all Minimum Improvements under 8.3(b)(ii), each as shown in an updated TIF Pro Forma required under Section 8.3(b)(i), exceeds an IRR of 22.0% will be referred to as “Project Excess Percentage”. The Developer must pay an amount equal to fifty percent (50%) of the Project Excess Percentage, up to a maximum amount equal to fifty percent (50%) of the TIF Note payments, to the Authority within thirty (30) days from the date that the Authority and the Developer agree in writing to the amount due to the Authority (the “Project TIF Adjustment”).

ARTICLE IX

TIF AND OTHER PUBLIC ASSISTANCE

Section 9.1 Creation of TIF District; Certification. The City and the Authority have taken all necessary actions to create and establish the Project Area as a “redevelopment district” under the TIF Act and have certified the TIF District to commence for the tax year 2020.

Section 9.2 TIF Note; Limitations on Reimbursement of Qualified Redevelopment Costs. The Authority will issue the TIF Note to the Developer upon the Land Transfer Closing Date of the South Site Transfer. Payment of Tax Increment under the TIF note will be fully conditioned upon the Developer providing evidence satisfactory to the Authority that (i) the Developer’s Qualified Redevelopment Costs equal at least the amount of the requested TIF Note; and (ii) a Certificate of Completion for the South Site has been recorded against the South Site; and all the conditions of Section 9.4 have been satisfied. Subject to satisfaction of the conditions in this Agreement, the Authority will issue the TIF Note to the Developer with a maximum original principal amount of \$10,100,000.00 (“Maximum TIF Note Amount”), plus interest on the unpaid principal balance thereof at a rate of 6% which shall be payable solely from Available Tax Increment from the Project. Accrual of interest on the unpaid principal balance of the TIF Note will commence upon receipt by the Authority from the Developer of evidence satisfactory to the Authority that Qualified Redevelopment Costs have been demonstrated. The Authority does not represent or warrant the amounts of Available Tax Increment that will be available for payment of the TIF Note. The Authority will not reimburse the Developer for the Qualified Redevelopment Costs from Authority revenues, other than from Available Tax Increment, nor guaranty the amount of money which the Developer will receive as a reimbursement, such amount being payable solely from the Available Tax Increment in accordance with this Section.

Section 9.3 Tax Increment Eligibility. If a Developer Event of Default occurs, the Authority may withhold payments due under the TIF Note until the Developer has cured the Default which gave rise to the Event of Default.

Section 9.4 Preconditions to Issuance of the TIF Note.

(a) The Authority will issue the TIF Note to the Developer upon satisfaction of the following conditions:

(i) The Developer has satisfied all conditions of Section 9.2;

(ii) receipt of an updated TIF Pro Forma sufficient to demonstrate that the “but for” finding adopted by the City and the Authority on June 20, 2017, continue to be satisfied; and

(iii) No Developer Event of Default exists under this Agreement or the Development Contract.

(b) Upon satisfaction of the conditions set forth in paragraph (a) above, the Authority will issue the TIF Note to the Developer. The principal amount of the TIF Note will be the amounts and at the interest rate set forth in Section 9.2.

Section 9.5 Assignment of TIF Note. The Developer may, without the City’s or the Authority’s consent, collaterally assign the Developer’s rights and obligations under this Agreement and the TIF Note to the holder of any Mortgage that is permitted under the terms of Section 10.1. Except as set forth above, the TIF Note shall not be assignable nor transferable without the prior written consent of the Authority; provided, however, that such consent shall be approved if:

(a) the assignee or transferee delivers to the Authority a written instrument acknowledging the limited nature of the Authority’s payment obligations under the TIF Note; and

(b) the assignee or transferee executes and delivers to the Authority a certificate, in form and substance reasonably satisfactory to the Authority, pursuant to which, among other things, such assignee or transferee represents:

(i) that the Note is being acquired for investment for such assignee’s or transferee’s own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof;

(ii) that the assignee or transferee has no present intention of selling, granting any participation in, or otherwise distributing the same;

(iii) that the assignee or transferee is an “accredited investor” within the meaning of Rule 501 of the Regulation D under the Securities Act of 1933, as amended;

(iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment in the Note and the assignee or transferee is able to bear the economic consequences thereof;

(v) that in making its decision to acquire the Note, the assignee or transferee has relied upon independent investigations made by the assignee or transferee and, to the extent believed by such assignee or transferee to be appropriate, the assignee's or transferee's representatives, including its own professional, tax and other advisors, and has not relied upon any representation or warranty from the Authority, or any of its officers, employees, agents, affiliates or representatives, with respect to the value of the Note;

(vi) that the Authority has not made any warranty, acknowledgment or covenant, in writing or otherwise, to the assignee or transferee regarding the tax consequences, if any, of the acquisition and investment in the Note;

(vii) that the assignee or transferee or its representatives have been given a full opportunity to examine all documents and to ask questions of, and to receive answers from, the Authority and its representatives concerning the terms of the Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the Note, and all such questions have been answered to the full satisfaction of the assignee or transferee;

(viii) that the assignee or transferee has evaluated the merits and risks of investment in the Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects;

(ix) that the Note will be characterized as "restricted securities" under the federal securities laws because the Note is being acquired in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be resold without registration under the Securities Act of 1933, as amended, except in certain limited circumstances; and

(x) that no market for the Note exists and no market for the Note is intended to be developed.

(c) Notwithstanding Sections (a) and (b) above, the Developer may transfer the Note to:

(i) any entity controlling, controlled by or under common control with the Developer; or

(ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in the Developer.

Section 9.6 Affordable Housing.

(a) The Developer covenants that at least ten percent (10%) of the residential units within the Apartment Element will remain affordable to certain low-income persons and households for a period of fifteen (15) years commencing on the date a Certificate of Completion is issued for the South Site Vertical Improvements. Half of these units (rounded up to the next whole number if the number of these units is an odd number) will be leased at rates that are considered affordable to individuals or households earning less than 60% of the U.S. Department of Housing and Urban Development's ("HUD") Area Median Income for the Minneapolis-Saint Paul-Bloomington Metropolitan Statistical Area ("AMI") and the remainder of these units will be leased at rates that are considered affordable to individuals or households earning less than 50% of the AMI, as specified by a document to be recorded against the South Site in the form shown in Exhibit I ("Affordability Covenant"). The lease rates of affordable units will be based on the most current housing affordability data published by HUD. Two (2) of the affordable units will be two-bedroom units with a minimum of one thousand (1,000) square feet each and the remainder of the affordable units will be one-bedroom units with a minimum of six hundred fifty (650) square feet each. The two-bedroom units must be leased to households consisting of at least two members. The City will make available to the residents of the affordable units the option to purchase an overnight parking license for at least one (1) parking stall per affordable unit at a below-market rate (anticipated to be approximately \$50.00 per month), with such stalls to be located in the North Ramp. The level of finish within the affordable units must be consistent with the level of finish within new construction, market rate apartments in the Twin Cities metropolitan area; and contain at least the following features: (1) Stainless steel energy star kitchen appliances; (2) solid-surface (granite or quartz) countertops; (3) "luxury vinyl tile" flooring in living areas and bathrooms; (4) carpeted flooring in bedrooms; (5) fiberglass tub/shower surrounds; (6) energy efficient lighting; and (7) water-efficient plumbing fixtures. During the term of the Affordability Covenant, Developer will not refuse to lease an affordable unit to the holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 solely because of the status of the prospective tenant as such a holder.

(b) The Developer has represented that there is a financing gap for the Minimum Improvements related to the Affordability Covenant (the "Affordable Housing Gap"). The Authority will fund up to \$1,600,000.00 of the Affordable Housing Gap with a fifteen (15) year loan to the Developer from the Authority's affordable housing fund pursuant to the terms and conditions of the Affordable Housing Loan Agreement in the form attached as Exhibit M, provided Developer delivers to the Authority a current TIF Pro Forma sufficient to allow the City and the Authority to find that the Developer has a demonstrated need for additional financial assistance to fund the Affordable Housing Gap. The parties hereto acknowledge that the Authority intends to fund fifty percent (50%) of such loan through the sale of one or more participating interests in the loan to other nonprofit or public loan participants; provided, however, the sale of such participating interests shall not be a condition precedent to the Authority funding the entire \$1,600,000 loan pursuant to the terms of this Agreement and the Affordable Housing Loan Agreement. The terms of the loan will require a minimum annual interest rate of one percent (1%) on the principal amount of the loan, calculated on a simple basis for the term of the loan, with annual one percent (1%) interest payments on the principal balance due on each anniversary date of the effective date of the Affordable Housing Loan Agreement. On the maturity date of the loan (as specified in the Affordable Housing Loan Agreement), the annual interest rate on the loan will be recalculated to be the lesser of (x) one percent (1%) plus an amount equal to the average of the annual inflation rates (based on the Consumer Price Index)

for each year during the term of the loan and (y) two and one-half percent (2.5%) (“Adjusted Rate”). On such maturity date, Developer will repay the principal balance of loan and make a final interest payment in an amount equal to annual simple interest on the loan at the Adjusted Rate for the term of the loan less the minimum annual interest payments previously made by Developer. The Parties acknowledge that the period of the Affordability Covenant specified in (a) above may be extended by mutual agreement of the Parties.

Section 9.7 Developer/Authority Grant Applications. The Developer and the Authority will cooperate in efforts to obtain available public grant funding to undertake the Project, including but not limited to the Transit Oriented Development, Tax Base Revitalization Account, and Livable Communities Demonstration Account grants from the Metropolitan Council, Department of Employment and Economic Development funding for environmental remediation, and any other funding from metropolitan, state, county and federal sources identified by the Authority or the Developer as reasonably available. To the extent additional grant funds not reflected in the TIF Pro Forma are obtained, the amount shall first fund any unanticipated costs or revenue shortfalls of the Project then to reduce the principal amount of the TIF Note. To the extent the funds from any of the sources identified in this Section 9.7 is less than the amount shown in the TIF Pro Forma, the City or Authority will provide funds, from City or Authority resources, up to five hundred thousand dollars (\$500,000.00) to pay the costs of items specified in the respective grant application.

ARTICLE X

MORTGAGE OF MINIMUM IMPROVEMENTS AREA

Section 10.1 Mortgage of the Minimum Improvements Area.

(a) Until the Completion Date, neither the Developer, nor any successor in interest to the Developer, may engage in any financing or any other transaction creating any mortgage or other security interest in or lien upon the Minimum Improvements Area, or portion thereof, whether by express agreement or operation of law (a “Mortgage”), or suffer any Mortgage to be made on or attach to the Minimum Improvements Area except for the purpose of obtaining funds necessary for constructing the Minimum Improvements.

(b) This restriction on encumbrance shall terminate with respect to any Element of the Minimum Improvements, upon the Completion for such Element. The Developer or any successor in interest to the Minimum Improvements or portion thereof, may sell or engage in financing or any other transaction creating a mortgage or encumbrance or lien on the Minimum Improvements or portion thereof for which a Certificate of Completion has been obtained, without obtaining the prior written approval of the Authority.

Section 10.2 Copy of Notice of Default to Mortgagee. If the Authority delivers any notice or demand to the Developer, or any successor in interest to the Developer, with respect to any Default under this Agreement, the Authority will use its best efforts to also deliver a copy of such notice or demand to the mortgagee of any Mortgage at the address of such mortgagee provided in the recorded Mortgage or any other address thereafter provided to the Authority in a written notice from the Developer, any successor in interest to the Developer or the mortgagee,

provided that failure of the Authority to give any such notice shall not limit the Authority's ability to exercise any of its remedies hereunder.

Section 10.3 Mortgagee's Option to Cure Events of Default. Upon the occurrence of a Default, the mortgagee under any Mortgage will have the right at its option, to cure or remedy such Event of Default within the cure periods set forth herein.

Section 10.4 Rights of a Foreclosing Mortgage. Except as provided in Section 10.6, an individual or entity who acquires title to all or a portion of the Minimum Improvements through the foreclosure of a mortgage on or deed in lieu of foreclosure conveying such portion of the Minimum Improvements Area remains subject to each of the restrictions set forth in this Agreement and remains subject to all of the obligations of the Developer, or any successor in interest to the Developer, under the terms of this Agreement, but neither the purchaser at a foreclosure sale, the grantee under a deed in lieu of foreclosure, nor any subsequent transferee from a mortgagee shall have no personal liability for a breach of such obligations under this Agreement so long as:

(a) The party acquiring title through foreclosure or deed in lieu of foreclosure observes all of the restrictions set forth in the Agreement;

(b) The party who acquired title through foreclosure or deed in lieu of foreclosure does not undertake or permit any other party to undertake any Minimum Improvements on the portion of the Minimum Improvements Area it owns;

(c) The City has no obligation to approve any plans for Minimum Improvements of a portion of the Minimum Improvements the foreclosing mortgagee (or mortgagee obtaining a deed in lieu of foreclosure) owns or to issue any related building permits.

The purpose of this Section is to permit a foreclosing lender (or mortgagee or purchaser obtaining a deed in lieu of foreclosure or a subsequent transferee) to hold title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, subject to, but without personal liability for the obligations under this Agreement, until it can sell the portion it holds to a third party who will assume the obligations of the Developer under the terms of this Agreement and proceed with the construction of the Minimum Improvements pursuant to the terms of this Agreement. If, rather than passively holding title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, the foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure or subsequent transferee) or other purchaser at a foreclosure sale desires to sell portions of the Minimum Improvements Area for construction of the Minimum Improvements, the purchaser at the foreclosure sale must assume and perform each of the obligations of the Developer, or the applicable successor to the interest of the Developer, under this Agreement as to the portion of the Project subject to foreclosure. This Section does not restrict the authority of the Authority to pursue its rights under any outstanding security, exercise remedies otherwise available under this Agreement or suspend the performance of the obligations of the Authority or the Developer under this Agreement as otherwise allowed. The Authority agrees to reasonably cooperate with any foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) or other purchaser at a foreclosure sale in pursuing the Minimum Improvements in accordance with this Agreement.

Unless acting other than passively holding title as described above in this Section, a lender or an independent third party that purchases at a foreclosure sale will have no liability for breach under this Agreement.

Section 10.5 Defaults Under Mortgage. The Developer, or its successor or assign, will use commercially reasonable efforts to obtain an agreement from any mortgagee under a Mortgage that in the event the Developer is in default under any Mortgage, the mortgagee will use commercially reasonable efforts, within thirty (30) days after it becomes aware of any such default and prior to exercising any remedy available to it due to such default, to notify the Authority in writing of (i) the fact of default; (ii) the elements of default; and (iii) the actions required to cure the default. The Developer, or its successor or assign, will use its commercially reasonable efforts to obtain an agreement in any such Mortgage, that if, within the time period required by the Mortgage, the Authority cures any default under the Mortgage, the mortgagee will pursue none of its remedies under the Mortgage based on such default, provided that failure of the Developer or its successors or assigns to obtain such an agreement from any such mortgagee shall not constitute a breach of this Agreement.

Section 10.6 Subordination of Agreement. The City and the Authority will, upon the request of the holder of a Mortgage, execute and record a subordination agreement pursuant to which the City and the Authority agree that, upon a default by the Developer under a Mortgage, the holder of the Mortgage may elect, in an instrument to be recorded in the Hennepin County land records and delivered to the City and the Authority before the commencement of proceedings to foreclose the Mortgage, to either (1) treat this Agreement as being subordinate to the lien of the Mortgage such that the foreclosure of the Mortgage and the failure to redeem from such foreclosure will extinguish and terminate this Agreement and the TIF Note will automatically be cancelled and rescinded; or (2) to treat this Agreement as having priority over the Mortgage in which case this Agreement and the TIF Note will survive the foreclosure of the Mortgage and this Agreement will be binding upon the holder of the Sheriff's Certificate issued in conjunction with the foreclosure of the Mortgage. If the holder of the Mortgage fails to notify the City and the Authority of its election under this Section 10.6 on or before the commencement of foreclosure proceedings, the holder of the Mortgage shall be deemed to have elected to treat this Agreement as being subordinate to the lien of the Mortgage such that the foreclosure of the Mortgage and the failure to redeem from such foreclosure will extinguish and terminate this Agreement and the TIF Note will automatically terminate. The City and Authority each further agree that if the holder of a Mortgage elects to treat this Agreement as having priority over the Mortgage, the City and Authority, upon the completion of the foreclosure without redemption, agree that the time for the completion of the Minimum Improvements is extended to a date 12 months following the expiration of all applicable redemption periods.

ARTICLE XI

INSURANCE AND CONDEMNATION

Section 11.1 Insurance.

(a) The Developer, and its successors or assigns, shall obtain and continuously maintain insurance on the Minimum Improvements and, from time to time at the request of the

Authority, furnish proof to the Authority that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain, provided that the Developer shall obtain the insurance described in clause (i) below with respect to an Element prior to the Commencement of construction of that Element and is only obligated to maintain the insurance described in clause (i) with respect to an Element until the Developer receives a Certificate of Completion for that Element:

(i) Builder's risk insurance, written on the so-called "Builder's Risk-Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the applicable Element at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) naming the Authority, and the City as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.

(iii) Workers compensation insurance, for employees of the Developer if and to the extent required by law.

(b) All insurance required in this Article shall be obtained and continuously maintained by responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State to assume the risks covered by such policies. If available on commercially reasonable terms, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Article. In lieu of separate policies, the Developer or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Developer, its successor or assign, agrees to notify the Authority promptly in the case of damage exceeding \$100,000 in amount to, or destruction of the Minimum Improvements or any Element resulting from fire or other casualty.

Section 11.2 Condemnation. In the event that title to or possession of the Minimum Improvements Area or the Minimum Improvements, or both, or any material part thereof, is threatened with a taking through the exercise of the power of eminent domain, the Developer, or its successor or assign, will notify the Authority of the threatened taking with reasonable promptness.

ARTICLE XII

THE DEVELOPER COVENANTS

Section 12.1 Maintenance and Operation of the Minimum Improvements. The Developer, and its successors or assigns, will, at all times during the term of this Agreement, maintain and operate the Minimum Improvements (or the applicable portion thereof) in a safe and secure way and in compliance with this Agreement and all federal, state and local laws, regulations, rulings and ordinances applicable thereto. The Developer, or its successors or assigns, will pay all of the reasonable and necessary expenses of the operation and maintenance of the Minimum Improvements (except as may be provided in the City Easements), including all premiums for insurance insuring against loss or damage thereto and adequate insurance against liability for injury to persons or property arising from the construction of the Minimum Improvements as required pursuant to this Agreement. During construction of the Minimum Improvements, the Developer, or its successors or assigns, shall not knowingly cause any person working in or attending the Minimum Improvements for any purpose, or any tenant of the Minimum Improvements, to be exposed to any hazardous or unsafe condition; provided that such party shall not be in Default hereunder if it has required the contractors employed to perform work on the Minimum Improvements to take such precautions as may be available to protect the persons in and around the Minimum Improvements from hazards arising from the work, and has further required each such contractor to obtain and maintain liability insurance protecting against liability to persons for injury arising from the work. The expenses of operation and maintenance of the Minimum Improvements shall be borne solely by the Developer, its successors or assigns.

Section 12.2 Business Subsidy Agreement. The Authority and the Developer have determined that a business subsidy agreement within the meaning of the Minnesota Business Subsidy Act, Minnesota Statutes, Sections 116J.993 through 116J.995 is not required in accordance with the exception contained in the Minnesota Business Subsidy Act, Minnesota Statutes, Section 116J.993, subd. 3(17), because the Developer's investment in the purchase of the Minimum Improvements Area and site preparation thereon is seventy percent (70%) or more of the assessor's current year's estimated market value for the Minimum Improvements Area.

ARTICLE XIII

TRANSFER LIMITATIONS AND INDEMNIFICATION

Section 13.1 Representation as to the Minimum Improvements. The Developer represents to the City and the Authority that its purchase of the Minimum Improvements Area, and its other undertakings under this Agreement, are for the purpose of developing the Minimum Improvements and not for the purpose of speculation in land holding. The Developer acknowledges that, in view of the importance of the Minimum Improvements to the general welfare of the City and the Authority, and the substantial financing and other public aids that have been made available by the City and the Authority for the purpose of making such Minimum Improvements possible, the qualifications and identity of the Developer are of particular concern to the Authority. The Developer further acknowledges that the City and the Authority are willing to enter into this Agreement with the Developer because of the qualifications and identity of the Developer.

Section 13.2 Limitations on Transfer. Until the issuance of a Certificate of Completion for an Element:

(a) The Developer will not sell, assign, convey, lease or transfer in any other mode or manner any of its right, title, and interest in and to this Agreement, all or any part of the Minimum Improvements Area or the Minimum Improvements, without the express written approval of the Authority, provided that the consent of the Authority shall not be required for any of the following:

(i) granting of a mortgage or other security interests in the Minimum Improvements as provided in Article X hereof; and

(ii) leasing the Minimum Improvements in the normal course of business in a manner consistent with the Final Development Plan and the Development Contract.

If the Authority's consent to a transfer is required pursuant to this Section 13.2, the Authority shall be entitled to require, as conditions to its approval of any sale, assignment, conveyance, use or transfer of any rights, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements that:

(1) Any proposed transferee shall not be exempt from the payment of real estate taxes and shall have the qualifications and financial responsibility, as determined by the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer;

(2) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the Authority have expressly assumed all of the obligations of the Developer (or such obligations of the Developer as are applicable to the portion of the Minimum Improvements acquired) under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject; and

(3) The transferee must demonstrate, in a manner satisfactory to the City and the Authority, its ability to perform all assumed obligations in this Agreement.

(b) In the absence of specific written agreement by the City and the Authority to the contrary, neither the transfer of an Element prior to the issuance of a Certificate of Completion for that Element or the City's or the Authority's consent to such a transfer will relieve the Developer or any other party bound in any way by this Agreement from their obligations under this Agreement.

Section 13.3 Indemnification.

(a) The Developer releases and covenants and agrees that the City Parties shall not be liable for and agrees to indemnify and hold harmless the City 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 Minimum Improvements constructed by the Developer to the extent not attributable to the negligence or intentional misconduct of the City Parties.

(b) Except for negligence or intentional misconduct of the City Parties, the Developer agrees to indemnify the City Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or other persons acting under its direction or control) under this Agreement, including without limitation the Developer's acquisition and construction, installation, ownership, and operation of the Minimum Improvements.

Section 13.4 Limitation. All covenants, stipulations, promises, agreements and obligations of the City, the Authority or the Developer contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, the Authority and the Developer, and not of any governing body member, officer, agent, servant or employee of the City, the Authority or the Developer in the individual capacity thereof.

ARTICLE XIV

EVENTS OF DEFAULT AND REMEDIES

Section 14.1 Events of Default Defined. Subject to the cure rights described in Section 14.2, 14.3 and 14.4, "Events of Default" under this Agreement include any one or more of the events listed in Sections 14.2 and 14.3.

Section 14.2 Developer Events of Default. The following shall be Events of Default for the Developer:

(a) The Developer's failure to close on the acquisition of the South Site on or before the Land Transfer Closing Date for the South Site;

(b) The Developer's failure to close on the acquisition of the North Site Commercial Element on or before the Land Transfer Closing Date for the North Site Commercial Element;

(c) Subject to Unavoidable Delays and Cure Rights, the Developer's failure to achieve Commencement and Completion of any the South Site Vertical Improvements by the applicable Default Date and failure to cure that Default within thirty (30) days after written notice to do so;

(d) Subject to Unavoidable Delays and Cure Rights, the Developer shall Default in its obligations with respect to the construction of the Minimum Improvements (including the nature and the date for the completion of the various Elements thereof), or shall abandon or substantially suspend construction work on the Minimum Improvements, and any such Default, violation, abandonment or suspension is not cured, ended or remedied within thirty (30) days after written notice to do so;

(e) There is, in violation of this Agreement, any conveyance, encumbrance or other transfer of the Minimum Improvements Area or any part thereof, and such violation is not cured within thirty (30) days after written notice to do so;

(f) Subject to Unavoidable Delay and Cure Rights, failure by the Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto;

(g) If, prior to the delivery of a Certificate of Completion, 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 of 1978, as amended or under any similar federal or State law; or (ii) make an assignment for the benefit of its creditors; or (iii) become insolvent or adjudicated a bankrupt; or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or its reorganization under any present or future Federal bankruptcy act or any similar Federal or State law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Minimum Improvements, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within ninety (90) days after such appointed, or if the Developer shall consent to or acquiesce in such appointment.

Section 14.3 City and Authority Events of Default. Subject to Unavoidable Delays, the failure of the City or the Authority to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an Event of Default by the City or the Authority, as applicable.

Section 14.4 Cure Rights. Notwithstanding the foregoing, if a Default reasonably requires more than thirty (30) days to cure, such Default shall not constitute an Event of Default, provided that the curing of the Default is promptly commenced upon receipt by the defaulting party of the notice of the Default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the defaulting party keeps the non-defaulting party well informed at all times of its progress in curing the Default; provided in no event shall such additional cure period extend beyond 365 days.

Section 14.5 Authority Remedies on Developer Events of Default. Whenever any Event of Default of the Developer occurs, the Authority may take any one or more of the following actions:

- (a) Terminate this Agreement;
- (b) Exercise its rights under Section 9.3 of this Agreement regarding the Developer's TIF eligibility;
- (c) Suspend performance under this Agreement until it receives assurances from the Developer or the holder of any Mortgage, deemed adequate by the Authority, that the Developer

or holder, as applicable, will cure the Default and continue its performance under this Agreement;

(d) Take whatever action at law or in equity may appear necessary or desirable to the Authority to collect any payments due to the Authority under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer to the Authority under this Agreement; and

(e) The Authority shall have all remedies normally available at law and in equity to enforce performance of the Authority's rights under this Agreement including a right to specific performance.

Section 14.6 City Remedies on Developer Events of Default. Whenever any Event of Default of the Developer occurs, the City may suspend performance of its obligations under this Agreement and take whatever action at law or in equity may appear necessary or desirable to the City to enforce performance and observance of any obligation, agreement, or covenant of the Developer to the City under this Agreement, including an action for specific performance.

Section 14.7 Developer Remedies on City or Authority Events of Default. Whenever any Event of Default of the City or the Authority occurs, the Developer, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the City or the Authority under this Agreement, including an action for specific performance.

Section 14.8 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City, the Authority or the Developer is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, 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 Authority, the City or the Developer 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 XIV.

Section 14.9 No Additional Waiver Implied by One Waiver. If 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 14.10 Reimbursement of Attorneys' Fees. In the event of any enforcement action hereunder following an Event of Default, the prevailing party, in addition to other relief, shall be entitled to an award of attorney's fees and costs. The City, Authority and the Developer waive their right to a jury trial on the issues of who is the prevailing party and the reasonable amount of attorneys' fees and costs to be awarded to the prevailing party. Those issues will be decided by the trial judge upon motion by one or both parties, such motion to be decided based on the record as of the end of the jury trial augmented only by the testimony and/or affidavits

from the attorneys and their staff. The parties agree that, subject to the trial judge's discretion, the intent of this clause is to have all issues related to the award of attorneys' fees and costs decided by the trial judge as quickly as practicable.

ARTICLE XV

ADDITIONAL PROVISIONS

Section 15.1 Conflicts of Interest. No member of the Board or other official of the Authority shall have any financial interest, direct or indirect, in this Agreement, the TIF District or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City or the Authority shall be personally liable to the City or the Authority in the event of any Default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 15.2 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 15.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of the Developer, is addressed to or delivered personally to the Developer at:

Edina Market Street LLC
Attention: Peter Deanovic
5100 Eden Ave., Suite 317
Edina, MN 55424

with a copy to: Brent Rogers
Saturday Properties
1400 Van Buren St. NE, Suite 200
Minneapolis, MN 55413

with a copy to: Patrick E. Mascia
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

In the case of the Authority, is addressed to or delivered personally to the Authority at:

Edina Housing and Redevelopment Authority

Attention: Executive Director
4801 W. 50th ST.
Edina, MN 55424

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

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

City of Edina
Attention: City Manager
4801 W. 50th ST.
Edina, MN 55424

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

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

Section 15.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 15.6 Legal Opinions. Upon execution of this Agreement, each party shall, upon request of the other parties, supply the other parties with an opinion of its legal counsel to the effect that the individual or individuals executing this Agreement on behalf of the party had all necessary legal and corporate authority to execute this Agreement on behalf of that party and to bind that party.

Section 15.7 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 15.8 Representatives. Except as otherwise provided herein, all approvals and other actions required of or taken by the Authority, shall be effective upon action by the Authority Representative. All actions required of or taken by the Developer shall be effective upon action by a duly authorized officer of its general partner.

Section 15.9 Superseding Effect. This Agreement reflects the entire agreement of the parties with respect to the items covered by this Agreement, and supersedes in all respects all

prior agreements of the parties, whether written or otherwise, with respect to the items covered by this Agreement.

Section 15.10 Relationship of Parties. Nothing in this Agreement is intended, or shall be construed, to create a partnership or joint venture among or between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement.

Section 15.11 Term. The term of this Agreement shall be effective from the Effective Date until the earlier of (a) the date this Agreement is terminated pursuant to article IV or Article XIV, (b) payment in full of the TIF Note, or (c) date of termination of the TIF District.

Section 15.12 Provisions Surviving Rescission or Expiration. Sections 4.5 and 13.3 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 15.13 Memorandum of Agreement. Neither party shall cause this Agreement to be recorded or filed in the real estate records of Hennepin County. However, the Developer will cause a Memorandum of Agreement to be so recorded or filed in the form attached hereto as Exhibit N, and hereby incorporated herein by reference upon execution of this Agreement upon that portion of the Minimum Improvement Area owned by the Developer. At the time of execution of this Agreement the parties hereto will also execute and acknowledge the Memorandum of Agreement. At such time as the Developer further acquires fee title to any additional portion of the Minimum Improvements Area, the Developer will cause the Memorandum to be recorded against the additional portion of the Minimum Improvements Area and shall record such Memorandum of Agreement in the office of the County Recorder and/or Registrar of Titles in and for Hennepin County, Minnesota, as the case may be.

Section 15.14 Conflicts Between this Agreement and the Development Contract. In the event of any inconsistency or conflict between the requirements of this Agreement and a Development Contract, the provisions of the Development Contract shall control; provided, however, that for the purposes of Section 9.3 of this Agreement regarding Defaults that authorize the Authority to withhold payments on any TIF Assistance, this Agreement controls. Except with respect for such inconsistent provisions, neither agreement is intended to amend or supersede the other agreement.

Section 15.15 Limited Liability. Notwithstanding anything to contrary provided in this Agreement, it is specifically understood and agreed, such agreement being the primary consideration for the execution of this Agreement by the Developer, that (a) there should be absolutely no personal liability on the part of any director, officer, manager, member, employee or agent of the Developer or the City or Authority with respect to any terms, covenants and conditions in this Agreement; (b) the Developer and the City and the Authority waive all claims, demands and causes of action against the other parties' directors, officers, managers, members, employees and agents in any Event of Default, by either party, as the case may be, of any of the terms, covenants and conditions of this Agreement to be performed by either party; and (c) the Developer and the City or the Authority, as the case may be, shall look solely to the assets of the other party for the satisfaction of each and every remedy in the Event of Default by any party, as

the case may be, of any of the terms, covenants and conditions of this Agreement such exculpation of liability to be absolute and without any exception whatsoever.

Section 15.16 Estoppel Certificates. Either party shall, at any time and from time to time, upon not less than twenty (20) days prior written request from the other, execute, acknowledge and deliver to the requesting party, in form reasonably satisfactory to the requesting party, a written statement certifying (if true) (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) that there is no outstanding notice of an Event of Default hereunder and, to the best of such party's knowledge, no event has occurred or condition exists which, with the giving of notice or the passage of time or both, would constitute an Event of Default hereunder, and (iii) such other accurate information as may be reasonably requested by the requesting party.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

EXHIBIT A
Project Site Plan



PROJECT NAME



I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATIONS OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A QUALIFIED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

DANIEL L. KLEMMAS
DATE: 06/02/2011 MIN. LIC. NO.: 46274

NO.	DESCRIPTION	DATE
1	REVISED CITY SUBMITTAL	05/11/2011
2	FINAL DEVELOPMENT PLAN	06/02/2011

PROJECT NUMBER: 100000001

DRAWN BY: ERW/AFD

CHECKED BY: BME

DATE: 06/02/2011

COMPUTER GENERATED

CIVIL SITE PLAN

PROJECT NUMBER

DATE

DRAWN BY

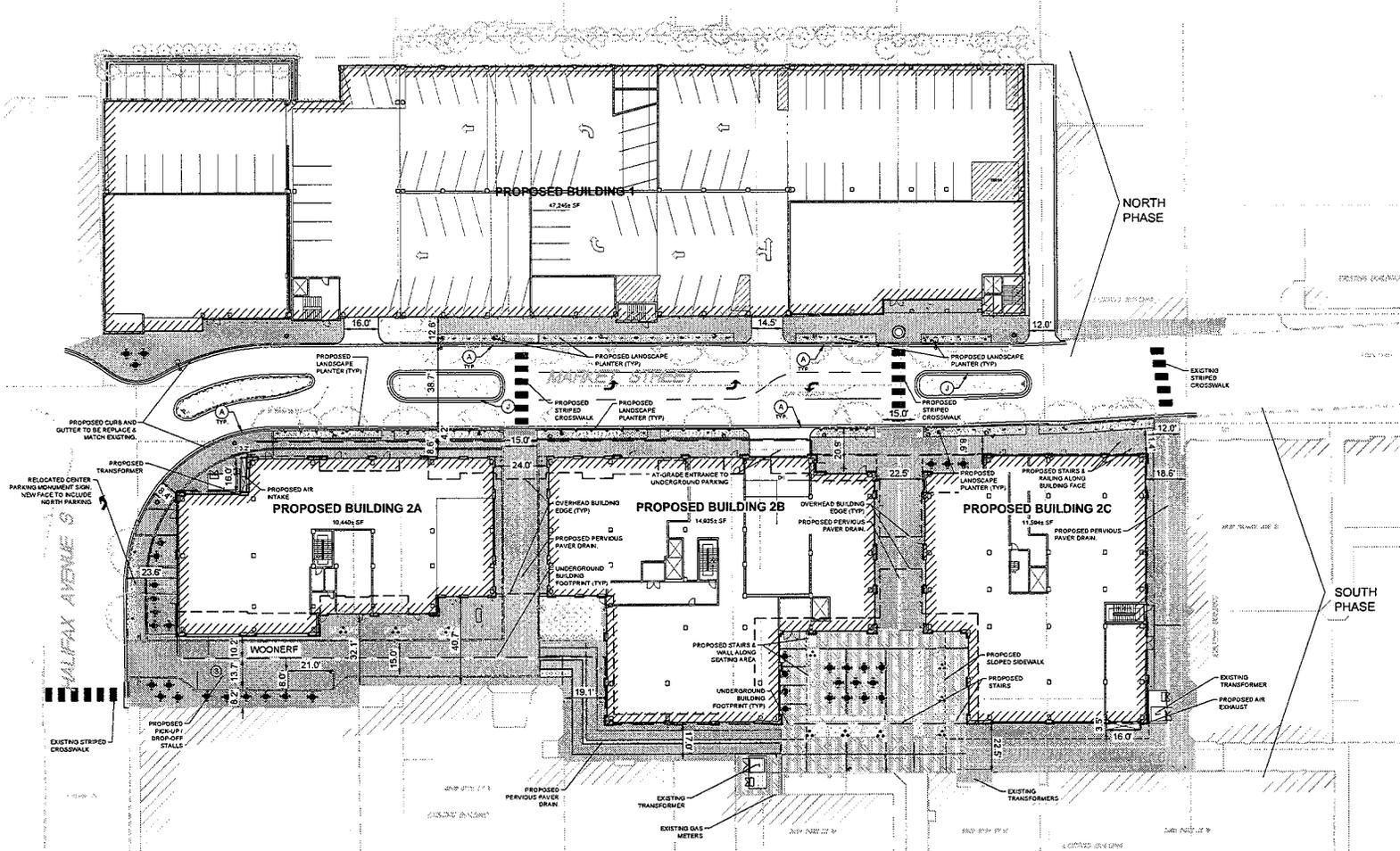
CHECKED BY

DATE

COMPUTER GENERATED

ENTITLEMENT

C4.0



LEGEND

---	PROPERTY LINE
---	EXISTING BUILDING EDGE
---	UNDERGROUND BUILDING FOOTPRINT
---	SEWER LINE
---	PROPOSED CURB AND GUTTER
---	PROPOSED PERVIOUS PAVERS
---	PROPOSED PERVIOUS PAVERS
---	PROPOSED COMPLETE FINEMENT
---	PROPOSED LANDSCAPE AREA

SITE PLAN NOTES

1. ALL WORK SHALL COMPLY WITH ALL CITY REGULATIONS AND ORDINANCES.
2. CONTRACTOR SHALL REFER TO THE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF ALL STRUCTURES. CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DIMENSIONS OF ALL STRUCTURES AND UTILITIES BEFORE CONSTRUCTION.
3. ALL NEW CURB AND GUTTER TO BE 18" HIGH AND 12" WIDE UNLESS OTHERWISE NOTED.
4. ALL UNDERGROUND UTILITIES TO BE 18" DEEP UNLESS OTHERWISE NOTED.
5. EXISTING STRUCTURES WITH CONSTRUCTION LIABILITIES TO BE DEMOLISHED OR RELOCATED AS NECESSARY. ALL COSTS SHALL BE INCLUDED IN BASE BID.
6. CONSTRUCTION SHALL BE RESPONSIBLE FOR ALL RELOCATION, PROTECTION AND REPAIR OF ALL UTILITIES INCLUDING BUT NOT LIMITED TO: WATER, SEWER, GAS, AND TELEPHONE. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF EDINA.
7. SITE BOUNDARY TO BE DETERMINED BY SURVEY AND TO BE SHOWN BY A BOUNDARY LINE ON THIS PLAN.
8. ALL UTILITIES TO BE SHOWN BY A BOUNDARY LINE ON THIS PLAN.
9. TOTAL LAND AREA IS 2.34 ACRES.
10. PROPOSED UNDERGROUND UTILITIES SHALL BE SHOWN BY A BOUNDARY LINE ON THIS PLAN.
11. ALL PROPOSED UNDERGROUND UTILITIES SHALL BE SHOWN BY A BOUNDARY LINE ON THIS PLAN.
12. REFER TO FINAL PLAT OF ALTA SURVEY FOR EXACT LOT AND PROPERTY BOUNDARY DIMENSIONS.

BUILDING A DATA SUMMARY

AREAS	FOOTPRINT (SQ FT)
BUILDING 1	47245
BUILDING 2A	10440
BUILDING 2B	14635
BUILDING 2C	11288
TOTAL BUILDING AREA	84214 SF (67.8% OF TOTAL PROPERTY AREA)

PROPERTY SUMMARY
EDINA, MN COLLABORATIVE

PROPERTY AREA	ACRES
TOTAL PROPERTY AREA	2.34 ACRES
TOTAL DISTURBED AREA	2.34 ACRES
EXISTING	0.33 ACRES
PROPOSED	2.02 ACRES
PERVIOUS AREA	0.33 ACRES
IMPERVIOUS AREA	2.01 ACRES

PARKING DATA SUMMARY
EDINA, MN COLLABORATIVE

LOCATION	EXISTING PARKING	PROPOSED PARKING
NORTH RAMP	269 STALLS	656 STALLS
CENTER RAMP	269 STALLS	261 STALLS
SOUTH RAMP	328 STALLS	328 STALLS
TOTAL	866 STALLS	1,246 STALLS

ZONING SUMMARY

EXISTING ZONING	PROPOSED ZONING
PCD-2	PUD

*PROPOSED IMPERVIOUS REDUCTION OF 12%.

KEYNOTE LEGEND

- 1. 18" CURB AND GUTTER
- 2. 18" PERVIOUS PAVERS
- 3. 18" PERVIOUS PAVERS
- 4. 18" PERVIOUS PAVERS
- 5. 18" PERVIOUS PAVERS
- 6. 18" PERVIOUS PAVERS
- 7. 18" PERVIOUS PAVERS
- 8. 18" PERVIOUS PAVERS
- 9. 18" PERVIOUS PAVERS
- 10. 18" PERVIOUS PAVERS
- 11. 18" PERVIOUS PAVERS
- 12. 18" PERVIOUS PAVERS
- 13. 18" PERVIOUS PAVERS
- 14. 18" PERVIOUS PAVERS
- 15. 18" PERVIOUS PAVERS
- 16. 18" PERVIOUS PAVERS
- 17. 18" PERVIOUS PAVERS
- 18. 18" PERVIOUS PAVERS
- 19. 18" PERVIOUS PAVERS
- 20. 18" PERVIOUS PAVERS



EXHIBIT A-1
Legal Description of Project Area

South Site (Parcel 1 through Parcel 5 described below)

Parcel 1:

All of Lot 30, Auditor's Subdivision No. 172, Hennepin County, Minnesota, except the East 1 foot thereof and except that part of Lot 30 lying South of a line drawn parallel with and 119.90 feet North of the South line of said Lot 30.

Hennepin County, Minnesota
Abstract Property

Property Identification No. 18-028-24-14-0023
Address: 3925 49 1/2 St. W., Edina, MN

Parcel 2:

Lot 33, Auditor's Subdivision No. 172, according to the map or plat thereof on file and of record in the office of the County Recorder within and for said County, except that part described as follows:

The South 119.9 feet of Lot 33, Auditor's Subdivision No. 172, according to the map or plat thereof on file and of record in the office of the County Recorder within and for Hennepin County, Minnesota.

Hennepin County, Minnesota
Abstract Property

Property Identification No. 18-028-24-14-0123
Address: unassigned

Parcel 3:

The South Half of Lot 34 and the East 13 feet of the South Half of Lot 35, Auditor's Subdivision No. 172, Hennepin County, Minnesota, except that part thereof lying South of a line drawn parallel with and 126.0 feet North of the South lines of said Lots 34 and 35.

Hennepin County, Minnesota
Abstract Property

Property Identification No. 18-028-24-14-0120
Address: unassigned

Parcel 4:

All that part of the South Half of Lot 35, Auditor's Subdivision No. 172, according to the recorded plat thereof, lying West of the East 13 feet thereof, except that part thereof lying South of a line drawn parallel with and 126.0 feet North of the South line of said Lot 35 and except that part of the Westerly 74.20 feet thereof lying South of a line drawn parallel with and 160.30 feet North of the South line of said Lot 35.

Hennepin County, Minnesota
Torrens Property

Property Identification No. 18-028-24-14-0032
Address: unassigned

Parcel 5:

Par 1: All that part of the West 100 feet of the East 122 feet of the South Half of Lot 36, Auditor's Subdivision No. 172, Hennepin County, Minnesota, according to the recorded plat thereof, lying North of a line drawn parallel with and 150.30 feet North of the South line of said Lot 36.

Hennepin County, Minnesota
Abstract Property

Par 2: All that part of the East 22 feet of the South Half of Lot 36, Auditor's Subdivision No. 172, lying North of a line drawn parallel with and 150.30 feet North of the South line of said Lot 36.

Hennepin County, Minnesota
Torrens Property

Property Identification No. 18-028-24-14-0036 (Includes additional land)
Address: unassigned

North Site (Parcel 6 through Parcel 9 described below)

Parcel 6 (the "**Hooten Site**"):

The East 85 feet of the West 120 feet of the East 172 feet of the South 150 feet of the North 1/2 of Lot 36, Auditor's Subdivision No. 172.

Hennepin County, Minnesota
Abstract Property

Property Identification No. 18-028-24-14-0035
Address: 3944 49 1/2 St. W., Edina, MN

Parcel 7:

The East 52 feet of the Southerly 150 feet of the North one-half of Lot 36, Auditor's Subdivision No. 172.

Hennepin County, Minnesota
Abstract Property

Property Identification No. 18-028-24-14-0034
Address: 3940 49 1/2 St. W., Edina, MN

Parcel 8 (the "Vacant Site"):

That part of the North 1/2 of Lot 34, Auditor's Subdivision No. 172, lying Southerly of the Westerly extension of the North line of the South 177.5 feet of Lot 32, except the West 14.75 feet thereof.

ALSO

The South 177.5 feet of Lot 32, Auditor's Subdivision No. 172.

Hennepin County, Minnesota
Abstract Property

Property Identification No. 18-028-24-14-0026
Address: 3930 49 1/2 St. W., Edina, MN

Parcel 9:

Par 1: That part of the North Half of Lot 35, Auditor's Subdivision No. 172, lying South of Allata's First Addition, the West line of said parcel being marked by Judicial Landmarks set pursuant to Torrens Case No. 16224, according to the recorded plat thereof.

Hennepin County, Minnesota
Torrens Property

Par 2: The West 14.75 feet of that part of the North 1/2 of Lot 34, Auditor's Subdivision No. 172, Hennepin County, Minnesota, lying Southerly of the Westerly extension of the North line of the South 177.5 feet of Lot 32, said Auditor's Subdivision No. 172, according to the plat thereof on file and of record in the office of the Register of Deeds.

Hennepin County, Minnesota

Abstract Property

Property Identification No. 18-028-24-14-0030

Address: 3936 49 1/2 St. W., Edina, MN

**EXHIBIT B
Plaza Easement Agreement**

**EASEMENT
AND
MAINTENANCE AGREEMENT**

between

THE CITY OF EDINA, MINNESOTA

and

EDINA MARKET STREET LLC

for

MARKET STREET PLAZA

Dated as of

_____, 201____

THIS DOCUMENT WAS DRAFTED BY:
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

**EASEMENT AND MAINTENANCE AGREEMENT
(MARKET STREET PLAZA)**

THIS EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into this ___ day of _____, 201___ (“Effective Date”), by and between the **CITY OF EDINA, MINNESOTA**, a Minnesota statutory city (the “City”), and **EDINA MARKET STREET LLC**, a Minnesota limited liability company (the “Developer”).

RECITALS

WHEREAS, the Housing and Redevelopment Authority of the City of Edina, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), the City, and Developer have entered into a Redevelopment Agreement (the “Contract”) dated June ___, 2017; and

WHEREAS, such Contract is intended to provide for the redevelopment of certain land within the City’s 50th & France District located on Market Street (formerly known as 49 1/2 Street) by the Developer in coordination with the Authority and with the cooperation and assistance of City, and

WHEREAS, the Contract provides for the expenditure of public and other funds for certain Minimum Improvements to assist in the redevelopment of the Market Street Project; and

WHEREAS, the South Site Vertical Improvements, located on that portion of the Market Street Project legally described on Exhibit A-1 attached hereto (the “South Site”), includes a ground-level, outdoor plaza and amenity area (the “Market Street Plaza”; defined in the Contract as the Shared Plaza Element), which such Market Street Plaza is located on that portion of the South Site legally described in Exhibit A-2 attached hereto and as depicted in Exhibit B attached hereto; and

WHEREAS, the City and the Developer have agreed in the Contract that the Developer will grant an easement to the City pursuant to which the Market Street Plaza will be permanently open and accessible to the general public for its use and enjoyment pursuant to the terms and conditions of this Agreement; and

WHEREAS, the City has agreed to operate, manage, and maintain the Market Street Plaza pursuant and subject to the terms and conditions of the Contract and this Agreement, and

WHEREAS, the City and Developer deem it to be in their interest and in furtherance of the economic development and redevelopment plan for Market Street Project to enter into this Agreement with respect to the Market Street Plaza; and

WHEREAS, all capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Contract.

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

Article I

GRANT OF EASEMENTS

Section 1.1 Easement Premises. Developer hereby grants and conveys to the City, for the benefit of the City (a) an exclusive, perpetual public easement over, across, upon and through those portions of the real property described on Exhibit A-2 attached hereto and depicted on Exhibit B attached hereto situate in the City of Edina, County of Hennepin, State of Minnesota (the “Plaza Premises”) for the purpose of utilizing the Plaza Premises and all the amenities located therein and thereon for their respective intended purposes, including use as public gathering and event space, in accordance with and subject to the terms and conditions of this Agreement and (b) a non-exclusive, perpetual public easement over, across, upon and through all means of pedestrian access to and from public rights of way, streets, alleys, public spaces, and easements appurtenant and/or used in connection with the Plaza Premises immediately adjoining or contiguous to the Plaza Premises, including all exterior concourses, passageways, sidewalks and stairways providing such means of access and intended for use by the public, but excluding all such areas or means of access intended to serve as exclusively private access to, or for the sole benefit of, the South Site Vertical Improvements (collectively, the “Access Premises”, and together with the Plaza Premises, collectively the “Easement Premises”), all in accordance with and subject to the terms and conditions of this Agreement. The Access Premises include only those portions of the South Site necessary to access the Plaza Premises.

Article II

TERM

Section 2.1 Term. The easements granted hereby, and each reservation, covenant, condition and restriction contained in this Agreement, shall be effective as of the date hereof, shall be perpetual, and shall remain in effect until affirmatively released by the City. Such release shall be evidenced by the recording of a release or termination of this Agreement in the real estate records of Hennepin County, Minnesota, at which time this Agreement shall terminate, subject to reconciliation of expenses and obligations incurred through the date of release or termination and the continuation of those provisions that specifically survive termination of this Agreement, and the Market Street Plaza and any other areas of the Easement Premises shall thereafter belong to and be under the sole control of Developer.

Article III

USE OF EASEMENT PREMISES

Section 3.1 Operation and Control of Market Street Plaza. During the term of this Agreement, the City shall operate the Market Street Plaza, in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders, at its own cost. Subject to the terms of this Agreement, the City shall have full authority and control over the management, operation, and use of the Market Street Plaza. Except as specifically set forth herein, the City shall be entitled to make all decisions and to execute all agreements, in its sole discretion, with respect to the Market Street Plaza so long as such decisions and agreements do

not (i) violate the provisions of this Agreement, the Contract, the approved Final Development Plan, or any applicable governmental laws, ordinances, regulations or orders, as each of the foregoing may be amended and so long as each of the foregoing remains in effect, or (ii) unreasonably disturb the users and occupants of the South Site Vertical Improvements, including the Apartment Element. The City may establish (and modify from time to time) (a) such hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate in the City's reasonable discretion for the safe, efficient, and orderly use and operation of the Market Street Plaza and (b) such rates and charges for the use of the Market Street Plaza as it deems advisable or desirable in the City's reasonable discretion. The City shall be entitled to keep and retain as its own property all income and revenue produced from the operation and use of the Market Street Plaza during the term of this Agreement and shall have no obligation to report to or account to the Developer for any such income or revenue. Notwithstanding anything in this Agreement to the contrary, the Market Street Plaza shall be open to the public as provided in the Contract. Notwithstanding anything in this Agreement to the contrary, owners, tenant and subtenants of the South Site Commercial Elements may make reasonable use of such portions of the Easement Premises which are immediately adjacent to entrances and storefronts of such South Site Commercial Elements for the purpose of placing non-permanent moveable items such as planters, benches, removable advertising signs, and seasonal decorations, provided that such items do not unreasonably obstruct or impair the public's use of the Easement Premises or the free flow of pedestrian traffic thereon, each as determined by the City in its reasonable discretion. Furthermore, the City acknowledges and agrees that certain portions of the ground level, pedestrian surfaces of the South Site Vertical Improvements, which areas are each depicted on Exhibit B hereto and identified thereon as an "Area of Potential Private Use" (collectively, the "Areas of Potential Private Use") may be withdrawn from the Easement Premises by Developer and reserved for the private use of the owners, tenants, and subtenants of the South Site Commercial Elements or the Apartment Element. Such Areas of Potential Private Use so withdrawn from the Easement Premises and reserved for private use may be used for any legal use, including, without limitation, outdoor dining, outdoor bar, seating area or dog run. The City acknowledges that the Developer may desire to modify the Areas of Potential Private Use from time to time (and consequently modify the Easement Premises) based on changing uses and tenancies of the South Site Commercial Elements. The City agrees to consider any such requested modifications to the Areas of Potential Private Use and the Easement Premises, and if such modification does not (x) cause the overall gross square footage of the original Plaza Premises to be reduced by more than five percent (5%) (in the aggregate for all requested modifications) or (y) in the City's reasonable discretion, materially and adversely diminish the public use or benefit intended to be derived from the Market Street Plaza and this Agreement, the City will enter into an amendment to this Agreement to reflect such modification.

Section 3.2 Waste; Nuisance. Neither the City nor the Developer shall knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any improvements hereafter erected or located upon the Easement Premises, or any part thereof, or the fixtures and/or equipment thereof. The City in its use and occupancy of the Easement Premises, shall not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time shall not be considered "waste," "nuisance," "damage," "disfigurement," or "injury."

Article IV

Construction and MAINTENANCE OF THE EASEMENT PREMISES

Section 4.1 Construction of Market Street Plaza; Operations and Maintenance

Plan. In accordance with the provisions of the Contract and this Agreement, the Developer is responsible, at its sole cost and expense, to initially build, construct, and install the Market Street Plaza, consisting of (a) all surface improvements, including, without limitation, all paving, sidewalks, pathways, retaining walls, and other hardscapes (collectively "Surface Improvements") and (b) all amenities, components and fixtures located thereon, including, without limitation, all lighting, fountains, benches, tables, chairs, fences, planters and plantings, trees, shrubs, landscaping, irrigation systems, and signage (collectively, "Plaza Amenities"). The size, location, and design of the Market Street Plaza, the Surface Improvements, and the Plaza Amenities must be as approved in the Final Development Plans. In addition, the Developer is responsible for initial construction of a subsurface structural support system capable of supporting the Market Street Plaza. By no later than December 1, 2018, the Developer shall prepare, in consultation with a qualified professional engineer with experience and knowledge about industry best practices for proper maintenance of plazas (similar to the Market Street Plaza and Plaza Amenities) constructed over underground parking facilities or other underground structures ("Qualified Engineer"), a proposed operation manual and maintenance schedule for the Market Street Plaza, the Plaza Amenities, and the underlying structural components ("O&M Plan") which shall identify the nature and frequency of all recommended routine and preventative Maintenance Work (as defined below). The Developer shall be responsible for causing the O&M Plan to be reviewed and updated at such intervals as may be appropriate in accordance with relevant industry standards, and providing such revised O&M Plan for the City's use. The O&M plan, and each revision thereof, shall be subject to the City's and Developer's reasonable approval prior to the implementation thereof.

Section 4.2 Developer Maintenance. The Developer shall, at all times during the term hereof, at its sole cost and expense, keep, maintain, and repair the components of the Market Street Plaza described in this Section 4.1 in good condition and repair in a first-class manner, including in accordance with in the O&M Plan, as the same may be revised from time to time. Such maintenance and repair work shall include, without limitation, the following (collectively "Developer's Work"):

- (a) maintenance, repair or replacement of the subsurface structural element of the Market Street Plaza at or below the level of the hot applied waterproofing barrier applied to the roof of the UG Parking Element (the "Developer Waterproofing Layer"), including the foundation, foundation walls, floor slabs, support walls, and waterproofing systems related thereto;
- (b) replacement, repair, or correction of any structural or other construction defects; and
- (c) maintaining in good working order (including cleaning as necessary), repairing, and replacing as necessary the Access Premise.

Section 4.3 City Maintenance. The City shall, at all times during the term hereof, at its sole cost and expense, keep, maintain, repair and replace the Surface Improvements, and the Plaza Amenities of the Market Street Plaza in good condition and repair in accordance with standards set forth in (i) the City's 50th & France District maintenance policy and schedule, as the same may be amended from time to time ("50th & France Maintenance Policy"), and (ii) the O&M Plan, as the same may be revised from time to time (provided however, in the event that any inconsistency exists with respect to the 50th & France Maintenance Policy and the O&M Plan, the O&M Plan shall control). Subject to any additional requirements of the 50th & France Maintenance Policy and the O&M Plan, such maintenance and repair work shall include the following (collectively the "City's Work"), and together with the Developer's Work, collectively the "Maintenance Work"):

(a) the inspection, repair, replacement, and maintenance of the Surface Improvements, and Plaza Amenities (including waterproofing or containment systems associated with any fountain located in the Market Street Plaza) and those portions of the subsurface located above the Developer Waterproofing Layer, including any repair or replacement necessitated by Developer's obligation to perform subsurface, structural maintenance, repair or replacement in accordance with Section 4.2(a);

(b) the inspection, repair, replacement, and maintenance of all pedestrian surfaces to a smooth and evenly covered condition, which obligation includes, without limitation, the cleaning, sweeping, repairing and resurfacing of such pedestrian surfaces;

(c) periodic removal of all papers, debris, filth, refuse, ice and snow; provided all sweeping shall be at appropriate intervals during such times as shall not unreasonably interfere with the use of the Market Street Plaza;

(d) maintaining and replacing all landscaping and other vegetation;

(e) keeping in repair, replacing and repainting any appropriate directional signs or markers, within or associated with the Market Street Plaza;

(f) operating, keeping in repair, cleaning and replacing when necessary such Market Street Plaza lighting facilities as may be reasonably required, including without limitation all lighting necessary or appropriate for Market Street Plaza security; and

(g) maintaining in good working order, repairing, and replacing as necessary all domestic water, sewer, storm water, gas, electricity, power, heat, telephone, other communications service and any and all other utility or similar services used, rendered, or supplied, upon, at, from, or in connection with the Market Street Plaza.

Section 4.4 Manner of Performance. All Maintenance Work shall be done: (i) in such manner as to not unreasonably interfere with the normal use and enjoyment of the South Site Vertical Improvements and the area on which such work is being done; (ii) in full compliance with the provisions of this Agreement and the Contract; (iv) in full compliance with all applicable statutes, codes, ordinances, rules and regulations; (v) with respect to reconstruction, maintenance, repair, alterations or modifications, the Maintenance Work shall use materials, equipment and design and engineering standards, equal to or better than those

originally used; (vi) in a good and workmanlike manner; (vii) in such manner as not to unreasonably adversely affect, impair or destroy the structural soundness or integrity, aesthetic appearance or functional utility of the Market Street Plaza or the South Site Vertical Improvements; (viii) with all due diligence; and (ix) in such a manner so as to clean the area and restore the affected portion of the area on which the Maintenance Work was done to a condition equal to or better, to the extent practical, than the condition which existed prior to the commencement of such Maintenance Work. Each of the City and the Developer may, from time to time, select and hire one or more third parties to perform each party's respective Maintenance Work, provided that each of the City and the Developer shall remain responsible at all times for the performance of each such party's respective Maintenance Work. Notwithstanding anything to the contrary contained herein, to the extent that any Maintenance Work is required due to (a) damage or destruction caused by the negligence or willful misconduct of the City, the Developer, or their respective employees or agents, or (b) the failure of a party to comply with the 50th & France Maintenance Policy or the O&M Plan, the cost and responsibility for the repair of such damage or destruction shall be borne by the party whose negligence or willful misconduct caused such damage or destruction or failed to comply with the 50th & France Maintenance Policy or the O&M Plan.

Section 4.5 50th & France District Maintenance Assessments. The Developer acknowledges and agrees that nothing in this Agreement will be deemed to limit the City's right to recoup its costs of the City's Work hereunder by including such costs in the 50th & France District commercial area maintenance assessments, including assessments levied upon property owned by the Developer, all as specified and in accordance with the City Code.

Section 4.6 Liens. Neither the City nor the Developer will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the City or the Developer, as the case may be, (and will promptly discharge (by payment, bonding over or otherwise) the same upon their occurrence); provided, however, the City or Developer, as applicable, may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the City or Developer, as applicable, shall file a bond or deposit cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Market Street Plaza to secure the payment of such lien if finally determined to be valid.

Article V

UTILITIES

Section 5.1 Utility Charges. Developer shall cause the utilities serving the Market Street Plaza to be separately metered and City will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, storm water, gas, electricity, power, heat, telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with the Easement Premises, or any part thereof.

Article VI

TAXES AND ASSESSMENTS

Section 6.1 Payment of Taxes and Assessments. Developer shall pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies (collectively “Taxes”), assessed and levied by any governmental taxing authority during the term of this Agreement against the Market Street Plaza. Notwithstanding the foregoing, if (i) the Market Street Plaza is ever subdivided such that it becomes a separate tax parcel and such parcel is deemed to be subject to Taxes, or (ii) records of the tax assessor provide reasonable evidence that the Market Street Plaza is deemed to be subject to Taxes, the City shall pay directly to the relevant taxing authority any such Taxes.

Article VII

INDEMNIFICATION, INSURANCE, IMMUNITIES

Section 7.1 Property Insurance. At all times during the term hereof, the Developer at its initial cost and expense, shall keep the South Site Vertical Improvements (including the Market Street Plaza), and all alterations, extensions, and improvements thereto and replacements thereof, insured, in the amount of the full replacement cost thereof and with such deductibles as the Developer deems appropriate, against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to buildings and improvements similar in construction, general location, use, and occupancy to the South Site Vertical Improvements. The City shall pay within sixty (60) days following receipt of Developer’s invoice therefor, an amount equal to the cost of such insurance which is directly attributable to the Market Street Plaza, taking into account the use, nature, and/or value of the Market Street Plaza (and not merely as a percentage of the total of such insurance costs) as reasonably determined by the parties and the applicable insurer.

Section 7.2 Indemnification of Developer. Except to the extent caused by the willful misconduct or negligence of the Developer or its employees or agents, or arising out of the default by Developer of its obligations hereunder, the City hereby covenants and agrees to assume and to permanently indemnify and save harmless Developer and its employees and agents, from and against any and all claims, demands, actions, damages, costs, expenses, attorneys’ fees, and liability in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in, at, upon, or from the use or occupancy of the Easement Premises by any party other than Developer and its employees or agents.

Section 7.3 Indemnification of the City. Except to the extent caused by the willful misconduct or negligence of the City, its employees or agents or the general public or arising out of the default by the City and its officers, employees or agents of obligations made pursuant to a contract with Developer, including this Agreement, Developer hereby covenants and agrees to assume and to permanently indemnify and save harmless the City and its employees and agents from and against any and all claims, demands, actions, damages, costs, expenses, attorneys’ fees, and liability in connection with the loss of life, personal injury and/or damage to property to the

extent arising from or out of the design or initial construction of the Easement Premises, or in connection with the use or occupancy of the Easement Premises, or any part thereof, by the Developer, or to the extent arising out of the breach of Developer's obligations hereunder

Section 7.4 Liability Insurance. The Developer and the City shall procure and maintain continuously in effect (or shall cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to facilities and improvements similar to those located on the Easement Premises and, to be reviewed from time to time by the parties and adjusted in accordance with the requirements of Minnesota Statutes Section 466.04, as follows:

(a) Insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Market Street Plaza. Developer (and Developer's lender and property manager) shall be named as additional insureds on the City's such policy of insurance and the City shall be named as additional insured on the Developer's such policy of insurance.

(b) Liability insurance including coverage for:

(i) fire and explosion; and

(ii) riot, civil commotion, malicious mischief, and vandalism.

(c) To the extent reasonably available, insuring the indemnifications expressed in 7.2 and 7.3 hereof (as applicable).

Section 7.5 General Insurance Requirement. All insurance required in this Agreement shall be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. Each party shall, within a commercially reasonable time following the other party's request therefor, furnish the requesting party with copies of policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel it without giving written notice to the parties at least thirty (30) days before the cancellation becomes effective. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 7.6 Immunities. Nothing herein shall be deemed or constitute a waiver by the City of any statutory limitations on liability, statutory or common law immunities or any defenses that would otherwise be available to it in claims by third parties, including specifically the maximum liability amount contained in Minnesota Statutes Section 466.04. To the extent that the Developer performs construction, operation, maintenance, repair, or replacement of any part of the Market Street Plaza, pursuant to the terms of this Agreement, it is the intention of the parties that the Developer is entitled to the immunities provided pursuant to Minnesota Statutes Section 466.03, or any successor statute.

Article VIII

ASSIGNMENT

Section 8.1 General. Due to the public nature of the easement granted herein, the City may not assign or transfer its interest under this Agreement without the prior written consent of Developer, which consent shall be granted, conditioned or withheld in Developer's sole discretion. During the term of the Contract, the Developer may not assign or otherwise transfer its interest under this Agreement, except as provided in the Contract. The City shall recognize and approve any successors or assigns of Developer in accordance with the terms and provisions of the Contract. Following the expiration or earlier termination of the Contract, Developer may freely assign or transfer its interest under this Agreement without the consent of the City. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that the rights and easements established, granted, conveyed, reserved and consented to by this Agreement will run with the land and will inure to the benefit of and be binding on all present and future owners of any applicable portion of the South Site and their respective successors and assigns.

Article IX

Casualty

Section 9.1 Destruction. Promptly upon any casualty loss or damage to all or any part of the Market Street Plaza (including subsurface structural support elements), the Developer shall proceed with diligence to restore the Market Street Plaza to the condition prior to the casualty with the insurance proceeds obtained with respect to the loss or damage to the extent the insurance proceeds recovered allow for such rebuilding; provided, however, the Developer shall not be obligated to rebuild the Market Street Plaza if any of the Developer's lenders or loan agreements (whether executed before or after the date hereof) do not permit such rebuilding or require that insurance amounts recovered with respect to any loss or damage to the Market Street Plaza be paid directly to the lender.

Article X

EMINENT DOMAIN

Section 10.1 Major Condemnation. If all of the Market Street Plaza shall be taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, this Agreement shall terminate as of the date of vesting of title in the condemning authority. Each party shall make its own claim in the condemnation proceeding based upon the value of its respective interest in the Market Street Plaza.

Section 10.2 Partial Condemnation. If any portion of the Market Street Plaza shall be taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, the absence of which materially and adversely affects the conduct of business by the City or the Developer, then either the City or the Developer, at any time within sixty (60) days after it has actual notice of such proposed acquisition or condemnation, shall have the option to cancel and

terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property; provided, if neither party so terminates the Agreement will continue as to the remaining part of the Easement Premises not so taken or threatened to be taken. The terminating party, if any, shall exercise its termination option by giving the other party written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event neither party furnishes the other party written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement shall continue in full force and effect. Each party shall make its own claim in the condemnation proceeding based upon the value of its respective interest in that part of the Market Street Plaza subject to the acquisition or condemnation, provided, however, that no award to the City based on its easement interest shall be permitted to the extent such award reduces Developer's award based on its fee interest. Following any such partial taking, the City shall restore the remaining portion of the Market Street Plaza above the Developer Waterproofing Layer, and Developer shall restore the corresponding portion of the subsurface support of the Market Street Plaza at and below the Developer Waterproofing Layer.

Article XI

DEFAULT and Remedies

Section 11.1 Events of Default. It shall be an "Event of Default" hereunder if (a) either party defaults in any obligation of this Agreement requiring the payment of money and fails to cure such default within ten (10) days after receipt of written notice of such default from the other party or (b) if a party defaults in any of its other obligations under this Agreement and fails to cure such default within thirty (30) days after receipt of written notice of such default from the other party (or, if such default reasonably requires more than thirty (30) days to cure, fails to commence such action as is necessary to cure such default within such 30-day period and to proceed diligently thereafter to cure such default).

Section 11.2 Remedies. Following an Event of Default hereunder, the non-defaulting party may: (a) exercise its self-help rights in accordance with Section 11.3 with respect to a default in the performance of Maintenance Work; (b) pay all or any part of such obligations and charge the amount of such payment, together with reasonable attorneys' fees and interest at a rate of twelve percent (12%) per annum, to the defaulting party; (c) bring an action for injunctive relief; or (d) enforce the obligations of the defaulting party by an action at law or in equity. In an emergency, any such payment or performance may be undertaken or action brought by the non-defaulting party prior to the giving of any notice or expiration of any notice period, but the party curing the default will provide such notice as soon as may be reasonable under the circumstances. If the Developer has failed to cure a default requiring the payment of money in accordance this section, the City shall have the right to assess the costs incurred by the City to all or any portion of the South Site as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute.

Section 11.3 Self Help; Failure to Maintain. In the event the City defaults in its obligation to perform the City's Work, or the Developer defaults in its obligation to perform the Developer's Work, each as required by this Agreement, then the non-defaulting party, after compliance with the notice and cure provisions of Section 11.1 (except in an emergency, in

which case the applicable Maintenance Work may be initiated with whatever notice is reasonable under the circumstances), shall have the right to enter any portion of the Easement Premises (including subsurface structural support elements) and perform such Maintenance Work as required herein and charge the costs of such performance plus ten percent (10%) of such costs for overhead, together with reasonable attorneys' fees, to the defaulting party. The defaulting party shall promptly pay to the non-defaulting party any and all such costs as are due and owing on account thereof. The non-defaulting party shall submit a statement to the defaulting party evidencing the costs incurred for such Maintenance Work. If the Developer is the defaulting party and has failed to make payment in accordance with the statement within sixty (60) days after receipt thereof, the City shall have the right to assess the costs incurred by the City to all or any portion of the South Site as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. The Developer hereby agrees to such an assessment for maintenance and repair costs, agrees that the South Site assessed for such service charges is benefited thereby, and waives any rights the Developer or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429. The Easement Premises are subject to entry without notice and at any time, by the non-defaulting party or its authorized employees and/or agents and/or by any public safety personnel to perform such Maintenance Work as the non-defaulting party shall deem necessary in its reasonable discretion. Notwithstanding anything to the contrary contained herein, the City shall have no obligation of any kind, expressed or implied, to perform the Developer's Work or any part thereof, and the Developer shall have no obligation of any kind, expressed or implied, to perform the City's Work or any part thereof.

Section 11.4 Remedies Cumulative. Each right, power and remedy provided under this Agreement will be cumulative and concurrent and will be in addition to every other right, power or remedy provided for under this Agreement or at law or in equity. The exercise or beginning of exercise of any one or more rights, powers or remedies will not preclude the concurrent or later exercise of any other rights, powers or remedies. Failure to enforce any covenant under this Agreement will not be deemed a waiver of the right to do so thereafter.

Section 11.5 Easements Survive. The Developer may not terminate any of the easements created by this Agreement or discontinue performance of its obligations with respect to maintenance, repair or replacement of any easement due to a default by the City under this Agreement.

Article XII

MISCELLANEOUS

Section 12.1 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 12.2 Amendments. Except as otherwise herein provided, and not otherwise, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement shall be binding upon the parties to this Agreement unless in writing and signed by such parties. Developer and the City agree to join in and consent to amendments to this

Agreement, to the extent such amendments are reasonably required by the Developer's construction lender and/or permanent lender for the Market Street Project, provided, however, that the Developer and the City shall not be required to enter into such amendments if the amendments are not consistent with the approved Final Development Plan, as the same may be amended and so long as the same remains in effect, or materially and adversely affect the interest and security of the City with respect to the Market Street Project, including any increase in obligations or diminution of rights hereunder.

Section 12.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of the Developer, is addressed to or delivered personally to the Developer at:

Edina Market Street LLC
Attention: Peter Deanovic
5100 Eden Ave., Suite 317
Edina, MN 55424

with a copy to: Brent Rogers
Saturday Properties
1400 Van Buren St. NE, Suite 200
Minneapolis, MN 55413

with a copy to: Daniel J. Van Dyk
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

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

City of Edina
Attention: City Manager
4801 W. 50th ST.
Edina, MN 55424

with a copy to:

Edina Housing and Redevelopment Authority
Attention: Executive Director
4801 W. 50th ST.
Edina, MN 55424

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

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

Section 12.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 12.6 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 12.7 No Additional Waiver Implied by One Waiver. If 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 12.8 Joinder; Permitted Encumbrance. Except for the consent attached hereto, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement shall constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Developer and any construction lender or permanent lender.

Section 12.9 Survival. The easements granted hereby and each reservation, covenant, condition and restriction contained in this Agreement will run with the land and will be binding upon, and inure to the benefit of, as the case may be, the Developer and the City and their respective successors and assigns.

Section 12.10 Estoppel Certificate. Each party shall, within fifteen (15) days after request from the other party hereto, deliver a written statement which may be relied upon by the requesting party, or any lender or transferee of the requesting party, setting forth (a) whether the requesting party has fully complied with the provisions hereof, and if not, setting forth in reasonable detail the nature of any violations; and (b) any other matter reasonably requested by the requesting party.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

CITY OF EDINA, MINNESOTA

By _____
Mayor

By _____
City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by James Hovland and Scott Neal, the Mayor and City Manager respectively, of the City of Edina, Minnesota, on behalf of the City of Edina.

Notary Public

EXHIBIT A-1

LEGAL DESCRIPTION OF THE SOUTH SITE

B-17

Exhibit A-1 to
Easement and Maintenance Agreement

(Market Street Plaza)

4847-5934-5479\16

EXHIBIT A-2

LEGAL DESCRIPTION OF THE PLAZA PREMISES

B-18

Exhibit A-2 to
Easement and Maintenance Agreement

(Market Street Plaza)

4847-5934-5479\16

EXHIBIT B
DEPICTION OF THE PLAZA PREMISES

PROJECT NO. 17

M&H
MORRIS & HANSEN

1000 Taylor Oaks Center Dr.
Suite 200
Wagon Mound, MO 64484
Tel: 856-621-1400
Fax: 856-621-1402

Kimley-Horn

225 WESTERN AVENUE, SUITE 200
ST. PAUL, MINNESOTA 55105
PH: 651-450-1977 WWW.KIMLEY-HORN.COM

I HEREBY CERTIFY THAT THE PLANS, SPECIFICATIONS OR REPORTS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A duly LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

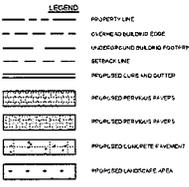
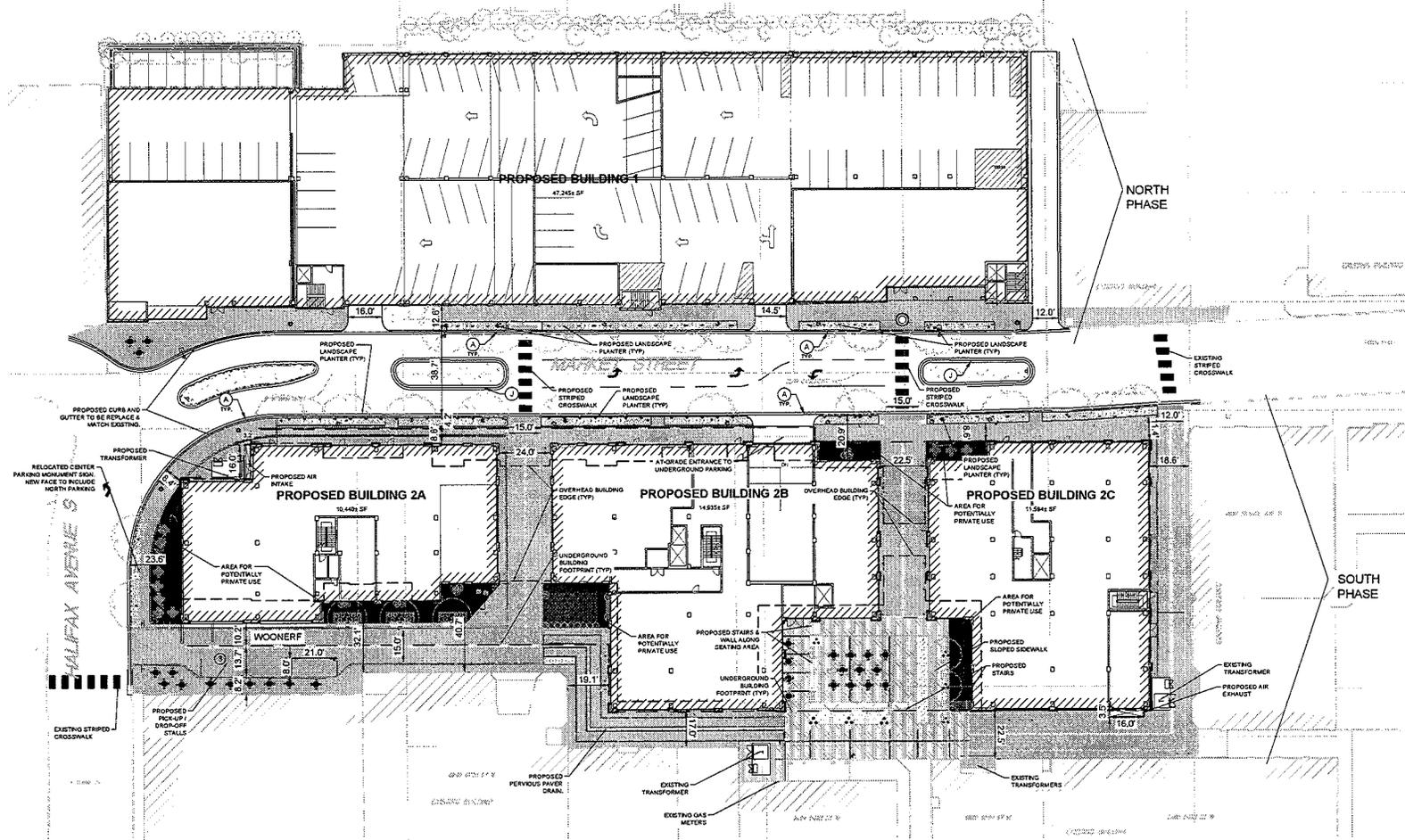
DANIEL L. ELDMAN
DATE: 06/20/2017 BY: LEL/MLC/AMM

NO.	DESCRIPTION	DATE
1.	ISSUED FOR PERMITS	05/29/2017
2.	FINAL DEVELOPMENT PLAN	06/20/2017

PROJECT NUMBER: 16000001
DRAWN BY: BMM/APS
CHECKED BY: DLE
DATE: 06/20/2017
COMPUTER PLOTTER:

CIVIL SITE PLAN

ENTITLEMENT
C4.0



- SITE PLAN NOTES**
- ALL WORK AND MATERIALS SHALL COMPLY WITH ALL CITY AND STATE REGULATIONS AND SPECIFICATIONS AND SHALL BE VERIFIED.
 - CONTRACTOR SHALL REFER TO THE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF ALL STRUCTURES, UTILITIES, AND EQUIPMENT. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND EXISTING UTILITIES BEFORE CONSTRUCTION.
 - ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA. CONTRACTOR SHALL VERIFY ALL UTILITIES BEFORE CONSTRUCTION.
 - ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA. CONTRACTOR SHALL VERIFY ALL UTILITIES BEFORE CONSTRUCTION.
 - EXISTING STRUCTURES WITH INADEQUATE UTILITIES ARE TO BE ABANDONED OR RELOCATED AS NECESSARY. ALL COSTS SHALL BE INCLUDED IN BIDDING.
 - CONTRACTOR SHALL BE RESPONSIBLE FOR ALL NECESSARY PERMITS AND INSURANCE. CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND INSURANCE BEFORE CONSTRUCTION.
 - CONTRACTOR SHALL BE RESPONSIBLE FOR ALL NECESSARY PERMITS AND INSURANCE. CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND INSURANCE BEFORE CONSTRUCTION.
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BUILDING DATA SUMMARY

AREAS	AREA (SF)
BUILDING 1 FOOTPRINT (SF)	47245
BUILDING 2A FOOTPRINT (SF)	16489
BUILDING 2B FOOTPRINT (SF)	4620
BUILDING 2C FOOTPRINT (SF)	13549
TOTAL BUILDING AREA	82144 (87.4% OF TOTAL PROPERTY AREA)

PROPERTY SUMMARY

EDINA, MN COLLABORATIVE	
TOTAL PROPERTY AREA	2.86 ACRES
TOTAL DISTURBED AREA	2.34 ACRES
IMPERVIOUS AREA	2.53 ACRES
PERVIOUS AREA	0.33 ACRES
ZONING SUMMARY	
EXISTING ZONING	PCD-2
PROPOSED ZONING	PLD

*PROPOSED IMPERVIOUS REDUCTION OF 12%

PARKING DATA SUMMARY

LOCATION	EXISTING PARKING	PROPOSED PARKING
NORTH RAMP	236 STALLS	655 STALLS
CENTER RAMP	205 STALLS	261 STALLS
SOUTH RAMP	339 STALLS	339 STALLS
TOTAL	880 STALLS	1,256 STALLS

- KEYNOTE LEGEND**
- 1. 12" CURB AND GUTTER
 - 2. 12" CURB AND GUTTER
 - 3. 12" CURB AND GUTTER
 - 4. 12" CURB AND GUTTER
 - 5. 12" CURB AND GUTTER
 - 6. 12" CURB AND GUTTER
 - 7. 12" CURB AND GUTTER
 - 8. 12" CURB AND GUTTER
 - 9. 12" CURB AND GUTTER
 - 10. 12" CURB AND GUTTER
 - 11. 12" CURB AND GUTTER
 - 12. 12" CURB AND GUTTER
 - 13. 12" CURB AND GUTTER
 - 14. 12" CURB AND GUTTER
 - 15. 12" CURB AND GUTTER
 - 16. 12" CURB AND GUTTER
 - 17. 12" CURB AND GUTTER
 - 18. 12" CURB AND GUTTER
 - 19. 12" CURB AND GUTTER
 - 20. 12" CURB AND GUTTER

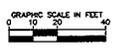


EXHIBIT C
Trash Facility Easement Agreement

EASEMENT
AND
MAINTENANCE AGREEMENT

between

THE CITY OF EDINA, MINNESOTA

and

EDINA MARKET STREET LLC

for

MARKET STREET TRASH FACILITY

Dated as of

_____, 201____

THIS DOCUMENT WAS DRAFTED BY:
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

**EASEMENT AND MAINTENANCE AGREEMENT
(MARKET STREET TRASH FACILITY)**

THIS EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into this ___ day of _____, 201___ (“Effective Date”), by and between the **CITY OF EDINA, MINNESOTA**, a Minnesota statutory city (the “City”), and **EDINA MARKET STREET LLC**, a Minnesota limited liability company (the “Developer”).

RECITALS

WHEREAS, the Housing and Redevelopment Authority of the City of Edina, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), the City, and Developer have entered into a Redevelopment Agreement (the “Contract”) dated June ___, 2017; and

WHEREAS, such Contract is intended to provide for the redevelopment of certain land within the City’s 50th & France District located on Market Street (formerly known as 49 1/2 Street) by the Developer in coordination with the Authority and with the cooperation and assistance of City, and

WHEREAS, the Contract provides for the expenditure of public and other funds for certain Minimum Improvements to assist in the redevelopment of the Market Street Project; and

WHEREAS, the South Site Vertical Improvements, located on that portion of the Market Street Project legally described on Exhibit A-1 attached hereto (the “South Site”), include two shared trash facilities (the “Market Street Trash Facility”; defined in the Contract as the Shared Trash Facility), which such Market Street Trash Facility is located on those portions of the South Site legally described in Exhibit A-2 attached hereto and as depicted in Exhibit B attached hereto; and

WHEREAS, the City and the Developer have agreed in the Contract that the Developer will grant an easement to the City pursuant to which the City may access and use the Market Street Trash Facility and grant licenses for access to and use of the Market Street Trash Facility to the owners, tenant and subtenants of certain buildings within the 50th & France District pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Developer has agreed to operate, manage, and maintain the Market Street Trash Facility pursuant and subject to the terms and conditions of the Contract and this Agreement, and

WHEREAS, the City and Developer deem it to be in their interest and in furtherance of the economic development and redevelopment plan for Market Street Project to enter into this Agreement with respect to the Market Street Trash Facility; and

WHEREAS, all capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Contract.

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

Article I

GRANT OF EASEMENTS

Section 1.1 Easement Premises. Developer hereby grants and conveys to the City, for the benefit of the City, its employees, contractors, and agents, (i) a non-exclusive, perpetual easement over, across and upon those portions of the real property described on Exhibit A-2 attached hereto and depicted on Exhibit B attached hereto situate in the City of Edina, County of Hennepin, State of Minnesota (the “Trash Facility Premises”) for the purpose of disposing of, collecting, storing, and facilitating the removal of trash, refuse, debris, filth, recyclable materials (including organic recycling materials) and such other ordinary waste products generated by the “Licensed Parties” (as defined below) within the “Serviced Buildings” (collectively “Waste”), in accordance with and subject to the terms and conditions of this Agreement and (b) a non-exclusive, perpetual easement over, across, upon and through all exterior means of pedestrian and vehicular access to and from public rights of way, streets, alleys, public spaces, and easements appurtenant and/or used in connection with the Trash Facility Premises immediately adjoining or contiguous to the Trash Facility Premises, which such driveways, exterior sidewalks, alley ways, woonerfs and corridors providing such means of access to the Trash Facility Premises from the Serviced Building are as depicted on Exhibit B attached hereto (collectively, the “Access Premises”, and together with the Trash Facility Premises, collectively the “Easement Premises”), all in accordance with and subject to the terms and conditions of this Agreement. Subject to the terms of this Agreement, the City may grant licenses for the use of the Easement Premises to the owners, tenants, and subtenants of the UG Parking Element, the North Ramp (including the North Ramp Improvements), the Shared Plaza Element, the North Site Commercial Elements, the South Site Commercial Elements and, subject to Section 2.2 below, the existing buildings located on the city block bordered by 50th Street, Halifax Avenue, Market Street and France Avenue (collectively, the “Serviced Buildings”) (each a “Licensed Party”, and collectively, the “Licensed Parties”). Before any Licensed Party is given the means to access the Easement Premises and use Market Street Trash Facility, the Licensed Party must sign a reasonable license agreement which shall obligate such Licensed Party to use the Market Street Trash Facility in accordance with the terms and conditions of this Agreement and shall include reasonable indemnification provisions by which such Licensed Party will be responsible for all claims, demands, actions, damages, costs, expenses, attorneys’ fees, and liability (including costs of “Maintenance Work”) arising from the negligence, willful misconduct, or violation of the requirements of this Agreement or the license agreement by such Licensed Party, its employees, agents, and invitees in connection with the use of the Easement Premises.

Article II

TERM

Section 2.1 Term. The easements granted hereby, and each reservation, covenant, condition and restriction contained in this Agreement, shall be effective as of the date hereof, shall be perpetual, and shall remain in effect until affirmatively released by the City. Such

release shall be evidenced by the recording of a release or termination of this Agreement in the real estate records of Hennepin County, Minnesota, at which time this Agreement shall terminate, subject to reconciliation of expenses and obligations incurred through the date of release or termination and the continuation of those provisions that specifically survive termination of this Agreement, and the Market Street Trash Facility and any other areas of the Easement Premises shall thereafter belong to and be under the sole control of Developer.

Section 2.2 Partial Release of Adjoining Properties. Notwithstanding anything to the contrary contained herein, the easements granted herein shall terminate (and corresponding licenses shall be revoked) with respect to any of the Serviced Buildings located on the city block bordered by 50th Street, Halifax Avenue, Market Street and France Avenue in the event such property is demolished or otherwise redeveloped in a manner sufficient to support its own trash facility, or otherwise redeveloped or repurposed in such a manner that materially increases the volume or intensity of such property's Waste or use of the Easement Premises hereunder. Upon such change in building or use, the Developer and City shall jointly execute and record a partial termination of this Agreement with respect to such parcel.

Article III

USE OF EASEMENT PREMISES

Section 3.1 Operation and Control of the Market Street Trash Facility. During the term of this Agreement, the Developer shall operate the Market Street Trash Facility, in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders, subject to the reimbursement provisions contained herein. Subject to the terms of this Agreement, the Developer shall have full authority and control over the management, operation, and use of the Market Street Trash Facility. Except as specifically set forth herein, the Developer shall be entitled to make all decisions and to execute all agreements, in its sole discretion, with respect to the Market Street Trash Facility so long as such decisions and agreements do not violate the provisions of this Agreement, the Contract, the approved Final Development Plan, or any applicable governmental laws, ordinances, regulations or orders, as each of the foregoing may be amended and so long as each of the foregoing remains in effect. The Developer shall establish (and modify from time to time) such hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate in the Developer's reasonable discretion for the safe, efficient, and orderly use and operation of the Market Street Trash Facility, including maintenance and management of (a) a system of secured, controlled access to the Market Street Trash Facility by the Licensed Parties only by key, key card, key fob or other secured means as authorized and issued by or through the City ("Secured Access System") and (b) a security system with cameras and related recording equipment to reasonably monitor the use and access of the Market Street Trash Facility ("Security System").

Section 3.2 Waste; Nuisance. Neither the City nor the Developer shall knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any improvements hereafter erected or located upon the Easement Premises, or any part thereof, or the fixtures and/or equipment thereof. The City in its use and occupancy of the Easement Premises, shall not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance. Usual and normal wear and

tear, storage of trash, recycling or organic recycling materials (provided organic recycling is provided at the Market Street Trash Facility), damage by the elements, unavoidable casualty or depreciation and diminution over time shall not be considered “waste,” “nuisance,” “damage,” “disfigurement,” or “injury.”

Article IV

Construction and MAINTENANCE OF THE EASEMENT PREMISES

Section 4.1 Construction of Market Street Trash Facility. In accordance with the provisions of the Contract and this Agreement, the Developer is responsible, at its sole cost and expense, to initially build, construct, and install the Market Street Trash Facility, consisting of (a) all walls, floors, curbs, ceilings, vents, and all other structural and finish elements required to create a fully enclosed space and (b) all components and fixtures located thereon, including, without limitation, the Secured Access System, the Security System, all lighting, doors, gates, locks, shelving, and required electrical, plumbing, and mechanical systems and signage. The size, location, and design of the Market Street Trash Facility must be as approved in the Final Development Plans. In addition, the Developer is responsible for initial construction and ongoing maintenance for the term of this Agreement of a subsurface structural support system capable of supporting the Market Street Trash Facility and the ongoing operation, maintenance, and repair thereof.

Section 4.2 Developer Maintenance. The Developer shall, at all times during the term hereof, at its initial cost and expense, subject to the reimbursement provisions hereof, keep, maintain, and repair the Market Street Trash Facility (including the Access Premises) in good condition and repair in a first-class manner. Such maintenance and repair work shall include the following (collectively “Maintenance Work”):

- (a) all interior and exterior non-structural repairs, replacements, renewals, alterations, additions and betterments thereto, ordinary and extraordinary, and foreseen and unforeseen, all as may be necessary to keep the Market Street Trash Facility in the condition and repair required by this Agreement;
- (b) maintenance, repair or replacement of all structural elements of the Market Street Trash Facility, including structural components of all walls, ceilings, and roofs, and foundations, foundation walls, floor slabs, support walls, and waterproofing systems; and
- (c) replacement, repair, or correction of any structural or other construction defects;
- (d) maintaining in good working order (including cleaning and painting as necessary), repairing, and replacing as necessary all Access Facilities; and
- (e) maintaining in good working order, repairing, and replacing as necessary all domestic water, sewer, storm water, gas, electricity, power, heat, telephone, other communications service and any and all other utility or similar services used, rendered, or supplied, upon, at, from, or in connection with the Market Street Trash Facility.

(f) the inspection, repair, replacement, and maintenance of all interior finish surfaces to a smooth and evenly covered condition;

(g) the inspection, repair, replacement, maintenance, and management of the Secured Access System, the Security System and any required ventilation system;

(h) periodic janitorial, cleaning and pest control services necessary to keep the Market Street Trash Facility in a clean, orderly and sanitary condition;

(i) providing or arranging for the provision of all necessary and proper containers for the storage of all Waste (e.g., trash cans, dumpsters, compactors, etc.) ("Waste Containers"); and

(j) periodic removal or causing the periodic removal of all Waste deposited by the Licensed Parties in the Market Street Trash Facility at such intervals necessary to prevent the accumulation such Waste beyond the capacity of the Waste Containers.

Section 4.3 Manner of Performance. All Maintenance Work shall be done: (i) in such manner as to not unreasonably interfere with the normal use and enjoyment of the area on which such work is being done; (ii) in full compliance with the provisions of this Agreement and the Contract; (iv) in full compliance with all applicable statutes, codes, ordinances, rules and regulations; (v) with respect to reconstruction, maintenance, repair, alterations or modifications, the Maintenance Work shall use materials, equipment and design and engineering standards, equal to or better than those originally used; (vi) in a good and workmanlike manner; (vii) in such manner as not to unreasonably adversely affect, impair or destroy the structural soundness or integrity, aesthetic appearance or functional utility of the Market Street Trash Facility; (viii) with all due diligence; and (ix) in such a manner so as to clean the area and restore the affected portion of the area on which the Maintenance Work was done to a condition equal to or better, to the extent practical, than the condition which existed prior to the commencement of such Maintenance Work. The Developer may, from time to time, select and hire one or more third parties to perform the Maintenance Work, provided that the Developer shall remain responsible at all times for the performance of each such Maintenance Work. Notwithstanding anything to the contrary contained herein, to the extent that any Maintenance Work is required due to damage or destruction caused by the negligence or willful misconduct of the City, the Developer, or their respective employees, agents, or invitees, including the Licensed Parties as licensees of the City, the cost and responsibility for the repair of such damage or destruction shall be borne by the party whose negligence or willful misconduct (or whose employee, agent or invitee's negligence or willful misconduct) caused such damage or destruction.

Section 4.4 50th & France District Maintenance Assessments. The Developer acknowledges and agrees that nothing in this Agreement will be deemed to limit the City's right to recoup its share of the Maintenance Costs hereunder by including such costs in the 50th & France District commercial area maintenance assessments, including assessments levied upon property owned by the Developer, all as specified and in accordance with the City Code.

Section 4.5 Liens. The Developer will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by

Developer (and will promptly discharge (by payment, bonding over or otherwise) the same upon their occurrence); provided, however, the Developer may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Developer shall file a bond or deposit cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Market Street Trash Facility to secure the payment of such lien if finally determined to be valid.

Section 4.6 Third Party Maintenance Providers. The Developer shall have the right, from time to time, to select and hire a third party to perform the Maintenance Work, provided that the Developer shall remain responsible at all times for the performance of the Maintenance Work. If the Developer selects such third party to perform, supervise or coordinate the Maintenance Work (the "Property Manager"), such Property Manager must be a recognized professional commercial property management company. The Developer may hire companies affiliated with it to perform the Maintenance Work, but only if the rates charged by such companies are competitive with those of other companies furnishing similar service in the Minneapolis-St. Paul metropolitan area, it being agreed that this provision regarding affiliated companies shall be construed strictly against the Developer. Any contract with a Property Manager, and the amounts to be paid such Property Manager under such contract, shall be subject to the City's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. All such contracts shall be no longer than one (1) year in duration (but may provide for automatic renewal).

Section 4.7 Maintenance Costs; Budget.

(a) Subject to the Excluded Costs set forth in Section 4.8 below, all costs and expenses in connection with the Maintenance Work ("Maintenance Costs") shall be the responsibility of the City (subject to reimbursement under Section 4.4 above or such other reimbursement as the City may obtain from the Licensed Parties). Maintenance Costs shall also include an administrative or overhead fee of the Developer or the Property Manager (if applicable), but not both ("Administrative Fee") to cover arranging such maintenance and billing, but such Administrative Fee shall not exceed three percent (3%) of the Maintenance Costs exclusive of such Administrative Fee.

(b) No later September 1 of each year, the Developer shall submit to the City an estimated annual budget of the Maintenance Costs for the following calendar year, and the parties will cooperate in good faith to finalize such budget no later than October 1 of each year ("Annual Budget"). The Developer shall submit the first Annual Budget to the City, covering the initial partial year of operation of the Market Street Trash Facility, no later than sixty (60) days prior to the anticipated date the Market Street Trash Facility will available for use by the Licensed Parties. Each Annual Budget shall be subject to the City's review and prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. City and Developer agree that Maintenance Work that is included in the applicable Annual Budget, including any allowances therein, and any Maintenance Work that is otherwise considered necessary or prudent under industry standards for the safe operation and long-term preservation of first-class indoor trash collection facilities (collectively "Nondiscretionary Maintenance Work") shall be performed by Developer in accordance with the terms hereof and the cost thereof

included in Maintenance Costs. All Maintenance Work other than Nondiscretionary Maintenance Work is referred to herein as “Discretionary Maintenance Work”. The City shall be entitled to reject or approve, in whole or in part (if partial rejection is feasible in Developer’s reasonable opinion), in its sole and absolute discretion, and the City may modify the Annual Budget to account for any Discretionary Maintenance Work so rejected by the City.

(c) The City shall pay to the Developer one twelfth (1/12) of the City’s pro rata share of Maintenance Costs as set forth in the approved Annual Budget in monthly installments no later than thirty (30) days following invoice thereof from the Developer (and paid in arrears if required by City policy). If the Effective Date is a day other than the first day of a calendar month, the City’s share of the costs for this month shall be a prorated portion of the monthly estimation, based upon a thirty (30) day month, and shall be due and payable on the Effective Date. Any payment not received when due hereunder shall accrue interest at a rate of twelve percent (12%) per annum.

(d) Within sixty (60) days after the end of each calendar year, the Developer shall provide the City with a certified statement, together with supporting material upon request of the City, as to the actual Maintenance Costs paid by it during the preceding calendar year, together with an accounting of the Administrative Fee. If the amount paid by City for such calendar year shall have exceeded its share, the Developer shall promptly refund the excess to the City at the time such certified statement is delivered, or if the amount paid by the City for such calendar year is less than its share, the City shall pay the balance of its share to Developer within sixty (60) days after receipt of such certified statement.

(e) Within one (1) year after receipt of any such certified statement, the City shall have the right to inspect the Developer’s books and records pertaining to Maintenance Costs for the calendar year covered by such statement. The Developer shall provide a complete copy of such books and records to the City in electronic form. In the event that such inspection shall disclose any error in the determination of Maintenance Costs or in calculating the City’s share of such costs, an appropriate adjustment shall be made forthwith. Alternatively, the City may cause a third-party auditor to conduct such inspection, provided as a condition of any third-party audit, City and Developer agree that only auditors compensated on an hourly or fixed fee basis (expressly excluding any auditors compensated on a contingent basis) shall be permitted and prior to any such audit City shall provide evidence of same by delivery to Developer of a copy of the City’s engagement letter with the auditor. In the event that such audit shall disclose any error in the determination of Maintenance Costs or in calculating the City’s share of such costs, an appropriate adjustment shall be made forthwith. The cost of any such audit shall be assumed by the City unless the City shall be entitled to a refund in excess of ten (10%) percent of the amount calculated by the Developer as its share of such costs for such calendar year, in which case the Developer shall pay the cost of such audit, without reimbursement, not to exceed \$2,000.00. The Developer shall keep, and present, upon request, all invoices, bills or statements of costs or expenses incurred in connection with the Maintenance Costs for a period of two (2) years.

Section 4.8 Exclusions to Maintenance Costs. Notwithstanding anything in this Agreement to the contrary, the City shall not be obligated to pay any portion of Maintenance Costs expended by Developer with respect to the following items, which such Maintenance Costs shall be the Developer's sole cost and expense and not subject to reimbursement from the City (collectively "Excluded Costs"):

- (a) The repair or replacement of any structural element of the Market Street Trash Facility, including the foundation, foundation walls, floor slabs, exterior walls, and waterproofing systems related to the foregoing;
- (b) replacement, repair, or correction of any structural or other construction defect;
- (c) Taxes, except Separate Taxes, if any, pursuant to Section 6.1 below;
- (d) Policies of insurance required to be carried by the Developer pursuant to Article VII, except the City's Property Insurance Contribution pursuant to Section 7.1 below;
- (e) Maintenance Work related to the repair of any damage caused by the Developer, its contractors and agents (provided, however, the City will pay one hundred percent (100%) of the cost of repair of any damage caused by the City or the Licensed Parties (other than Developer), or employees or agents thereof;
- (f) With respect to Maintenance Work performed by a party related to Developer, then any cost therefor in excess of what would be chargeable in an arms-length transaction;
- (g) Discretionary Maintenance Costs not approved by the City in writing; and
- (h) Maintenance Costs which are extraordinary costs and which are not reasonably necessary for the operation, maintenance and insurance of the Market Street Trash Facility, including, without limitation, (i) any late charges or fees; (ii) any entertainment, transportation, meals or lodging charges, of anyone; or (iii) any profit, administrative and overhead costs (other than the Administrative Fee), such as rent, legal, supplies, utilities and wages or salaries paid to management or supervisory personnel, except as otherwise provided in this Agreement.

Article V

UTILITIES

Section 5.1 Utility Charges. Developer shall cause the utilities serving the Market Street Trash Facility to be separately metered (together with the utilities for the Shared Plaza Element) and the City will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, storm water, gas, electricity, power, heat, telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with the Easement Premises, or any part thereof.

Article VI

TAXES AND ASSESSMENTS

Section 6.1 Payment of Taxes and Assessments. Developer shall pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies (collectively "Taxes"), assessed and levied by any governmental taxing authority during the term of this Agreement against the Market Street Trash Facility. Notwithstanding the foregoing, if (i) the Market Street Trash Facility is ever subdivided such that it becomes a separate tax parcel and such parcel is deemed to be subject to Taxes, or (ii) records of the tax assessor provide reasonable evidence that the Market Street Trash Facility is deemed to be subject to Taxes, the City shall pay directly to the relevant taxing authority any such Taxes ("Separate Taxes").

Article VII

INDEMNIFICATION, INSURANCE, IMMUNITIES

Section 7.1 Property Insurance. At all times during the term hereof, the Developer shall keep the South Site Vertical Improvements (including the Market Street Trash Facility), and all alterations, extensions, and improvements thereto and replacements thereof, insured, in the amount of the full replacement cost thereof and with such deductibles as the Developer deems appropriate, against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to buildings and improvements similar in construction, general location, use, and occupancy to the South Site Vertical Improvements. The City shall pay with its first monthly installment of its pro rata share of Maintenance Costs following the approval of each Annual Budget an amount equal to the cost of such insurance which is directly attributable to the Market Street Trash Facility, taking into account the use, nature, and/or value of the Market Street Trash Facility (and not merely as a percentage of the total of such insurance costs) as reasonably determined by the parties and the applicable insurer prior to the City's approval of each Annual Budget (the "City's Property Insurance Contribution").

Section 7.2 Indemnification of Developer. Except to the extent caused by the willful misconduct or negligence of the Developer or its employees or agents, or arising out of the default by Developer of its obligations hereunder, the City hereby covenants and agrees to assume and to permanently indemnify and save harmless Developer and its employees and agents, from, and against any and all claims, demands, actions, damages, costs, expenses, attorneys' fees, and liability in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in, at, upon, or from the use or occupancy of the Easement Premises by any party other than Developer and its employees or agents.

Section 7.3 Indemnification of the City. Except to the extent caused by the willful misconduct or negligence of the Licensed Parties or arising out of the default by the City and its officers, employees or agents of obligations made pursuant to a contract with Developer, including this Agreement, Developer hereby covenants and agrees to assume and to permanently indemnify and save harmless the City and its employees and agents from and against any and all

claims, demands, actions, damages, costs, expenses, attorneys' fees, and liability in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in, at, upon, or from the Easement Premises or to the extent arising from or out of the design, construction, maintenance and operation of the Easement Premises by the Developer, or in connection with the use or occupancy of the Easement Premises, or any part thereof, by the Developer, or to the extent arising out of the breach of Developer's obligations hereunder

Section 7.4 Liability Insurance. The Developer and the City shall procure and maintain continuously in effect (or shall cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to facilities and improvements similar to the Market Street Trash Facility, to be reviewed from time to time by the parties and adjusted in accordance with the requirements of Minnesota Statutes Section 466.04, as follows:

(a) Insurance against liability (including passenger elevator liability) for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Market Street Trash Facility. Developer (and Developer's lender and property manager) shall be named as additional insureds on the City's such policy of insurance and the City shall be named as additional insured on the Developer's such policy of insurance.

(b) Liability insurance including coverage for:

- (i) fire and explosion;
- (ii) theft (of entire vehicle); and
- (iii) riot, civil commotion, malicious mischief, and vandalism.

(c) To the extent reasonably available, insuring the indemnifications expressed in 7.2 and 7.3 hereof (as applicable).

Section 7.5 General Insurance Requirement. All insurance required in this Agreement shall be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Developer shall, within a commercially reasonable time following the City's request therefor, furnish the City with copies of policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 7.6 Immunities. Nothing herein shall be deemed or constitute a waiver by the City of any statutory limitations on liability, statutory or common law immunities or any defenses that would otherwise be available to it in claims by third parties, including specifically the maximum liability amount contained in Minnesota Statutes Section 466.04. To the extent that the Developer performs construction, operation, maintenance, repair, or replacement of any part of the Market Street Trash Facility, pursuant to the terms of this Agreement, it is the intention of

the parties that the Developer is entitled to the immunities provided pursuant to Minnesota Statutes Section 466.03, or any successor statute.

Article VIII

ASSIGNMENT

Section 8.1 General. Due to the public nature of the easement granted herein, the City may not assign or transfer its interest under this Agreement without the prior written consent of Developer, which consent shall be granted, conditioned or withheld in Developer's sole discretion. During the term of the Contract, the Developer may not assign or otherwise transfer its interest under this Agreement, except as provided in the Contract. The City shall recognize and approve any successors or assigns of Developer in accordance with the terms and provisions of the Contract. Following the expiration or earlier termination of the Contract, Developer may freely assign or transfer its interest under this Agreement without the consent of the City. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that the rights and easements established, granted, conveyed, reserved and consented to by this Agreement will run with the land and will inure to the benefit of and be binding on all present and future owners of any applicable portion of the South Site and their respective successors and assigns.

Article IX

Casualty

Section 9.1 Destruction. Promptly upon any casualty loss or damage to all or any part of the Market Street Trash Facility (including subsurface structural support elements), the Developer shall proceed with diligence to restore the Market Street Trash Facility to the condition prior to the casualty with the insurance proceeds obtained with respect to the loss or damage to the extent the insurance proceeds recovered allow for such rebuilding; provided, however, the Developer shall not be obligated to rebuild the Market Street Trash Facility if any of the Developer's lenders or loan agreements (whether executed before or after the date hereof) do not permit such rebuilding or require that insurance amounts recovered with respect to any loss or damage to the Market Street Trash Facility be paid directly to the lender.

Article X

EMINENT DOMAIN

Section 10.1 Major Condemnation. If all of the Market Street Trash Facility shall be taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, this Agreement shall terminate as of the date of vesting of title in the condemning authority. Each party shall make its own claim in the condemnation proceeding based upon the value of its respective interest in the Market Street Trash Facility.

Section 10.2 Partial Condemnation. If any portion of the Market Street Trash Facility shall be taken, acquired, or condemned by eminent domain for any public or quasi-public use or

purpose, the absence of which materially and adversely affects the conduct of business by the City or the Developer, then either the City or the Developer, at any time within sixty (60) days after it has actual notice of such proposed acquisition or condemnation, shall have the option to cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property; provided, if neither party so terminates the Agreement will continue as to the remaining part of the Easement Premises not so taken or threatened to be taken. The terminating party, if any, shall exercise its termination option by giving the other party written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event neither party furnishes the other party written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement shall continue in full force and effect. Each party shall make its own claim in the condemnation proceeding based upon the value of its respective interest in that part of the Market Street Trash Facility subject to the acquisition or condemnation, provided, however, that no award to the City based on its easement interest shall be permitted to the extent such award reduces Developer's award based on its fee interest.

Article XI

DEFAULT and Remedies

Section 11.1 General. It shall be an "Event of Default" hereunder if (a) either party defaults in any obligation of this Agreement requiring the payment of money and fails to cure such default within ten (10) days after receipt of written notice of such default from the other party or (b) if a party defaults in any of its other obligations under this Agreement and fails to cure such default within thirty (30) days after receipt of written notice of such default from the other party (or, if such default reasonably requires more than thirty (30) days to cure, fails to commence such action as is necessary to cure such default within such 30-day period and to proceed diligently thereafter to cure such default).

Section 11.2 Remedies. Following an Event of Default hereunder, the non-defaulting party may: (a) exercise its self-help rights in accordance with Section 11.3 with respect to a default in the performance of Maintenance Work; (b) pay all or any part of such obligations and charge the amount of such payment, together with reasonable attorneys' fees and interest at a rate of twelve percent (12%) per annum, to the defaulting party; (c) bring an action for injunctive relief; or (d) enforce the obligations of the defaulting party by an action at law or in equity. In an emergency, any such payment or performance may be undertaken or action brought by the non-defaulting party prior to the giving of any notice or expiration of any notice period, but the party curing the default will provide such notice as soon as may be reasonable under the circumstances. If the Developer has failed to cure a default requiring the payment of money in accordance this section, the City shall have the right to assess the costs incurred by the City to all or any portion of the South Site as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute.

Section 11.3 Self Help; Failure to Maintain. In the event the Developer defaults in its obligation to perform the Maintenance Work as required by this Agreement, then the City, after compliance with the notice provisions of Section 11.1 (except in an emergency, in which case the applicable Maintenance Work may be initiated with whatever notice is reasonable under the

circumstances), shall have the right to enter any portion of the Easement Premises (including subsurface structural support elements) and perform such Maintenance Work as required herein and charge the costs of such performance plus ten percent (10%) of such costs for overhead, together with reasonable attorneys' fees, to the Developer. The Developer shall promptly pay to the City any and all such costs as are due and owing on account thereof. The City shall submit a statement to the Developer evidencing the costs incurred for such Maintenance Work. If the Developer has failed to make payment in accordance with the statement within sixty (60) days after receipt thereof, the City shall have the right to assess the costs incurred by the City to all or any portion of the South Site as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. The Developer hereby agrees to such an assessment for maintenance and repair costs, agrees that the South Site assessed for such service charges is benefited thereby, and waives any rights the Developer or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429. Notwithstanding anything to the contrary contained herein, the City shall have no obligation of any kind, expressed or implied, to perform the Maintenance Work or any part thereof.

Section 11.4 Remedies Cumulative. Each right, power and remedy provided under this Agreement will be cumulative and concurrent and will be in addition to every other right, power or remedy provided for under this Agreement or at law or in equity. The exercise or beginning of exercise of any one or more rights, powers or remedies will not preclude the concurrent or later exercise of any other rights, powers or remedies. Failure to enforce any covenant under this Agreement will not be deemed a waiver of the right to do so thereafter.

Section 11.5 Easements Survive. The Developer may not terminate any of the easements created by this Agreement or discontinue performance of its obligations with respect to maintenance, repair or replacement of any easement due to a default by the City under this Agreement.

Article XII

MISCELLANEOUS

Section 12.1 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 12.2 Amendments. Except as otherwise herein provided, and not otherwise, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement shall be binding upon the parties to this Agreement unless in writing and signed by such parties. Developer and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Developer's construction lender and/or permanent lender for the Market Street Project, provided, however, that the Developer and the City shall not be required to enter into such amendments if the amendments are not consistent with the approved Final Development Plan, as the same may be amended and so long as the same remains in effect, or materially and adversely affect the interest

and security of the City with respect to the Market Street Project, including any increase in obligations or diminution of rights hereunder.

Section 12.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of the Developer, is addressed to or delivered personally to the Developer at:

Edina Market Street LLC
Attention: Peter Deanovic
5100 Eden Ave., Suite 317
Edina, MN 55424

with a copy to: Brent Rogers
Saturday Properties
1400 Van Buren St. NE, Suite 200
Minneapolis, MN 55413

with a copy to: Daniel J. Van Dyk
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

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

City of Edina
Attention: City Manager
4801 W. 50th ST.
Edina, MN 55424

with a copy to:

Edina Housing and Redevelopment Authority
Attention: Executive Director
4801 W. 50th ST.
Edina, MN 55424

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

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

Section 12.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 12.6 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 12.7 No Additional Waiver Implied by One Waiver. If 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 12.8 Joinder; Permitted Encumbrance. Except for the consent attached hereto, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement shall constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Developer and any construction lender or permanent lender.

Section 12.9 Survival. The easements granted hereby and each reservation, covenant, condition and restriction contained in this Agreement will run with the land and will be binding upon, and inure to the benefit of, as the case may be, the Developer and the City and their respective successors and assigns.

Section 12.10 Estoppel Certificate. Each party shall, within fifteen (15) days after request from the other party hereto, deliver a written statement which may be relied upon by the requesting party, or any lender or transferee of the requesting party, setting forth (a) whether the requesting party has fully complied with the provisions hereof, and if not, setting forth in reasonable detail the nature of any violations; and (b) any other matter reasonably requested by the requesting party.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

CITY OF EDINA, MINNESOTA

By _____
Mayor

By _____
City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by James Hovland and Scott Neal, the Mayor and City Manager respectively, of the City of Edina, Minnesota, on behalf of the City of Edina.

Notary Public

EXHIBIT A-1

LEGAL DESCRIPTION OF THE SOUTH SITE

C-19

Exhibit A-1 to
Easement and Maintenance Agreement

(Market Street Trash Facility)

4847-5934-5479\16

EXHIBIT A-2

LEGAL DESCRIPTION OF THE MARKET STREET TRASH FACILITY

C-20

Exhibit A-2 to
Easement and Maintenance Agreement

(Market Street Trash Facility)

4847-5934-5479\16

EXHIBIT B

DEPICTION OF THE TRASH FACILITY PREMISES AND ACCESS PREMISES

C-21

Exhibit B to
Easement and Maintenance Agreement

(Market Street Trash Facility)

4847-5934-5479\16

EXHIBIT D
UG Parking Easement Agreement

EASEMENT
AND
MAINTENANCE AGREEMENT

between

THE CITY OF EDINA, MINNESOTA

and

EDINA MARKET STREET LLC

for

MARKET STREET UNDERGROUND PARKING

Dated as of

_____, 201__

THIS DOCUMENT WAS DRAFTED BY:
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

**EASEMENT AND MAINTENANCE AGREEMENT
(MARKET STREET UNDERGROUND PARKING)**

THIS EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into this ___ day of _____, 201___ (“Effective Date”), by and between the **CITY OF EDINA, MINNESOTA**, a Minnesota statutory city (the “City”), and **EDINA MARKET STREET LLC**, a Minnesota limited liability company (the “Developer”).

RECITALS

WHEREAS, the Housing and Redevelopment Authority of the City of Edina, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), the City, and Developer have entered into a Redevelopment Agreement (the “Contract”) dated June ___, 2017; and

WHEREAS, such Contract is intended to provide for the redevelopment of certain land within the City’s 50th & France District located on Market Street (formerly known as 49 1/2 Street) by the Developer in coordination with the Authority and with the cooperation and assistance of City, and

WHEREAS, the Contract provides for the expenditure of public and other funds for certain Minimum Improvements to assist in the redevelopment of the Market Street Project; and

WHEREAS, the South Site Vertical Improvements, located on that portion of the Market Street Project legally described on Exhibit A-1 attached hereto (the “South Site”), includes two levels of underground parking below the South Site Vertical Improvements, which contain approximately 270 parking stalls (defined in the Contract as the “UG Parking Element”), and the top level below grade of the UG Parking Element (“Public Parking Level”) contains approximately 128 parking stalls and the lower level below grade of the UG Parking Element (the “Private Parking Level”) contains approximately 142 parking stalls; and

WHEREAS, the City and the Developer have agreed in the Contract that the Developer will grant an easement to the City pursuant to which the Public Parking Level will be permanently open and accessible to the general public for its use and enjoyment pursuant to the terms of this Agreement; and

WHEREAS, the City and the Developer have agreed that the City will operate and manage the Public Parking Level, the Developer will operate and manage the Private Parking Level, and the Developer will maintain the entire UG Parking Element (including both the Public Parking Level and the Private Parking Level), all pursuant and subject to the terms and conditions of this Agreement, and

WHEREAS, the City and Developer deem it to be in their interest and in furtherance of the economic development and redevelopment plan for Market Street Project to enter into this Agreement with respect to the UG Parking Element; and

WHEREAS, all capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Contract.

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

Article I

GRANT OF EASEMENTS

Section 1.1 Easement Premises. Developer hereby grants and conveys to the City, for the benefit of the City (a) an exclusive, perpetual public easement over and across those portions of the real property described on Exhibit A-2 attached hereto and depicted on Exhibit B-1 attached hereto situate in the City of Edina, County of Hennepin, State of Minnesota (the “Parking Premises”) for the purposes of utilizing the Public Parking Level for the parking, passage, and accommodation of motor vehicles and passage and accommodation of pedestrians and (b) a non-exclusive, perpetual public easement over, across, upon and through all means of vehicular and pedestrian access to and from public rights of way, streets, alleys, public spaces, and easements appurtenant and/or used in connection with the Parking Premises (including easements held by the City in connection with the Shared Plaza Element) immediately adjoining or contiguous to the Parking Premises, including but not limited to all atria, lobbies, concourses, passageways, hallways, corridors, stairways, and elevators providing such means of access and intended for use by the public (but excluding all such areas or means of access intended to serve as private access to the South Site Vertical Improvements other than the Public Parking Level), all as depicted on Exhibit B-2 attached hereto (collectively, the “Access Premises”, and together with the Parking Premises, collectively the “Easement Premises”), all in accordance with and subject to the terms and conditions of this Agreement. The Easement Premises include only those portions of the South Site Vertical Improvements necessary to utilize the Public Parking Level for public parking purposes and access thereto as described above. The Easement Premises do not include any right to use, alter or affect the walls or structural components of the South Site Vertical Improvements.

Section 1.2 Breakthrough Panels. Developer shall construct the Public Parking Level with a minimum of one (1) breakthrough panel, such breakthrough panel or panels designed to accommodate, in aggregate, two standard drive lanes (each approximately twelve (12) to fifteen (15) feet in width) (“Breakthrough Panels”), in the locations depicted on Exhibit B-2 attached hereto, to facilitate potential future access from the Public Parking Level to a public or private underground parking facility constructed on property adjacent to the South Site (“Adjacent Parcel”) and accessible to the locations of the breakthrough panels (such facility is referred to herein as the “Adjacent Parcel Parking Facility”). The Developer and the City agree to negotiate in good faith with the Adjacent Parcel owner regarding an easement agreement to provide access to and through the South Site and Public Parking Level, provided that terms of such an easement agreement, include specifically, but are not limited to, the Adjacent Parcel owner (a) assuming costs for (1) removing the breakthrough panel(s), (2) designing and constructing all connections to and through the Adjacent Parcel, including the relocation of utilities located between the UG Parking Element and the Adjacent Property; and (3) restoring any portions of the South Site, UG Parking Element or Shared Plaza Element disturbed by the construction or operation of the

Adjacent Parcel Parking Facility; and (b) participating in the Maintenance Costs of the UG Parking Element (including specifically the street level vehicle ingress and egress system). Any such easement agreement shall be on terms acceptable to Developer and City, in each of their commercially reasonable discretion, with respect to the following: grant of easement(s) (including term thereof and consideration therefor, if any), maximum capacity of the Adjacent Parcel Parking Facility and related traffic volumes and wait times in the UG Parking Element, construction and operation of the Adjacent Parcel Parking Facility, insurance and indemnity requirements, casualty, and rules and regulations for each of the Adjacent Parcel Parking Facility and the UG Parking Element. **[SECTION 1.2 ABOVE SHALL BE INCLUDED, REMOVED, OR MODIFIED FOLLOWING THE PARTIES' REVIEW OF THE CONCLUSION OF THE BREAKTHROUGH PANEL FEASIBILITY STUDY DESCRIBED IN SECTION 5.7 OF THE CONTRACT.]**

Article II

TERM

Section 2.1 Term. The easements granted hereby, and each reservation, covenant, condition and restriction contained in this Agreement, shall be effective as of the date hereof, shall be perpetual, and shall remain in effect until affirmatively released by the City. Such release shall be evidenced by the recording of a release or termination of this Agreement in the real estate records of Hennepin County, Minnesota, at which time this Agreement shall terminate, subject to reconciliation of expenses and obligations incurred through the date of release or termination and the continuation of those provisions that specifically survive termination of this Agreement, and the Public Parking Level and any other areas of the Easement Premises shall thereafter belong to and be under the sole control of Developer.

Article III

USE OF EASEMENT PREMISES

Section 3.1 General. During the term of this Agreement, the City shall operate the Public Parking Level, and the Developer shall operate the Private Parking Level, each in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders, each at its own cost and subject to the reimbursement provisions contained herein. Subject to the terms of this Agreement, the City shall have full authority and control over the management, operation, and use of the Public Parking Level. The Developer shall have full authority and control over the management, operation, and use of the Private Parking Level. Except as specifically set forth herein, each party shall be entitled to make all decisions and to execute all agreements, in its sole discretion, with respect to its respective portion of the UG Parking Element (*i.e.*, the City with respect to the Public Parking Level and the Developer with respect to the Private Parking Level) so long as such decisions and agreements do not violate the provisions of this Agreement, the Contract, the approved Final Development Plan, or any applicable governmental laws, ordinances, regulations or orders, as each of the foregoing may be amended and so long as each of the foregoing remains in effect. Notwithstanding the separate management and control of the Public Parking Level and Private Parking Level by the City and the Developer respectively, or anything else to the contrary in the Agreement, the parties

covenant that they will cooperate and coordinate in good faith to establish operational and management procedures such that neither party's normal use and enjoyment of its respective portion of the UG Parking Element is unreasonably diminished or impaired by the other party's normal use and enjoyment of its respective portion of the UG Parking Element. Furthermore, to the extent access and use of the UG Parking Element is controlled by an automated payment processing and compliance enforcement system (an "Automated Parking System"), the parties will cooperate to cause any such Automated Parking System to be designed and programmed in a manner consistent with each party's desired use and operation of its respective portion of the UG Parking Element.

Section 3.2 Operation and Control of the Public Parking Level. Subject to Section 3.1, the City may establish (and modify from time to time) (a) such hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate in the City's reasonable discretion for the safe, efficient, and orderly use and operation of the Public Parking Level and (b) such rates and charges for the use of the Public Parking Level as it deems advisable or desirable in the City's reasonable discretion. The City shall be entitled to keep and retain as its own property all income and revenue produced from the operation and use of the Public Parking Level during the term of this Agreement and shall have no obligation to report to or account to the Developer for any such income or revenue. Notwithstanding anything in this Agreement to the contrary, the Public Parking Level shall be open to the public; provided, however, the City may designate certain parking spots for certain specific uses (e.g., handicap parking, ride share, etc.) and enter into contracts for parking licenses for spots within the Public Parking Level in a manner consistent with policies that the City may establish (and modify from time to time), including monthly contracts for overnight parking by residents of the Apartment Element, so long all of the foregoing activities do not unreasonably impair the public's use and access to the Public Parking Level for purposes of patronizing the businesses, events, and amenities located in the 50th & France District.

Section 3.3 Operation and Control of the Private Parking Level. Subject to Section 3.1, Developer may establish (and modify from time to time) (a) such hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate in the Developer's reasonable discretion for the safe, efficient, and orderly use and operation of the Private Parking Level and (b) such rates and charges for the use of the Private Parking Level as it deems advisable or desirable in the Developer's reasonable discretion. The Developer shall be entitled to keep and retain as its own property all income and revenue produced from the operation and use of the Private Parking Level during the term of this Agreement and shall have no obligation to report to or account to the City for any such income or revenue.

Section 3.4 Waste; Nuisance. Neither the City nor the Developer shall knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any improvements hereafter erected or located upon the Easement Premises, or any part thereof, or the fixtures and/or equipment thereof. The City in its use and occupancy of the Easement Premises, shall not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time shall not be considered "waste," "nuisance," "damage," "disfigurement," or "injury."

Article IV

MAINTENANCE OF THE EASEMENT PREMISES

Section 4.1 Maintenance. Subject to cost reimbursement by the City as provided in Section 4.4 below, and subject further to the City's right to exclusively control and operate the Public Parking Level, Developer shall, at all times during the term hereof, at its initial cost and expense, keep, maintain, and repair the UG Parking Element in good condition and repair in a first-class manner, similar to that of other underground parking facilities located within other first-class, multi-use projects in the Minneapolis-St. Paul metropolitan area. Such maintenance and repair work (collectively "Maintenance Work") shall include, without limitation, the following:

- (a) all repairs, replacements, renewals, alterations, additions and betterments thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, all as may be necessary to keep the UG Parking Element in the condition and repair required by this Agreement;
- (b) maintaining all drive and parking surfaces in a smooth and evenly covered condition, which maintenance work shall include cleaning, sweeping, restriping, repairing and resurfacing the same;
- (c) maintaining in good working order (including cleaning and painting as necessary), repairing, and replacing as necessary the Access Premises;
- (d) maintaining in good working order, repairing, and replacing as necessary all ventilation and mechanical systems ("Mechanical Systems");
- (e) maintaining in good working order, repairing, and replacing as necessary any Automated Parking System;
- (f) maintaining in good working order, repairing, and replacing as necessary all domestic water, sewer, storm water, gas, electricity, power, heat, telephone, other communications service and any and all other utility or similar services used, rendered, or supplied, upon, at, from, or in connection with the UG Parking Element (collectively "Utilities");
- (g) periodic removal of all papers, debris, filth, refuse, ice and snow, including without limitation sweeping to the extent necessary to keep the UG Parking Element in a first-class, clean and orderly condition; provided all sweeping shall be at appropriate intervals during such times as shall not unreasonably interfere with the use of the UG Parking Element;
- (h) placing, keeping in repair, replacing and repainting any appropriate directional signs or markers, within or associated with the UG Parking Element; and

(i) operating, keeping in repair, cleaning and replacing when necessary such UG Parking Element lighting facilities as may be reasonably required, including without limitation all lighting necessary or appropriate for UG Parking Element security.

Section 4.2 Manner of Performance. All Maintenance Work shall be done: (i) in such manner as to not unreasonably interfere with the normal use and enjoyment of the area on which such work is being done; (ii) in full compliance with the provisions of this Agreement and the Contract; (iv) in full compliance with all applicable statutes, codes, ordinances, rules and regulations; (v) with respect to reconstruction, maintenance, repair, alterations or modifications, the Maintenance Work shall use materials, equipment and design and engineering standards, equal to or better than those originally used; (vi) in a good and workmanlike manner; (vii) in such manner as not to unreasonably adversely affect, impair or destroy the structural soundness or integrity, aesthetic appearance or functional utility of the UG Parking Element; (viii) with all due diligence; and (ix) in such a manner so as to clean the area and restore the affected portion of the area on which the Maintenance Work was done to a condition equal to or better, to the extent practical, than the condition which existed prior to the commencement of such Maintenance Work.

Section 4.3 Third Party Maintenance Providers. The Developer shall have the right, from time to time, to select and hire a third party to perform the Maintenance Work, provided that the Developer shall remain responsible at all times for the performance of the Maintenance Work. If the Developer selects such third party to perform, supervise or coordinate the Maintenance Work (the "Property Manager"), such Property Manager must be a recognized professional commercial property management company. The Developer may hire companies affiliated with it to perform the Maintenance Work, but only if the rates charged by such companies are competitive with those of other companies furnishing similar service in the Minneapolis-St. Paul metropolitan area, it being agreed that this provision regarding affiliated companies shall be construed strictly against the Developer. Any contract with a Property Manager, and the amounts to be paid such Property Manager under such contract, shall be subject to the City's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. All such contracts shall be no longer than one (1) year in duration (but may provide for automatic renewal).

Section 4.4 Maintenance Costs.

(a) Subject to the Excluded Costs set forth in Section 4.6 below, all costs and expenses in connection with the maintenance and repair of the UG Parking Element, ("Maintenance Costs") shall be the shared responsibility of the City and the Developer on a pro rata share basis (as defined below). Maintenance Costs shall include, without limitation, the following costs:

(i) all third party costs of performing any maintenance of the UG Parking Element, including repairs and necessary replacements of all or components of the Access Premises, the Mechanical Systems and the Automatic Parking System;

(ii) wages of on-site supervisory personnel, attendants and cashiers, janitorial, maintenance, clerical and audit staff attributable to the UG Parking Element, and a charge from the Developer or the Property Manager, as the case may be, for employee benefits including, but not limited to, monetary fringe benefits such as workers' compensation insurance, unemployment insurance, social security, group health and dental insurance, retirement benefits; provided, however, in the event an employee does not devote his or her full working time to the UG Parking Element, then all of the foregoing charges pertaining to such employee shall be appropriately prorated to the UG Parking Element in a manner reasonably acceptable to the City; provided further, in no event shall the compensation (direct or indirect) of any off-site management personnel be included in Maintenance Cost Expenses, the same being borne solely by the Developer or the Property Manager, as the case may be; provided further, that notwithstanding the provisions of this subsection to the contrary, the parties acknowledge and agree that the UG Parking Element will likely utilize an Automated Parking System and, therefore, the need for on-site attendants and cashiers will likely be minimal;

(iii) costs of Utilities used, rendered, supplied, or consumed in, upon, at, from, or in connection with the UG Parking Element and Access Premises ("Utilities Costs"); and

(iv) an administrative or overhead fee of the Developer or the Property Manager (if applicable), but not both ("Administrative Fee") to cover arranging such maintenance and billing, but such Administrative Fee shall not exceed three percent (3%) of the Maintenance Costs exclusive of such Administrative Fee.

(b) The City's "pro rata share" of Maintenance Costs shall be fifty percent (50%) and the Developer's "pro rata share" of Maintenance Costs shall be fifty percent (50%). In addition to the City's pro rata share of Maintenance Costs, the City shall pay (i) the cost of all Maintenance Work which exclusively benefits or serves the Public Parking Level and those portions of the Access Premises, including the public elevator, solely serving the Public Parking Level and the cost of the repair of any damage caused by the City or the public and (ii) all Utilities Costs which exclusively serve the Public Parking Level and Access Premises or are separately metered.

(c) No later September 1 of each year, the Developer shall submit to the City an estimated annual budget of the Maintenance Costs for the following calendar year, and the parties will cooperate in good faith to finalize such budget no later than October 1 of each year ("Annual Budget"). The Developer shall submit the first Annual Budget to the City, covering the initial partial year of operation of the Public Parking Level, no later than sixty (60) days prior to the anticipated date the Public Parking Level will open to the public. With the first Annual Budget, the Developer shall prepare, in consultation with a qualified professional engineer with experience and knowledge about industry best practices for proper maintenance of an underground parking facility ("Qualified Engineer"), a proposed operation manual and maintenance schedule for the UG Parking Element ("O&M Plan") which shall identify the nature and frequency of all

recommended routine and preventative Maintenance Work for the UG Parking Element. The Developer shall cause the O&M Plan to be reviewed and updated by a Qualified Engineer at least once every five (5) years and submitted to the City with the subsequent year's proposed Annual Budget. Each Annual Budget and O&M Plan shall be subject to the City's review and prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. City and Developer agree that Maintenance Work that is included in the applicable Annual Budget, including any allowances therein, and any Maintenance Work that is presented as "critical", "required", "recommended", or similarly categorized in the O&M Plan, or is otherwise considered necessary or prudent under industry standards for the safe operation and long-term preservation of underground parking facilities (collectively "Nondiscretionary Maintenance Work") shall be performed by Developer in accordance with the terms hereof and the cost thereof included in Maintenance Costs. All Maintenance Work other than Nondiscretionary Maintenance Work is referred to herein as "Discretionary Maintenance Work". The City shall be entitled to reject or approve, in whole or in part (if partial rejection is feasible in Developer's reasonable opinion), in its sole and absolute discretion, any Discretionary Maintenance Work that will affect or is proposed to be performed with respect to the Public Parking Level, and the City may modify the Annual Budget to account for any Discretionary Maintenance Work so rejected by the City. The Developer will cause any Discretionary Maintenance Work with respect to the Public Parking Level to be completed only if approved by the City.

(d) The Developer shall endeavor to use its commercially reasonable efforts, where practical, to obtain multiple bids (ideally three) from reputable vendors for the Maintenance Costs to ensure the expenditures are incurred at market rates in arms-length transactions most beneficial to the parties hereto.

(e) The City shall pay to the Developer one twelfth (1/12) of the City's pro rata share of Maintenance Costs as set forth in the approved Annual Budget in monthly installments no later than thirty (30) days following invoice thereof from the Developer (and paid in arrears if required by City policy). If the Effective Date is a day other than the first day of a calendar month, the City's share of the costs for this month shall be a prorated portion of the monthly estimation, based upon a thirty (30) day month, and shall be due and payable on the Effective Date. Any payment not received when due hereunder shall accrue interest at a rate of twelve percent (12%) per annum.

(f) Within sixty (60) days after the end of each calendar year, the Developer shall provide the City with a certified statement, together with supporting material upon request of the City, as to the actual Maintenance Costs paid by it during the preceding calendar year, together with an accounting of the Administrative Fee. If the amount paid by City for such calendar year shall have exceeded its share, the Developer shall promptly refund the excess to the City at the time such certified statement is delivered, or if the amount paid by the City for such calendar year is less than its share, the City shall pay the balance of its share to Developer within sixty (60) days after receipt of such certified statement.

(g) Within one (1) year after receipt of any such certified statement, the City shall have the right to inspect the Developer's books and records pertaining to Maintenance Costs for the calendar year covered by such statement. The Developer shall provide a complete copy of such books and records to the City in electronic form. In the event that such inspection shall disclose any error in the determination of Maintenance Costs or in calculating the City's share of such costs, an appropriate adjustment shall be made forthwith. Alternatively, the City may cause a third-party auditor to conduct such inspection, provided as a condition of any third-party audit, City and Developer agree that only auditors compensated on an hourly or fixed fee basis (expressly excluding any auditors compensated on a contingent basis) shall be permitted and prior to any such audit City shall provide evidence of same by delivery to Developer of a copy of the City's engagement letter with the auditor. In the event that such audit shall disclose any error in the determination of Maintenance Costs or in calculating the City's share of such costs, an appropriate adjustment shall be made forthwith. The cost of any such audit shall be assumed by the City unless the City shall be entitled to a refund in excess of ten (10%) percent of the amount calculated by the Developer as its share of such costs for such calendar year, in which case the Developer shall pay the cost of such audit, without reimbursement, not to exceed \$2,000.00. The Developer shall keep, and present, upon request, all invoices, bills or statements of costs or expenses incurred in connection with the Maintenance Costs for a period of two (2) years.

Section 4.5 50th & France District Maintenance Assessments. The Developer acknowledges and agrees that nothing in this Agreement will be deemed to limit the City's right to recoup its payments for its pro rata share of the Maintenance Costs hereunder by including such costs in the 50th & France District commercial area maintenance assessments, including assessments levied upon property owned by the Developer, all as specified and in accordance with the City Code.

Section 4.6 Exclusions to Maintenance Costs. Notwithstanding anything in this Agreement to the contrary, the City shall not be obligated to pay any portion of Maintenance Costs expended by Developer with respect to the following items, which such Maintenance Costs shall be the Developer's sole cost and expense and not subject to reimbursement from the City (collectively "Excluded Costs"):

- (a) repair or replacement of any structural element of the UG Parking Element, including the foundation, foundation walls, parking decks, floor slabs, exterior walls, and waterproofing systems related to the foregoing;
- (b) replacement, repair, or correction of any structural or other construction defect;
- (c) Taxes, except Separate Taxes, if any, pursuant to Section 5.1 below;
- (d) Policies of insurance required to be carried by the Developer pursuant to Article VI, except the City's Property Insurance Contribution pursuant to Section 6.1 below;

(e) Maintenance Work which exclusively benefits or serves the Private Parking Level and the cost of repair of any damage caused by the Developer, its contractors and agents, or such damage to the Access Premises caused by residents of the Apartment Element while using the Access Premises to access the Private Parking Level (provided, however, the City will pay one hundred percent (100%) of such Maintenance Costs which exclusively benefit or serve the Public Parking Level and the cost of repair of any damage caused by the City or the public, as provided in Section 4.4(b) above);

(f) With respect to Maintenance Work performed by a party related to Developer, then any cost therefor in excess of what would be chargeable in an arms-length transaction;

(g) Utilities Costs which exclusively benefit or serve the Private Parking Level or are separately metered (it being agreed that the user of such Utilities shall be solely responsible for payment based on actual metered usage);

(h) Discretionary Maintenance Costs not approved by the City in writing; and

(i) Maintenance Costs which are extraordinary costs and which are not reasonably necessary for the operation, maintenance and insurance of the UG Parking Element, including, without limitation, (i) any late charges or fees; (ii) any entertainment, transportation, meals or lodging charges, of anyone; or (iii) any profit, administrative and overhead costs (other than the Administrative Fee), such as rent, legal, supplies, utilities and wages or salaries paid to management or supervisory personnel, except as otherwise provided in this Agreement.

Section 4.7 Liens. The Developer will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by Developer (and will promptly discharge (by payment, bonding over or otherwise) the same upon their occurrence); provided, however, the Developer may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Developer shall file a bond or deposit cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the UG Parking Element to secure the payment of such lien if finally determined to be valid.

Article V

TAXES AND ASSESSMENTS

Section 5.1 Payment of Taxes and Assessments. Developer shall pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies (collectively "Taxes"), assessed and levied by any governmental taxing authority during the term of this Agreement against the UG Parking Element. Notwithstanding the foregoing, if (i) the Public Parking Level is ever subdivided such that it becomes a separate tax parcel and such parcel is deemed to be subject to Taxes, or (ii) records of the tax assessor provide reasonable evidence that the Public Parking Level is deemed to be subject to Taxes, the City shall pay directly to the relevant taxing authority any such Taxes ("Separate Taxes").

Article VI

INDEMNIFICATION, INSURANCE, IMMUNITIES

Section 6.1 Property Insurance. At all times during the term hereof, the Developer shall keep the South Site Vertical Improvements (including the UG Parking Element), and all alterations, extensions, and improvements thereto and replacements thereof, insured, in the amount of the full replacement cost thereof and with such deductibles as the Developer deems appropriate, against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to buildings and improvements similar in construction, general location, use, and occupancy to the South Site Vertical Improvements. The City shall pay with its first monthly installment of its pro rata share of Maintenance Costs following the approval of each Annual Budget an amount equal to the cost of such insurance which is directly attributable to the Public Parking Level, taking into account the use, nature, and/or value of the Public Parking Level (and not merely as a percentage of the total of such insurance costs) as reasonably determined by the parties and the applicable insurer prior to the City's approval of each Annual Budget (the "City's Property Insurance Contribution").

Section 6.2 Indemnification of Developer. Except to the extent caused by the willful misconduct or negligence of the Developer or its employees or agents, or caused by the willful misconduct or negligence of residents of the Apartment Element while using the Access Premises to access the Private Parking Level, or arising out of the default by Developer of its obligations hereunder, the City hereby covenants and agrees to assume and to permanently indemnify and save harmless Developer and its employees and agents, from, and against any and all claims, demands, actions, damages, costs, expenses, attorneys' fees, and liability in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in, at, upon, or from the use or occupancy of the Easement Premises by any party other than Developer and its employees or agents.

Section 6.3 Indemnification of the City. Except to the extent caused by the willful misconduct or negligence of the City, its employees or agents or the general public or arising out of the default by the City and its officers, employees or agents of obligations made pursuant to a contract with Developer, including this Agreement, Developer hereby covenants and agrees to assume and to permanently indemnify and save harmless the City and its employees and agents from and against any and all claims, demands, actions, damages, costs, expenses, attorneys' fees, and liability in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in, at, upon, or from the Private Parking Level or to the extent arising from or out of the design, construction, maintenance and operation of the UG Parking Element by the Developer, or in connection with the use or occupancy of the UG Parking Element, or any part thereof, by the Developer, or to the extent arising out of the breach of Developer's obligations hereunder

Section 6.4 Liability Insurance. The Developer and the City shall procure and maintain continuously in effect (or shall cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to underground parking

facilities, to be reviewed from time to time by the parties and adjusted in accordance with the requirements of Minnesota Statutes Section 466.04, as follows:

(a) Insurance against liability (including passenger elevator liability) for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the UG Parking Element. Developer (and Developer's lender and property manager) shall be named as additional insureds on the City's such policy of insurance and the City shall be named as additional insured on the Developer's such policy of insurance.

(b) Liability insurance including coverage for:

- (i) fire and explosion;
- (ii) theft (of entire vehicle); and
- (iii) riot, civil commotion, malicious mischief, and vandalism.

(c) To the extent reasonably available, insuring the indemnifications expressed in 6.2 and 6.3 hereof (as applicable).

Section 6.5 General Insurance Requirement. All insurance required in this Agreement shall be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Developer shall, within a commercially reasonable time following the City's request therefor, furnish the City with copies of policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6 Immunities. Nothing herein shall be deemed or constitute a waiver by the City of any statutory limitations on liability, statutory or common law immunities or any defenses that would otherwise be available to it in claims by third parties, including specifically the maximum liability amount contained in Minnesota Statutes Section 466.04. To the extent that the Developer performs construction, operation, maintenance, repair, or replacement of any part of the UG Parking Element, pursuant to the terms of this Agreement, it is the intention of the parties that the Developer is entitled to the immunities provided pursuant to Minnesota Statutes Section 466.03, or any successor statute.

Article VII

ASSIGNMENT

Section 7.1 General. Due to the public nature of the easement granted herein, the City may not assign or transfer its interest under this Agreement without the prior written consent of Developer, which consent shall be granted, conditioned or withheld in Developer's sole discretion. During the term of the Contract, the Developer may not assign or otherwise transfer

its interest under this Agreement, except as provided in the Contract. The City shall recognize and approve any successors or assigns of Developer in accordance with the terms and provisions of the Contract. Following the expiration or earlier termination of the Contract, Developer may freely assign or transfer its interest under this Agreement without the consent of the City. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that the rights and easements established, granted, conveyed, reserved and consented to by this Agreement will run with the land and will inure to the benefit of and be binding on all present and future owners of any applicable portion of the South Site and their respective successors and assigns.

Article VIII

Casualty

Section 8.1 Destruction. Promptly upon any casualty loss or damage to all or any part of the UG Parking Element, the Developer shall proceed with diligence to restore the UG Parking Element to the condition prior to the casualty with the insurance proceeds obtained with respect to the loss or damage to the extent the insurance proceeds recovered allow for such rebuilding; provided, however, the Developer shall not be obligated to rebuild the UG Parking Element if any of the Developer's lenders or loan agreements (whether executed before or after the date hereof) do not permit such rebuilding or require that insurance amounts recovered with respect to any loss or damage to the UG Parking Element be paid directly to the lender.

Article IX

EMINENT DOMAIN

Section 9.1 Major Condemnation. If all of the UG Parking Element shall be taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, this Agreement shall terminate as of the date of vesting of title in the condemning authority. Each party shall make its own claim in the condemnation proceeding based upon the value of its respective interest in the UG Parking Element.

Section 9.2 Partial Condemnation. If any portion of the UG Parking Element shall be taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, the absence of which materially and adversely affects the conduct of business by the City or the Developer, then either the City or the Developer, at any time within sixty (60) days after it has actual notice of such proposed acquisition or condemnation, shall have the option to cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property; provided, if neither party so terminates the Agreement will continue as to the remaining part of the Easement Premises not so taken or threatened to be taken. The terminating party, if any, shall exercise its termination option by giving the other party written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event neither party furnishes the other party written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement shall continue in full force and effect. Each party shall make its own claim in the condemnation proceeding based upon the value of its respective interest in that part of the UG Parking Element subject to the acquisition

or condemnation, provided, however, that no award to the City based on its easement interest shall be permitted to the extent such award reduces Developer's award based on its fee interest.

Article X

DEFAULT and Remedies

Section 10.1 General. It shall be an "Event of Default" hereunder if (a) either party defaults in any obligation of this Agreement requiring the payment of money and fails to cure such default within ten (10) days after receipt of written notice of such default from the other party or (b) if a party defaults in any of its other obligations under this Agreement and fails to cure such default within thirty (30) days after receipt of written notice of such default from the other party (or, if such default reasonably requires more than thirty (30) days to cure, fails to commence such action as is necessary to cure such default within such 30-day period and to proceed diligently thereafter to cure such default).

Section 10.2 Remedies. Following an Event of Default hereunder, the non-defaulting party may: (a) exercise its self-help rights in accordance with Section 10.3 with respect to a default in the performance of Maintenance Work; (b) pay all or any part of such obligations and charge the amount of such payment, together with reasonable attorneys' fees and interest at a rate of twelve percent (12%) per annum, to the defaulting party; (c) bring an action for injunctive relief; or (d) enforce the obligations of the defaulting party by an action at law or in equity. In an emergency, any such payment or performance may be undertaken or action brought by the non-defaulting party prior to the giving of any notice or expiration of any notice period, but the party curing the default will provide such notice as soon as may be reasonable under the circumstances. If the Developer has failed to cure a default requiring the payment of money in accordance this section, the City shall have the right to assess the costs incurred by the City to all or any portion of the South Site as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute.

Section 10.3 Self Help; Failure to Maintain. In the event the Developer defaults in its obligation to perform the Maintenance Work as required by this Agreement, then the City, after compliance with the notice provisions of Section 10.1 (except in an emergency, in which case the applicable Maintenance Work may be initiated with whatever notice is reasonable under the circumstances), shall have the right to enter any portion of the Easement Premises (including subsurface structural support elements) and perform such Maintenance Work as required herein and charge the costs of such performance plus ten percent (10%) of such costs for overhead, together with reasonable attorneys' fees, to the Developer. The Developer shall promptly pay to the City any and all such costs as are due and owing on account thereof. The City shall submit a statement to the Developer evidencing the costs incurred for such Maintenance Work. If the Developer has failed to make payment in accordance with the statement within sixty (60) days after receipt thereof, the City shall have the right to assess the costs incurred by the City to all or any portion of the South Site as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. The Developer hereby agrees to such an assessment for maintenance and repair costs, agrees that the South Site assessed for such service charges is benefited thereby, and waives any rights the Developer or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes,

Chapter 429. Notwithstanding anything to the contrary contained herein, the City shall have no obligation of any kind, expressed or implied, to perform the Maintenance Work or any part thereof.

Section 10.4 Remedies Cumulative. Each right, power and remedy provided under this Agreement will be cumulative and concurrent and will be in addition to every other right, power or remedy provided for under this Agreement or at law or in equity. The exercise or beginning of exercise of any one or more rights, powers or remedies will not preclude the concurrent or later exercise of any other rights, powers or remedies. Failure to enforce any covenant under this Agreement will not be deemed a waiver of the right to do so thereafter.

Section 10.5 Easements Survive. The Developer may not terminate any of the easements created by this Agreement or discontinue performance of its obligations with respect to maintenance, repair or replacement of any easement due to a default by the City under this Agreement.

Article XI

MISCELLANEOUS

Section 11.1 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.2 Amendments. Except as otherwise herein provided, and not otherwise, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement shall be binding upon the parties to this Agreement unless in writing and signed by such parties. Developer and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Developer's construction lender and/or permanent lender for the Market Street Project, provided, however, that the Developer and the City shall not be required to enter into such amendments if the amendments are not consistent with the approved Final Development Plan, as the same may be amended and so long as the same remains in effect, or materially and adversely affect the interest and security of the City with respect to the Market Street Project, including any increase in obligations or diminution of rights hereunder.

Section 11.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of the Developer, is addressed to or delivered personally to the Developer at:

Edina Market Street LLC
Attention: Peter Deanovic
5100 Eden Ave., Suite 317
Edina, MN 55424

with a copy to: Brent Rogers
Saturday Properties
1400 Van Buren St. NE, Suite 200
Minneapolis, MN 55413

with a copy to: Daniel J. Van Dyk
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

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

City of Edina
Attention: City Manager
4801 W. 50th ST.
Edina, MN 55424

with a copy to:

Edina Housing and Redevelopment Authority
Attention: Executive Director
4801 W. 50th ST.
Edina, MN 55424

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

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

Section 11.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 11.6 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 11.7 No Additional Waiver Implied by One Waiver. If 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 11.8 Joinder; Permitted Encumbrance. Except for the consent attached hereto, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement shall constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Developer and any construction lender or permanent lender.

Section 11.9 Survival. The easements granted hereby and each reservation, covenant, condition and restriction contained in this Agreement will run with the land and will be binding upon, and inure to the benefit of, as the case may be, the Developer and the City and their respective successors and assigns.

Section 11.10 Estoppel Certificate. Each party shall, within fifteen (15) days after request from the other party hereto, deliver a written statement which may be relied upon by the requesting party, or any lender or transferee of the requesting party, setting forth (a) whether the requesting party has fully complied with the provisions hereof, and if not, setting forth in reasonable detail the nature of any violations; and (b) any other matter reasonably requested by the requesting party.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

CITY OF EDINA, MINNESOTA

By _____
Mayor

By _____
City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by James Hovland and Scott Neal, the Mayor and City Manager respectively, of the City of Edina, Minnesota, on behalf of the City of Edina.

Notary Public

EXHIBIT A-1

LEGAL DESCRIPTION OF THE SOUTH SITE

D-21

EXHIBIT A-2

LEGAL DESCRIPTION OF THE PARKING PREMISES

[SINCE VERTICAL SUBDIVISION IS NOT CURRENTLY ANTICIPATED, IT IS ANTICIPATED THAT THIS LEGAL DESCRIPTION WILL DESCRIBE A BOX BETWEEN THE INTERIOR SURFACE OF THE EXTERIOR WALLS OF A DESCRIBED PORTION OF THE SOUTH SITE VERTICAL IMPROVEMENTS LOCATED BETWEEN TWO LISTED ELEVATIONS]

D-22

EXHIBIT B-1

DEPICTION OF THE PARKING PREMISES

D-23

EXHIBIT B-2

DEPICTION OF THE ACCESS PREMISES

D-24

EXHIBIT E
Center Ramp Lease

LEASE AGREEMENT
(Market Street Center Ramp)

THIS LEASE AGREEMENT (this "Lease") is entered into effective as of _____, 20____, by and between **EDINA MARKET STREET LLC**, a Minnesota limited liability company ("Lessor"), and the **CITY OF EDINA, MINNESOTA**, a Minnesota statutory city and the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF EDINA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (collectively, the "Lessee").

RECITALS

WHEREAS, the Lessor and Lessee have entered into a Redevelopment Agreement (the "Contract") dated June ____, 2017; and

WHEREAS, such Contract provides for the redevelopment of certain land within the City's 50th & France District located on Market Street (formerly known as 49 1/2 Street) by the Lessor in coordination with and with the cooperation and assistance of Lessee (the "Market Street Project"); and

WHEREAS, the Contract provides for Lessor to purchase from Lessee the real property described on Exhibit A attached hereto, together with all improvements located thereon (referred to herein, and in the Contract, as the "South Site"); and;

WHEREAS, the Contract provides further that following the transfer of the South Site to Lessor, Lessor will lease the South Site back to Lessee so the South Site can continue to be utilized for public purposes until certain other improvements can be completed in connection with the Market Street Project;

WHEREAS, all capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Contract.

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

ARTICLE I

Section 1.01 Lease of Premises and Equipment; Title and Condition

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, on an "as-is" and "where-is" basis, the South Site, together with all fixtures, equipment and any other personal property located thereon as of the Commencement Date (the "Premises").

Section 1.02 Permitted Use

Lessee may only use the Premises for its current use as a public parking facility, trash collection facility (for certain users and occupants within the 50th & France District), and other directly related uses (the “Permitted Use”).

Section 1.03 Term

This Lease shall be for a term beginning on the Land Transfer Closing Date for the South Site (the “Commencement Date”) and ending on the date prior to the date designated by Lessor for commencement of demolition of the Premises, subject to the terms and conditions of the Contract (the “Term”).

Section 1.04 Premises Accepted As-Is and Where Is; No Representations or Warranties

Lessee accepts the Premises “AS-IS” and “WHERE IS” in the condition the Premises may be found on the Commencement Date, and subject to all limitations to which the Premises are subject.

Section 1.05 Rent and Other Payments

(a) Rent. Lessee shall pay to Lessor rent as follows (“Rent”):

 i. Beginning on the Commencement Date, throughout the Term, \$10.00 per month, payable no later than thirty (30) days after written demand therefor by Lessor.

 ii. As additional “Rent”, Lessee shall timely pay the following: (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time prior to or during the Term imposed or levied upon or assessed against or which arise with respect to the Premises; and (ii) all charges of utilities, communications and similar services serving the Premises.

(b) Additional Payments. Within thirty (30) days after written demand therefor, Lessee shall pay any other amount owed to Lessor pursuant to this Lease (each an “Additional Payment”).

ARTICLE II

Section 2.01 Net Lease

This is an “absolute net lease”, and in addition to the Rent and Additional Payments, Lessee is wholly responsible for the payment of all costs and expenses relating to the Premises whatsoever, including, without limitation, all repairs and maintenance, taxes, utility costs, the premiums, fees and other costs required to maintain the insurance Lessee is required to maintain pursuant to this Lease, and all other costs and expenses with respect to the Premises.

Section 2.02 Maintenance and Repair

Lessee shall, at its own expense, maintain all parts of the Premises in the manner necessary, in Lessee's discretion, for the safe and efficient use of the Premises for the Permitted Use. It is acknowledged and agreed by the parties that the Premises will be demolished and redeveloped as part of the Market Street Project following the expiration or earlier termination of the Term, and Lessee, therefore, has no obligation to return the Premises to Lessor in any specific condition and has no obligation to complete any specific repairs to the Premises. Except as required to maintain the Premises in a safe condition and as required by applicable Legal Requirements, Lessor shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the Premises during the Term.

Section 2.03 Alterations

Lessee shall not make any material change to, or permit any material construction on the Premises, without Lessor's prior written consent.

Section 2.04 Additional Lessee Obligations with Respect to Maintenance, Repair or Modification

With respect to any maintenance, repair, alteration, improvement, addition, or change to the Premises constructed, caused or made by Lessee, Lessee shall, at Lessee's sole expense:

- (a) comply with all Legal Requirements applicable thereto or any portion of the Premises,
- (b) pay all costs in connection therewith, and
- (c) indemnify, defend and save and hold Lessor and the Premises harmless from any and all costs, judgments, expenses, or mechanics', laborers', materialmens', vendors', suppliers' or other liens that may be filed against the Premises resulting or relating to any such changes

Section 2.05 Insurance

Lessee will procure and maintain continuously in effect (or shall cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to the Premises and Permitted Use, to be reviewed from time to time by the Lessee and adjusted in accordance with the requirements of Minnesota Statutes Section 466.04. Lessee shall name Lessor and Lessor's lender as additional insured and loss payee, as applicable, on Lessee's insurance policies covering the Premises.

ARTICLE III

Section 3.01 Compliance With Law

Without limiting any of Lessee's obligations hereunder, Lessee shall comply with and cause the Premises to comply with and shall assume all obligations and liabilities with respect to

(i) all laws, ordinances and regulations and other governmental rules, orders and determinations presently in effect or hereafter enacted, made or issued, whether or not presently contemplated (collectively, "Legal Requirements"), as applied to the Premises or the ownership, operation, use or possession thereof.

Section 3.02 Environmental Matters

The covenants set forth in Section 4.5 of the Contract will extend through the Term of this Lease, such that the "transfer" of the South Site for purposes of said Section 4.5 will be deemed to have occurred upon the expiration or earlier termination of the Term; provided, however, Lessor shall be responsible for all claims and costs arising from the presence, disposal, or release of Hazardous Material upon the Premises, to the extent caused by Lessor, its contractors or agents during the Term.

ARTICLE IV

Section 4.01 Indemnification; Immunity

(a) Lessee shall indemnify, defend and hold harmless Lessor, any mortgagee with respect to the Premises, and their respective, officers and members, and their respective successors and assigns from any and all claims and costs arising out of, based on or in connection with or by reason of the Premises or Lessee's operation or use of the Premises.

(b) Nothing herein shall be deemed or constitute a waiver by the Lessee of any statutory limitations on liability, statutory or common law immunities or any defenses that would otherwise be available to it in claims by third parties, including specifically the maximum liability amount contained in Minnesota Statutes Section 466.04.

Article XII

Section 4.02 Casualty

If the Premises shall be destroyed or damaged by fire, flood, earthquake, or other casualty ("Casualty"), Lessee shall be entitled, at its sole option, to (a) reconstruct improvements on the Premises as Lessee may deem necessary or convenient in connection with its use and occupancy of the Premises pursuant to this Lease (a "Restoration") or (b) within one hundred eighty (180) days of the Casualty event, terminate this Lease with notice to Lessor and Lessee shall have no obligation to perform a Restoration, other than razing the remainder of such building and improvements, remove all debris from the Premises, and either (i) completely landscape or (ii) install a parking areas consistent with the existing parking areas of the Premises. Lessee may unilaterally negotiate, prosecute or adjust any claim for any awards, compensations and insurance payments on account of any Casualty, and retain any and all proceeds thereof.

ARTICLE V

Section 5.01 Default Provisions

(a) The following shall constitute an "Event of Default" under this Lease: Lessee's

failure to observe or perform any of its other obligations pursuant to this Lease and such failure has not been cured within thirty (30) days after written notice of such failure, or if such failure cannot reasonably, with diligence, be cured within such thirty (30) day period, it shall not be an “Event of Default” if Lessee commence to cure such failure within such initial thirty (30) day period and continuously and diligently prosecute such curing, the time within which Lessee may cure such deficiency failure will be extended for a reasonable time not to exceed one hundred (100) days to the extent reasonably necessary to complete such curing with diligence.

(b) After an Event of Default, Lessor may assert any action or remedy available under law or in equity by ordinary, summary or expedited process.

ARTICLE VI

Section 6.01 Transfer and Assignment

Lessee shall not assign this Lease or sublet the use of all or any part of the Premises without Lessor’s prior written consent. Excluding an assignment to an affiliate and a collateral assignment for financing purposes, Lessor shall not assign Lessor’s interest in this Lease or the Premises without Lessee’s prior written consent.

Article XIII

Section 6.02 Mortgages

Lessee shall, within ten (10) days of Lessor’s request, subordinate this Lease, upon terms and conditions reasonably acceptable to Lessee, to any mortgage encumbering Lessor’s interest in the Premises in the future, provided that such lien holder executes a subordination, non-disturbance and attornment agreement executed by the mortgage holder in the form and substance reasonably acceptable to Lessee.

Section 6.03 Memorandum of Lease

Upon the request of either party, the parties shall execute a memorandum of this Lease, which shall set forth the Term of the Lease and provide for a unilateral termination of record thereof by Lessor, together with such other provisions as the parties may mutually agree upon. Said memorandum of Lease shall be executed by each of the parties, acknowledged and otherwise shall be in recordable form. Either Lessor or Lessee may record with the Hennepin County Recorder said memorandum of Lease at the sole cost of said recording party.

Section 6.04 Notices and Other Instruments

Any notice, demand or other communication under this Lease by any party to any other shall be given in the manner required under the Contract.

Section 6.05 Surrender

Upon the expiration or termination of this Lease, Lessee shall surrender the Premises to Lessor in the repair and condition required under the Lease. Notwithstanding anything to

contrary contained herein or under applicable Legal Requirements, prior to expiration or termination of this Lease, Lessee may, but shall not be obligated to, remove and retain any fixtures, equipment, or personal property which are a part of the Premises or located thereon.

Section 6.06 Quiet Enjoyment

Lessor agrees that, subject to the rights of Lessor under this Lease, Lessee shall hold and enjoy the Premises during the term of this Lease, free from any hindrance or interference from Lessor or any other person claiming by or through Lessor.

Section 6.07 Attorneys' Fees

In the event either Lessor or Lessee commences a legal action to enforce the provisions of this Lease, the prevailing party in such action shall be entitled, as a part of said action, to recover all its costs and expenses, including reasonable attorneys' fees.

Section 6.08 Counterparts

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

Section 6.09 Law Governing

This Lease will be governed and construed in accordance with the laws of the State of Minnesota.

Section 6.10 Consents and Approvals

In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 6.11 No Additional Waiver Implied by One Waiver

If any agreement contained in this Lease 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.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above written.

LESSOR:

EDINA MARKET STREET LLC
a Minnesota limited liability company

By _____
Name _____
Its _____

LESSEE:

CITY OF EDINA, MINNESOTA

By _____
Mayor

By _____
City Manager

**HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF EDINA,
MINNESOTA**

By _____
Chair

By _____
Executive Director

EXHIBIT A
PREMISES

EXHIBIT F
TIF Pro Forma

City of Edina, MN
Edina Collaborative

Mixed Use - 32,523 sq ft retail and 110-unit Apartment Redevelopment

SOURCES		
	Amount	Pct.
Developer Financing - 1st Mortgage	41,300,000	55.63%
Equity - GP & LP	18,511,263	24.94%
Private Subtotal	59,811,263	80.57%
Affordable Housing Loan	1,600,000	2.16%
Met Council - LCDA Grant	1,441,565	1.94%
DEED/TBRA Grant	883,008	1.19%
Deferred Developer Fee	400,000	0.54%
GAP - Requested TIF	10,100,000	11.86%
Other Subtotal	14,424,573	19.43%
TOTAL SOURCES	74,235,836	100.00%

USES		
	Amount	Pct.
ACQUISITION AND SITE COSTS	9,200,859	12.39%
Land - North	1,000,000	1.35%
Land - South	5,100,000	6.87%
North Retail Site - Private Cost Contributions	621,120	0.84%
Demolition - Center Ramp	315,000	0.42%
Utility Relocation & Updates	1,341,522	1.81%
Site Environmental	823,217	1.11%
CONSTRUCTION COSTS	51,404,068	69.24%
Residential Construction	31,542,175	42.49%
Retail Construction (South)	3,070,100	4.14%
North Retail Landlord Work	672,880	0.91%
Plaza/Woonerf/Sidewalks	1,908,103	2.57%
South Public UG Parking - P1	4,187,286	5.64%
South Residential UG Parking - P2	4,187,286	5.64%
FF&E	825,000	1.11%
Retail Tenant Improvements	2,113,976	2.85%
Builders Risk Insurance	163,996	0.22%
Hard Cost Contingency (5%)	2,733,266	3.68%
PERMITS/FEES	796,509	1.07%
SAC, WAC	440,499	0.59%
Met Council SAC/UAC	341,010	0.46%
Planning/Zoning	15,000	0.02%
SOFT COSTS		
PROFESSIONAL SERVICES	3,860,046	5.20%
Architecture & Engineering	2,295,943	3.09%
Environmental	179,200	0.24%
Civil/Survey/Plat	50,000	0.07%
Legal	250,000	0.34%
City Third Party Costs	160,000	0.22%
Liability Insurance	12,500	0.02%
Market Study	10,000	0.01%
Retail Leasing Commissions	650,454	0.88%
Soft Cost Contingency	251,949	0.34%
FINANCING COSTS	5,110,289	6.88%
Title Insurance & Closing	144,714	0.19%
Draw Fees	5,400	0.01%
Mortgage Registration Tax / Recording Fee	143,920	0.19%
Lender Due Diligence/Legal	65,000	0.09%
Loan Financing Costs	642,500	0.87%
Interest During Construction	3,808,116	5.13%
Equity Placement Fee	262,669	0.35%
Real Estate Taxes (Escrow)	37,970	0.05%
PROJECT MANAGEMENT	2,840,589	3.83%
Developer Fee	2,700,589	3.64%
Project Management Overhead	140,000	0.19%
CASH ACCOUNTS	1,023,477	1.38%
Start Up Costs - Operations & Marketing	302,500	0.41%
Operating Deficit	720,977	0.97%
TOTAL USES	74,235,836	100.00%



City of Edina, MN

Market Street Redevelopment

Mixed Use - 32,523 sq ft retail and 110-unit Apartment Redevelopment

Income					
	Monthly Rent	# of Units	Annual Revenue	Unit Sq/Ft	Rent/ Sq/Ft
Rent					
1 BR - Alcove					
1 BR - Alcove (50% AMI)					
1 BR - Alcove (60% AMI)					
1 BR - Exterior BR					
2 BR - 2 BA					
2 BR - 2 BA (50% AMI)					
2 BR - 2 BA (60% AMI)					
2 BR+Den - 2.5 BA					
3 BR - 3 BA					
Total Rental Income	340,487	110	\$4,149,158		
Other					
Parking					
Storage					
Pet Fees, Recovery					
Total Other Income			\$427,200		
	Per Sq/Ft			Bldg Sq/Ft	
Commercial Rent					
Center Retail				23,724	
Hooten Retail				4,549	
Edina Realty Retail				4,250	
CAM - Taxes				32,523	
CAM - Recovery				32,523	
Gross Revenue			\$6,252,142	32,532	
Vacancy Loss - Units	6%		(\$248,949)		
Vacancy Loss - Other Income	6%		(\$25,632)		
Retail Vacancy Loss	6%		(\$100,547)		
Effective Gross Income			5,877,013		

Expense					
	Total				Per Unit
Operating Costs					
Administrative					
Payroll					
Marketing					
Total Utilities					
Insurance (Residential)					
Retail CAM					
Turnover					
Total Maintenance					
Total Operating	\$842,132				\$5,941
Management and Other Costs					
Management Fees		3.00%	% of EGI		
Property Taxes					
Reserves					
Total Expenses	\$2,162,930				
Net Operating Income	\$3,714,083				



City of Edina, MN

Market Street Redevelopment

Mixed Use - 32,523 sq ft retail and 110-unit Apartment Redevelopment

15-year operating Proforma

ASSUMPTIONS	
Rental Revenue Inflation	2.00%
Other Income Inflation	2.00%
Commercial Inflation	2.00%
Inflation on Expenses	3.00%
Vacancy Rate Apartments	6.00%
Vacancy Rate - Retail	6.00%

	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Income	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16
Rental Income																
Housing	4,149,158	4,232,141	4,316,784	4,403,119	4,491,182	4,581,005	4,672,625	4,766,078	4,861,400	4,958,628	5,057,800	5,158,956	5,262,135	5,367,378	5,474,725	5,584,220
Less: Vacancy	(248,949)	(253,928)	(259,007)	(264,187)	(269,471)	(274,860)	(280,358)	(285,965)	(291,684)	(297,518)	(303,468)	(309,537)	(315,728)	(322,043)	(328,484)	(335,053)
Total Rental Income	3,900,208	3,978,212	4,057,777	4,138,932	4,221,711	4,306,145	4,392,268	4,480,113	4,569,716	4,661,110	4,754,332	4,849,419	4,946,407	5,045,335	5,146,242	5,249,167
Other Income																
Parking	257,400	262,548	267,799	273,155	278,618	284,190	289,874	295,672	301,585	307,617	313,769	320,045	326,445	332,974	339,634	346,427
Storage	18,000	18,360	18,727	19,102	19,484	19,873	20,271	20,676	21,090	21,512	21,942	22,381	22,828	23,285	23,751	24,226
Pet Fees, Recovery	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800	151,800
Less: Vacancy	(25,632)	(25,962)	(26,300)	(26,643)	(26,994)	(27,352)	(27,717)	(28,089)	(28,468)	(28,856)	(29,251)	(29,654)	(30,064)	(30,484)	(30,911)	(31,347)
Total Other Income	401,568	406,746	412,027	417,413	422,908	428,512	434,228	440,059	446,006	452,073	458,260	464,572	471,009	477,576	484,273	491,105
Commercial Income																
Commercial Income	1,675,784	1,709,300	1,743,486	1,778,355	1,813,923	1,850,201	1,887,205	1,924,949	1,963,448	2,002,717	2,042,771	2,083,627	2,125,299	2,167,805	2,211,161	2,255,385
Less: Vacancy	(100,547)	(102,558)	(104,609)	(106,701)	(108,835)	(111,012)	(113,232)	(115,497)	(117,807)	(120,163)	(122,566)	(125,018)	(127,518)	(130,068)	(132,670)	(135,323)
Less: Expense on Vacancy	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Commercial Income	1,575,237	1,606,742	1,638,877	1,671,654	1,705,087	1,739,189	1,773,973	1,809,452	1,845,641	1,882,554	1,920,205	1,958,609	1,997,781	2,037,737	2,078,492	2,120,062
Effective Gross income	5,877,013	5,991,700	6,108,680	6,228,000	6,349,706	6,473,846	6,600,469	6,729,625	6,861,363	6,995,737	7,132,798	7,272,600	7,415,198	7,560,648	7,709,007	7,860,333
Expenses																
Operating Expenses	842,132	867,396	893,417	920,220	947,827	976,261	1,005,549	1,035,716	1,066,787	1,098,791	1,131,754	1,165,707	1,200,678	1,236,699	1,273,800	1,312,014
Management Fees	176,310	181,600	187,048	192,659	198,439	204,392	210,524	216,840	223,345	230,045	236,946	244,055	251,376	258,918	266,685	274,686
Property Taxes (2% Inflation)	1,089,488	1,111,278	1,133,503	1,156,173	1,179,297	1,202,883	1,226,940	1,251,479	1,276,509	1,302,039	1,328,080	1,354,641	1,381,734	1,409,369	1,437,556	1,466,307
Reserves (3% Inflation)	55,000	56,650	58,350	60,100	61,903	63,760	65,673	67,643	69,672	71,763	73,915	76,133	78,417	80,769	83,192	85,688
TOTAL EXPENSES	2,162,930	2,216,923	2,272,318	2,329,152	2,387,465	2,447,296	2,508,686	2,571,678	2,636,313	2,702,637	2,770,696	2,840,536	2,912,206	2,985,755	3,061,234	3,138,695
NET OPERATING INCOME	3,714,083	3,774,777	3,836,362	3,898,847	3,962,240	4,026,550	4,091,783	4,157,947	4,225,050	4,293,099	4,362,101	4,432,063	4,502,992	4,574,893	4,647,773	4,721,638
Tax Increment	-	678,846	692,423	706,271	720,397	734,805	749,501	764,491	779,781	795,376	811,284	827,510	844,060	860,941	878,160	895,723
ADJUSTED NET OPERATING INCOME	3,714,083	4,453,623	4,528,785	4,605,118	4,682,637	4,761,354	4,841,284	4,922,438	5,004,831	5,088,476	5,173,385	5,259,573	5,347,052	5,435,834	5,525,933	5,617,361
Debt Service - 1st Mortgage	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372	2,971,372
Debt Service - TIF Loan	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542	611,542
Debt Service - Affordable Housing	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	1,960,000
CASH FLOW AFTER FINANCING	115,169	854,709	929,871	1,006,205	1,083,723	1,162,440	1,242,370	1,323,524	1,405,917	1,489,562	1,574,471	1,660,659	1,748,138	1,836,920	1,927,019	74,447
PAYMENT OF DEFERRED DEVELOPER NOTE	115,169	284,831	0	0	0	0	0	0	0	0	0	0	0	0	0	0
DEFERRED DEVELOPER NOTE BALANCE	284,831	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NET CASH TO INVESTORS	0	569,878	929,871	1,006,205	1,083,723	1,162,440	1,242,370	1,323,524	1,405,917	1,489,562	1,574,471	1,660,659	1,748,138	1,836,920	1,927,019	74,447
RETURN ON INVES.-ANNUAL	0.00%	3.08%	5.02%	5.44%	5.85%	6.28%	6.71%	7.15%	7.59%	8.05%	8.51%	8.97%	9.44%	9.92%	10.41%	0.40%
RETURN ON INVES.-AVERAGE	0.00%	1.54%	2.70%	3.38%	3.88%	4.28%	4.63%	4.94%	5.24%	5.52%	5.79%	6.05%	6.31%	6.57%	6.83%	6.43%
CASH ON Private Cost - Without Assistance	5.00%	5.08%	5.17%	5.25%	5.34%	5.42%	5.51%	5.60%	5.69%	5.78%	5.88%	5.97%	6.07%	6.16%	6.26%	6.36%
CASH ON Private Cost - With Assistance	5.00%	6.00%	6.10%	6.20%	6.31%	6.41%	6.52%	6.63%	6.74%	6.85%	6.97%	7.08%	7.20%	7.32%	7.44%	7.57%
ANNUAL DEBT COVERAGE	103.20%	123.75%	125.84%	127.96%	130.11%	132.30%	134.52%	136.78%	139.07%	141.39%	143.75%	146.14%	148.57%	151.04%	153.54%	101.34%
ANNUAL DEBT COVERAGE W/O RESERVES	104.80%	125.73%	127.91%	130.13%	132.39%	134.69%	137.02%	139.40%	141.81%	144.27%	146.76%	149.30%	151.88%	154.51%	157.18%	102.93%



City of Edina, MN
Market Street Redevelopment
Mixed Use - 32,523 sq ft retail and 110-unit Apartment Redevelopment

Sales and IRR Analysis

YEAR	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
SALE ANALYSIS (End of Year)	6	7	8	9	10	11	12	13	14	15
Net Operating Income End of Year	4,761,354	4,841,284	4,922,438	5,004,831	5,088,476	5,173,385	5,259,573	5,347,052	5,435,834	5,525,933
Divided By Cap Rate	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%
Gross Sale Price	90,692,465	92,214,925	93,760,722	95,330,111	96,923,344	98,540,672	100,182,342	101,848,603	103,539,698	105,255,869
Minus 1st Mortgage Debt	37,747,355	37,021,066	36,249,982	35,431,339	34,562,204	33,639,463	32,659,809	31,619,732	30,515,506	29,603,450
Minus TIF Debt	7,768,826	7,619,348	7,460,650	7,292,164	7,113,287	6,923,376	6,721,752	6,507,693	6,280,431	6,092,720
Minus Affordable Housing Debt	1,744,000	1,768,000	1,792,000	1,816,000	1,840,000	1,864,000	1,888,000	1,912,000	1,936,000	0
Net Sale Amount	43,432,285	45,806,510	48,258,090	50,790,608	53,407,853	56,113,833	58,912,781	61,809,178	64,807,761	69,559,699
Sales Expense 1.00%	(906,925)	(922,149)	(937,607)	(953,301)	(969,233)	(985,407)	(1,001,823)	(1,018,486)	(1,035,397)	(1,052,559)
Final Amount	42,525,360	44,884,361	47,320,483	49,837,307	52,438,620	55,128,426	57,910,957	60,790,692	63,772,364	68,507,140
YEAR	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
IRR ANALYSIS (Monthly Cashflows to End of Year)	6	7	8	9	10	11	12	13	14	15
Year	Sales Proceeds	Cash Flow								
2018	0	(18,511,263)	(18,511,263)	(18,511,263)	(18,511,263)	(18,511,263)	(18,511,263)	(18,511,263)	(18,511,263)	(18,511,263)
2019	0	0	0	0	0	0	0	0	0	0
2020	0	569,878	569,878	569,878	569,878	569,878	569,878	569,878	569,878	569,878
2021	0	929,871	929,871	929,871	929,871	929,871	929,871	929,871	929,871	929,871
2022	0	1,006,205	1,006,205	1,006,205	1,006,205	1,006,205	1,006,205	1,006,205	1,006,205	1,006,205
2023	0	1,083,723	1,083,723	1,083,723	1,083,723	1,083,723	1,083,723	1,083,723	1,083,723	1,083,723
2024	42,525,360	43,687,801	1,162,440	1,162,440	1,162,440	1,162,440	1,162,440	1,162,440	1,162,440	1,162,440
2025	44,884,361	0	46,126,731	1,242,370	1,242,370	1,242,370	1,242,370	1,242,370	1,242,370	1,242,370
2026	47,320,483	0	0	48,644,007	1,323,524	1,323,524	1,323,524	1,323,524	1,323,524	1,323,524
2027	49,837,307	0	0	0	51,243,224	1,405,917	1,405,917	1,405,917	1,405,917	1,405,917
2028	52,438,620	0	0	0	0	53,928,182	1,489,562	1,489,562	1,489,562	1,489,562
2029	55,128,426	0	0	0	0	0	56,702,897	1,574,471	1,574,471	1,574,471
2030	57,910,957	0	0	0	0	0	0	59,571,616	1,660,659	1,660,659
2031	60,790,692	0	0	0	0	0	0	0	62,538,829	1,748,138
2032	63,772,364	0	0	0	0	0	0	0	0	65,609,284
2033	68,507,140	0	0	0	0	0	0	0	0	0
Total	28,766,214	32,367,585	36,127,230	40,049,971	44,140,846	48,405,123	52,848,314	57,476,186	62,294,778	68,956,574
ANNUALIZED INTERNAL RATE OF RETURN	17.60%	16.36%	15.43%	14.70%	14.12%	13.65%	13.25%	12.91%	12.62%	12.50%

EXHIBIT G
Form of TIF Note

TAX INCREMENT NOTE

\$ _____

Date of Original Issue: ____, 201__

UNITED STATES OF AMERICA
STATE OF MINNESOTA
CITY OF EDINA

HOUSING AND REDEVELOPMENT AUTHORITY
OF THE CITY OF EDINA, MINNESOTA
LIMITED REVENUE TAXABLE TAX INCREMENT NOTE

The HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF EDINA, MINNESOTA (the “HRA”) acknowledges itself to be indebted and, for value received, promises to pay to the order of EDINA MARKET STREET LLC, or its assigns (the “Developer”), solely from the source, to the extent and in the manner hereinafter provided, up to the principal amount of this Limited Revenue Taxable Tax Increment Note (the “Note”), together with interest thereon accrued on the unpaid principal balance hereof from the date of the Certificate of Completion for the South Site Vertical Improvements, at the rate of interest of six and zero hundredths percent (6.00%) per annum, on the Payment Dates (as hereinafter defined).

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 Developer and mailed to the Developer at its postal address within the United States which shall be designated from time to time by the Developer.

The Note is a special and limited obligation and not a general obligation of the HRA, which has been issued by the HRA pursuant to a Redevelopment Agreement dated June __, 2017, between the City of Edina, Minnesota, the HRA and the Developer (the “Redevelopment Agreement”), as approved by the Board of the HRA to aid in financing a “project,” as defined in Minnesota Statutes, Section 469.174, subdivision 8, of the HRA consisting generally of defraying certain capital and administration costs incurred and to be incurred within and for the benefit of Tax Increment Financing District _____ (the “TIF District”). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to them in the Redevelopment Agreement.

The Note is being issued at the request of the Developer upon the Land Transfer Closing Date of the South Site Transfer. The payment of Available Tax Increment under the Note is fully conditioned upon satisfaction of all requirements of the Note and the Redevelopment

Agreement relating to payment of Available Tax Increment, including specifically, but not limited to, Section 9.2 and Section 9.4 of the Redevelopment Agreement.

The maximum principal amount of this Note attributable to Qualified Redevelopment Costs shall not exceed \$ _____.

Principal of and interest on this Note shall be payable solely from and in the amount of Available Tax Increment, as hereinafter defined, on each August 1 and February 1 commencing on the first August 1 or February 1 immediately following issuance of the Certificate of Completion for the South Site Vertical Improvements and continuing through February 1, 2046 (the "Payment Dates"). The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of such pledged revenues. The Authority shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment Date.

All payments made by the HRA on this Note shall be applied first to accrued interest and then to the principal amount of this Note. Interest accruing from the date of original issue through and including the first Payment Date will be compounded semiannually on February 1 and August 1 of each year and added to principal. Interest shall be computed on the basis of a year of 360 days and charged for actual days principal is unpaid.

"Available Tax Increment" means ninety percent (90%) of the Tax Increment derived from the TIF District and received by the Authority from the County in the six months before each Payment Date.

EXCEPT AS TO THE OBLIGATION TO MAKE PAYMENTS FROM THE AVAILABLE TAX INCREMENT, THIS NOTE IS NOT A DEBT OF THE HRA, THE CITY OF EDINA, OR THE STATE OF MINNESOTA (THE "STATE"), AND NEITHER THE HRA, THE CITY OF EDINA, THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE NOTE, NOR SHALL THE NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN TAX INCREMENT.

Upon an Event of Default by the Redeveloper under the Redevelopment Agreement, the Authority may exercise the remedies with respect to this Note described in Section 14.5 of the Redevelopment Agreement, the terms of which are incorporated herein by reference.

The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Note.

Upon request of the Owner, the Authority will deliver to the Owner a statement of the outstanding principal balance of the Note after application of the deemed prepayment under this paragraph.

The Developer shall never have or be deemed to have the right to compel any exercise of any taxing power of the HRA or the City of Edina or any other public body, and neither the HRA nor the City of Edina nor any director, commissioner, council member, board member, officer, employee or agent of the HRA or the City of Edina, nor any person executing or registering this Note shall be liable personally hereon by reason of the issuance or registration hereof or otherwise.

THE HRA MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE. NO HOLDER OF THIS NOTE SHALL HAVE RIGHTS AGAINST THE HRA EXCEPT FOR DISTRIBUTION OF AVAILABLE TAX INCREMENT.

The Note shall not be assignable or transferable without the prior written consent of the HRA; provided, however, that such consent shall not be unreasonably withheld or delayed if: (a) the assignee or transferee delivers to the HRA a written instrument acknowledging the limited nature of the HRA's payment obligations under the Note, and (b) the assignee or transferee executes and delivers to the HRA a certificate, in form and substance satisfactory to the HRA, pursuant to which, among other things, such assignee or transferee represents (i) that the Note is being acquired for investment for such assignee's or transferee's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, (ii) that the assignee or transferee has no present intention of selling, granting any participation in, or otherwise distributing the same, (iii) that the assignee or transferee is an "accredited investor" within the meaning of Rule 501 of the Regulation D under the Securities Act of 1933, as amended, (iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment in the Note and the assignee or transferee is able to bear the economic consequences thereof, (v) that in making its decision to acquire the Note, the assignee or transferee has relied upon independent investigations made by the assignee or transferee and, to the extent believed by such assignee or transferee to be appropriate, the assignee's or transferee's representatives, including its own professional, tax and other advisors, and has not relied upon any representation or warranty from the HRA, or any of its officers, employees, agents, affiliates or representatives, with respect to the value of the Note, (vi) that the HRA has not made any warranty, acknowledgment or covenant, in writing or otherwise, to the assignee or transferee regarding the tax consequences, if any, of the acquisition and investment in the Note, (vii) that the assignee or transferee or its representatives have been given a full opportunity to examine all documents and to ask questions of, and to receive answers from, the HRA and its representatives concerning the terms of the Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the Note, and all such questions have been answered to the full satisfaction of the assignee or transferee, (viii) that the assignee or transferee has evaluated the merits and risks of investment in the Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects, (ix) that the Note will be characterized as "restricted securities" under the federal securities laws because the Note is being acquired in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be resold without registration under the Securities Act of 1933, as amended, except in certain limited circumstances, and (x) that no market for this Note exists and no market for the Note is intended to be developed.

Notwithstanding the foregoing, the Developer may assign and pledge this Note to secure any Mortgage that is permitted under Section 10.1 of the Redevelopment Agreement and may transfer the Note to (i) any entity controlling, controlled by or under common control with the Developer or (ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in the Developer.

This Note is issued pursuant to a resolution of the Board of the HRA and is entitled to the benefits thereof, which resolution is incorporated herein by reference.

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 HRA or the City of Edina outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the HRA or the City of Edina to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the Board of the Housing and Redevelopment Authority of the City of Edina, Minnesota, has caused this Note to be executed by the manual signatures of the Chair and the Executive Director of the HRA, and has caused this Note to be dated as of the date of original issue specified above.

Chair

Executive Director

EXHIBIT H
Certificate of Completion

CERTIFICATE OF COMPLETION

A. [EDINA MARKET STREET LLC (the “Developer”)] [The HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF EDINA, MINNESOTA (the “Authority”)], pursuant to the Redevelopment Agreement by and among the CITY OF EDINA, MINNESOTA (the “City”) and the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF EDINA, MINNESOTA [(the “Authority”)] and EDINA MARKET STREET LLC [(the “Developer”)], dated effective as of June __, 2017 (the “Agreement”), has agreed to complete the _____, as defined in and in accordance with the Agreement, on that certain real property (the “Property”) located in Hennepin County, Minnesota, described on the attached Exhibit A.

B. [The Developer] [The Authority] has substantially completed construction of _____ as required under the Agreement.

C. The issuance of this Certificate of Completion by the [City and the Authority] [Developer] is not intended nor shall it be construed to be a warranty or representation by the [City or the Authority] [Developer] as to the structural soundness of the _____ including, but not limited to, the quality of materials, workmanship or the fitness of the _____ for it/their proposed use;

NOW THEREFORE, this is to certify that all construction and other physical improvements specified to be done and made by the [Developer] [Authority] with regard to the _____ of the Minimum Improvements have been substantially completed, and the provisions of the Agreement imposing obligations on the [Developer] [Authority] to construct the _____ on the Property, are hereby satisfied and terminated, and the County Recorder and Registrar of Titles in and for the County of Hennepin and State Minnesota are hereby authorized to record this instrument, to be a conclusive determination of the satisfactory termination of said provisions of the Agreement.

**HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF EDINA,
MINNESOTA**

By _____
Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by Scott Neal, the Executive Director of the Housing and Redevelopment Authority of the City of Edina, Minnesota, on behalf of said Authority.

Notary Public

EDINA MARKET STREET LLC
a Minnesota limited liability company

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 201___, by _____, the _____ of Edina Market Street LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

This Instrument Drafted By:

Exhibit A
to
Certificate of Completion

Legal Description

**EXHIBIT I
DECLARATION OF COVENANTS AND RESTRICTIONS**

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION is made as of the day of _____, 20___, by EDINA MARKET STREET LLC, a Minnesota limited liability company ("Declarant").

RECITALS

WHEREAS, Declarant, is the owner of certain real properties situated in the city of Edina, County of Hennepin, State of Minnesota, legally described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Housing and Redevelopment Authority of the City of Edina, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the "Authority"); the City of Edina Minnesota, a Minnesota statutory city (the "City"); and Declarant have entered into a Redevelopment Agreement (the "Contract") dated June __, 2017; and

WHEREAS, such Contract is intended to provide for the redevelopment of the Property by Declarant in coordination with the Authority and with the cooperation and assistance of City (the "Market Street Redevelopment"), and

WHEREAS, the Contract provides for the expenditure of public and other funds to assist in the redevelopment of the Market Street Redevelopment and to pay for certain Minimum Improvements, which include, without limitation, an approximately 110 unit apartment building to be located on the real property described on Exhibit A attached hereto (the "Project" and referred to in the Contract as the "Apartment Element"); and

WHEREAS, pursuant to the Contract, Declarant has agreed to impose restrictive covenants upon the Property to ensure that at least ten percent (10%) of the residential units within the Project (consisting of two (2), two bedroom units with a minimum area of 1,000 square feet each and [____], one bedroom units with a minimum area of 650 square feet each) will remain affordable to certain low-income persons and households ("Affordable Units"); and

WHEREAS, Declarant, under this Declaration, intends, declares and covenants that the restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Property for the Term stated herein and binding upon all subsequent owners of the Property for such Term, and are not merely personal covenants of Declarant.

NOW, THEREFORE, said Declarant makes the following Declaration, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding on all

parties in interest and their successors and assigns:

Article I

OCCUPANCY, INCOME AND RENT RESTRICTIONS

Section 1.1 Declarant shall lease at least [____()] of the Affordable Units only to individuals or households whose gross annual income is sixty percent (60%) or less of the area median income (including adjustments for family size) , as determined by the U.S. Department of Housing and Urban Development’s (“HUD”) Area Median Income for the Minneapolis-Saint Paul-Bloomington Metropolitan Statistical Area (“AMI”) and at least [____()] of the Affordable Units only to individuals or households whose gross annual income is fifty percent (50%) or less of the AMI (each a “Qualified Household”).

Section 1.2 The Affordable Units shall bear annual rents not greater than the rental rate limits for such Qualified Households (adjusted for bedroom count and including utilities) as published by HUD (and reflected in the City’s Affordable Housing Policy), as such rental rate limits are updated annually by HUD (and if HUD ceases to publish and update such rates, such annual rents for the Affordable Units shall not be not greater than thirty percent (30%) of sixty percent (60%) of AMI or thirty percent (30%) of fifty percent (50%) of AMI, as the case may be with respect to the applicable Qualified Household, less the monthly allowance for utilities and services to be paid by the tenant).

Section 1.3 Declarant covenants and agrees that the two-bedroom Affordable Units will be leased to Qualified Household consisting of at least two (2) individuals.

Section 1.4 Declarant covenants and agrees that no tenant household will be approved by Declarant for initial occupancy of an Affordable Unit unless and until Declarant shall have determined (through verification of income, assets, expenses, and deductions) whether such tenant household is a Qualified Household. Declarant must re-examine and verify the income of each tenant household living in an Affordable Unit at least annually.

Section 1.5 Residential units of the Project shall qualify as Affordable Units despite temporary noncompliance with this Article I if the noncompliance is caused by increases in the incomes of existing tenant household and if actions satisfactory to the Authority are being taken to ensure that all vacancies are filled in accordance with this Article I until the noncompliance is corrected.

Article II

Additional Representations, Covenants, and Warranties of declarant

Section 2.1 Declarant shall maintain (a) the Affordable Units with the level of finishes and amenities described in Section 9.6(a) of the Contract and (b) the Project in compliance with all requirements of the Contract, any requirements of any lender whose loan is secured by a mortgage to which Declarant is a party or by which it or the Project is bound, and applicable ordinances, building and use restrictions, code-required building permits, and any requirements with respect to licenses, permits, and agreements necessary for the lawful use and operation of

the Project.

Section 2.2 The execution and performance of this Declaration by Declarant (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which Declarant is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

Section 2.3 Developer shall not refuse to lease an Affordable Unit to the holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 solely because of the status of the prospective tenant as such a holder.

Section 2.4 Declarant shall obtain the consent to this Declaration of any prior recorded lien-holder for the Project and shall cause such liens to be subordinated to this Declaration.

Section 2.5 Declarant has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof and that, in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations set forth herein and supersede any other document's provisions in conflict herewith.

Section 2.6 Subject to the terms and conditions of the Contract, Declarant may sell, transfer or exchange the Project, the Property or any portion thereof, but Declarant shall notify the Authority and City in writing at least thirty (30) days prior to such sale, transfer or exchange, and use commercially reasonable efforts to obtain the acknowledgment of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the covenants and restrictions of this Declaration (and to the requirements of Contract incorporated herein). Failure by Declarant to obtain such acknowledgment shall not be deemed to impair the covenants and restrictions of this Declaration.

Section 2.7 Declarant shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential unit for any purpose other than rental housing during the Term of this Declaration unless required by law.

Section 2.8 Promptly upon any casualty loss or damage to all or any part of the Project (including subsurface structural support elements), Declarant shall proceed with diligence to restore the Project to the condition prior to the casualty with the insurance proceeds obtained with respect to the loss or damage to the extent the insurance proceeds recovered allow for such rebuilding; provided, however, Declarant shall not be obligated to rebuild the Project if any of Declarant's lenders or loan agreements (whether executed before or after the date hereof) do not permit such rebuilding or require that insurance amounts recovered with respect to any loss or damage to the Project be paid directly to the lender.

Article III

Enforcement of Covenants and Restrictions

Section 3.1 Declarant shall submit a rent roll, including the income and household size of the tenants of the Affordable Units, and the proposed rent schedule to Authority annually for approval on the basis of compliance with this Article I, with an initial deadline for submission of three (3) months following the Commencement Date and thereafter an annual deadline for submission of September 1st for the Term of this Declaration.

Section 3.2 Declarant shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority or City, to inspect any books and records of Declarant regarding the Project with respect to the incomes of tenant households of Affordable Units the rents charged for Affordable Units to ensure compliance with the requirements of this Declaration.

Section 3.3 At the Authority's request, Declarant will submit any other information, documents or certifications that Declarant, in its reasonable discretion, deems necessary to substantiate Declarant's compliance with the requirements of this Declaration.

Article IV

TERM

Section 4.1 This Declaration, and the covenants and restrictions contained herein, shall continue in full force and effect for a period (the "Term") commencing on the date a Certificate of Completion is issued by the Authority for the South Site Vertical Improvements ("Commencement Date") and ending on the fifteen (15) year anniversary of the Commencement Date.

Section 4.2 Declarant's obligation to operate the Project subject to this Declaration for the Term is independent of the existence and continuance of any TIF Note and other public assistance contemplated or given by the Authority or the City to Declarant under the Contract ("Public Assistance") or any loan given by the Authority to Declarant through the Authority's Edina Affordable Housing Fund ("EAHF Loan"). The provisions of this Declaration are intended to survive the termination or extinguishment of any Public Assistance or EAHF Loan, any mortgage securing the same, and any other security instruments placed of record in connection with the Public Assistance or EAHF Loan and to survive the termination of any subsequent financing or security instruments placed of record by other lenders. This Declaration automatically ceases to be of any force or effect on the date fifteen (15) year anniversary of the Commencement Date without the execution or recording of any additional documents

Article V

REPRESENTATIVES OF BENEFITED PARTIES

Section 5.1 The Authority and the City are designated as the sole and exclusive representative(s) of any and all other persons or entities also benefited by the covenants,

conditions and restrictions of this Declaration, insofar as the enforcement, the construction, the interpretation, the amendment, the release and/or the termination of such covenants, conditions and restrictions are concerned. This designation and appointment shall also run with the Property and the Project and is hereby made and agreed to by Declarant, its successors and assigns, and any subsequent transferee of any interest in the Project, or any part thereof, from Declarant.

Article VI

Remedies, Enforceability

Section 6.1 In the event of a violation or attempted violation of any of the covenants, conditions or restrictions herein contained, the Authority or the City may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or to specifically enforce the covenants, conditions and restrictions therein set forth, or to recover monetary damages caused by such violation or attempted violation. Unless terminated as provided herein, the provisions hereof are imposed upon and made applicable to the Project, and shall be enforceable against Declarant, each purchaser, grantee, owner or lessee of the Project and the respective heirs, legal representatives, successors and assigns of each. No delay in enforcing the provisions of said covenants, conditions and restrictions as to any breach or violation shall impair, damage or waive the right to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

Article VII

AMENDMENT, TERMINATION OF COVENANTS

Section 7.1 The provisions of this Declaration shall not be amended, terminated or deleted during the Term hereof, except by an instrument in writing duly executed by the Authority, the City, and Declarant, their respective successors and assigns, or in accordance with Section 7.2 of this Article VII.

Section 7.2 Unless sooner terminated, amended or deleted as provided in this Article VII, the covenants, conditions and restrictions contained herein shall continue in full force and effect through the Term hereof and shall thereupon terminate and be of no further force or effect.

Article VIII

Covenants Running with the Land

Section 8.1 Declarant intends, declares and covenants, on behalf of itself and all future owners and operators of the Property and the Project during the Term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Property and the Project (i) shall be and are covenants running with the Property and the Project, encumbering the Property and the Project for the Term of this Declaration, binding upon Declarant's successors in title and all subsequent owners and operators of the Property and the Project; (ii) are not merely personal covenants of

Declarant; and (iii) shall bind Declarant (and the benefits shall inure to the Authority and the City) and its respective successors and assigns during the Term of this Declaration. Declarant hereby agrees that any and all requirements of the laws of the State of Minnesota to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. For the Term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Property and the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property and the Project or portion thereof provides that such conveyance is subject to this Declaration.

Article IX

Miscellaneous

Section 9.1 Except as otherwise expressly provided in this Declaration, a notice, demand or other communication under this Declaration by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of Declarant, is addressed to or delivered personally to Declarant at:

Edina Market Street LLC
Attention: Peter Deanovic
5100 Eden Ave., Suite 317
Edina, MN 55424

with a copy to: Brent Rogers
Saturday Properties
1400 Van Buren St. NE, Suite 200
Minneapolis, MN 55413

with a copy to: Daniel J. Van Dyk
Briggs and Morgan, P.A.
80 South Eighth Street, Suite 2200
Minneapolis, MN 55402

In the case of the Authority, is addressed to or delivered personally to the Authority at:

Edina Housing and Redevelopment Authority
Attention: Executive Director
4801 W. 50th ST.
Edina, MN 55424

with a copy to: Jay R. Lindgren

Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

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

City of Edina
Attention: City Manager
4801 W. 50th ST.
Edina, MN 55424

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

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 9.2 This Declaration will be governed and construed in accordance with the laws of the State of Minnesota.

Section 9.3 If any provisions hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

**EXHIBIT J
[RESERVED]**

EXHIBIT K
Disbursing Agreement

DISBURSING AGREEMENT

THIS DISBURSING AGREEMENT (this “Agreement”), is made an entered into as of the _____, 20__, by and among the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF EDINA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”); **EDINA MARKET STREET LLC**, a Minnesota limited liability company (“Developer”); and **COMMERCIAL PARTNERS TITLE, LLC**, as title and escrow agent (“Title Company”).

RECITALS

A. The Authority, the Developer and the City of Edina, Minnesota, a Minnesota statutory city (the “City”) have entered into a Redevelopment Agreement (the “Contract”) dated June __, 2017. Undefined capitalization terms used herein are used with the same meanings assigned such terms in the Contract.

B. Pursuant to the Contract the Authority will construct the North Site Improvements, including constructing the North Site Commercial Element on behalf of Developer.

C. Pursuant to the Contract, the parties agreed to execute this Agreement to provide a mechanism for the disbursement of the North Site Commercial Construction Deposit and the other funds listed in Section 6.4(c) of the Contract (“Funds”) to fund construction costs for the North Site Improvements.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, it is agreed by and among the parties hereto as follows:

1. From time to time, and in accordance with the Contract, the Authority will deposit the Funds with Title Company, and Title Company shall disburse the Funds so deposited in accordance with the terms of this Agreement to pay the construction costs of the North Site Improvements.

2. Prior to first disbursement of Funds hereunder:

(a) The Title Company shall furnish to Developer and Developer’s lender a commitment for ALTA owner’s and loan title insurance policies (the “Commitment”), which shall set forth the conditions of title to those portions of the North Site which will be subdivided into separately platted lots on which the North Site Commercial Elements will be constructed (“Developer Lots”) and thereafter conveyed to the Developer pursuant to the terms of the Contract. It is acknowledged and agreed by the parties hereto that the

disbursement process set forth herein is intended to help ensure that the Developer Lots and North Site Commercial Elements will remain free of mechanics' liens and, upon the Developer's acquisition of the Developer Lots and North Site Commercial Elements, the title insurance policies to be issued pursuant to the Commitment will include mechanic's lien coverage.

- (b) The Authority shall furnish or cause to be furnished to Title Company:
 - (i) A sworn statement of the Authority disclosing the contracts entered into by the Authority in connection with the North Site Improvements, the work and materials to be furnished, the amounts paid to them thereon, and the balance due thereon, and the name and address of the general contractor, or contractors contracted to perform the North Site Improvements (collectively, the "General Contractor").
 - (ii) A sworn statement of the General Contractor setting forth the names of all subcontractors and material suppliers with whom the General Contractor has contracted in connection with the North Site Improvements, the addresses of the subcontractors and suppliers, the work and materials furnished by the subcontractors and suppliers, the amounts of the subcontracts, the amounts paid to date thereon, and the balance due thereon.

3. Prior to each disbursement of Funds hereunder, the Authority shall cause to be delivered to Title Company:

(a) A duly and properly authorized payment request (in form reasonably acceptable to the Title Company) evidencing through attached invoices, receipts, cancelled checks, or other evidence, reasonably acceptable to the Title Company that the costs have been incurred and relate to the North Site Improvements (a "Payment Request"). Each Payment Request will separately identify the amount of such costs incurred with respect to the North Site Commercial Elements and to be paid from the North Site Commercial Construction Deposit ("Developer Costs") and the amount of such costs incurred with respect to the North Ramp Improvements ("Authority Costs"). Section 5 below will apply if costs with respect to the North Site Commercial Elements are excess of the amount of the North Site Commercial Construction Deposit.

(b) A sworn statement from the General Contractor, setting forth: (i) the names of all additional subcontractors and material suppliers with whom the General Contractor has contracted in connection with the North Site Improvements and the additional information with respect to such subcontractors called for in Section 2(b)(ii) hereof, (ii) all change orders, and (iii) the amount due to date on all subcontracts.

(c) Partial and conditional (subject only to payment) waiver of mechanic's lien and/or materialmen's lien, executed by all contractors to be paid out of the Payment

Request in the amount of the lienable costs payable from the Payment Request, in the form reasonably required by the Title Company.

(d) Sufficient funds to cover the Payment Request and to pay for extras or change orders for which waivers have not been deposited and for which funds have not previously been deposited.

(e) Sufficient funds to cover unpaid escrow charges.

Title Company shall not make any disbursement until all of the foregoing requirements have been satisfied, and when all of the foregoing requirements have been so satisfied, Title Company may disburse, without liability for so doing.

4. The Title Company shall pay such approved amounts to each contractor and other person identified in the relevant Payment Request, less five percent (5%) retainage. Retainage will be disbursed with the final disbursement. Soft costs incurred by the Developer or the Authority in connection with the North Site Improvements already performed and permitted by the Contract may be included in the first Payment Request, but there shall be no retainage on the soft costs.

5. All disbursements for Developer Costs will be disbursed from the North Site Commercial Construction Deposit and disbursements for Authority Costs will be disbursed first from the net amount of the South Site Purchase Price and second from deposits of Funds otherwise made by the Authority. If at any time during the course of construction of the North Site Improvements, the total of the unpaid disclosed cost of the North Site Commercial Elements, as indicated by the column totals on the Payment Requests, exceeds the amount of the undisbursed amount of the North Site Commercial Construction Deposit, as calculated by subtracting the total amount previously disbursed by Title Company from the original amount of the North Site Commercial Construction Deposit, the Developer and City shall promptly meet and work together in good faith to determine a mechanism to deposit with Title Company the sum necessary to make the available funds equal to the unpaid disclosed cost of the North Site Commercial Elements. Title Company shall not make further disbursements under the terms of this Agreement until or unless otherwise specifically directed to do so by the Authority.

6. Payments of any construction management fee payable to Construction Manager shall be paid through draws from Funds in equal monthly installments commencing with the first Payment Request. It is anticipated that the construction duration of the North Site Improvements will be [] months, and the Authority may allocate monthly installments of the construction management fee accordingly; provided, however, that adjustments to the allocation may be made by the Authority from time to time to account for any increase or decrease in the construction management fee. Payments of reimbursable expenses, consultant fees, or additional services charges due to the Construction Manager shall be paid through draws from Funds on a monthly basis.

7. In no event shall the final disbursement be made until all conditions are satisfied to enable Title Company to issue a title polices pursuant to the Commitment as provided in

Section 2(a) in form reasonably acceptable to Developer and its lender.

8. The Authority shall be responsible for all fees due to Title Company as compensation for its disbursing services herein.

9. The Title Company shall keep records showing the names of all parties to whom disbursements are made by the Title Company, the date, the amount and purpose of such disbursement, which records may be inspected by the Developer and the Authority.

10. If the Title Company shall determine in its reasonable judgment that proper documentation to support a given disbursement as required by this Agreement has not been furnished, the Title Company shall withhold payment of all or such portion of such disbursement as shall not be so supported by proper documentation, and shall promptly notify Developer and the Authority of the discrepancy in or omission of such documentation. Until such time as such discrepancy or omission is corrected to the satisfaction of the Title Company, it shall withhold such amount, unless otherwise directed in writing by the Authority.

11. Any notice required or permitted to be given by any party hereto to any other party hereto under the terms of this Agreement shall be deemed to have been given as and when provided for in the Contract, addressed to the party to which the notice is to be given at the address set forth in the Contract, or to any other address in the United States of America specified in a notice given by such party to the others not less than three (3) business days prior to the effective date of the address change. Notices to the Title Company shall be addressed to Commercial Partners Title, LLC [] and shall otherwise be subject to the same notice requirements of the Contract.

12. This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that the Title Company may not delegate its duties hereunder. This Agreement is made solely by the signatory parties hereto, and no other persons (except the successors and assigns of the signatory parties) shall have any right to rely on or enforce or have the benefit of any provision of this Agreement. This Agreement shall be governed by the laws of the State of Minnesota. This Agreement can be amended or modified only by a writing signed by the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF EDINA,
MINNESOTA

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

EDINA MARKET STREET LLC

By: _____

Name: _____

Its: _____

COMMERCIAL PARTNERS TITLE, LLC

By: _____

Name: _____

Title: _____

EXHIBIT L
North Site Budget

City of Edina, MN
Edina Collaborative
North Ramp Expansion Budget

SOURCES		
	Amount	Pct.
Developer Contribution	621,120	5.80%
Private Subtotal	621,120	5.80%
DEED/TBRA Grant	170,973	
Centennial Lakes TIF Contribution	3,808,114	35.59%
City of Edina - Purchase Price Credit	6,100,000	57.01%
Other Subtotal	10,079,087	94.20%
TOTAL SOURCES	10,700,207	100.00%

USES		
	Amount	Pct.
ACQUISITION AND SITE COSTS	149,285	1.40%
Center Ramp Lease Payments	0	0.00%
Site Environmental	149,285	1.40%
CONSTRUCTION COSTS	9,459,409	88.40%
Retail Shell Construction	621,120	5.80%
Builders Risk Insurance	28,826	0.27%
North Ramp Expansion	7,983,188	74.61%
Sidewalks, Landscaping, Screening & Utilities	345,840	3.23%
Hard Cost Contingency (5%)	480,435	4.49%
PERMITS/FEES	0	0.00%
SOFT COSTS		
PROFESSIONAL SERVICES	699,961	6.54%
Architecture & Engineering	562,600	5.26%
Environmental	45,959	0.43%
Civil/Survey/Plat	55,000	0.51%
Legal	15,000	0.14%
Soft Cost Contingency	21,402	0.20%
FINANCING COSTS	7,204	0.07%
Closing Costs	4,804	0.04%
Draw Fees	2,400	0.02%
PROJECT MANAGEMENT	384,348	3.59%
Construction Management Fee (North)	384,348	3.59%
TOTAL USES	10,700,207	100.00%

Note: The construction budget does not include site clearance costs of the vacant properties associated with the North site.

EXHIBIT M
Affordable Housing Loan Agreement

AFFORDABLE HOUSING LOAN AGREEMENT
(Market Street – Edina Affordable Housing Fund)

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into this ___ day of _____, 201___ (“Effective Date”), by and between the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), and EDINA MARKET STREET LLC, a Minnesota limited liability company (the “Developer”).

RECITALS

WHEREAS the City of Edina, Minnesota, a Minnesota statutory city (the “City”), the Authority, and the Developer have entered into a Redevelopment Agreement (the “Contract”) dated June ___, 2017; and

WHEREAS, such Contract is intended to provide for the redevelopment of certain land within the City’s 50th & France District located on Market Street (formerly known as 49 1/2 Street) by the Developer in coordination with the Authority and with the cooperation and assistance of City (the “Market Street Project”), and

WHEREAS, the Contract provides for the expenditure of public and other funds to assist in the redevelopment of the Market Street Project and to pay for certain Minimum Improvements, which include, without limitation, an approximately 110 unit apartment building to be located on the real property described on Exhibit A attached hereto (the “Project”, and referred to as the “Apartment Element” in the Contract); and

WHEREAS, pursuant to the Contract and the City’s affordable housing policy, the Developer has agreed that at least ten percent (10%) of the residential units within the Apartment Element (the “Affordable Units”) will remain affordable to certain low-income persons and households in accordance with the terms and conditions set forth in the Contract and that certain Affordability Covenant (as defined and set forth in the Contract) (“Affordability Requirements”); and

WHEREAS, the Authority has created the Edina Affordable Housing Fund (the “EAHF Fund”), for the purpose of expanding the supply of safe, decent, sanitary housing for low-income households and individuals in the city of Edina; and

WHEREAS, the Developer has represented, and the Authority has acknowledged, that there is a financing gap for the Minimum Improvements related to the Affordability Requirements (the “Affordable Housing Gap”), and the Authority has agreed to fund up to

\$1,600,000.00 of the Affordable Housing Gap with a fifteen (15) year loan to the Developer from the EAHF Fund pursuant to the terms of this Agreement; and

WHEREAS, the Authority is authorized and empowered to enter into this Agreement by Minnesota Statutes §§ 469.001 to 469.047 and 469.192, and other applicable law.

WHEREAS, all capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Contract.

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

AGREEMENT

1. **Project Requirements**. Declarant shall construct, maintain, lease, and operate the Project and the Affordable Units in accordance with and in the manner required under the Contract and the Affordability Covenant, as the same may be amended from time to time.

2. **Loan**. The Authority will lend to the Developer, and Developer will borrow from the Authority, EAHF Funds in an amount equal to One Million Six Hundred Thousand Dollars and No/100 (\$1,600,000.00) in the form of a deferred loan (the "Loan") to enable the Developer to fund all or part of the Affordable Housing Gap, subject to the following provisions:

(a) Developer agrees to repay the Loan together with interest at a fixed, simple annual interest rate equal to the lesser of (i) one percent (1%) plus an amount equal to the average of the annual inflation rate (based on the Consumer Price Index) for each calendar year in which all or part of the Loan remains outstanding (except the calendar year in which the Loan is repaid in full) and (ii) two and one-half percent (2.5%) on the outstanding principal balance of the Loan following the date of disbursement of the Loan (the "Disbursement Date") until the Loan is repaid in full. For purposes of this Agreement "Consumer Price Index" means the consumer price index which is designated for the applicable year of determination as the United States City Average for All Urban Consumers, All Items, Not Seasonally Adjusted, with a base period equaling 100 in 1982 - 1984, as published by the United States Department of Labor's Bureau of Labor Statistics or any successor agency.

(b) Developer agrees to pay annual interest payments on each anniversary date of the Disbursement Date in an amount equal to one percent (1%) per annum simple interest on the outstanding principal balance of the Loan. On the Maturity Date, or such earlier date that Developer re-pays in full the principal of the Loan, the annual interest rate will be calculated in accordance with Section 2(a) above, and the Developer agrees to pay all remaining accrued interest in full together with the outstanding principal balance of the Loan .

(c) The principal of the Loan, together with any accrued but unpaid interest shall be repaid no later than the date that is the fifteenth (15th) anniversary of the Disbursement Date ("Maturity Date").

(d) All such interest and principal payments shall be made by the Developer in immediately available funds and without notice, demand or offset. If all or any portion of any payment (including any payment of interest or principal) required hereunder is not paid within thirty (30) days after the date such payment is due, the Developer shall pay a late charge equal to four percent (4%) of the amount of such unpaid payment.

3. **Loan Disbursement.** The Authority's obligation to disburse the proceeds of the Loan shall be subject to the prior fulfillment of the following conditions:

(a) There shall not be an uncured "Event of Default" (as defined below) under this Agreement.

(b) The City has issued the Developer a Certificate of Completion for the South Site Vertical Improvements.

(c) The Developer has provided the Authority:

(i) A current TIF Pro Forma if there are any material changes to the TIF Pro Forma reviewed by the Authority as of the date of this Agreement that reduce the Affordable Housing Gap or, if there are no such material changes, a certificate from the Developer stating that there are no material changes to the TIF Pro Forma that reduces the Affordable Housing Gap.

(ii) A pro forma ALTA mortgagee's title insurance policy (ALTA Loan Policy 2006 Loan Policy of Title Insurance, or equivalent, or other form satisfactory to Bank), with such endorsements as the Authority may require, issued by the Escrow Agent in the amount of the Loan insuring the lien of the Mortgage, including insuring against any lien claims that could arise out of the construction of the Project.

(iii) A draw request with an itemized payee list including a summary of all invoices included in the draw request, or other evidence, reasonably acceptable to the Authority, that Loan will be used to pay for Developer's construction or other related development costs which have been incurred and relate to the construction of the Project.

(iv) Copies of the Loan Documents (as defined below) duly executed by the Developer.

4. **Loan Security.** The Developer agrees to execute (together with this Agreement, collectively the "Loan Documents") (a) a Promissory Note in the amount of the Loan (the "Note"); (b) to secure the Note, a Combination Mortgage, Assignment of Rents, Security Agreement, and Fixture Financing Statement (the "Mortgage") to be filed with the Hennepin County Recorder and/or Registrar of Titles, as applicable, giving the Authority a lien on the Project that is subordinate to the lien of any construction or other financing the Developer obtains to fund development of the Project; (c) and the Affordability Covenant, which will be filed with the Hennepin County Recorder and/or Registrar of Titles, as applicable,. The Developer, for itself and for its successors and/or its assigns, further agrees and consents to the

filing of such security instruments in the appropriate Hennepin County land records if necessary to protect the interest of the Authority in the Project as described in this Agreement. The Authority agrees, in exchange for the lien rights specified in (a) above, to execute an intercreditor agreement with the Developer's other lenders, in the form required by such lenders, specifying the subordinate nature of the Authority's lien.

5. **Records and Reports:** Monitoring The Developer shall submit a rent roll, including the income and household size of the tenants of the Affordable Units, and the proposed rent schedule to City annually for approval on the basis of the Affordability Covenant, with an initial deadline for submission of three (3) months following the Disbursement Date and thereafter an annual deadline for submission of September 1st for the term of this Agreement. The Developer shall maintain records for the receipt and expenditure of all Loan proceeds. All of the Developer's records that relate to the Loan shall be made available for inspection and copying upon request of the Authority during normal business hours. The Authority shall have the right to review any and all procedures, including property management agreements, and all materials, notices, documents, etc., prepared by the Developer to perform its obligations under this Agreement and the Developer agrees to provide all pertinent information required by any person authorized by the Authority to request such information from the Developer for the purpose of reviewing the same. The Authority shall review the performance of the Developer, its subcontractors, and owners of rental housing assisted with Loan proceeds to assess the Developer's compliance with the terms and conditions of this Agreement. The results of such review will be of public record.

6. **Encumbrance; Assignment.** Except in connection with [insert description of senior debt] and leasing all or part of the Project to tenants in the ordinary course of business, the Developer shall not assign, subcontract, transfer, or pledge this Agreement and/or its obligations hereunder, whether in whole or in part, without the prior written consent of the Authority, which consent the Authority will not unreasonably withhold, condition or delay.

7. **Indemnification.** The Developer agrees to defend, indemnify, and hold harmless the Authority, its elected officials, officers, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly from any negligent act or omission or willful misconduct of the Developer, its officers, agents, employees or contractors, and/or anyone for whose act, omission, they may be liable in the performance of the activities required by this Agreement, and against all loss suffered by the Authority by reason of the failure of the Developer to perform fully, in any respect, all obligations under this Agreement.

8. **Insurance.** In order to protect the Developer and those listed above under the indemnification provisions, the Developer agrees at all times during the term of this Agreement and beyond such term when so requested by the Authority, to keep in force the insurance coverage required to be carried by Developer under the Contract.

9. **Housing Quality Standards and Property Requirements.** The Developer shall maintain the Project, at a minimum, to meet the U.S. Department of Housing and Urban Development's Housing Quality Standards, and maintain compliance with all applicable ordinances, building and use restrictions, code-required building permits, and any requirements

with respect to licenses, permits, and agreements necessary for the lawful use and operation of the Project for the duration of this Agreement.

10. **Equal Opportunity and Fair Housing.** The Developer shall comply with all federal laws, executive orders, and implementing rules and regulations set forth to ensure that no person shall on the grounds of race, color, national origin, religion, handicap, familial status, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Loan proceeds.

11. **City Policy on Affirmative Action and Equal Opportunity.** In accordance with the City's policies against discrimination, no person shall be excluded from full employment rights or participation in or the benefits of any program, service, or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin; and no person who is protected by applicable federal or state laws, rules, or regulations against discrimination shall be otherwise subjected to discrimination.

12. **Non-Discrimination Based on Disability.** When and where applicable, the Developer shall comply with, and make commercially reasonable efforts to have its third party providers comply with, Public Law 101-336 Americans with Disabilities Act of 1990, Title I "Employment," Title II "Public Services" - Subtitle A, and Title III "Public Accommodations and Services Operated by Private Entities" and all ensuing federal regulations implementing said Act.

13. **Events of Default.** Any of the following shall constitute an "Event of Default" hereunder and shall entitle the Authority to exercise its rights and remedies under Section 16:

(a) If the Developer (i) fails to make any payment of principal or interest required to be paid under this Agreement within ten (10) days following notice from the Authority that payment is past due or (ii) fails to perform any other obligation required to be performed under this Agreement within thirty (30) days following notice from the Authority that the date of performance is past due; or

(b) If the Developer fails to perform or observe any condition or covenant relating to any indebtedness that is secured with a lien that is prior to the Authority's lien on the Project if the effect of such failure is to cause, or permit the holder or holders of such indebtedness to cause such indebtedness to be declared due and payable prior to its stated maturity and to foreclose its lien;

(c) A Default under the Contract, subject to applicable Cure Rights and Unavoidable Delays (each as defined in the Contract);

(d) A violation of the Affordability Covenant;

(e) If the Developer uses any portion of the proceeds of the Loan, or any interest or earnings thereon, other than in a manner specifically authorized in this Agreement;

(f) If the Developer shall admit in writing its inability to pay its debts as they mature; or

(g) If the Developer shall be adjudicated a bankrupt or insolvent, and such adjudication shall continue undischarged or unstayed for a period of thirty (30) days; or the Developer shall make an assignment for the benefit of creditors; or the Developer shall apply for or consent to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Developer, as the case may be, and such appointment shall continue undischarged for a period of thirty (30) days.

14. **Rights and Remedies.** Upon the occurrence of an Event of Default, the Authority may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

(a) The interest rate on the Note shall thereafter increase and shall be payable on the whole of the unpaid principal balance at a rate equal to six percent (6%) per annum simple interest (hereinafter referred to as the “Default Rate”), which Default Rate shall be automatically effective as of the date of the occurrence of such Event of Default but shall be reduced to the interest rate described in Section 3 of this Agreement when the Developer cures the Event of Default.

(b) Suspend or terminate the obligation of the Authority to make advances of the Loan without notice to the Developer;

(c) Declare the entire unpaid principal balance of the Note to be immediately due and payable, together with accrued and unpaid interest thereon, without notice to or demand on the Developer; or

(d) Exercise any or all remedies specified herein and in the other Loan Documents, including (without limiting the generality of the foregoing) the right to foreclose the Mortgage, and any other remedies which the Authority may have therefor at law, in equity or under statute.

15. **Amendments.** Except as otherwise herein provided, and not otherwise, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement shall be binding upon the parties to this Agreement unless in writing and signed by such parties.

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

Edina Market Street LLC
Attention: Peter Deanovic

5100 Eden Ave., Suite 317
Edina, MN 55424

with a copy to: Brent Rogers
Saturday Properties
1400 Van Buren St. NE, Suite 200
Minneapolis, MN 55413

with a copy to: Patrick E. Mascia
Briggs and Morgan, P.A.
80 South Eighth Street, Suite 2200
Minneapolis, MN 55402

In the case of the Authority, is addressed to or delivered personally to the Authority at:

Edina Housing and Redevelopment Authority
Attention: Executive Director
4801 W. 50th ST.
Edina, MN 55424

with a copy to:: City of Edina
Attention: City Manager
4801 W. 50th ST.
Edina, MN 55424

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

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.

17. **Attorneys' Fees.** In the event either the Developer or the Authority commences a legal action to enforce the provisions of this Agreement, the prevailing party in such action shall be entitled, as a part of said action, to recover all its costs and expenses, including reasonable attorneys' fees.

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

19. **Law Governing.** This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

20. **Consents and Approvals.** In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

21. **No Additional Waiver Implied by One Waiver.** If 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.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Authority and the Developer have caused this Agreement to be duly executed in their names and on their behalf, all on or as of the date first above written.

AUTHORITY:

HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF EDINA,
MINNESOTA

By _____
Chair

By _____
Executive Director

DEVELOPER:

EDINA MARKET STREET LLC
a Minnesota limited liability company

By _____
Its _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

EXHIBIT N

Memorandum of Redevelopment Agreement

THIS MEMORANDUM OF REDEVELOPMENT AGREEMENT (this "*Memorandum*") is entered into as of _____, 2017, by and among the **CITY OF EDINA, MINNESOTA**, a Minnesota statutory city (the "*City*"), the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF EDINA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the "*Authority*"), and **EDINA MARKET STREET LLC**, a Minnesota limited liability company, (the "*Developer*") (City, Authority and Developer are hereinafter collectively referred to as the "*Parties*").

RECITALS

The Parties have entered into that certain Redevelopment Agreement dated as of June __, 2017 (the "*Agreement*"), whereby the Parties have agreed to various aspects of the redevelopment of certain real property more particularly described on Exhibit A attached hereto and made a part hereof, together with all improvements, tenements, easements, rights and appurtenances pertaining to such real property, lying and being in Hennepin County, Minnesota (the "*Property*").

The Parties wish to give notice of the existence of the Agreement and its application to the Property.

AGREEMENT

NOW, THEREFORE, in considerations of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the Parties agree as follows:

1. The above Recitals are incorporated by reference as if fully set forth herein.
2. Capitalized terms, when not defined herein, shall have the meanings ascribed to them in the Agreement.
3. The Parties have entered into the Agreement to set forth the terms and provisions governing the redevelopment of the Property.
4. This Memorandum has been executed and delivered by the Parties for the purpose of recording and giving notice that a contractual relationship for the redevelopment of the Property has been created between the Parties in accordance with the terms, covenants, and conditions of the Agreement.
5. The terms and conditions of the Agreement are incorporated by reference into this Memorandum as if fully set forth herein.

6. This Memorandum may be executed separately in counterparts which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City, Authority and Redeveloper have caused this Memorandum to be duly executed in their names and on their behalf, all on or as of the date first above written.

CITY OF EDINA, MINNESOTA

By _____
Mayor

By _____
City Manager

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by James Hovland and Scott Neal, the Mayor and City Manager, respectively, of the City of Edina, Minnesota, on behalf of the City of Edina.

Notary Public

IN WITNESS WHEREOF, the City, Authority and Developer have caused this Memorandum to be duly executed in their names and on their behalf, all on or as of the date first above written.

**HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF
EDINA, MINNESOTA**

By _____
Chair

By _____
Executive Director

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by James Hovland and Scott Neal, the Chair and Executive Director, respectively, of the Housing and Redevelopment Authority of the City of Edina, Minnesota, a body corporate and politic organized and existing under the Constitution and laws of the State of Minnesota, on behalf of said Authority.

Notary Public

EXHIBIT O
Depiction of Shared Plaza Element

**EXHIBIT P
Go-Ahead Letter**

[EDINA MARKET STREET LLC LETTERHEAD]

[Date]

Scott Neal
City Manager/City of Edina
Executive Director/Edina Housing and Redevelopment Authority
4801 West 50th Street
Edina, MN 55424

Dear Mr. Neal:

This letter is submitted pursuant to Section 5.2 of the Redevelopment Agreement by and among the City of Edina, Minnesota, the Housing and Redevelopment Authority of the City of Edina, Minnesota, and Edina Market Street LLC, dated as of June _____, 2017 (the “Agreement”) and is provided as the “Go-Ahead Letter” required under the Agreement. Capitalized terms used in this letter and not defined herein have the meaning given to them in the Agreement.

The Financing Commitment has been received by the Developer, and the Developer is prepared to proceed with acquisition of the South Site and Commencement of the South Site Vertical Improvements, in accordance with the Agreement, subject to the City’s completion of the Hooten Work and the satisfaction of all of Developer’s contingencies under Section 4.2(b) of the Agreement.

Sincerely,

EDINA MARKET STREET LLC

By _____

Its _____