

PRELIMINARY DEVELOPMENT AGREEMENT

THIS PRELIMINARY DEVELOPMENT AGREEMENT (this "Agreement"), dated the _____ day of _____ 2017, by and between the Edina Housing and Redevelopment Authority, a public body corporate and politic under the laws of the State of Minnesota (the "Authority") and Frauenshuh, Inc., a Minnesota corporation (the "Developer");

WITNESSETH:

WHEREAS, the Authority desires to promote development of certain property within the City, located at 5146 Eden Avenue, Edina, MN 55436 (the "Property") as depicted in Exhibit A attached hereto; and

WHEREAS, the Property is made up of parcels owned or to be owned by the Authority; and

WHEREAS, the Authority has determined that it is in the best interests of the Authority that the Developer be designated as the sole developer of the Property during the term of this; and

WHEREAS, the Authority intends that the site design for the Property be consistent with the 2012 Grandview Development Framework, the 7 Guiding Principles for redevelopment in the Grandview District ("Guiding Principles") and the 2016 Transportation Study and provide for all of the following uses on the Property:

1. District parking structure that leverages the topography of the site;
2. Affordable Housing in accordance with City of Edina Policy;
3. Market Rate Housing; and
4. New finished building for the Edina Art Center

(collectively referred to herein as the "Required Uses"). In addition, the Authority encourages the incorporation of a unique community-oriented commercial marketplace, such as a food hall ("Preferred Use"). Required Uses 1, 2 and 4 together with the Preferred Use must occupy at least 60% of the Property;

WHEREAS, the Developer desires to master develop and acquire all or a portion of the Property for purposes of constructing thereon a mixed-use (multi-family residential and commercial) development along with complementary public uses (the "Development"); and

WHEREAS, the Developer has requested the Authority to explore the use of tax increment financing ("TIF") under Minnesota Statutes, Sections 469.174 to 469.1794, as amended, or other public financial assistance to offset costs of the Development; and

WHEREAS, the Authority and the Developer are willing and desirous to undertake the Development if (i) a satisfactory agreement can be reached regarding the City of Edina ("City") and/or Authority's commitment to TIF or other public financial assistance to offset costs of the Development; (ii) satisfactory mortgage and equity financing or adequate cash resources for the

Development can be secured by Developer; (iii) the parties reach a satisfactory resolution of zoning, land use, public infrastructure, and site design issues; and (iv) the economic feasibility and soundness of the Development and other necessary preconditions have been determined to the satisfaction of the parties; and

WHEREAS, the parties wish to enter into this Agreement setting forth their respective responsibilities in connection with the Property.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and obligations set forth herein, the Authority and the Developer hereby agree as follows:

I. During the term of this Agreement the Authority agrees to designate the Developer as the sole developer of the Property and to negotiate solely with the Developer relative to the acquisition and development of the Property under the following terms and conditions:

(a) The specific work to be performed by Developer, including deliverables and time frames is more specifically provided in Exhibit B (“Schedule”). As part of the deliverables, the Developer shall obtain a preliminary market study for the proposed residential portion of the site and the Preferred Use, a high-level traffic analysis that addresses the combination of uses on the site and soil borings for the various uses to evaluate soil conditions;

(b) The Authority and Developer will work together in good faith to complete the tasks and activities per the Schedule.

(c) The Authority and Developer will pursue the schedule activities within the pre-development budget set forth in Exhibit C (the “Pre-Development Costs”), with cost-sharing for such Pre-Development Costs as specified therein, except as otherwise modified by this Agreement. Any increases in budgeted items to Pre-Development Costs must be approved by the parties. Payment of Pre-Development Costs required under this Agreement shall be based solely on actual costs incurred.

(d) If the parties and City execute the Contract (as defined in paragraph 2 below) and proceed to closing on the conveyance of all or a portion of the Property to the Developer, all actual Pre-Development Costs incurred by Developer, except costs attributed to the residential portion of the Property and associated pro-rated costs, will be applied as a credit to the purchase price and development cost of all or such portion of the Property conveyed in accordance with the allocations set forth in Exhibit C.

(e) Developer and Authority shall determine whether the Required Uses and Preferred Uses can be accommodated on the Property in a manner that is consistent with the Guiding Principles by February 28, 2018, or such later date as agreed to by the parties. If the Required Uses cannot be accommodated as provided herein, no further work will be

done pursuant to this Agreement after the date of such determination and this Agreement shall terminate, unless otherwise approved by the parties. Provided Developer has complied with the timelines and deliverables for Phase I under the Schedule (unless any failure to comply is due to circumstances beyond Developer's control), the Authority will reimburse Developer for only the actual costs incurred by Developer allocated to the Authority reimbursement as identified in Exhibit C .

(f) Developer's sketch plan ("Sketch Plan") submission shall include the items required pursuant to the City Code and the following: site plan, floor plans, 3-D elevations, renderings of the Required Uses and Preferred Use, if incorporated, high level look at traffic impacts of all uses, narrative describing the uses and a summary of how they respond to the Southdale Vision Principles and the Guiding Principles.

(g) If the Sketch Plan is not favorably reviewed by the City Council and suggested revisions cannot be accommodated, no further work will be done pursuant to this Agreement and the Agreement will terminate unless otherwise approved by the parties. Provided Developer has used good faith efforts to comply with the timelines and deliverables for Phase I under the Schedule, the Authority will reimburse Developer for only the actual costs incurred by Developer allocated to the Authority reimbursement as identified in Exhibit C.

(h) If the Sketch Plan is not favorably reviewed and the parties and City are unable to negotiate a Contract, as hereinafter defined, prior to June 19, 2018, and provided the Developer has used good faith efforts to comply with the timelines and deliverables for Phase I and II under the Schedule, the Authority shall reimburse the Developer for the actual costs incurred by Developer allocated to the Authority reimbursement as identified in Exhibit C.

(i) If Developer fails to use good faith efforts to comply with the deliverables and timelines identified in the Schedule through no fault of the Authority or City, Developer shall reimburse the Authority \$2,000.00 per month for each month of this Agreement until Developer complies with the deliverables and timeline under the Agreement or the Agreement is terminated by either party for the right to exclusive development.

(j) The Authority will provide previously completed Phase I and Phase II Environmental reports and Geotechnical reports for the Property to the Developer for review.

2. The parties agree to work cooperatively towards defining the Development and its components (including but not limited to site design, building plans and specifications, number of market-rate and affordable residential units, commercial square footage, building stories and height, public amenity components and structured parking, storm water management, streets and sidewalks, and all other necessary public infrastructure improvements), and determining its financial feasibility, the infrastructure necessary to service

it, and the approvals necessary to bring it to fruition; as well as to negotiate in good faith toward a definitive Contract (the "Contract"), together with the City.

3. Developer shall prepare a Development pro forma (including a detailed list of various revenue sources and respective amounts necessary to bring the Development to fruition) and submit it to the Authority for its review prior to execution of the Contract.

4. Developer shall work to secure satisfactory mortgage and equity financing, and additional forms of financing necessary to bring the Development to fruition prior to execution of the Contract.

5. Developer understands the Development will be subject to the City's Grandview Development Framework and agrees to incorporate the planning principles and objectives of this framework in to the Development if the parties enter into the Contract.

6. In connection with this Agreement, the Authority hereby grants to the Developer, its agents, employees, officers, and contractors (the "Authorized Parties") a right of entry on the Property for the purpose of performing all due diligence work and inspections deemed necessary by the Developer to fulfill its obligations under this Agreement (the "Permitted Activities"). The Authorized Parties shall have access to the Authority Property seven (7) days a week between the hours of 7:00 a.m. and 7:00 p.m. Developer hereby agrees to restore the Property to its original condition upon completion of the Permitted Activities. Developer agrees to indemnify, save harmless, and defend the Authority, and their officers and employees, from and against any and all claims, actions, damages, liability and expense in connection with personal injury and/or damage to the Property arising from or out of any occurrence in, upon or at the Property caused by the act or omission of the Authorized Parties in conducting the Permitted Activities on the Property.

7. The Authority will provide guidance to Developer in determining the municipal regulatory approvals required for the Development including, but not limited to, land use amendments to the Comprehensive Plan, zoning changes, permits, and any other necessary municipal approvals.

8. The Authority will provide guidance to the Developer on its applications for any approvals or land use guidance and zoning changes as may be required in connection with the Development. However, the City makes no guarantees as to any approvals or land use guidance and zoning changes as may be required in connection with the Development.

9. The Authority will review existing traffic studies pertinent to the Development.

10. The Developer agrees to complete an application and development payment agreement for TIF assistance (the "TIF Application") pursuant to the Schedule.

11. The Authority agrees to direct its staff and legal and financial consultants to review and analyze the TIF Application and the Development's pro forma and help determine the terms of tax increment or other financial assistance required for the Development.

12. If, in the Authority's sole discretion, the Development is feasible, desirable and public financial assistance is deemed appropriate, the Authority and the Developer will negotiate the Contract, which will provide, in general, for (a) the purchase of all or a portion of the Property by the Developer; (b) tax increment assistance in an amount determined by the Authority to be necessary to make the Development financially feasible and consistent with the Authority and City policies for issuance of tax increment financing; and (c) timely construction of the minimum improvements for the Development by Developer. The Contract will be subject to approval by the Authority's board of commissioners and the approval by the City of the issuance of TIF, if TIF is to be used for the project. It is expressly understood that the Contract, when executed, will supersede this Agreement in all respects. Execution and implementation of the Contract shall be subject to:

(a) A determination by the Authority in its sole discretion that its undertakings are feasible based on (i) the projected tax increment revenues and any other revenues designated by the Authority or City, including any grants; (ii) the purposes and objectives of any tax increment, development, or other plan created or proposed for the purpose of providing financial assistance for the Development; and (iii) the best interests of the City of Edina and Authority.

(b) A determination by the Authority that any financial assistance is reasonably necessary in order to make the Development financially feasible, and that any such assistance is limited to the amount necessary to achieve financial feasibility based on Developer's pro forma and review of all the facts and circumstances.

(c) A determination by the Developer that the Development is both market and economically feasible and in the best interests of the Developer, and that the Developer is able to meet all the requirements of the Contract.

13. The Authority and Developer will pay the Pre-Development Costs in accordance with the terms of this Agreement based solely on actual costs within 35 days of receipt of an invoice or by reimbursement to a party upon request accompanied by reasonable evidence of payment. The parties will negotiate an appropriate pro-ration of project costs to be included in the Contract.

14. This Agreement may be terminated as follows:

(a) By the Developer at any time upon 10 day's written notice to the Authority. The Authority will reimburse Pre-Development Costs pursuant to Paragraph 1(e), if Developer's termination is based on (i) a breach by the Authority; (ii) failure of

the City to adhere to the Schedule; or (iii) the reason identified in Paragraph 15 and Developer provides to the Authority appropriate evidence for such reason. If Developer terminates for any other reason, the Authority shall reimburse Developer solely for the actual costs equal to (i) one-half of soil boring costs; (ii) 50% of the costs of the residential market study and (iii) one-half of the costs of the traffic study; and Developer shall pay the authority pursuant to Paragraph 1(i).

(b) By the Authority at any time upon 10 day's written notice to the Developer. Provided Developer has complied with the deliverables according to the Schedule and is not in breach of this Agreement, the Authority will reimburse Pre-Development Costs pursuant to Paragraph 1(e) if termination occurs at or prior to completion of Phase I and pursuant to Paragraph 1(h) if termination occurs after completion of Phase I.

(c) By mutual written agreement of all parties hereto. The Authority will reimburse the Developer pursuant to Paragraph 1(e) if termination occurs at or prior to completion of Phase I and pursuant to Paragraph 1(h) if termination occurs after completion of Phase I.

(d) Pursuant to paragraph 16 hereof.

15. Developer agrees to notify the Authority and terminate this Agreement as soon as reasonably practicable in the event the Developer determines that the proposed Development is not market and economically feasible and/or Developer is unable to secure the financing necessary for the Development or if the Developer for any reason is unable to bring the Development to fruition.

16. This Agreement shall terminate by its terms if the governing bodies of the Authority and City have not approved the Contract by June 20, 2018 or such later date as agreed to by the parties. Except as otherwise provided herein, the parties agree that any costs expended prior to the date of the Authority and the City's approval of this Agreement are the sole obligation of the party incurring such costs.

17. All reports, plans, models, software, diagrams, analyses and information generated in connection with performance of this Agreement the costs for which were reimbursed to Developer by the Authority shall be the property of the Authority. The Authority may use the information for its purposes. The Authority will be the copyright owner.

18. Developer and Authority shall exercise the same degree of care, skill and diligence in the performance of the deliverables required under this Agreement as is ordinarily possessed and exercised by real estate developer under similar circumstances.

19. Developer and Authority shall each defend, indemnify and hold the other, and their respective officials, employees and agents, harmless from and against any and all liability, loss, expense (including reasonable attorney's fees and cost) or claims for injury or damage arising out of the performance of this Agreement, caused by or resulting from the negligent or intentional acts or omissions of the indemnifying party and its officers, directors, volunteers, agents or employees. Under no circumstances, however, shall Authority be required to pay on behalf of itself or Developer, any amounts in excess of the limits on liability established in Minnesota Statutes, Chapter 466 applicable to any one party.

20. The Parties shall secure and maintain such insurance as will protect it from claims under the Worker's Compensation Acts, and from claims for bodily injury, death, or property damage which may arise from the performance of work under this Agreement. Such insurance shall be written for amounts not less than:

Commercial General Liability	\$1,000,000 each occurrence/aggregate
Professional Liability	\$1,000,000 each claim

Before commencing work, Developer and Authority shall each provide a certificate of insurance evidencing the required insurance coverage in a form acceptable to all parties.

21. Developer shall be responsible for engaging sub-consultants to provide professional expertise during implementation of the deliverables identified in Exhibit B. Authority reimbursement of any costs related to the Developer's use of sub-consultants shall be determined pursuant to Exhibit C and the terms of this Agreement. Use of additional sub-consultants shall be solely at the expense of the party that engages other sub-consultants.

Developer must pay its subcontractors/sub-consultants for all undisputed work provided by subcontractor/sub-consultant within ten days of Developer's receipt of payment from the Authority, as the case may be. Developer must pay interest of 1.5 percent per month or any part of a month to subcontractor/sub-consultant on any undisputed amount not paid on time to subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.

22. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Hennepin County.

23. Authority, Developer and sub-consultants must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by and to the Authority or City pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by Developer and Authority pursuant to this Agreement. Developer is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event Developer or Authority

receives a request to release data, each party must immediately notify the other. Authority will give Developer instructions concerning the release of the data to the requesting party before the data is released. Developer agrees to defend, indemnify, and hold the Authority, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Developer's officers', agents', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The Authority agrees to defend, indemnify, and hold Developer, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from the Authority's officers', agents', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

24. Each party shall defend the other party from actions or claims charging infringement of any copyright or software license by reason of the use or adoption of any software, designs, drawings or specifications supplied by the party, and shall hold harmless the other party from loss or damage resulting therefrom.

25. Neither party shall assign this Agreement or any interest arising herein, without the written consent of the other party.

26. Notice or demand or other communication between or among the parties shall be sufficiently given if sent by mail, postage prepaid, return receipt requested or delivered personally:

- (a) As to the Authority:
Edina Housing and Redevelopment Authority
4801 W 50th St
Edina, MN 55424
Attn: Executive Director

- (b) As to the Developer:

Frauenshuh, Inc.
7101 West 78th Street, Suite 100
Minneapolis, MN 55439
Attn: David Anderson, Senior Vice President

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

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

IN WITNESS WHEREOF, the City and Authority have caused this Agreement to be duly executed in their name and behalf and their seal to be duly affixed hereto and the Developer has caused this Agreement to be duly executed as of the date and year first above written.

FRAUENSHUH, INC.:

EDINA HOUSING AND REDEVELOPMENT AUTHORITY:

By: _____

By: _____
James B. Hovland, Its Chair

Its: _____

And By: _____
Robert J. Stewart, Its Secretary

Exhibit A

PID: 2811721310014

PID: 2811721310015

PID: 2811721310016



Exhibit B

Grandview- Former Public Works Site Preliminary Development Agreement 2017/2018 Schedule & Process Edina Housing and Redevelopment Authority and Frauenshuh

Phase I – Sketch Plan

- December 11 (week of): Organizational Meeting/Workshop with City staff and Developer's team, including Developer's architectural, civil and landscape consultants.
- December 11th or 18th (week of): Workshop with City Staff and Developer's team.
- January 8th (week of): Developer presentation of first draft of Sketch Plan to Joint workshop with Parks & Rec Board and Arts & Culture Commission representatives.
- January 10th: Developer submission of Sketch Plan Application.
Developer submission of preliminary market study concerning private development and the Preferred Use
- January 24th: Planning Commission; Sketch Plan review.
- January 24th (week of): Developer schedule and participate in neighborhood meeting concerning draft Sketch Plan.
- February 7th: City Council; Sketch Plan review.

Phase 2 – Contract for Private Redevelopment and Necessary Land Use Approval

- April 25th: Developer completion of traffic study
- April 9th: Developer application for Tax Increment Financing, Developer Submission of Development Payment Agreement; Developer application for preliminary zoning approval and any necessary comprehensive plan amendments required for development.
- April 25th - June 9th: Developer, Authority and City negotiation of Contract for Private Redevelopment and Tax Increment Financing Agreement.
- May 9th: Planning Commission review of preliminary zoning and comprehensive plan application.
- June 5th: Contract for Private Redevelopment and Tax Increment Financing Agreement submitted to the Authority and City Council together with final approval of any. Comprehensive Plan Approvals necessary for development and preliminary zoning approval.

Exhibit C

Pre-Development Budget Preliminary Development Agreement Grandview				
		Cost Allocation		
Project Activity	Project Cost*	Frauenshuh Portion Expense During PDA	City Portion Expense During PDA	City to Reimburse PDA Termination or Expiration**
Architectural				
Sketch Plan - Architect	\$ 39,500			
Res. Tower		\$ 13,167		
District Parking/Community Space		\$ 13,167		\$ 13,167
Art Center		\$ 13,167		\$ 13,167
Civil/LA				
Sketch Plan - Civil/Landscape Consultants	\$ 17,500			
Res. Tower		\$ 5,833		
District Parking/Community Space		\$ 5,833		\$ 5,833
Art Center		\$ 5,833		\$ 5,833
Site Evaluation				
Soil (Borings and sampling)	\$ 10,000		\$ 10,000	
High level traffic	\$ 5,000	\$ 5,000		\$ 2,500
Preferred Use Market Study	\$ 5,000		\$ 5,000	
Preliminary Res. Market Study	\$ 5,000	\$ 5,000		\$ 2,500
Financial and Legal				
TIF Analysis	\$ 2,500	\$ 2,500		
Legal - TIF	\$ 2,500	\$ 2,500		
Legal - Real Estate, General	\$ 2,500		\$ 2,500	
Authority - PDA	\$ 10,000		\$ 10,000	
Frauenshuh - PDA Development	\$ 60,000	\$ 60,000		\$ 30,000
Legal	\$ 5,000	\$ 5,000		\$ 2,500
	\$ 164,500	\$ 137,000	\$ 27,500	\$ 75,500
<p>*If the Project proceeds with Frauenshuh as master developer, the costs above will be incorporated as project costs allocated to each phase on a prorated basis. Adjustments to be made at closing.</p> <p>**If the PDA is terminated prior to or upon City Council consideration of the sketch plan, the Authority's reimbursement obligation for Architectural and Civil/LA costs will be limited to 50%. If the project otherwise continues following City Council consideration of sketch plan, 100% of reimbursement of the Architectural and Civil/LA costs will apply.</p>				