

**FIRST AMENDMENT**

**to**

**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  
December 19, 2017**

**THIS DOCUMENT WAS DRAFTED BY:**

**Dorsey & Whitney LLP  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402-1498**

**FIRST AMENDMENT TO  
REDEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT** (“First Amendment”) is made and entered into this 19th day of December, 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 “Developer”) (together, the “Parties”).

**RECITALS**

**WHEREAS**, the City, the Authority and the Developer are parties to a Redevelopment Agreement dated June 27, 2017 (the “Redevelopment Agreement”) and all capitalized terms used in this First Amendment shall have the meaning given them in the Redevelopment Agreement; and

**WHEREAS**, the Parties have agreed to amend the Redevelopment Agreement on the terms and conditions set forth herein.

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

1. **South Site Land Transfer Closing Date.** Notwithstanding anything to the contrary, Authority and Developer agree that the Land Transfer Closing Date for the South Site shall be January 11, 2018.

2. **Center Ramp Lease Holdover.**

a. **Amendment to Redevelopment Agreement.** Section 3.4 of the Redevelopment Agreement is hereby amended and restated in its entirety as follows:

**“Section 3.4 Demolition Timing; Hold Over Conditions.**

a. Subject to Section 3.1, the Developer may demolish the Center Ramp after the Authority, as lessee under the Center Ramp Lease, has vacated and surrendered the South Site pursuant to the Lease, which is anticipated to be at the end of the Center Ramp Lease term, the same being the earlier to occur of: (a) the completion of the North Ramp Improvements (Initial) to the extent that the North Ramp can safely be re-opened to the public for parking with no less than 185 parking stalls, as reasonably determined by the Authority, and (b) April 1, 2018 (the “Lease Expiration Date”).

b. If the Authority fails to so vacate and surrender the South Site (“Center Ramp Surrender”) by the Lease Expiration Date the following shall apply: (i) the Authority shall provide not less than one (1) week’s written notice to Developer of the Authority’s intent to hold over beyond the Lease Expiration Date

as provided herein, (ii) immediately following the Lease Expiration Date, Developer may begin mobilization on the South Site in preparation for demolition of the Center Ramp provided that the Center Ramp remains open, safe, and accessible for parking by the public; (ii) if Center Ramp Surrender does not occur by the date that is one week after the Lease Expiration Date, the Authority will pay Developer, for the period from the Lease Expiration Date through the date that the Center Ramp Surrender occurs, the sum of (a) \$3,000.00 per day, retroactive to the Lease Expiration Date, for the period commencing on the Lease Expiration Date and ending on the date thirty (30) days following the Lease Expiration Date, and (b) \$10,000.00 per day, for the period commencing on the date thirty-one (31) days following the Lease Expiration Date and ending on the date sixty (60) days following the Lease Expiration Date (collectively, the “Hold Over Rent”). In no event shall the Authority have the right to hold over or otherwise occupy or use the Center Ramp or South Site beyond the date sixty (60) days following the Lease Expiration Date (the “Outside Surrender Date”), and Developer shall have the right in all cases to demolish the Center Ramp no later than the day following the Outside Surrender Date.

c. Hold Over Rent, if any, will be payable by the Authority to the Developer by the fifth day of the first month following the Lease Expiration Date, and by the fifth day of each month thereafter, to the extent any Hold Over Rent is due and payable.

d. Notwithstanding anything to the contrary in this Agreement or the Center Ramp Lease, Developer may begin utility relocation work on the South Site immediately following the Land Transfer Closing Date for the South Site, provided that (i) the Center Ramp remains open, safe, and accessible for parking by the public, and (ii) to the extent practicable during utility relocation work thereon, Developer agrees to maintain surface parking, including handicap parking, delivery and trash routes, and dumpster storage, on the surface parking lot currently located on the South Site.”

b. Replacement of Form of Center Ramp Lease. Exhibit E attached to the Redevelopment Agreement is hereby deleted in its entirety and replaced with Exhibit attached hereto.

3. **Contingencies for Land Transfer Closings.**

a. Section 4.2(a)(vi) is hereby deleted from Section 4.2 and inserted in its entirety as a new Section 4.3(a)(iv) to the Redevelopment Agreement.

b. The following is hereby added as a new Section 4.2(b)(xi) of the Redevelopment Agreement:

“(xi) The Authority shall have entered into a sub-grant agreement with Developer with respect to \$295,000.00 of the Metropolitan Council Tax Base Revitalization Account Contamination Cleanup Grant Program award.”

c. The following is hereby added as a new Section 4.2(b)(xii) of the Redevelopment Agreement:

“(xii) The Metropolitan Council shall have made a final award of a Livable Communities Demonstration Account Grant in an amount not less than \$1,441,565.00 (the “LCDA Grant”) to the City and the City shall have delivered a confirmation letter to Developer confirming the award of the LCDA Grant and the City’s intent to enter into a sub-grant agreement for delivery of the LCDA Grant funds to Developer.”

d. Section 4.3(b)(ii) of the Redevelopment Agreement is hereby amended such that the phrase “Section 4.4(b)” therein is replaced with the phrase “Section 4.4(a)”.

4. **Construction on Public Utility Easement.** Section 5.5(c) is hereby amended to insert the following phrase at the beginning of existing Section 5.5(c):

“Except as provided on the Final Development Plan,”.

5. **Temporary Trash and Recycling.** The following is hereby added at the end of Section 5.6 of the Redevelopment Agreement:

From the date the Authority vacates the Center Ramp under the Center Ramp Lease until the Shared Trash Facility is open and operating for use in accordance with the Trash Facility Easement, Developer shall provide and service, temporary trash and recycling facilities for the Serviced Buildings at one or more locations within the Project Area. Such temporary facilities will be sized to accommodate the trash, recycling, and organic disposal needs of the Serviced Buildings. The Developer will initially bear the cost of such temporary facilities and the City will reimburse the Developer for such costs on a monthly basis upon presentation of invoices and other documentation of such costs. The City may recoup such costs from the users of such temporary facilities in accordance with the City’s policies and rules for providing such services to the 50<sup>th</sup> and France District.

6. **Valet Parking.** The following is hereby added as a new Section 5.10 of the Redevelopment Agreement:

**Section 5.10 Valet Parking During Construction Period.** Developer shall provide valet parking service during the construction period for the North Ramp Improvement, which will extend from approximately the Land Transfer Closing Date for the South Site to the completion of the North Ramp Improvements (anticipated to be January 8, 2018 through September 30, 2018). Valet service will be provided during the busiest customer days of the week, which is anticipated to be Monday through Saturday from approximately 10:00 AM to 6:00 PM, provided that valet times and hours may be adjusted based on business needs. Such valet service will include two valet drop off/pick up locations, one to be located near 50th and Halifax and the second to be located near Market and France. Each location will be staffed by two attendants. Valet service shall be provided at no cost to the customer or businesses. Tipping shall

not be required nor encouraged. Developer shall (i) secure valet service contracts with reputable vendors; (ii) secure off-site parking at Mercy Covenant Church; and (iii) if necessary, as mutually determined by Authority and Developer, use commercially reasonable efforts to secure a second site on terms reasonably acceptable to both Developer and Authority. Developer shall be responsible for (a) the cost to provide 12.5 hours per week of valet services, and (b) the cost to secure off-site parking at Mercy Covenant Church, each for up to nine months. The City shall reimburse Developer for the cost of valet service which are not the Developer's responsibility pursuant to the preceding sentence. In addition, if a second off-site location is secured pursuant to the terms hereof, Developer shall be responsible for the cost to secure such site for the period from January through April and the City shall be responsible for such costs from May through September. The City will reimburse Developer for the City's share of actual costs incurred on a monthly basis upon presentation of invoices and other documentation of such costs. The City will provide access to limited portions of the North Ramp for additional parking for use by valet attendants. Notwithstanding anything to contrary in this section, the City and Developer reserve the right to terminate or reduce valet service with one week notice if the service is not reasonably used by customers and an alternate strategy to mitigate construction impacts to businesses is implemented.

7. **Preconditions to Issuance of the TIF Note.** Section 9.4(a)(i) is hereby deleted from the Redevelopment Agreement.

8. **Affordable Housing.**

a. Section 9.6(b) of the Redevelopment Agreement is hereby amended such that the dollar figure of \$1,600,000.00 in the third line and twelfth line of Section 9.6(b) is replaced with the dollar figure of \$1,500,000.00 in each case.

b. Section 9.6(b) of the Redevelopment Agreement is hereby further amended such that the phrase "effective date of the Affordable Housing Loan Agreement" in the sixteenth line of Section 9.6(b) is replaced with the phrase "Disbursement Date, as defined in the Affordable Housing Loan Agreement."

c. Exhibit I and Exhibit M attached to the Redevelopment Agreement are hereby deleted in their entirety and replaced with Exhibit I and Exhibit M attached hereto.

9. **Escrow of Grant Funds.** The following is hereby added at the end of Section 9.7 of the Redevelopment Agreement:

"City and Developer have applied for, and expect to receive, certain funds by grant from the Minnesota Department of Employment and Economic Development (the "DEED Grant"). In the event that (a) the DEED Grant funds have not been finally awarded, or (b) the City and Developer have not entered into a sub-grant agreement with respect thereto, as of the South Site Land

Transfer Closing Date, the Authority shall place in escrow with the Escrow Agent the above-described \$500,000.00 (the “DEED Grant Escrow”). The DEED Grant Escrow shall be released to the Authority upon (a) the final awarding of the DEED Grant funds to the extent that the Authority is not responsible to provide such funds to Developer pursuant to this Section 9.7, (b) the execution of a grant agreement between the awarding entity and the City, and (c) the execution of a sub-grant agreement between the City and Developer. The DEED Grant Escrow shall be released to Developer in the event that Developer does not receive the full DEED Grant award to the extent not so received.

10. **Entire Agreement.** Except as herein amended, other terms and provisions of the Development Agreement, as amended, shall remain in full force and effect.

11. **Ratification.** Except as specifically modified by this First Amendment, the terms and provisions of the Redevelopment Agreement shall remain in full force and effect.

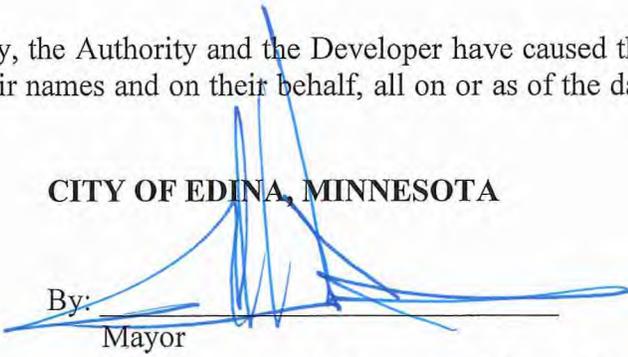
12. **Binding Effect.** This First Amendment amends and supplements the Redevelopment Agreement. If there is a conflict between the provisions of the Redevelopment Agreement and this First Amendment, the provisions of this First Amendment shall control. This First Amendment shall be binding upon and inure to the benefit of the City, the Authority, the Developer, and their respective successors and assigns.

13. **Counterparts.** This First Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or email copies shall be deemed originals.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the City, the Authority and the Developer have caused this First Amendment 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

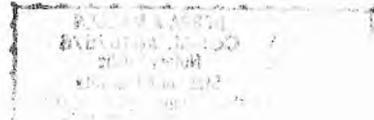
By:   
Mayor

By:   
City Manager

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF ~~HENNEPIN~~ )  
*Carver*

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of December, 2017, by James B. 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 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 dated June 27, 2017 (as amended, the "Contract"); 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"). Lessee shall not assign this Lease or sublet any portion of the Premises without Lessor's prior written consent.

**Section 1.03 Term**

(a) 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 earlier to occur of the following dates: (a) the completion of the North Ramp Improvements (Initial) to the extent that the North Ramp can be safely re-opened to the public for parking with no less than 185 parking stalls, as reasonably determined by Lessee; or (b) April 1, 2018 (the "Term").

(b) Holdover. If Lessee continues to occupy the Premises after the expiration of the Term, without the express prior written consent of Lessor, such tenancy shall be a tenancy at sufferance, and Lessee shall be subject to the terms and conditions set forth in the Contract and shall pay Lessor the Hold Over Rent in accordance with the terms and conditions set forth in the Contract.

**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 V

#### Section 5.01 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 VI

### Section 6.01 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 VII

### Section 7.01 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 VIII

### Section 8.01 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 8.02 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 8.03 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 8.04 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 8.05 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 8.06 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 8.07 Counterparts**

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

**Section 8.08 Law Governing**

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

**Section 8.09 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 8.10 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]

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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 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 (as amended, the “Contract”) dated June 27, 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 100 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**

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**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 (as amended, the “Contract”) dated June 27, 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 100 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 \$1,500,000.00 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 Five Hundred Thousand Dollars and No/100 (\$1,500,000.00) 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**

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4818-3603-5928\3

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