

REDEVELOPMENT AGREEMENT

by and among

CITY OF EDINA, MINNESOTA,

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

and

ORION 4500 FRANCE, LLC

**Dated as of
December 18, 2018**

THIS DOCUMENT WAS DRAFTED BY:
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- EXHIBIT A-2 Depiction of Minimum Improvements Area and Release Parcel
- EXHIBIT B Final Development Plan
- EXHIBIT C TIF Pro Forma
- EXHIBIT D Form of Go-Ahead Letter
- EXHIBIT E Form of Certificate of Completion
- EXHIBIT F Memorandum of Redevelopment Agreement
- EXHIBIT G Form of Plaza Easement Agreement
- EXHIBIT H Form of Parking Easement Agreement
- EXHIBIT I Form of Annual Statement
- EXHIBIT J Sample TIF Cash-On-Cost Return Annual Lookback Calculation
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**REDEVELOPMENT AGREEMENT
(4500 France)**

THIS REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into December 18, 2018 (“Effective Date”), by and among the CITY OF EDINA, MINNESOTA, a Minnesota statutory city (the “City”), the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”) and ORION 4500 FRANCE, LLC, a Minnesota limited liability company (the “Developer”).

RECITALS

A. Pursuant to and in accordance with Minnesota Statutes, Sections 469.174 to 469.1799, as amended (the “TIF Act”), the Authority is authorized to finance certain eligible redevelopment costs of a redevelopment project with tax increment revenues derived from a tax increment financing district established in accordance with the TIF Act.

B. The Authority has analyzed the current use of certain land generally located along France Avenue South between West 44th Street and West 45th Street (the “Redevelopment Area”) (as such Redevelopment Area is more particularly described in the TIF Plan, defined herein), including a building-by-building structural analysis, and determined that the Redevelopment Area, is currently underutilized, with obsolete structures and physical arrangements, substantial vacant areas and building vacancies, poor soils and potential contamination, inconsistent legal restrictions on redevelopment and outdated and inadequate public infrastructure and circulation; and

C. Having analyzed the current land use in the Redevelopment Area, consistent with the TIF Act, the Authority and the City and held public hearings after appropriate notices to consider the need and desirability for adoption of a tax increment financing plan and the creation and establishment of the Redevelopment Area as a tax increment financing district pursuant to the TIF Act, and determined that absent such authorization and the provision of certain funds to undertake various qualified redevelopment activities, the redevelopment contemplated herein would not be undertaken.

D. After such hearings, the Authority and the City, having determined that the creation and establishment of the Redevelopment Area as a tax increment financing district is in the public interest, the Authority and the City established the Redevelopment Area as the 44th & France 2 Tax Increment Financing District under the TIF Act (the “TIF District”) and adopted the Tax Increment Financing plan (the “TIF Plan”) for the TIF District in accordance with Minnesota Statutes, Section 469.175, pursuant to Authority Resolution No. 2018-100.

E. Developer owns that certain land within the Redevelopment Area defined in Section 1.1 as the Minimum Improvements Area, and proposes to redevelop and improve the Minimum Improvements Area with a mixed use project consisting of (i) a 4-story, approximately 46 unit apartment building, (ii) approximately 6,500 square feet of ground-level restaurant and retail space (excluding tenant improvements), (iii) approximately 69 below grade parking stalls, (iv) at least 35 at-grade, enclosed public parking stalls for public, district parking (collectively,

the “Public Parking”), which will be subject to the Parking Easement (as defined herein), (v) an approximately 4,500 square foot plaza with a public art installation (the “Plaza”), which will be subject to the Plaza Easement (as defined herein), and (vi) such other public and streetscape improvements required under the terms of the City Approvals (as defined herein) (the foregoing items described in clauses (i) through (vi) are collectively referred to herein as the “Minimum Improvements”), as such Minimum Improvements were approved by the City pursuant to City Council Resolution No. 2018-137 (the “Project Approval Resolution”) and authorized by City Ordinance No. 2018-09 (the “PUD Ordinance”), which establishes Planned Unit Development District-15 for the Minimum Improvements.

F. The Authority and the City have adopted findings which include a determination that (i) the redevelopment to occur through the proposed Minimum Improvements would not occur solely through private investment within the reasonably foreseeable future and that the increased market value of the Minimum Improvements Area that could reasonably be expected to occur without the use of the tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the Minimum Improvement’s tax increments for the minimum 15-year duration of the TIF District, (ii) that the proposed Minimum Improvements conform to the general plan for the development or redevelopment of the City as a whole, and (iii) that the proposed Minimum Improvements afford maximum opportunity consistent with the sound needs of the City as a whole, for the development or redevelopment of the TIF District by private enterprise.

G. Upon certification of the TIF District and the satisfaction of certain conditions set forth in this Agreement, the Authority will provide Developer TIF Assistance (as defined herein) in accordance with Article VIII of this Agreement in connection with Developer’s construction and development of the Minimum Improvements.

H. The City and the Authority believe that the Minimum Improvements are in the best interests of the residents of the City.

NOW, THEREFORE, in consideration of foregoing Recitals, which are incorporated into the provisions of this Agreement by this reference, and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the others as follows:

ARTICLE I DEFINITIONS

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

“*Affordable Housing Requirements*” has the meaning set forth in Section 11.3.

“*Affordable Housing Restrictive Covenant*” has the meaning set forth in Section 11.3.

“*Affordable Units*” has the meaning set forth in Section 11.3.

“*Agreement*” means this Redevelopment Agreement.

“Annual Statement” has the meaning set forth in Section 7.3(b)(i).

“Authority” means the Housing and Redevelopment Authority of Edina, Minnesota.

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

“Available Tax Increment” means up to 90% of the Tax Increment received and retained by the Authority from the County during any applicable time frame.

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

“Calculation Date” has the meaning set forth in Section 7.3(b)(i).

“Certificate of Completion” means the certificate in substantially the form attached as Exhibit E, signed by the Authority Representative, to be issued pursuant to the terms of Section 4.8.

“City” means the City of Edina, Minnesota.

“City Approvals” means, collectively, the PUD Ordinance, the Project Approval Resolution, the Final Development Plan, and the Development Contract.

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

“City Council” means the City Council of the City.

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

“City Easement(s)” has the meaning set forth in Section 4.6.

“Commencement” means (i) with respect to pre-construction aspects or elements necessary for Commencement of the Minimum Improvements (e.g., demolition and environmental remediation), actual physical activity related to such pre-construction aspect or element and (ii) with respect to each aspect or element of the Minimum Improvements, the date on which actual physical construction of such aspect or element of the Minimum Improvements begins.

“Completion” means (i) with respect to the Minimum Improvement, Developer’s receipt of the Certificate of Completion from the Authority and (ii) with respect to the individual aspects or elements of the Minimum Improvements described in the Minimum Improvements timeline set forth in Section 6.1, substantial completion of such aspect or element such that Developer can proceed with Commencement of the next aspect or element in a manner consistent with normal construction practices

“County” means the County of Hennepin, Minnesota.

“**Cure Rights**” means the rights to cure a Default as specified in Section 13.4 before such Default is deemed to be an Event of Default.

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

“**Development Contract**” means that certain Site Improvement Performance Agreement dated December 18, 2018 entered into by and between the City and Developer, and recorded against the Minimum Improvements Area.

“**Developer**” means Orion 4500 France, LLC, a Delaware limited liability company.

“**Effective Date**” means the date first set forth above.

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

“**Event of Default**” means any of the events by the City, the Authority or Developer described in Article XIII.

“**Final Development Plan**” means the final development plan for the Minimum Improvements as approved by the City pursuant to the Project Approval Resolution, the same being the plan set labeled [_____], and titled as France Ave Apartments, 4500 France Avenue S, Edina, MN 55410, prepared by ESG Architecture & Design, under project number 21752] dated [_____], and listed in the attached Exhibit B.

“**Final Plat**” means the final plat or replat or lot combination or subdivision for the Minimum Improvements Area approved by the City and the County, as needed to obtain a building permit and to commence construction of the Minimum Improvements.

“**Financial Advisor**” has the meaning set forth in Section 7.3(b)(i).

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

“**Go-Ahead Letter**” means Developer’s letter to the City and the Authority, substantially in the form attached as Exhibit D, indicating that the Financing Commitment has been received by Developer and Developer is prepared to proceed with the construction of the Minimum Improvements.

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

Environmental Law.

“**IRR**” means the internal rate of return for the Minimum Improvements as calculated in the TIF Pro Forma attached as Exhibit C, where the IRR is calculated as the annualized return on the annual cash flow over the applicable period.

“**Law**” means federal, state, or local governmental or quasi-governmental laws, ordinances, rules, codes, regulations, directives, orders and/or requirements.

“**Memorandum of Agreement**” means the document described in Section 14.12 and substantially in the form shown in Exhibit F.

“**Minimum Improvements**” has the meaning set forth in Recital E.

“**Minimum Improvements Area**” means the land legally described on attached Exhibit A-1 and depicted on attached Exhibit A-2; which such Minimum Improvements Area may be modified by release of the Release Parcel pursuant to Section 3.5 hereof.

“**Mortgage**” has the meaning set forth in Section 9.1.

“**Parking Easement**” has the meaning set forth in Section 4.6(a)(ii).

“**Plaza**” has the meaning set forth in Recital E.

“**Plaza Easement**” has the meaning set forth in Section 4.6(a)(i).

“**Project Approval Resolution**” means City Council Resolution No. 2018-137.

“**Project Excess Return**” has the meaning set forth in Section 7.3(c)(i)

“**Project TIF Adjustment**” has the meaning set forth in Section 7.3(c)(ii).

“**Policy Guide**” has the meaning set forth in Section 11.3(a).

“**Public Parking**” has the meaning set forth in Recital E.

“**PUD Ordinance**” means City Ordinance No. 2018-09.

“**Purchase Right**” has the meaning set forth in Section 11.3(b).

“**Qualified Redevelopment Costs**” has the meaning set forth in Section 7.2.

“**Redevelopment Area**” has the meaning set forth in Recital B.

“**Related Party**” means with respect to any person or entity (i) any other person or entity controlling, controlled by or under common control with such person or entity; or (ii) any other person or entity in which the majority equity interest is owned by the parties that have a majority equity interest in such person or entity.

“*Release Parcel*” has the meaning set forth in Section 3.5.

“*Sale Pro Forma*” has the meaning set forth in Section 7.3(c)(i).

“*Sidewalks*” has the meaning set forth in Section 4.6(a)(iii).

“*Sidewalk Easement*” has the meaning set forth in Section 4.6(a)(iii).

“*State*” means the State of Minnesota.

“*Tax Increment*” means the tax increment generated from parcels specifically within the Minimum Improvements Area and remitted to the Authority pursuant to the TIF Act.

“*TIF*” means tax increment financing.

“*TIF Act*” has the meaning set forth in Recital A.

“*TIF Assistance*” means reimbursement of Qualified Redevelopment Costs through payments from the Authority to Developer of Available Tax Increment under the TIF Note, pursuant to the terms and conditions of Article VIII of this Agreement and the TIF Act.

“*TIF District*” has the meaning set forth in Recital D.

“*TIF Note*” has the meaning set forth in Section 8.2.

“*TIF Plan*” has the meaning set forth in Recital D.

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

“*Unavoidable Delays*” means delays, outside the control of the party claiming its occurrence, which are the direct result of (a) unusually severe or prolonged bad weather, (b) acts of God, acts of war, civil unrest, terrorism, criminal conduct of third parties, fire or other casualty to the Minimum Improvements, (c) litigation commenced by third parties which directly results in delays, (d) actions or inactions of any federal, State, or local government unit which directly result in delays, (e) strikes, other labor trouble, (f) delays in delivery of materials, and (g) concealed or unknown site conditions not revealed prior to the Effective Date.

ARTICLE II REPRESENTATIONS AND WARRANTIES

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

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

(b) There is not pending, nor to the best of the City’s knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency

or other governmental authority that may materially and adversely affect the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder or as contemplated hereby, or the validity or enforceability of this Agreement.

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

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

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

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

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

(b) Except as provided in this Agreement, and provided that the Authority will fund fiscal disparities from within the TIF District, in accordance with Minnesota Statutes, Section 469.177, subdivision 3, the Authority agrees to retain all of the captured net tax capacity of the Minimum Improvements Area to finance the Qualified Redevelopment Costs as provided in this Agreement, and will elect that the duration of the TIF District will be at least 15 years from the first Tax Increment received by the Authority. The Authority will not voluntarily take any action to reduce the amount of captured tax capacity retained to finance the Qualified Redevelopment Costs or to further reduce the duration of the District until the amount paid to Developer from Available Tax Increment reaches the maximum amount specified in Section 8.2.

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

any bond, debenture, loan agreement, regulation or order of the United States of America or the State, or any agency or political subdivisions thereof or any court order or judgment in any proceeding to which the Authority is or was a party by which it is bound.

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

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

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

Section 2.3 Representations and Warranties of Developer. Developer represents and warrants that:

(a) Developer is a limited liability company organized and in good standing under the laws of the State of Delaware, is not in violation of any provisions of its operating agreement or other organizational documents or the laws of the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.

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

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

(d) Developer currently holds fee title to the Minimum Improvements Area.

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

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

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

(h) Developer has not received any notice from any local, state or federal official that the activities of Developer or the Authority with respect to the Minimum Improvements Area may or will be in violation of any Environmental Law, except as has been identified in any report, audit, inspection or survey, undertaken by or provided to the City and the Authority. Developer represents that to the best of Developer's knowledge: (i) it is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any local, state or federal Environmental Law, regulation or review procedure; and (ii) it is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under any Environmental Law, including the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act.

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

ARTICLE III LAND USE AND DEVELOPMENT CONTROLS

Section 3.1 Restrictions on Development. Developer may not construct or permit construction of the Minimum Improvements until Developer satisfies the following conditions:

(a) Developer executes and records the Development Contract against the Minimum Improvements Area, and causes any lien holder affecting any of the property to subject its interest as provided in this Agreement and in the Development Contract;

(b) Developer satisfies all of the conditions established by the City in the City Approvals; and

(c) Developer obtains the approvals needed for the Final Plat.

Section 3.2 Zoning and Land Use Approvals. Nothing in this Agreement shall limit

the authority of the City with respect to zoning and land use approvals. Subject to the foregoing, the staff of the City and the Authority shall cooperate with Developer and assist Developer in the processing and obtaining of zoning and land use approvals. Developer shall be responsible for applying for and obtaining all land use and zoning approvals necessary for the Minimum Improvements, including, without limitation, any conditions contained in the City Approvals. All zoning and land use approvals shall be by the City Council or the City Planning Commission in accordance with the ordinances of the City.

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

Section 3.4 City/Authority Approval. Unless the City Council determines otherwise in its discretion, whenever this Agreement provides for approval by the City or the Authority, such approval shall be given by, respectively, the City Manager or the Executive Director of the Authority (or in either case his/her designee), unless (a) this Agreement explicitly provides for approval by the City Council or the Board of the Authority, (b) approval by the Council or Board is required by law or (c) the approval, in the opinion of the City Manager or the Executive Director, would result in a material change in the terms of this Agreement.

Section 3.5 Change to Legal Description of Minimum Improvements Area. The parties acknowledge and agree that, as part of the Final Plat, Developer will cause a portion of the Minimum Improvements Area which is not necessary for the Minimum Improvements to be legally subdivided and conveyed to the adjoining neighbor upon or after Completion of the Minimum Improvements (the "Release Parcel"). The Release Parcel is depicted on Exhibit A-2. Following Completion of the Minimum Improvements the parties agree to execute and record an amendment to this Agreement and/or its memorandum which releases the Release Parcel from this Agreement and redefines the Minimum Improvements Area hereunder as the original Minimum Improvements Area less the Release Parcel. So long as the actual Release Parcel is consistent in all material respects with the Release Parcel depicted on Exhibit A-2, such amendment may be executed by the Authority Representative and City Manager without further City Council or Authority board approval.

ARTICLE IV CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 4.1 Minimum Improvements.

(a) Construction. Developer shall construct the Minimum Improvements in accordance with this Agreement and the City Approvals in all material respects. Prior to delivery of the Certificate of Completion to Developer, upon the request of the Authority, Developer shall, after reasonable advance notice from the Authority, provide the Authority and the City with reasonable access to the Minimum Improvements Area to inspect the Minimum Improvements. Prior to delivery of the Certificate of Completion, Developer will deliver monthly progress reports to the Authority.

(b) Market Value of Minimum Improvements. It is anticipated that upon completion, the Minimum Improvements will have an assessed taxable market value of approximately \$18,900,000.00.

Section 4.2 Submission and Approval of Evidence of Financing. No later than issuance of the applicable construction or building permit for the Minimum Improvements, Developer shall provide the Go-Ahead Letter.

Section 4.3 Reserved.

Section 4.4 Effect of Delay. Developer acknowledges that if construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, this could affect the amount of Available Tax Increment and thus the total amount which may be available to pay the TIF Note. Developer acknowledges that if the Completion of the construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, there will be no compensation to Developer or any other party for any reduction in the amount available to pay or refund the TIF Note.

Section 4.5 Additional Responsibilities of Developer. Subject to applicable Cure Rights:

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

(b) Developer will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

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

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

(e) Developer will record the Final Plat to create a separate tax parcel for the Minimum Improvements Area.

Section 4.6 Easements.

(a) Prior to the issuance of the Certificate of Completion for the Minimum Improvements, Developer shall grant to the City the following easements with respect to the Minimum Improvements (each a "City Easement", and collectively the "City Easements"):

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

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

(iii) A permanent, public easement for access and use of the sidewalks (the “Sidewalks”) adjoining the Minimum Improvements and shown in the Final Development Plan (the “Sidewalk Easement”). The Sidewalk Easement shall be in the form reasonably required by the City attorney and negotiated with Developer in accordance with the City Approvals and shall be subject to the Authority’s prior written approval to ensure that it conforms to the requirements of this Agreement.

(b) The City will not pay an acquisition cost to Developer for any of the City Easements. Each City Easement must be recorded by Developer as a condition to issuance of the TIF Note. Developer shall, at Developer’s sole cost and expense, cause a licensed surveyor to determine the final, actual legal description of the Plaza, the Public Parking, and Sidewalks for the purpose of the granting the City Easements with respect to such elements. Such legal descriptions will be consistent with the areas and boundaries of the Plaza, the Public Parking, and Sidewalks as described and depicted in the City Approvals.

Section 4.7 Public Art. In addition to the requirements set forth in the City Approvals for the public art to be installed as part of the Plaza, such public art shall be a permanent sculpture or similar art installation and Developer shall (a) engage a professional art consultant experienced in public art visioning, commissioning, and implementation in connection with the creation of such public art and (b) such installation shall have a value of no less than \$10,000.00, in the aggregate, in and for such public art (exclusive of fees paid to such professional art consultant and exclusive of costs for other aspects of the Plaza which are installed in connection with or ancillary to such public art, but which do not directly form a part of such public art).

Section 4.8 Certificate of Completion. Developer shall notify the Authority when the final certificate of occupancy is received for the Minimum Improvements. Upon receipt of each such final certificate of occupancy and the Authority’s inspection of the Minimum Improvements for consistency with this Agreement as set forth in the Certificate of Completion, the Authority will furnish to Developer a recordable Certificate of Completion. After notification from Developer and written request from Developer for a Certificate of Completion, the Authority will, within 45 days thereafter, inspect the Minimum Improvements and furnish the Developer with an appropriate Certificate of Completion. Such Certificate of Completion by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of Developer to construct the Minimum Improvements and the dates for the beginning and completion thereof. If the Authority shall refuse to provide a Certificate of Completion in accordance with this provision, the Authority shall promptly notify Developer within the same 45-day period following receipt of request by the Redeveloper for the Certificate of Completion, and such notification from the Authority shall include a written statement, indicating in adequate detail in what respects

Developer has failed to complete the relevant portion of the Minimum Improvements and what measures or acts will be necessary, in the opinion of the Authority, for Developer to take or perform in order to obtain such certification. If the Authority fails to issue such a written statement within such 45-day period, the Authority shall be deemed to have waived its right to do so and shall issue a Certificate of Completion to Developer. Developer shall have 60 days following receipt of the Authority’s written response to cure or agree to terms with the Authority regarding issues to be resolved prior to Developer obtaining a Certification of Completion from the Authority.

**ARTICLE V
[RESERVED]**

**ARTICLE VI
TIMELINE AND DEFAULT**

Section 6.1 Commencement and Completion of Minimum Improvements.

The chart below is Developer’s current anticipated timeline for the Commencement and Completion of the Minimum Improvements, and individual elements and aspects thereof. Such Commencement and Completion dates, as the same be extended pursuant to this Agreement as a result of Unavoidable Delay, shall be substantially in accordance with the below timeline, and failure to meet the dates described as a “Default Date” below, as extended pursuant to this Agreement as a result of Unavoidable Delay, shall be a Default. Following Commencement, construction or other activity associated any element or aspect of the Minimum Improvements must continue in a sequence consistent with normal construction practices.

Minimum Improvements Timeline				
Description of Work	Commencement		Completion	
	Anticipated	Default Date	Anticipated	Default Date
Final Development Plan and PUD Approval	N/A	N/A	N/A	December 31, 2018
Demolition	Winter 2018/2019	March 31, 2019	Spring 2019	June 30, 2019
Site Remediation	Winter 2018/2019	July 31, 2019	Spring 2019	October 31, 2019
Foundation	Spring 2019	November 1, 2019	Fall 2019	December 31, 2019
Shell Construction	Fall 2019	January 1, 2020	Fall 2020	October 31, 2020
Commercial Tenant Improvements	Fall 2020	N/A	Fall 2021	N/A
Certificate of Occupancy	N/A	N/A	Summer 2020	March 31, 2021

**ARTICLE VII
DEVELOPER REIMBURSEMENT OBLIGATIONS; QUALIFIED REDEVELOPMENT COSTS; PERFORMANCE REVIEW**

Section 7.1 Developer Reimbursement Obligations. Developer is obligated to pay all reasonable out of pocket costs of the City and the Authority for the City Consultants in connection with the Minimum Improvements and the TIF Assistance provided to Developer, including but not limited to costs of the development of this Agreement, and the TIF Plan, the creation of the TIF District, the Final Development Plan, the Development Contracts, architectural and engineering studies for the Minimum Improvements, fiscal analysis, legal fees and all costs and expenses related thereto. Developer shall pay such costs monthly upon presentation of invoices and other documentation of such costs, not more than 30 days after the request for payment is delivered to Developer. All such costs will be Qualified Redevelopment Costs pursuant to the TIF Pro Forma.

Section 7.2 Qualified Redevelopment Costs.

(a) Costs and expense for the items described in the table below, initially paid by Developer from Developer’s own sources and incurred in furtherance of the construction and development of the Minimum Improvements, shall be eligible for TIF Assistance under the terms and conditions of this Agreement (collectively, “Qualified Redevelopment Costs”):

Qualified Redevelopment Activities	Estimated Cost
(i) Demolition of the existing structures and other improvements within the Minimum Improvements Area	\$239,000
(ii) The design and construction of the structured parking elements of the Minimum Improvements	\$1,430,000
(iii) Public streetscape required in connection with this Agreement and the City Approvals	\$200,000
(iv) Environmental remediation of the Minimum Improvements Area as required by Environmental Law	\$170,000
(v) Removal of overhead utilities from within the Minimum Improvements Area, as reasonably necessary for the construction of the Minimum Improvements	\$450,000
(vi) TIF-related professional fees	\$150,000
	\$2,639,000.00

(b) The actual amount of Qualified Redevelopment Costs within each of the foregoing categories may be reallocated among such categories by an amount not to exceed \$200,000 for each category, provided that Developer provides reasonable evidence of the actual amounts of Qualified Redevelopment Cost actually incurred or committed in each such category.

Section 7.3 TIF Lookback.

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

(b) Annual Lookback.

(i) No later than April 1 of each calendar year (each a "Calculation Date") following the issuance of the TIF Note until the earlier to occur of the calendar year after (A) the fifteen 15th anniversary of the Authority's first receipt of Tax Increment, (B) the TIF Note is paid in full, and (C) the TIF Note is terminated pursuant to Section 7(c) below or otherwise in accordance with this Agreement (the "Maturity Year"), Developer shall provide to the Authority and the Authority's designated financial advisor (the "Financial Advisor") any reasonable and relevant information and documentation as the Authority and its Financial Advisor require in order to calculate the annual Cash-On-Cost Return (as defined below) for the year immediately preceding the applicable Calculation Date, including, without limitation, a certified cost and revenue analysis for the Minimum Improvements prepared in accordance with generally accepted accounting principles and substantially in the same form as the sample analysis attached as Exhibit I ("Annual Statement"). The Authority may retain an accountant to audit the submitted Annual Statement, at Developer's cost.

(ii) If, as of each Calculation Date, the demonstrated average Cash-On-Cost Return for the life of the Project, based on the most recent Annual Statement and each prior Annual Statement, is **below** 7.0% in the aggregate, then the Authority shall make payments under the TIF Note from Available Tax Increment to Developer during the calendar year in which such Calculation Date occurs, in an amount up to, but not exceeding, an amount which supplements Net Operating Income (including prior TIF Note payments) to cause the average Cash-On-Cost Return to reach 7.0% for all prior years.

(iii) If, as of each Calculation Date, the demonstrated average Cash-On-Cost Return for the life of the Project, based on the most recent Annual Statement and each prior Annual Statement, **exceeds** 7.0%, then the Authority shall not make a payment under the TIF Note to Developer during the calendar year in which such Calculation Date occurs. After the demonstrated average Cash-On-Cost Return for the life of the Project so exceeds 7.0%, no further payments under the TIF Note will be required unless and until a subsequent Annual Statement demonstrates that the average Cash-On-Cost Return for the life of the Project is below a 7.0% in the aggregate, in which case payments under the TIF Note shall resume in accordance with clause (ii) above.

(iv) The process set forth in clauses (ii) and (iii) above will continue until the Maturity Year.

(v) For the purposes of this section, the following terms have the following meanings:

(1) “Cash Flow” means Net Operating Income less debt service (principal and interest) with respect to the first priority Mortgage loan encumbering the Minimum Improvements.

(2) “Cash-on-Cost Return” means Net Operating Income divided by the sum of the total actual cost of the Minimum Improvements (less any grants or City, Authority, federal or State funds received by Developer) as set forth in an updated TIF Pro Forma.

(3) “Net Operating Income” means total income and other project-derived revenue, including payments under the TIF Note, less Operating Expenses.

(4) “Operating Expenses” means reasonable and customary expenses incurred in operating the Minimum Improvements and any other improvements and land within the Minimum Improvements Area or properly allocated to the Minimum Improvements Area, including, but not limited to, all real estate taxes and special assessments for the Minimum Improvements Area.

(vi) For purposes of clarity, an example calculation of the Cash-On-Cost Return adjustment pursuant to this Section 7.3(b) is attached hereto as Exhibit J.

(c) Sale Lookback.

(i) No later than 30 days after each sale of all or part of the Minimum Improvements to any party other than a Related Party occurring prior to the date upon which the TIF Note is paid in full or terminated hereunder, Developer shall submit to the Authority and its Financial Advisor any reasonable and relevant information and documentation as the Authority and its Financial Advisor require in order to calculate the IRR (as defined below) for such sale, including, without limitation, a certified cost and revenue analysis for such sale prepared in accordance with generally accepted accounting principles, which requirements will be satisfied if substantially in the same form as an updated TIF Pro Forma (“Sale Pro Forma”). This analysis will include, without limitation, all acquisition costs, Qualified Redevelopment Costs, and all other improvement and redevelopment costs incurred by Developer for the Project, each as reasonably allocated to the Minimum Improvements, or part thereof, subject to a sale, as well as historical Net Operating Income, debt service, and TIF Note payments. The Authority may retain an accountant to audit the submitted Sale Pro Forma, at Developer’s cost. Developer shall pay to the Authority an amount equal to Developer’s proceeds of such sale which causes Developer’s IRR for such sale of the Minimum Improvements, or a part thereof, to exceed an IRR of 16.0% (the “Project Excess Return”).

(ii) Developer shall pay the Project Excess Return to the Authority first, by a reduction of the outstanding principal amount of the TIF Note in the amount of up to 100% of the Project Excess Return. In the event of any sale of the Minimum Improvements (partial or full) in which the Project Excess Return exceeds the outstanding principal balance of the TIF Note, Developer shall pay such excess (the “Project TIF Adjustment”) in lawful money of the United States within 30 days from the date on which the Authority gives Developer notice of the amount of the Project TIF Adjustment due to the Authority; provided, however, in no event shall the Project TIF Adjustment exceed the aggregate sum of all payments (both principal and interest) actually made by the Authority to Developer under the TIF Note. Until the Authority is paid the Project TIF Adjustment in full, the Authority shall have a lien in its favor upon the Minimum Improvements to secure the amount of the Project TIF Adjustment. Such lien shall attach and take effect from the date of the sale of the Minimum Improvements contemplated by this section. Any such lien may be foreclosed as a mortgage on real estate if the Project TIF Adjustment is not paid by the date required by this section. A lien under this section is prior to all other liens and encumbrances on the Minimum Improvements except (1) the first priority Mortgage on the Minimum Improvement Area; (2) liens for real estate taxes and other governmental assessments or charges against the Minimum Improvements; and (3) all leases executed prior to the date that the lien attaches and takes effect.

(iii) Immediately following the effective date of any full sale of all the Minimum Improvements, the TIF Note and the Authority’s obligations to make payments thereunder shall terminate, and upon Developer’s payment of any applicable Project Excess Return, Developer’s obligations under Section 7.3(b) and this Section 7.3(c) shall terminate.

(iv) For purposes of clarity, example calculations of the Project TIF Adjustment pursuant to this Section 7.3(c) is attached hereto as Exhibit K.

(d) Exclusions for Related Parties. Sections 7.3(b) and 7.3(c) shall not apply to a transfer of all or part of the Minimum Improvements to a Related Party of Developer.

(e) Foreclosure. Nothing in this Section 7.3 shall diminish the rights of a foreclosing mortgagee under Section 9.4 hereof.

ARTICLE VIII TIF ASSISTANCE

Section 8.1 Creation of TIF District; Certification. The Authority and City shall have taken all necessary actions to create and establish the TIF District as of the Effective Date. The TIF District, which as of the date hereof encompasses the entire Minimum Improvements Area, has been created and established as a “renewal and renovation” district under the TIF Act. The Authority will cause the TIF District to be certified prior to June 30, 2019, such that Tax Increment will be available commencing in the tax year 2021. Developer acknowledges and agrees that the Authority and the City may take appropriate steps to modify the TIF District in the future, including, without limitation, such modification necessary to convert the TIF District

to a “redevelopment district” under the TIF Act. Developer shall cooperate with any such the Authority and the City with any such future modification, including to execute and deliver any supplements or modifications to this Agreement that are reasonably required in connection therewith, provided that no such modification or supplement shall (a) increase any obligation of Developer hereunder or (b) adversely affect any right of or benefit of Developer hereunder (except to a de minimis extent).

Section 8.2 TIF Note; Limitations on Reimbursement of Qualified Redevelopment Costs.

(a) TIF Note. In order for Developer to obtain the TIF Assistance contemplated by this agreement, the Authority shall issue, subject to the terms and conditions of this Agreement, one “pay-as-you-go” TIF note (“TIF Note”) in substantially the form attached as Exhibit L and in the aggregate maximum principal amount of up to \$2,295,000.00. The TIF Note shall bear simple interest on the unpaid principal balance thereof at a fixed rate equal to the lesser of (i) the rate of interest charged by the lender providing the initial permanent financing for the Minimum Improvements which is secured by a first priority Mortgage on the Minimum Improvements Area, which rate shall be calculated once as of the date of permanent financing, or (ii) 5.0% per annum. If permanent financing is not in place as of the date of issuance of the TIF Note, the interest rate shall be fixed at 5.0% and not subsequently changed upon obtaining permanent financing. Payments upon and accrual of interest on the unpaid principal balance of the TIF Note will commence upon the Authority’s issuance of the TIF Note.

(b) Condition of Issuance. Before the Authority issues the TIF Note to Developer, Developer shall have satisfied each of the following conditions:

(i) Developer shall have provided evidence satisfactory to the Authority that Developer has actually incurred Qualified Redevelopment Costs in an amount equal to at least the amount of the requested TIF Note;

(ii) Developer shall have provided an updated TIF Pro Forma sufficient to demonstrate that the “but for” finding adopted by the City and the Authority, continues to be satisfied and establish the total cost of the Minimum Improvements as the basis for future Cash-on-Cost return calculations;

(iii) No Developer default or Event of Default exists under this Agreement or any of the City Approvals;

(iv) the Certificate of Completion shall have been issued by the Authority in accordance with the terms and conditions of this Agreement;

(v) Developer shall have granted to the City each of the City Easements; each of the Plaza Easement Agreement, the Parking Easement Agreement, and the Sidewalk Easement Agreement shall have been recorded against the Minimum Improvements Area; and the Public Parking, Plaza, and Sidewalks shall have been open to the public pursuant to the terms of each applicable easement agreement;

(vi) the Affordable Housing Restrictive Covenant (as defined in Section 11.3

below) shall have been approved by the Authority in accordance with Section 11.3 below and recorded against the Minimum Improvements Area; and

(vii) Developer shall have granted to the Authority the Purchase Right and it shall have been recorded against the Minimum Improvements Area.

(viii) Developer shall have recorded the Final Plat to create a separate tax parcel for the Minimum Improvements Area.

(c) Issuance. Upon satisfaction of the conditions set forth in clause (b) above, the Authority will issue the TIF Note to the Developer in accordance with this Agreement.

(d) No Representation or Warranty. Payments of principal and interest under the TIF Note shall be payable solely from Available Tax Increment from the Minimum Improvements Area. The Authority does not represent or warrant the amounts of Available Tax Increment that will be available for payment principal and interest under the TIF Note. The Authority will not reimburse Developer for Qualified Redevelopment Costs from Authority revenues, other than from Available Tax Increment, nor guaranty the amount of money which Developer will receive as a reimbursement, such amount being payable solely from the Available Tax Increment in accordance with this section.

Section 8.3 Tax Increment Eligibility. If a Developer Event of Default occurs, the Authority may withhold payments due under the TIF Note until the Developer has cured the Default which gave rise to the Event of Default, but the Authority may not terminate the TIF Note once issued as a result of a Developer Event of Default.

Section 8.4 Assignment of Note. Developer may, without the City's or the Authority's consent (a) collaterally assign Developer's rights and obligations under this Agreement and the TIF Note to the holder of any Mortgage that is permitted under the terms of Section 9.1 and/or (b) transfer the TIF Note to a Related Party. Except as set forth in clauses (a) and (b) above, the TIF Note shall not be assignable nor transferable without the prior written consent of the Authority; provided, however, that such consent shall be provided if the assignee or transferee executes and delivers to the Authority a certificate, in form and substance reasonably satisfactory to the Authority, pursuant to which, among other things, such assignee or transferee acknowledges and represents:

(i) the limited nature of the Authority's payment obligations under the TIF Note;

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

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

(iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business

matters and is capable of evaluating the merits and risks of the prospective investment in the TIF Note and the assignee or transferee is able to bear the economic consequences thereof;

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

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

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

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

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

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

Subject to the terms and conditions of this Section 8.4, the holder of the TIF Note may be different than the owner of the Minimum Improvements Area or the party responsible for the obligations of the Developer under the Redevelopment Agreement, provided, however, that such holder will be subject to all limitations and conditions to payments under the TIF Note set forth herein.

ARTICLE IX ENCUMBRANCE OF THE MINIMUM IMPROVEMENTS AREA

Section 9.1 Mortgage of the Minimum Improvements Area.

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

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

(c) Notwithstanding anything in this Agreement to the contrary, Developer is authorized, without the approval of the Authority, to obtain construction financing to cover the costs of construction of the Minimum Improvements and the costs set forth in the TIF Pro Forma and to mortgage the Minimum Improvements Area to provide security for construction financing.

Section 9.2 Copy of Notice of Default to Mortgagee. If the Authority delivers any notice or demand to Developer, or any successor in interest to Developer, with respect to any Default under this Agreement, the Authority will use its best efforts to also deliver a copy of such notice or demand to the mortgagee of any Mortgage at the address of such mortgagee provided in the recorded Mortgage or any other address thereafter provided to the Authority in a written notice from Developer, any successor in interest to Developer or the mortgagee, provided that failure of the Authority to give any such notice shall not limit the Authority’s ability to exercise any of its remedies hereunder.

Section 9.3 Mortgagee’s Option to Cure Events of Default. Upon the occurrence of an Event of Default, the mortgagee under any Mortgage will have the right at its option, to cure or remedy such Event of Default within the cure periods set forth herein.

Section 9.4 Rights of a Foreclosing Mortgagee. Except as provided in Section 9.6, an individual or entity who acquires title to all or a portion of the Minimum Improvements through the foreclosure of a mortgage or deed in lieu of foreclosure on such portion of the Minimum Improvements Area remains subject to each of the restrictions set forth in this Agreement and remains subject to all of the obligations of Developer, or any successor in interest to Developer, under the terms of this Agreement, but neither the purchaser at a foreclosure sale, the grantee under a deed in lieu of foreclosure, nor any subsequent transferee from a mortgagee shall have no personal liability for a breach of such obligations under this Agreement so long as:

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

(ii) The party who acquired title through foreclosure or deed in lieu of foreclosure does not undertake or permit any other party to undertake any Minimum Improvements on the

portion of the Minimum Improvements Area it owns;

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

The purpose of this section is to permit a foreclosing lender (or mortgagee or purchaser obtaining a deed in lieu of foreclosure or a subsequent transferee) to hold title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, subject to, but without personal liability for the obligations under this Agreement, until it can sell the portion it holds to a third party who will assume the obligations of Developer under the terms of this Agreement and proceed with the construction of the Minimum Improvements pursuant to the terms of this Agreement. If, rather than passively holding title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, the foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure or subsequent transferee) or other purchaser at a foreclosure sale desires to construct the Minimum Improvements, the purchaser at the foreclosure sale must assume and perform each of the obligations of Developer, or the applicable successor to the interest of Developer, under this Agreement as to the portion of the Minimum Improvements subject to foreclosure. This section does not restrict the authority of the Authority to pursue its rights under any outstanding security, exercise remedies otherwise available under this Agreement or suspend the performance of the obligations of the Authority or Developer under this Agreement as otherwise allowed. The Authority agrees to reasonably cooperate with any foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) or other purchaser at a foreclosure sale in pursuing the Minimum Improvements in accordance with this Agreement. Unless acting other than passively holding title as described above in this section, a lender or an independent third party that purchases at a foreclosure sale will have no liability for breach under this Agreement.

Section 9.5 Events of Default Under Mortgage. Developer, or its successor or assign, will use commercially reasonable efforts to obtain an agreement from any mortgagee under a Mortgage that in the event Developer is in default under any Mortgage, the mortgagee will use commercially reasonable efforts, within 30 days after it becomes aware of any such default and prior to exercising any remedy available to it due to such default, to notify the Authority in writing of (i) the fact of default; (ii) the elements of default; and (iii) the actions required to cure the default. Developer, or its successor or assign, will use its commercially reasonable efforts to obtain an agreement in any such Mortgage, that if, within the time period required by the Mortgage, the Authority cures any default under the Mortgage, the mortgagee will pursue none of its remedies under the Mortgage based on such default, provided that failure of Developer or its successors or assigns to obtain such an agreement from any such mortgagee shall not constitute a breach of this Agreement.

Section 9.6 Subordination of Agreement. The City and the Authority will, upon the request of the holder of a Mortgage, execute and record a subordination agreement pursuant to which the City and the Authority agree that, upon a default by Developer under a Mortgage, the holder of the Mortgage may elect, in an instrument to be recorded in the Hennepin County land records and delivered to the City and the Authority before the commencement of proceedings to foreclose the Mortgage, to either (1) treat this Agreement as being subordinate to the lien of the

Mortgage such that the foreclosure of the Mortgage and the failure to redeem from such foreclosure will extinguish and terminate this Agreement and the TIF Note will automatically be cancelled and rescinded; or (2) to treat this Agreement as having priority over the Mortgage in which case this Agreement and the TIF Note will survive the foreclosure of the Mortgage and this Agreement will be binding upon the holder of the Sheriff's Certificate issued in conjunction with the foreclosure of the Mortgage. If the holder of the Mortgage fails to notify the City and the Authority of its election under this Section 9.6 on or before the commencement of foreclosure proceedings, the holder of the Mortgage shall be deemed to have elected to treat this Agreement as being subordinate to the lien of the Mortgage such that the foreclosure of the Mortgage and the failure to redeem from such foreclosure will extinguish and terminate this Agreement and the TIF Note will automatically terminate. The City and Authority each further agree that if the holder of a Mortgage elects to treat this Agreement as having priority over the Mortgage, the City and Authority, upon the completion of the foreclosure without redemption, agree that the time for the completion of the Minimum Improvements is extended to a date 12 months following the expiration of all applicable redemption periods.

ARTICLE X INSURANCE AND CONDEMNATION

Section 10.1 Insurance.

(a) Developer, and its successors or assigns, shall obtain and continuously maintain insurance on the Minimum Improvements and, from time to time at the request of the Authority, furnish proof to the Authority that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that Developer must obtain and continuously maintain, provided that Developer shall obtain the insurance described in clause (i) below with respect to the Minimum Improvements prior to the Commencement of construction thereof and is only obligated to maintain the insurance described in clause (i) until Developer receives the Certificate of Completion:

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

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

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

(b) All insurance required in this Article shall be obtained and continuously

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

(c) Developer, its successor or assign, agrees to notify the Authority promptly in the case of damage exceeding \$500,000 in amount to, or destruction of the Minimum Improvements resulting from fire or other casualty.

Section 10.2 Condemnation. In the event that title to or possession of Minimum Improvements Area or the Minimum Improvements, or both, or any material part thereof, is threatened with a taking through the exercise of the power of eminent domain, Developer, or its successor or assign, will notify the Authority of the threatened taking with reasonable promptness.

ARTICLE XI OTHER DEVELOPER COVENANTS

Section 11.1 Maintenance and Operation of the Minimum Improvements. Developer, and its successors or assigns, will, at all times during the term of this Agreement, maintain and operate the Minimum Improvements (or the applicable portion thereof) in a safe and secure way and in compliance with this Agreement and applicable Law. Developer, or its successors or assigns, will pay all of the reasonable and necessary expenses of the operation and maintenance of the Minimum Improvements, including all premiums for insurance insuring against loss or damage thereto and adequate insurance against liability for injury to persons or property arising from the construction of the Minimum Improvements as required pursuant to this Agreement. During construction of the Minimum Improvements, Developer, or its successors or assigns, shall not knowingly cause any person working in or attending the Minimum Improvements for any purpose, or any tenant of the Minimum Improvements, to be exposed to any hazardous or unsafe condition; provided that such party shall not be in Default hereunder if it has required the contractors employed to perform work on the Minimum Improvements to take such precautions as may be available to protect the persons in and around the Minimum Improvements from hazards arising from the work, and has further required each such contractor to obtain and maintain liability insurance protecting against liability to persons for injury arising from the work. The expenses of operation and maintenance of the Minimum Improvements shall be borne solely by Developer, its successors or assigns.

Section 11.2 Business Subsidy Agreement. The Authority and Developer have determined that a business subsidy agreement within the meaning of the Minnesota Business Subsidy Act, Minnesota Statutes, Sections 116J.993 through 116J.995 is not required in accordance with the exception contained in the Minnesota Business Subsidy Act, Minnesota Statutes, Section 116J.993, subd. 3(17), because Developer's investment in the purchase of the

Minimum Improvements Area and site preparation thereon is 70% or more of the assessor's current year's estimated market value for the Minimum Improvements Area.

Section 11.3 Affordable Housing.

(a) Developer covenants that at least three of the residential units within the Minimum Improvements (the "Affordable Units") will be leased at rates (inclusive of utilities) that are considered affordable to individuals or households earning less than 50% of the U.S. Department of Housing and Urban Development's Area Median Income for the Minneapolis-Saint Paul-Bloomington Metropolitan Statistical Area for a period of 15 years commencing on the date the Certificate of Completion is issued (the "Affordable Housing Requirements"). The Affordable Housing Requirements shall also incorporate and include the following conditions and requirements: (i) no security deposit shall be required in excess of the amount of one month of rent in connection with any Affordable Unit; (ii) Developer shall affirmatively market the Affordable Units to one or more traditionally underserved populations (e.g., people with disabilities) as affordable at the rates required hereunder; (iii) the Affordable Units shall be subject to the terms and condition of the Inclusionary Housing Policy Program Guide ("Policy Guide") to be adopted by the City, a current draft of which is attached hereto as Exhibit M, provided, however, the Affordable Housing Requirements hereunder shall not include changes in the final Policy Guide adopted by the City which differ from the Policy Guide attached hereto as Exhibit M and which would increase Developer's costs and/or other obligations beyond a de minimis extent; (iv) Developer shall, upon annual invoicing, reimburse the City (or such subdivision of the City administering the Affordable Housing Requirements) for third-party expenses related to monitoring of Developer's compliance with the Affordable Housing Requirements, which such costs shall initially not exceed \$500.00 per year (plus any additional costs necessitated by re-inspections for noncompliance with the Affordable Housing Requirements) and thereafter be subject to reasonable adjustment from time to time. The Affordable Housing Requirements will be set forth in a restrictive covenant in substantially the form shown in the attached Exhibit N and to be recorded against the Minimum Improvements Area prior to the issuance of the TIF Note (the "Affordable Housing Restrictive Covenant"). The Affordable Housing Restrictive Covenant shall not be subordinated or junior to any Mortgage on the Minimum Improvements, and if any Mortgage exists at the time the Affordable Housing Restrictive Covenant is to be recorded, Developer shall cause the mortgagee under such Mortgage to subordinate the Mortgage and the lien thereof to the Affordable Housing Restrictive Covenant.

(b) Prior to issuance of the TIF Note, Developer shall grant to the Authority the one-time right to purchase one or more of the Affordable Units (the "Purchase Right"), which such Purchase Right shall be exercisable by the Authority in the event the Affordable Units are converted from rental units to for-sale units. The Purchase Right shall be granted to Authority pursuant to a Right of First Purchase Option agreement in the form attached as Exhibit O and on the terms and conditions set forth therein.

(c) On or about the date which is one year before the original expiration of the Affordable Housing Restrictive Covenant, the Authority and Developer shall negotiate in good faith the terms and conditions of an extension of initial 15-year term of the Affordable Housing Restrictive Covenant .

Section 11.4 Developer/Authority Grant Applications. Developer and the Authority will cooperate in efforts to obtain available public grant funding to undertake the Minimum Improvements, including but not limited to the Transit Oriented Development, Tax Base Revitalization Account, and Livable Communities Demonstration Account grants from the Metropolitan Council, Department of Employment and Economic Development funding for environmental remediation, and any other funding from metropolitan, state, county and federal sources identified by the Authority or Developer as reasonably available. Costs of preparing the grant applications shall be borne by Developer. City staff shall have the final authority to review and submit the grant applications to the applicable agency. To the extent additional grant funds not reflected in the TIF Pro Forma are obtained, the amount shall reduce the principal amount of the TIF Note.

ARTICLE XII TRANSFER LIMITATIONS AND INDEMNIFICATION

Section 12.1 Representation as to the Minimum Improvements. Developer represents to the City and the Authority that its undertakings under this Agreement are for the purpose of developing the Minimum Improvements and not for the purpose of speculation in land holding. Developer acknowledges that, in view of the importance of the Minimum Improvements to the general welfare of the City and the Authority, and the substantial financing and other public aids that have been made available by the City and the Authority for the purpose of making such Minimum Improvements possible, the qualifications and identity of Developer are of particular concern to the Authority. Developer further acknowledges that the City and the Authority are willing to enter into this Agreement with Developer because of the qualifications and identity of Developer.

Section 12.2 Limitation on Transfers.

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

- (i) granting of a mortgage or other security interests in the Minimum Improvements Area as provided in Article IX hereof; and
- (ii) leasing the Minimum Improvements in the normal course of business in a manner consistent with this Agreement and the City Approvals; and
- (iii) transfer to a Related Party.

After a Certificate of Completion has been issued, Developer or other transferor may freely, without the approval of the Authority sell or transfer all or any part of the Minimum Improvements Area or the Minimum Improvements to any person at any time.

(b) If the Authority's consent to a transfer is required pursuant to this Section 12.2, the Authority shall be entitled to require, as conditions to its approval of any sale, assignment,

conveyance, use or transfer of any rights, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements that:

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

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

(iii) Developer must submit all instruments and other legal documents involved in effecting transfer to the Authority; and

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

(c) In the absence of specific written agreement by the City and the Authority to the contrary, neither the transfer of the Minimum Improvements, or any portion thereof, prior to the issuance of the Certificate of Completion or the City's or the Authority's consent to such a transfer will relieve Developer of its obligations under this Agreement.

Section 12.3 Indemnification.

(a) Developer releases and covenants and agrees that the City Parties shall not be liable for and agrees to indemnify and hold harmless the City Parties against any loss or damage to property or any injury to or death of any person occurring at or about, or resulting from any defect in the Minimum Improvements constructed by Developer to the extent not attributable to the negligence or intentional misconduct of the City Parties.

(b) Except for negligence or intentional misconduct of the City Parties, Developer agrees to indemnify the City Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or other persons under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements, where such claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings occur or arise at any time while the TIF Note remains outstanding.

Section 12.4 Limitation. All covenants, stipulations, promises, agreements and obligations of the City, the Authority or Developer contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, the Authority

and Developer, and not of any governing body member, officer, agent, servant, manager or employee of the City, the Authority or Developer in the individual capacity thereof.

ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES

Section 13.1 Events of Default Defined. Subject to applicable cure periods, “Events of Default” under this Agreement include any one or more of the events listed in Sections 13.2 and 13.3.

Section 13.2 Developer Events of Default. The following shall be Events of Default for Developer:

(a) subject to Unavoidable Delays and Cure Rights, Developer’s failure to achieve Commencement and Completion of any aspect of the Minimum Improvements by the applicable “Default Date” set forth in Section 6.1; provided that if a Certificate of Completion is issued by the Authority, such failure shall no longer be an Event of Default;

(b) Subject to Unavoidable Delays and Cure Rights, the Developer shall Default in its obligations with respect to the construction of the Minimum Improvements (including the nature and the date for the completion of the various elements thereof), or shall abandon or substantially suspend construction work on the Minimum Improvements, and any such Default, violation, abandonment or suspension is not cured, ended or remedied within 30 days after written notice to do so; provided that if a Certificate of Completion is issued by the Authority, such failure shall no longer be an Event of Default;

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

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

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

Section 13.3 City and Authority Events of Default. Subject to Cure Rights and Unavoidable Delays, the failure of the City or the Authority to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of 30 days after written notice of such failure from any party hereto shall be an Event of Default for the City or the Authority.

Section 13.4 Cure Rights. If a Default occurs under Section 13.2(a), (b) or (d) or under Section 13.3 which reasonably requires more than 30 days to cure, such Default shall not constitute an Event of Default, provided that the curing of the Default is promptly commenced upon receipt by the defaulting party of the notice of the Default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the defaulting party keeps the non-defaulting party well informed at all times of its progress in curing the Default; provided in no event shall such additional cure period extend beyond 120 days.

Section 13.5 Authority Remedies on Developer Events of Default. Whenever any Event of Default occurs by Developer, the Authority may take any one or more of the following actions:

- (a) terminate this Agreement (but not the issued TIF Note);
- (b) exercise its rights under Section 8.3 of this Agreement regarding Developer's TIF eligibility;
- (c) suspend performance under this Agreement until it receives assurances from Developer or the holder of any Mortgage, deemed adequate by the Authority, that Developer or the holder of any Mortgage will cure the Event of Default and continue its performance under this Agreement,
- (d) withhold the Certificate of Completion where such Event of Default relates to Completion of the Minimum Improvements or issuance of the Certificate of Completion;
- (e) take whatever action at law or in equity may appear necessary or desirable to the Authority to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement; and
- (f) the Authority shall have all remedies normally available at law and in equity to enforce performance of this Agreement including a right to specific performance.

Section 13.6 City Remedies on Developer Events of Default. Whenever any Event of Default of Developer occurs, the City may suspend performance of its obligations under this Agreement and take whatever action at law or in equity may appear necessary or desirable to the City to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement, including an action for specific performance.

Section 13.7 Developer Remedies on City or Authority Events of Default. Whenever any Event of Default of the City or the Authority occurs, Developer, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of

any obligation, agreement, or covenant of the City or the Authority under this Agreement, including an action for specific performance.

Section 13.8 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City, the Authority or Developer is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority, the City or Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article XIV.

Section 13.9 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 13.10 Reimbursement of Attorneys' Fees. In the event of any enforcement action hereunder following an Event of Default, the prevailing party, in addition to other relief, shall be entitled to an award of attorney's fees and costs. The City, Authority and Developer waive their right to a jury trial on the issues of who is the prevailing party and the reasonable amount of attorneys' fees and costs to be awarded to the prevailing party. Those issues will be decided by the trial judge upon motion by one or both parties, such motion to be decided based on the record as of the end of the jury trial augmented only by the testimony and/or affidavits from the attorneys and their staff. The parties agree that, subject to the trial judge's discretion, the intent of this clause is to have all issues related to the award of attorneys' fees and costs decided by the trial judge as quickly as practicable.

ARTICLE XIV ADDITIONAL PROVISIONS

Section 14.1 Conflicts of Interest. No member of the Board or other official of the Authority shall have any financial interest, direct or indirect, in this Agreement, the TIF District or the Minimum Improvements, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City or the Authority shall be personally liable to the City or the Authority in the event of any Default or breach by Developer or successor or on any obligations under the terms of this Agreement.

Section 14.2 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 14.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by reputable overnight courier, sent registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and addressed to:

Developer at: Orion 4500 France, LLC
Attn: Ted Carlson
4530 West 77th Street, Suite 365
Edina, MN 55435

The Authority at: Housing and Redevelopment Authority of Edina, Minnesota
Attention: Executive Director
4801 West 50th Street
Edina, MN 55424

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

The City at: City of Edina
Attention: City Manager
4801 West 50th Street
Edina, MN 55424

with a copy to: Dorsey & Whitney LLP
Attention: Jay R. Lindgren
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 14.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 14.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 14.6 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 14.7 Representatives. Except as otherwise provided herein, all approvals and other actions required of or taken by the Authority shall be effective upon action by the Authority Representative. All actions required of or taken by Developer shall be effective upon action by a duly authorized officer of any of its managers.

Section 14.8 Superseding Effect. This Agreement reflects the entire agreement of the parties with respect to the items covered by this Agreement, and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to the items covered by this Agreement.

Section 14.9 Relationship of Parties. Nothing in this Agreement is intended, or shall be construed, to create a partnership or joint venture among or between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement.

Section 14.10 Term. The term of this Agreement shall be effective from the Effective Date above written until the earlier of (a) the date this Agreement is terminated pursuant to the terms and conditions hereof, (b) payment in full of the TIF Note, or (c) the date which is the 16th anniversary of the first Tax Increment received by the Authority. Upon termination, the parties agree to execute and record a document terminating this Agreement and providing for the release of the obligations under this Agreement.

Section 14.11 Provisions Surviving Rescission or Expiration. Section 12.3 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 14.12 Memorandum of Agreement. Neither party shall cause this Agreement to be recorded or filed in the real estate records of Hennepin County. However, Developer shall cause a Memorandum of Agreement to be so recorded or filed in the form attached as Exhibit F, and hereby incorporated herein by reference upon execution of this Agreement upon that portion of the Minimum Improvements Area owned by Developer. At the time of execution of this Agreement the parties hereto will also execute and acknowledge the Memorandum of Agreement. At such time as Developer further acquires fee title to any additional portion of the Minimum Improvements Area, Developer shall cause the Memorandum to be recorded against the additional portion of the Minimum Improvements Area and shall record such Memorandum of Agreement in the office of the County Recorder and/or Registrar of Titles in and for Hennepin County, Minnesota, as the case may be.

Section 14.13 Conflicts Between this Agreement and the Development Contract. In the event of any inconsistency or conflict between the requirements of this Agreement and the Development Contract, the provisions of the Development Contract shall control; provided, however, that for the purposes of Section 8.3 of this Agreement regarding Events of Default that authorize the Authority to withhold payments on any TIF Assistance, this Agreement controls. Except with respect for such inconsistent provisions, neither agreement is intended to amend or supersede the other agreement.

Section 14.14 Limited Liability. Notwithstanding anything to contrary provided in this Agreement, it is specifically understood and agreed, such agreement being the primary consideration for the execution of this Agreement by Developer, that (a) there should be absolutely no personal liability on the part of any director, officer, manager, member, employee or agent of Developer or the City or Authority with respect to any terms, covenants and conditions in this Agreement; (b) Developer and the City and the Authority waive all claims, demands and causes of action against the other parties' directors, officers, managers, members,

employees and agents in any Event of Default, by either party, as the case may be, of any of the terms, covenants and conditions of this Agreement to be performed by either party; and (c) Developer and the City or the Authority, as the case may be, shall look solely to the assets of the other party for the satisfaction of each and every remedy in the Event of Default by any party, as the case may be, of any of the terms, covenants and conditions of this Agreement such exculpation of liability to be absolute and without any exception whatsoever.

Section 14.15 Time is of the Essence. Time is of the essence of this Agreement and each and every term and condition hereof; provided, however, that if any date herein set forth for the performance of any obligations by Developer, City or Authority or for the delivery of any instrument or notice as herein provided should not be on a business day, the compliance with such obligations or delivery shall be deemed acceptable on the next following business day.

Section 14.16 Estoppel Certificate. Each party shall, within fifteen (15) days after request from the other party hereto, deliver a written statement which may be relied upon by the requesting party, or any lender or transferee of the requesting party, setting forth (a) whether, to the best knowledge of the party providing the written statement, that the requesting party is not in default and there exists no circumstance which with the giving of notice or lapse of time, or both, would constitute a default (or if such party is aware of any such default or circumstance specifying the same); and (b) such other factual certifications as may be reasonably requested by the requesting party.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

HOUSING AND REDEVELOPMENT
AUTHORITY OF EDINA, MINNESOTA

By _____
James B. Hovland, Chair

By _____
Robert J. Stewart, Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018,
by James B. Hovland and Robert J. Stewart, the Chair and Secretary, respectively, of the
Housing and Redevelopment Authority of Edina, Minnesota, on behalf of said Authority.

Notary Public

EXHIBIT A-1

Legal Description of Minimum Improvements Area

Parcel 1:

Lots 1 and 2 and that part of Lot 6 described as follows: Commencing at the most Northerly corner of said Lot 6; thence South along the East line of said lot; 40.62 feet; thence Northwesterly 30.2 feet to a point on the Northerly line of said Lot 6, distant 27.19 feet Westerly from the point of beginning; thence Northeasterly to the point of beginning, all in Block 2, "Fairbairn's Rearrangement" in Waveland and Waveland Park, including all of the vacated alley which lies North of the South line of said Lot 2 extended West, Hennepin County, Minnesota.

(Abstract Property)

Parcel 2:

Lots 3, 4 and 5;

That part of Lot 6, described as follows: Commencing on the Easterly line of said Lot at a point distant 40.62 feet

Southerly from the most Northerly corner of said Lot, thence Northwesterly 30.2 feet to a point on the Northwesterly line of said Lot distant 27.19 feet Southwesterly from the most Northerly corner of said Lot; thence Southwesterly along the Northwesterly line of said Lot to the most Westerly corner of said Lot, thence Southeasterly along the Southwesterly line of said Lot to the most Southerly corner of said Lot, thence Northerly along the Easterly line of said Lot to the point of beginning;

That part of the alley now vacated, described as follows: Commencing at the point of intersection of the center line of alley, now vacated with the North line of Lot 3 extended Westward, thence East on said extended line to the Northwest corner of said Lot 3, thence along the Easterly line of said alley to the most Southerly corner of Lot 5, thence Southwesterly along an extension of the Southeasterly line of said Lot to the center line of said alley, thence Northwesterly along the center line of said alley to a point of its intersection with a line erected to bisect the angle existing in the Westerly line of said alley, thence Southwest along said line to the West line of said alley, thence North along said West line to a point in said line 40.62 feet South of the most Northerly corner of Lot 6, the same being the point of intersection to said West line of alley with the extension Westward of the North line of Lot 3, thence East along said extended line to the point of beginning;

All in Block 2, "Fairbairn's Rearrangement" In Waveland And Waveland Park

(Torrens Property)

EXHIBIT A-2

Depiction of Minimum Improvements Area and Release Parcel

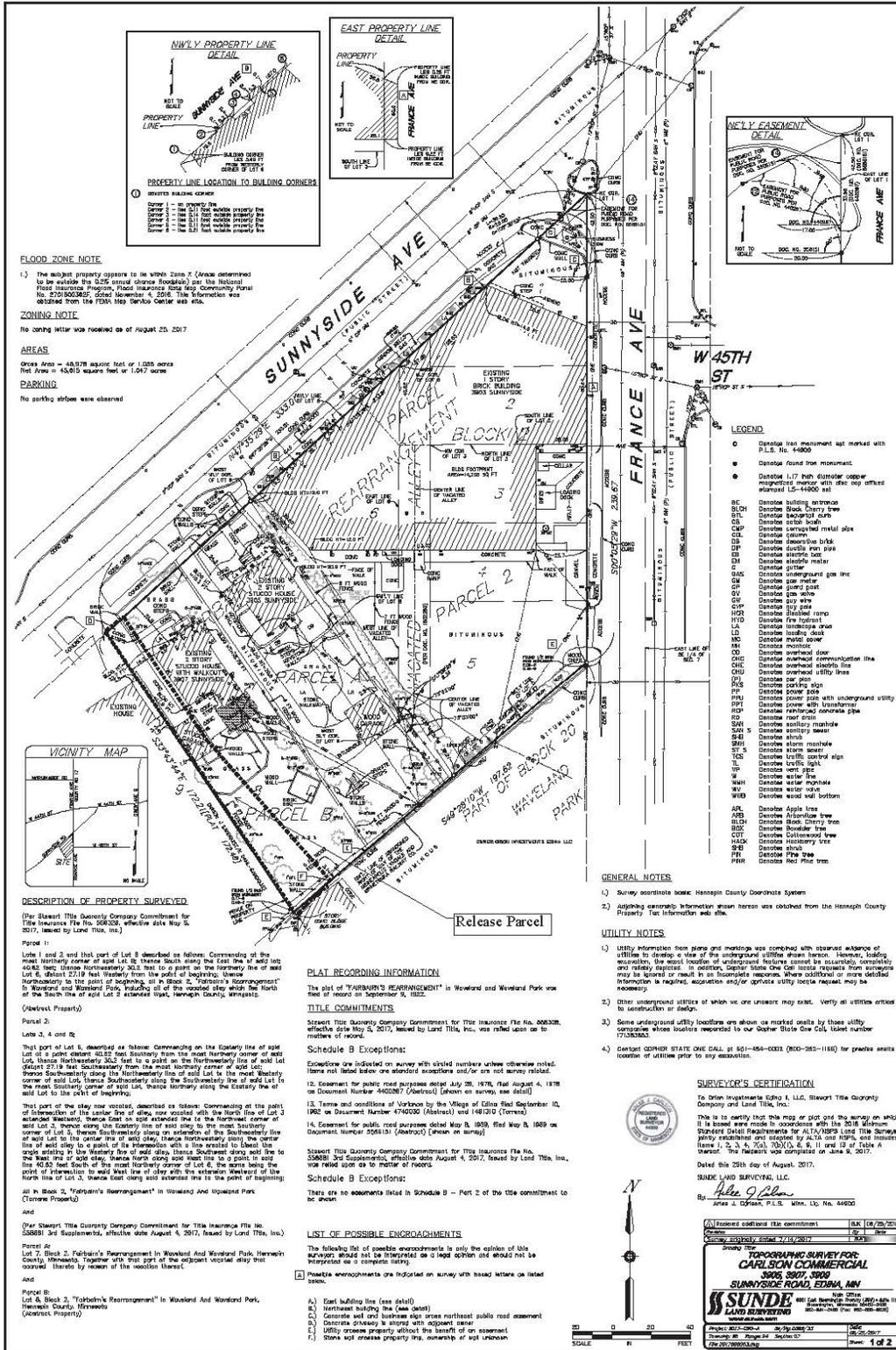


EXHIBIT B

Final Development Plan

[Final Development Plan to be inserted following approval by City Council]

EXHIBIT C

TIF Pro Forma

[See attached.]

EXHIBIT C - TIF PRO FORMA
4500 France Redevelopment
City of Edina

Sources and Uses

46 Apartment Units; 6,511 (sf) Commercial Space

SOURCES			
Debt		Amount	Percent
Debt A		18,321,921	63.8%
Subtotal		18,321,921	63.8%
Other Sources		Amount	Percent
Category	Sources		
Equity	Developer Cash	9,865,650	34.3%
Local_Grant	DEED	335,000	1.2%
Local_Grant	Other (Met LCDA, TBRA, Etc.)	200,000	0.7%
Subtotal		10,400,650	36.2%
TOTAL SOURCES		28,722,571	100.0%

USES			
	Amount	% of Cost	Per Sq. Ft. (Total)
ACQUISITION COSTS	4,641,000	16.2%	74.43
Land Cost	4,550,000	15.8%	72.97
Closing Fees	91,000	0.3%	1.46
CONSTRUCTION COSTS	19,327,350	67.3%	309.97
Residential Building	18,000,000	62.7%	288.68
Tenant Improvements: Total Commercial	327,350	1.1%	5.25
Construction Contingency	1,000,000	5.5%	16.04
ENVIRONMENTAL ABATEMENT/SOIL CORRECTION	645,000	2.2%	10.34
Environmental Abatement & Remed.	170,000	0.6%	2.73
Power Line Burial	400,000	1.4%	6.42
Testing	75,000	0.3%	1.20
PERMITS/FEES	683,516	2.4%	10.96
Park Dedication	0	0.0%	0.00
Permits/Inspection	200,000	0.7%	3.21
Local SAC/WAC Connection Fees	178,516	0.6%	2.86
Met Council Sewer Access Connection	145,000	0.5%	2.33
Affordable Housing Buyout	160,000	0.6%	2.57
PROFESSIONAL SERVICES	1,226,205	4.3%	19.67
Accounting	15,000	0.1%	0.24
Architectural	475,000	1.7%	7.62
Landscape Architect	35,000	0.1%	0.56
Civil Engineering	75,000	0.3%	1.20
Engineering	30,000	0.1%	0.48
FF&E	125,000	0.4%	2.00
Legal - Development	50,000	0.2%	0.80
Legal - Easement	0	0.0%	0.00
Marketing	50,000	0.2%	0.80
Leasing Bonus	23,000	0.1%	0.37
Retail - Leasing Brokerage Fees	98,205	0.3%	1.58
Owners Representative	100,000	0.3%	1.60
Soft Cost Contingency	150,000	0.5%	2.41
FINANCING COSTS	774,500	2.7%	12.42
Bank Loan Fees	100,000	0.3%	1.60
Construction Period Interest	300,000	1.0%	4.81
Appraisals	7,500	0.0%	0.12
Insurance - Builder's Risk	90,000	0.3%	1.44
Lender Legal	10,000	0.0%	0.16
Mortgage Registration Tax	30,000	0.1%	0.48
Title & Recording	12,000	0.0%	0.19
TIF Legal	200,000	0.7%	3.21
TIF Consultant	25,000	0.1%	0.40
DEVELOPER FEE	1,000,000	3.5%	16.04
Developer Fee	1,000,000	3.5%	16.04
CASH ACCOUNTS/ESCROWS/RESERVES	425,000	1.5%	6.82
Operating Reserves	125,000	0.4%	2.00
Stabilization Interest	300,000	1.0%	4.81
TOTAL USES		28,722,571	100%
			460.65

4500 France Redevelopment
City of Edina
46 Apartment Units; 6,511 (sf) Commercial Space
Sample Stabilized Operating Proforma

		Stabilized		
Income		Year 1	Year 2	Year 3
Rental Income				
	<i>Inflator</i>			
Gross Potential Rent	1.5%	1,835,763	1,863,299	1,891,249
Less: 5.0% Stabilized Vacancy		(91,788)	(93,165)	(94,562)
Less: Additional Pre-stabilization Vacancy	8-unit per month	(241,369)		
Total Rental Income		1,502,606	1,770,134	1,796,686
Other Residential Income				
	<i>Vacancy Rate</i>			
	<i>Inflator</i>			
Structured/Underground Parking	5.0%	124,200	126,063	127,954
Utility Recovery	5.0%	28,000	28,840	29,705
Internet Sales	5.0%	20,000	20,300	20,605
Cell Tower	0.0%	12,000	12,180	12,363
Miscellaneous	5.0%	27,536	27,949	28,368
Less: Vacancy		(9,987)	(10,158)	(10,332)
Less: Additional Pre-stabilization Vacancy		(26,262)		
Total Other Residential Income		175,488	205,174	208,663
Net Residential Income (NRI)		1,678,094	1,975,309	2,005,350
Commercial Income				
	<i>Inflator</i>			
Less: Commercial Vacancy - 5.0%	5.0%	216,050	216,050	216,050
Less: Expense on Commercial Vacancy	3.0%	(10,803)	(10,803)	(10,803)
		(8,191)	(8,437)	(8,690)
Net Commercial Income		197,056	196,811	196,558
Effective Gross Income (EGI) Residential + Commercial		1,875,150	2,172,120	2,201,907
Expenses		Year 1	Year 2	Year 3
Rental Unit Expenses				
	<i>Inflator</i>			
Operating Expenses	3.00%	217,000	223,510	230,215
Management Fee		79,224	80,429	81,652
Property Taxes	2.00%	73,961	259,167	264,350
Reserves: \$326 PUPY	3.00%	15,000	15,450	15,914
Modified Rental Expense During Stabilization		(10,416)		
Total Expenses		374,769	578,555	592,131
NET OPERATING INCOME		1,500,382	1,593,564	1,609,776
Available Tax Increment Financing Receipts Up to	<i>Inflator:</i>			
	2%	213,898	218,176	222,539
ADJUSTED NET OPERATING INCOME		1,714,280	1,811,740	1,832,316
Debt A	30 yr amortization @ 4.75%	1,146,910	1,146,910	1,146,910
NET CASH FLOW		567,370	664,830	685,406
Special Assessments		12,000	12,000	12,000
NET CASH FLOW AVAILABLE FOR DISTRIBUTION		555,370	652,830	673,406
Returns Analysis				
Net Cash to Developer		555,370	652,830	673,406
Net Cash to Developer (w/o assistance)		0	0	0
Cash on Cash Annual Return		5.6%	6.6%	6.8%
Cash on Cash Average Annual Return		5.6%	6.1%	6.4%
Cash on Cost Annual Return		6.0%	6.3%	6.4%

EXHIBIT D

Form of Go-Ahead Letter

[ORION 4500 FRANCE, LLC LETTERHEAD]

[Date]

[_____]

City Manager/City of Edina
Executive Director/ Housing and Redevelopment Authority of Edina, MN
4801 West 50th Street
Edina, Minnesota 55424

Dear [_____]:

This letter is submitted pursuant to Section 4.2 of the Redevelopment Agreement by and among the City of Edina, Minnesota, the Housing and Redevelopment Authority of Edina, Minnesota, and Orion 4500 France, LLC, a Delaware limited liability company, dated as of December 18, 2018 (the “Contract”) and is provided as the “Go-Ahead Letter” required under the Agreement. Capitalized terms used in this letter and not defined herein have the meaning given to them in the Contract.

The Financing Commitment has been received by the Developer, and the Developer is prepared to proceed with the construction of the Minimum Improvements, in accordance with the Contract.

Sincerely,

ORION 4500 FRANCE, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT E

Form of Certificate of Completion

CERTIFICATE OF COMPLETION

A. ORION 4500 FRANCE, LLC (“Developer”), pursuant to the Redevelopment Agreement by and among the CITY OF EDINA, MINNESOTA (the “City”), the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA (the “Authority”), and Developer, dated effective as of December 18, 2018 (the “Contract”), has agreed to complete certain Minimum Improvements, as defined in and in accordance with the Contract, on that certain real property (the “Property”) located in Hennepin County, Minnesota, described on the attached Exhibit A.

B. Developer has substantially completed construction of the Minimum Improvements as required under the Contract.

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

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

Dated: _____, 20____

[Remainder of page intentionally left blank; signature pages follow]

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

By _____
Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the Executive Director of the Housing and Redevelopment Authority of Edina, Minnesota, on behalf of said Authority.

Notary Public

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

EXHIBIT F

Memorandum of Redevelopment Agreement

MEMORANDUM OF REDEVELOPMENT AGREEMENT

THIS MEMORANDUM OF REDEVELOPMENT AGREEMENT (this “Memorandum”) is entered into as of December 18, 2018, by and among the CITY OF EDINA, MINNESOTA, a Minnesota statutory city (“City”); the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the State of Minnesota (“Authority”); and ORION 4500 FRANCE, LLC, a Delaware limited liability company (“Developer”).

RECITALS:

A. City, Authority, and Developer (collectively, the “Parties”) have entered into a certain Redevelopment Agreement dated as of December 18, 2018 (the “Contract”), whereby the Parties have agreed to various aspects of the redevelopment of certain real property more particularly described on the attached Exhibit A, together with all improvements, tenements, easements, rights and appurtenances pertaining to such real property, lying and being in Hennepin County, Minnesota (the “Property”).

B. The Parties wish to give notice of the existence of the Contract.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are incorporated by reference as if fully set forth herein.
2. Capitalized terms, when not defined herein, shall have the meanings ascribed to them in the Contract.
3. The Parties have entered into the Contract to set forth the terms and provisions governing the redevelopment of the Property.
4. This Memorandum has been executed and delivered by the Parties for the purpose of recording and giving notice that a contractual relationship for the redevelopment of the Property has been created between the Parties in accordance with the terms, covenants and conditions of the Contract.
5. The terms and conditions of the Contract are incorporated by reference into this Memorandum as if fully set forth herein.

6. This Memorandum may be executed separately in counterparts which, when taken together, shall constitute one and the same instrument.

[Remainder of page left blank intentionally; signature pages follow]

HOUSING AND REDEVELOPMENT
AUTHORITY OF EDINA, MINNESOTA

By _____
James B. Hovland, Chair

By _____
Robert J. Stewart, Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
2018, by James B. Hovland and Robert J. Stewart, the Chair and Secretary respectively, of the
Housing and Redevelopment Authority of Edina, Minnesota, on behalf of said Authority.

Notary Public

ORION 4500 FRANCE, LLC,
a Delaware limited liability company

By: Orion Investments Edina II, LLC,
a Minnesota limited liability
company

Its: Manager

By: _____

Name: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018, by _____, the _____ of Orion Investments Edina II, LLC, a Minnesota limited liability company, as the manager of ORION 4500 FRANCE, LLC, a Delaware limited liability company, on behalf of the limited liability companies.

Notary Public

THIS DOCUMENT WAS DRAFTED BY:

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

EXHIBIT G

Form of Plaza Easement Agreement

PLAZA EASEMENT AGREEMENT

between

THE CITY OF EDINA, MINNESOTA

and

ORION 4500 FRANCE, LLC

Dated as of

_____, 20____

THIS DOCUMENT WAS DRAFTED BY:

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

PLAZA EASEMENT AGREEMENT
(4500 France)

THIS PLAZA EASEMENT AGREEMENT (this “Agreement”) is made and entered into this ___ day of _____, 20___ (“Effective Date”), by and between the CITY OF EDINA, MINNESOTA, a Minnesota statutory city (the “City”), and ORION 4500 FRANCE, LLC, a Delaware limited liability company (“Owner”).

RECITALS:

A. The Housing and Redevelopment Authority of Edina, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), the City, and Owner, as “Developer”, are parties to that certain Redevelopment Agreement dated December 18, 2018 (the “Contract”).

B. The Contract provides for the redevelopment by Owner of certain real property legally described on the attached Exhibit A (referred to herein and in the Contract as the “Redevelopment Area”) and located within the 44th & France 2 Tax Incremental Financing District, established by the Authority pursuant to Resolution No. 2018-100, in coordination with the Authority and with the cooperation and assistance of the City.

C. The Contract provides for the expenditure of certain public funds to assist in the redevelopment of the Redevelopment Area with certain “Minimum Improvements” consisting generally of a new 4-story, mixed use project, including an approximately 46-unit apartment building and approximately 6,500 square feet of ground-level restaurant and retail space.

D. The Minimum Improvements also include a ground-level, outdoor plaza and amenity area (referred to herein and in the Contract as the “Plaza”), which such Plaza is located on that portion of the Redevelopment Area legally described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2 (the “Plaza Property”).

E. The City and Owner have agreed in the Contract that Owner shall grant an easement to the City pursuant to which the Plaza will be permanently open and accessible to the general public for its use and enjoyment pursuant to the terms and conditions of this Agreement.

F. Owner has agreed to own, operate, manage, and maintain the Plaza pursuant and subject to the terms and conditions of the Contract and this Agreement.

G. The City and Owner deem it to be in their interests and in furtherance of the economic development and redevelopment plan for the Redevelopment Area reflected in the Contract to enter into this Agreement.

H. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Contract.

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

ARTICLE I.

GRANT OF EASEMENTS

Section 1.1. Easement Premises. Owner hereby grants and conveys to the City, for the benefit of the City and the general public:

(a) a non-exclusive, perpetual public easement over, across, upon and through the Plaza Property, together with and including all (i) surface improvements now or hereafter located thereon, including, without limitation, all paving, sidewalks, and pathways, and (ii) all amenities, components, and fixtures now or hereafter located thereon, including, without limitation, all benches, tables, chairs, and trash receptacles, all to the extent required by the Final Development Plan, Development Contract, and the Contract (collectively, the “Plaza Premises”) for the purpose of the general public utilizing the Plaza Premises and its components as a public plaza, in accordance with and subject to the terms and conditions of this Agreement, and

(b) a non-exclusive, perpetual public easement over, across, upon and through all means of pedestrian and vehicular access to and from public rights of way, streets, alleys, public spaces, and easements appurtenant and/or used in connection with the Plaza Premises located on the Redevelopment Area and adjoining or contiguous to the Plaza Premises, including all roads, driveways, parking lots, exterior concourses, passageways, sidewalks and stairways providing such means of access, (collectively, the “Access Premises”, and together with the Plaza Premises, collectively the “Easement Premises”), all in accordance with and subject to the terms and conditions of this Agreement.

ARTICLE II.

TERM

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

ARTICLE III.

USE OF EASEMENT PREMISES

Section 3.1. Operation and Control of Easement Premises. During the term of this Agreement, Owner shall operate the Easement Premises in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders, at Owner’s sole cost and

expense. Subject to the terms of this Agreement, Owner has full authority and control over the management, operation, and use of the Easement Premises. Owner is entitled to keep and retain as its own property all income and revenue produced from the use and operation of the Easement Premises during the term of this Agreement and shall have no obligation to report to or account to the City for any such income or revenue or with respect to expenses incurred by Owner in its use and operation of the Easement Premises, provided, however, all use of the Plaza by the general public shall be free of charge and Owner shall not charge any fee for the use of the Plaza pursuant to this Agreement.

Section 3.2. Special Events. The easement rights granted hereunder include the right for the City and/or members of the general public (including organizations not affiliated with the City) to reserve and use the Plaza Premises for periodic community special events (e.g., fundraising walks/runs, art fairs, holiday events, community celebrations, etc.), provided that Owner may establish an application and permit process for such special events and require that the sponsor of such special event enter into a standard form license or similar agreement with Owner for the use of the Plaza Premises containing certain conditions, requirements, and restrictions which must be met by the special event's sponsor (e.g., insurance requirements, clean-up responsibilities, etc.). The terms and conditions of any such permit/application process and all such license/use agreements shall be commercially reasonable and applied to all users and special event sponsors on a non-discriminatory basis.

Section 3.3. Waste, Nuisance, Damage, Disfigurement or Injury to Easement Premises. Neither the City nor Owner shall knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any improvements hereafter erected or located upon the Easement Premises, or any part thereof, or the fixtures and/or equipment thereof. Owner, in its use and occupancy of the Easement Premises, shall not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time shall not be considered "waste," "nuisance," "damage," "disfigurement," or "injury."

Section 3.4. Owner's Reservation of Certain Rights. The City's easement rights under this Agreement shall be subject to the following reservations, as well as the other applicable provisions contained in this Agreement:

(a) Owner reserves the right to close-off any portion of the Easement Premises for such reasonable period of time as may be legally necessary, in the opinion of Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of the Easement Premises, Owner shall give as much written notice as reasonably practicable of its intention to do so.

(b) Owner reserves the right at any time and from time to time to exclude and restrain any private party from access to the Plaza for cause and on a non-discriminatory basis.

(c) Owner reserves the right to temporarily erect or place barriers in and around areas on the Easement Premises which are being constructed and/or repaired in order to

ensure either safety of persons or protection of property.

(d) Owner reserves the right to adopt and enforce reasonable rules and regulations for the safe, efficient, and orderly use and operation of the Easement Premises, so long as such rules and regulations are applied on a non-discriminatory basis, do not adversely impact the City's or the public's rights to use of the Easement Premises as set forth in this Agreement, and are mutually agreed to by Owner and the City Manager. By way of example and not limitation, Owner may establish the following hours of operation: from April 15 to October 31, 7:00 a.m. – 10:00 p.m. and from November 1 to April 14, 7:00 a.m. – 8:00 p.m.

(e) Owner may impose reasonable time, place, and manner restrictions on the use of and activity within the Plaza, provided such restrictions are content neutral and imposed to the extent necessary to ensure the safe operation of the Plaza and the Minimum Improvements as a whole (e.g., promoting the safety of the residents of the residential element of the Minimum Improvements).

ARTICLE IV.

MAINTENANCE OF THE EASEMENT PREMISES

Section 4.1. Maintenance. At all times during the term hereof, Owner, at its cost and expense, shall keep and maintain the Easement Premises and the other Minimum Improvements in good condition and repair in a first-class manner, similar to that of other public plazas located within other first-class, multi-use projects in the Minneapolis-Saint Paul metropolitan area, which such maintenance shall include, without limitation, the following:

(a) all repairs, replacements, renewals, alterations, additions and betterments thereto, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, all as may be necessary to keep the Easement Premises and the other Minimum Improvements in the condition and repair required by this Agreement, and which are consistent with the requirements of the Final Development Plan, Development Contract and the Contract, and are not inconsistent with the City's or the public's rights to use of the Easement Premises as set forth in this Agreement;

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

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

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

(e) placing, keeping in repair, replacing and repainting any appropriate directional signs or markers within or associated with the Easement Premises;

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

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

Section 4.2. No Obligation of the City to Repair or Maintain. The City shall have no obligation of any kind, expressed or implied, to repair, rebuild, restore, reconstruct, modify, alter, replace, or maintain the Easement Premises or any part thereof.

ARTICLE V.

UTILITIES

Section 5.1. Utility Charges. During the term of this Agreement, Owner shall pay, or cause to be paid, when the same become due, all charges for water, sewer usage, storm water, gas, electricity, power, heat, telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with the Easement Premises, or any part thereof.

TAXES AND ASSESSMENTS

Section 6.1. Payment of Taxes and Assessments. Owner shall pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies, assessed and levied by any governmental taxing authority during the term of this Agreement against the Easement Premises and the other Minimum Improvements. Nothing contained in this Agreement shall require Owner to pay any franchise, estate, inheritance, excise, succession, capital levy, or transfer tax of the City or any income, excess profits or revenue tax payable by the City under this Agreement. Subject to the terms of the Contract, Owner shall have the right and option, at any time but solely at Owner's expense, to pay any real estate taxes or assessments in installments or under protest or in a similar manner, or to contest the levy or amount of the same in appropriate legal or administrative proceedings.

ARTICLE VII.

INDEMNIFICATION, INSURANCE

Section 7.1. Indemnification of the City. Except to the extent caused by the willful misconduct or negligence of the City, its employees or agents, or the general public, or arising out of the default by the City and its officers, employees or agents of obligations made pursuant to a contract with Owner, including this Agreement, Owner hereby covenants and agrees to assume and to permanently indemnify and save harmless the City and its employees and agents from and against any and all claims, demands, actions, damages, costs, expenses, reasonable attorneys' fees, and liability in connection with the loss of life, personal injury and/or damage to property, to the

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

Section 7.2. Property Insurance. At all times during the term hereof, Owner, at its sole cost and expense, shall keep the Easement Premises and the other Minimum Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured, in the amount of the full replacement cost thereof and with such deductibles as Owner deems appropriate, against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to improvements similar in construction, general location, use, and occupancy to such improvements.

Section 7.3. Personal Property. All property of every kind and character which Owner may keep or store in, at, upon, or about the Easement Premises shall be kept and stored at the sole risk, cost, and expense of Owner.

Section 7.4. Liability Insurance. During the term of this Agreement, Owner shall procure and maintain continuously in effect (or shall cause the same to occur), the following policies of insurance of the kind and minimum amounts as are customarily maintained with respect to facilities and improvements similar to those located on the Easement Premises, at commercially reasonable coverage levels, to be reviewed from time to time by Owner: insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the use, occupancy, or condition of the Easement Premises, or any part thereof, including insuring the indemnification obligations set forth in Section 7.1 above. Such insurance shall provide that the City is an additional insured.

Section 7.5. General Insurance Requirement. All insurance required in this Agreement shall be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. Owner shall promptly following the City's request therefor, furnish the City with copies of policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel it without giving written notice to the City at least 10 days before the cancellation becomes effective. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 7.6. No Obligation of the City for Insurance. At no time and under no circumstances shall the City be required to take out, maintain in force and effect, or pay for any type of insurance coverage with reference to the protection of and/or ownership of and/or occupancy of and/or a suit relating to the Easement Premises and/or any improvements hereafter located thereon.

ARTICLE VIII.

ASSIGNMENT

Section 8.1. Assignment by the City. During the term of this Agreement, the City may

not assign or transfer its interest under this Agreement without the prior written consent of Owner.

Section 8.2. Assignment by Owner. During the term of the Contract, Owner may not assign or otherwise transfer its interest under this Agreement, except as provided in the Contract. The City shall recognize and approve any successors or assigns of Owner in accordance with the terms and provisions of the Contract. Following the full and final payment of the TIF Note issued under the terms of the Contract, Owner may assign this Agreement without consent of the City.

ARTICLE IX.

CASUALTY

Section 9.1. Destruction. In the event that all or any part of the Easement Premises and/or other portions of the Minimum Improvements are destroyed by fire or other casualty, and subject to a determination by the relevant mortgage lender, Owner shall promptly rebuild or reconstruct the same to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the same, to the extent insurance proceeds combined with any contributions by Owner toward reconstruction are available.

ARTICLE X.

EMINENT DOMAIN

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

ARTICLE XI.

DEFAULT AND REMEDIES

Section 11.1. Default By Owner. If Owner fails to perform any of its obligations under this Agreement, and fails to cure such default after 30 days' written notice of such default or, if such default cannot reasonably be cured within such 30 days, fails to commence curative action and thereafter diligently complete the same, then, in such case, the City may pursue all available remedies at law and in equity.

ARTICLE XII.

MISCELLANEOUS

Section 12.1. Waiver. The waiver by any party hereto of any breach or default of any provisions anywhere contained in this Agreement shall not be deemed to be a waiver of any subsequent breach or default thereof. No provision of this Agreement shall be deemed to have been waived by any party hereto unless such waiver is in writing and signed by the party charged with any such waiver.

Section 12.2. Amendments. Except as otherwise herein provided, and not otherwise, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement shall be binding upon either party unless in writing and signed by both parties. Owner and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by Owner's relevant mortgage lender encumbering the Easement Premises, provided; however, that Owner and the City shall not be required to enter into any amendment which does not adequately protect the legitimate interest and security of the Authority or the City with respect to the redevelopment of the Redevelopment Area as contemplated in the Contract.

Section 12.3. Joinder; Permitted Encumbrance. Except for the mortgagee consent attached hereto, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement shall constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between Owner and any construction lender or permanent lender.

Section 12.4. Dedication. Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Easement Premises to the general public, except as explicitly set forth in this Agreement.

Section 12.5. Notices. 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 (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, (b) sent by recognized overnight courier (such as Federal Express), or (c) delivered personally, as follows:

In the case of Owner: Orion 4500 France, LLC
Attn: Ted Carlson
4530 West 77th Street, Suite 365
Edina, MN 55435

In the case of the City: City of Edina
Attn: City Manager
4801 West 50th Street
Edina, MN 55424

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

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

Section 12.6. No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, action or remedies to any person or entity.

Section 12.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.8. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 12.9. Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 12.10. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 12.11. Survival. The easements granted hereby and each reservation, covenant, condition and restriction contained in this Agreement will run with the land and will be binding upon, and inure to the benefit of, as the case may be, Owner and the City and their respective successors and assigns.

[Remainder of page intentionally left blank; signature pages follow]

EXHIBIT A

Legal Description of the Plaza Property

EXHIBIT B-1

Legal Description of Redevelopment Area

EXHIBIT B-2

Depiction of the Redevelopment Area

EXHIBIT H
Form of Parking Easement Agreement

PARKING EASEMENT AGREEMENT

between

THE CITY OF EDINA, MINNESOTA

and

ORION 4500 FRANCE, LLC

Dated as of

_____, 20____

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

PARKING EASEMENT AGREEMENT
(4500 France)

THIS PARKING EASEMENT AGREEMENT (this “Agreement”) is made and entered into this ___ day of _____, 20____ (“Effective Date”), by and between the CITY OF EDINA, MINNESOTA, a Minnesota statutory city (the “City”), and ORION 4500 FRANCE, LLC, a Delaware limited liability company (“Owner”).

RECITALS:

A. The Housing and Redevelopment Authority of Edina, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), the City, and Owner, as “Developer”, are parties to that certain Redevelopment Agreement dated December 18, 2018 (the “Contract”).

B. The Contract provides for the redevelopment by Owner of certain real property legally described on the attached Exhibit A (referred to herein and in the Contract as the “Redevelopment Area”) and located within the 44th & France 2 Tax Incremental Financing District, established by the Authority pursuant to Resolution No. 2018-100 in coordination with the Authority and with the cooperation and assistance of the City.

C. The Contract provides for the expenditure of certain public funds to assist in the redevelopment of the Redevelopment Area with certain “Minimum Improvements” consisting generally of a new 4-story, mixed use project, including an approximately 46-unit apartment building and approximately 6,500 square feet of ground-level restaurant and retail space.

D. The Minimum Improvements also include [at least 35, but the actual quantity will be inserted in the final easement agreement based on the total quantity constructed per the approved Final Development Plan] at-grade, enclosed public parking stalls (referred to herein and in the Contract as the “Public Parking”) which such Public Parking is located on that portion of the Redevelopment Area legally described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2 (the “Public Parking Area”).

E. The City and Owner have agreed in the Contract that Owner shall grant an easement to the City pursuant to which the Public Parking will be permanently open and accessible to the general public for parking purposes pursuant to the terms and conditions of this Agreement.

F. Owner has agreed to own, operate, manage, and maintain the Public Parking and Public Parking Area pursuant and subject to the terms and conditions of the Contract and this Agreement.

G. The City and Owner deem it to be in their interests and in furtherance of the economic development and redevelopment plan for the Redevelopment Area reflected in the Contract to enter into this Agreement.

H. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Contract.

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

ARTICLE I

GRANT OF EASEMENTS

Section 1.1 Easement Premises. Owner hereby grants and conveys to the City, for the benefit of the City and the general public:

(a) a non-exclusive, perpetual public easement over, across, upon and through the Public Parking Area, together with and including all ancillary amenities, components, and fixtures located thereon and therein for the users of the Public Parking in general and as required by the Final Development Plan, Development Contract and the Contract (e.g., bike racks, bike repair facilities and equipment, EV charging stations) (collectively, the "Parking Premises"), for the purpose of the general public utilizing the Public Parking for vehicular parking and utilizing such ancillary amenities, if any, all in accordance with and subject to the terms and conditions of this Agreement; and

(b) a non-exclusive, perpetual public easement over, across, upon and through all means of pedestrian and vehicular access to and from public rights of way, streets, alleys, public spaces, and easements appurtenant and/or used in connection with the Parking Premises, located on the Redevelopment Area and adjoining or contiguous to the Parking Premises, including all roads, driveways, parking lots, exterior concourses, passageways, sidewalks and stairways providing such means of access (but excluding all such areas or means of access intended to serve as exclusively private access to, or for the sole benefit of, the other commercial and/or residential elements of the Minimum Improvements) (collectively, the "Access Premises", and together with the Parking Premises, collectively the "Easement Premises"), all in accordance with and subject to the terms and conditions of this Agreement.

ARTICLE II

TERM

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

ARTICLE III

USE OF EASEMENT PREMISES

Section 3.1 Operation and Control of Easement Premises. During the term of this Agreement, Owner shall operate the Easement Premises in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders, at Owner's sole cost and expense. Subject to the terms of this Agreement, Owner has full authority and control over the management, operation, and use of the Easement Premises. Owner is entitled to keep and retain as its own property all income and revenue produced from the use and operation of the Easement Premises during the term of this Agreement and shall have no obligation to report to or account to the City for any such income or revenue or with respect to expenses incurred by Owner in its use and operation of the Easement Premises; provided, however, parking within the Public Parking by the general public shall be free of charge and Owner shall not charge any fee for the use of the Public Parking pursuant to this Agreement.

Section 3.2 Signage. Owner shall install and maintain a prominent, permanent "Public Parking" sign at or near each vehicular entrance to the Public Parking Area, which such signage shall be subject to the City's prior written approval, not to be unreasonably, or delayed. Owner shall also install and maintain in the main lobby or foyer of the Minimum Improvements a permanent placard (to be no smaller than approximately 8 1/2 by 11 inches) which states that the Public Parking is provided in partnership with the City and the Authority. The final design and wording of such placard shall be subject to the prior reasonable approval of the City Manager.

Section 3.3 Waste, Nuisance, Damage, Disfigurement or Injury to Easement Premises. Neither the City nor Owner shall knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any improvements hereafter erected or located upon the Easement Premises, or any part thereof, or the fixtures and/or equipment thereof. Owner, in its use and occupancy of the Easement Premises, shall not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time shall not be considered "waste," "nuisance," "damage," "disfigurement," or "injury."

Section 3.4 Owner's Reservation of Certain Rights. The City's easement rights under this Agreement shall be subject to the following reservations, as well as the other applicable provisions contained in this Agreement:

(a) Owner reserves the right to close-off any portion of the Easement Premises for such reasonable period of time as may be legally necessary, in the opinion of Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of the Easement Premises, Owner shall give as much written notice as reasonably practicable of its intention to do so.

(b) Owner reserves the right at any time and from time to time to exclude and restrain any private party from access to the Public Parking for cause and on a non-discriminatory basis.

(c) Owner reserves the right to temporarily erect or place barriers in and around

areas on the Easement Premises which are being constructed and/or repaired in order to ensure either safety of persons or protection of property.

(d) Owner reserves the right to adopt and enforce reasonable rules and regulations for the safe, efficient, and orderly use and operation of the Easement Premises, so long as such rules and regulations are applied on a non-discriminatory basis, do not adversely impact the City's or the public's rights to use of the Easement Premises as set forth in this Agreement, and are mutually agreed to by Owner and the City Manager. By way of example and not limitation, Owner may:

(i) designate a reasonable number of parking stalls within the Public Parking for short-term parking (e.g., 15 minute parking for delivery and pick-up in connection with the retail elements of the Minimum Improvements) taking into consideration the types of and needs of the retail tenants occupying the Minimum Improvements;

(ii) establish a maximum number of hours a vehicle can be parked in an individual parking stall within the Public Parking of no less than two hours (other than the short-term stalls designated pursuant to in clause (i) above), and reserve the right, by posted notice, to cause a vehicle exceeding such maximum parking time to be removed from the Public Parking at the expense of the vehicle's owner;

(iii) establish reasonable hours of operation of the Public Parking which are less than 24 hours per day, taking into consideration the residents of the residential element of the Minimum Improvements and the types of and needs of the retail tenants occupying the Minimum Improvements;

(iv) prohibit overnight parking except by residents and/or guests of the residential element of the Minimum Improvements;

(v) prohibit the passage or parking of any recreational vehicles, campers, extended cab trailers or vans, tractors, trailers, buses and/or any other vehicles of a shape, size or weight that would interfere with the parking circulation of other vehicles within the Public Parking or that would exceed the design capability of the Public Parking.

ARTICLE IV

MAINTENANCE OF THE EASEMENT PREMISES

Section 4.1 Maintenance. At all times during the term hereof, Owner, at its cost and expense, shall keep and maintain the Easement Premises and the other Minimum Improvements in good condition and repair in a first-class manner, similar to that of other structured parking facilities located within other first-class, multi-use projects in the Minneapolis-Saint Paul metropolitan area, which such maintenance shall include, without limitation, the following:

(a) all repairs, replacements, renewals, alterations, additions and betterments thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and

foreseen and unforeseen, all as may be necessary to keep the Easement Premises and the other Minimum Improvements in the condition and repair required by this Agreement, and which are consistent with the requirements of the Final Development Plan, Development Contract and the Contract, and which do not adversely impact the City's or the public's rights to use of the Easement Premises as set forth in this Agreement;

(b) maintaining all drive and parking surfaces in a smooth and evenly-covered condition, which maintenance work shall include cleaning, sweeping, restriping, repairing and resurfacing the same;

(c) maintaining in good working order (including cleaning and painting as necessary), repairing, and replacing as necessary the Access Premises;

(d) maintaining in good working order, repairing, and replacing as necessary all ventilation and mechanical systems;

(e) maintaining in good working order, repairing, and replacing as necessary any automated parking system;

(f) maintaining in good working order, repairing, and replacing as necessary all domestic water, sewer, storm water, gas, electricity, power, heat, telephone, other communications service, commercially reasonable security and life safety systems, and any and all other utility or similar services used, rendered, or supplied, upon, at, from, or in connection with the Easement Premises;

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

(h) placing, keeping in repair, replacing and repainting any appropriate directional signs or markers, within or associated with the Easement Premises;

(i) operating, keeping in repair, cleaning and replacing when necessary such Easement Premises lighting facilities as may be reasonably required, including without limitation all lighting necessary or appropriate for security of the Public Parking;

Section 4.2 No Obligation of the City to Repair or Maintain. The City shall have no obligation of any kind, expressed or implied, to repair, rebuild, restore, reconstruct, modify, alter, replace, or maintain the Easement Premises or any part thereof.

ARTICLE V

UTILITIES

Section 5.1 Utility Charges. During the term of this Agreement, Owner shall pay, or cause to be paid, when the same become due, all charges for water, sewer usage, storm water, gas, electricity, power, heat, telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with

the Easement Premises, or any part thereof.

ARTICLE VI

TAXES AND ASSESSMENTS

Section 6.1 Payment of Taxes and Assessments. Owner shall pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies, assessed and levied by any governmental taxing authority during the term of this Agreement against the Easement Premises and other Minimum Improvements. Nothing contained in this Agreement shall require Owner to pay any franchise, estate, inheritance, excise, succession, capital levy, or transfer tax of the City or any income, excess profits or revenue tax payable by the City under this Agreement. Subject to the terms of the Contract, Owner shall have the right and option, at any time but solely at Owner's expense, to pay any real estate taxes or assessments in installments or under protest or in a similar manner, or to contest the levy or amount of the same in appropriate legal or administrative proceedings.

ARTICLE VII

INDEMNIFICATION, INSURANCE

Section 7.1 Indemnification of the City. Except to the extent caused by the willful misconduct or negligence of the City, its employees or agents, or the general public, or arising out of the default by the City and its officers, employees or agents, of obligations made pursuant to a contract with Owner, including this Agreement, Owner hereby covenants and agrees to assume and to permanently indemnify and save harmless the City and its employees and agents from and against any and all claims, demands, actions, damages, costs, expenses, reasonable attorneys' fees, and liability in connection with the loss of life, personal injury and/or damage to property, to the extent arising from or out of the design or initial construction, maintenance and operation of the Easement Premises, or in connection with the use or occupancy of the Easement Premises, or any part thereof, by Owner, or to the extent arising out of the breach of Owner's obligations hereunder.

Section 7.2 Property Insurance. At all times during the term hereof, Owner, at its sole cost and expense, shall keep the Easement Premises and the other Minimum Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured, in the amount of the full replacement cost thereof and with such deductibles as Owner deems appropriate, against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to improvements similar in construction, general location, use, and occupancy to such improvements.

Section 7.3 Personal Property. All property of every kind and character which Owner may keep or store in, at, upon, or about the Easement Premises shall be kept and stored at the sole risk, cost, and expense of Owner.

Section 7.4 Liability Insurance. During the term of this Agreement, Owner shall procure and maintain continuously in effect (or shall cause the same to occur), the following policies of

insurance of the kind and minimum amounts as are customarily maintained with respect to parking facilities and improvements similar to those located on the Easement Premises, at commercially reasonable coverage levels, to be reviewed from time to time by Owner:

(a) insurance against liability (including passenger elevator liability) for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the use, occupancy, or condition of the Easement Premises, or any part thereof, including insuring the indemnification obligations set forth in Section 7.1 above, which such insurance shall provide that the City is an additional insured;

(b) garage keepers' liability insurance including coverage for:

(i) Fire and explosion;

(ii) Theft (of entire vehicle); and

(iii) Riot, civil commotion, malicious mischief, and vandalism.

Section 7.5 General Insurance Requirement. All insurance required in this Agreement shall be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. Owner shall promptly following the City's request therefor, furnish the City with copies of policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel it without giving written notice to the City at least 10 days before the cancellation becomes effective. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 7.6 No Obligation of the City for Insurance. At no time and under no circumstances shall the City be required to take out, maintain in force and effect, or pay for any type of insurance coverage with reference to the protection of and/or ownership of and/or occupancy of and/or a suit relating to the Easement Premises and/or any improvements hereafter located thereon.

ARTICLE VIII

ASSIGNMENT

Section 8.1 Assignment by the City. During the term of this Agreement, the City may not assign or transfer its interest under this Agreement without the prior written consent of Owner.

Section 8.2 Assignment by Owner. Owner may assign or otherwise transfer its interest under this Agreement in connection with any sale or transfer of the Minimum Improvements. The City shall recognize and approve any successors or assigns of Owner.

ARTICLE IX

CASUALTY

Section 9.1 Destruction. In the event that all or any part of the Easement Premises and/or other portions of the Minimum Improvements are destroyed by fire or other casualty, and subject to a determination by the relevant mortgage lender, Owner shall promptly rebuild, reconstruct and/or restore the same to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the same, to the extent insurance proceeds combined with any contributions by Owner toward reconstruction are available.

ARTICLE X

EMINENT DOMAIN

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

ARTICLE XI

DEFAULT AND REMEDIES

Section 11.1 Default by Owner. If Owner fails to perform any of its obligations under this Agreement, and fails to cure such default after 30 days' written notice of such default or, if such default cannot reasonably be cured within such 30 days, fails to commence curative action and thereafter diligently complete the same, then, in such case, the City may pursue all available remedies at law and in equity.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Waiver. The waiver by any party hereto of any breach or default of any provisions anywhere contained in this Agreement shall not be deemed to be a waiver of any subsequent breach or default thereof. No provision of this Agreement shall be deemed to have been waived by any party hereto unless such waiver is in writing and signed by the party charged with any such waiver.

Section 12.2 Amendments. Except as otherwise herein provided, and not otherwise, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement shall be binding upon either party unless in writing and signed by both parties. Owner and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by Owner's relevant mortgage lender encumbering the Easement Premises, provided; however, that Owner and the City shall not be required to enter into any amendment which does not adequately protect the legitimate interest and security of the Authority or the City with respect to the redevelopment of the Redevelopment Area as contemplated in the Contract.

Section 12.3 Joinder; Permitted Encumbrance. Except for the mortgagee consent

attached hereto, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement shall constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between Owner and any construction lender or permanent lender.

Section 12.4 Dedication. Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Easement Premises to the general public, except as explicitly set forth in this Agreement.

Section 12.5 Notices. 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 (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, (b) sent by recognized overnight courier (such as Federal Express), or (c) delivered personally, as follows:

In the case of Owner: Orion 4500 France, LLC
Attn: Ted Carlson
4530 West 77th Street, Suite 365
Edina, MN 55435

In the case of the City: City of Edina
Attn: City Manager
4801 W. 50th Street
Edina, MN 55424

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

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

Section 12.6 No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, action or remedies to any person or entity.

Section 12.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.8 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 12.9 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 12.10 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 12.11 Survival. The easements granted hereby and each reservation, covenant, condition and restriction contained in this Agreement will run with the land and will be binding upon, and inure to the benefit of, as the case may be, Owner and the City and their respective successors and assigns.

[Remainder of page intentionally left blank; signature pages follow]

EXHIBIT A

Legal Description of the Redevelopment Area

EXHIBIT B-1

Legal Description of the Public Parking

EXHIBIT B-2

Depiction of the Parking Area

EXHIBIT I

Form of Annual Statement

[See attached.]

EXHIBIT I - FORM OF ANNUAL STATEMENT
4500 France Redevelopment
City of Edina

Sample Annual Operating Pro Forma

46 Apartment Units; 6,511 (sf) Commercial Space

Residential Income						
Rental Unit Income		Monthly Rent	Unit Count	Annual Revenue	Size Sq. Ft.	Rent/ Sq. Ft.
1BR	Market Rate	\$2,164	11	\$285,681	787	\$2.75
1BR	Affordable	\$881	3	\$31,716	782	\$1.13
1BR+Den	Market Rate	\$2,860	2	\$68,640	1,040	\$2.75
2BR	Affordable	\$975	0	\$0	1,197	\$0.81
2BR	Market Rate	\$4,839	8	\$464,544	1,613	\$3.00
2BR	Market Rate	\$3,732	22	\$985,182	1,357	\$2.75
Gross Potential Rent		152,980	46	\$1,835,763	55,841	\$2.74
Other Residential Income		# of Stalls (if available)		Annual Revenue	\$ Per Stall Per Month	
Structured/Underground Parking		69		\$124,200	\$150	
Utility Recovery				\$28,000		
Internet Sales				\$20,000		
Cell Tower				\$12,000		
Miscellaneous				\$27,536		
Total Other Income				\$211,736		
Total Residential Income				\$2,047,499		
Residential Vacancy		Percent		Annual Loss		
Gross Potential Rent		5.0%		(\$91,788)		
Structured/Underground Parking		5.0%		(\$6,210)		
Utility Recovery		5.0%		(\$1,400)		
Internet Sales		5.0%		(\$1,000)		
Cell Tower		0.0%		\$0		
Miscellaneous		5.0%		(\$1,377)		
Total Vacancy				(\$101,775)		
Net Residential Income				\$1,945,724		

Commercial Income

Commercial Space	Rent Per Sq/Ft	Annual Revenue	Sq/Ft
Retail #1	\$37.00	\$61,013	1,649
Retail #2	\$37.00	\$48,507	1,311
Restaurant	\$30.00	\$106,530	3,551
Total Commercial		\$216,050	6,511

Expense on Commercial Space (Recovered)	Total Annual Cost	Per Sq/Ft
Property Taxes (Commercial Portion Only)	\$114,989	17.66
Common Area Maintenance (CAM)	\$48,833	7.50
Replacement Reserves	\$0	0.00
Total Recovered Expenses on Commercial Space	\$163,822	25.16

Commercial Vacancy/Expenses	Percent	Annual Loss	Per Sq/Ft
Commercial Vacancy	5.0%	(\$10,803)	(1.66)
Expense on Commercial Vacancy	5.0%	(\$8,191)	(1.26)
Total Commercial Vacancy/Expenses		(\$18,994)	(2.92)

Net Commercial Income		\$197,056	
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Effective Gross Income (EGI) - Residential + Commercial		\$2,142,780
Expenses		
Apartment Operating Expenses	Amount	Per Unit
Administrative	\$5,000	\$109
Payroll	\$49,000	\$1,065
Marketing	\$25,000	\$543
Utilities	\$61,000	\$1,326
Insurance	\$17,000	\$370
Turnover	\$15,000	\$326
Maintenance and Repair	\$39,000	\$848
Other	\$6,000	\$130
Total Operating Costs	\$217,000	\$4,717
Apartment Mgmt, Property Taxes, Reserves	Amount	Per Unit
Management Fees <i>4.07% of EGI</i>	\$79,224	\$1,722
Residential Property Taxes	\$254,085	\$5,524
Replacement Reserves	\$15,000	\$326
Total Management and Other Costs	\$348,309	\$7,572
Total Rental Unit Expenses	\$565,309	\$12,289
Net Operating Income (NOI)		\$1,577,471
Available Tax Increment Financing Receipts	\$213,898	
Net Operating Income (with Assistance)		\$1,791,369
Cost of Minimum Improvements (Net of grants)	\$28,187,571	
% Cash on Cost (NOI / Minimum Improvements)	6.36%	

EXHIBIT J

Sample TIF Cash-On-Cost Return Annual Lookback Calculation

[See attached.]

EXHIBIT J - Sample TIF Cash-On-Cost Return Annual Lookback Calculation
4500 France Redevelopment
City of Edina
46 Apartment Units: 6,511 (sf) Commercial Space

Income	Stabilized										Commercial Vacancy - 100%				
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Rental Income															
Gross Potential Rent															
Less: 5.0% Stabilized Vacancy															
Total Rental Income															
Other Residential Income															
Structured/Underground Parking															
Utility Recovery															
Internet Sales															
Cell Tower															
Miscellaneous															
Less: Vacancy															
Total Other Residential Income															
Net Residential Income (NRI)															
Commercial Income															
Less: Commercial Vacancy - 5.0%															
Less: Expense on Commercial Vacancy															
Net Commercial Income															
Effective Gross Income (EGI) Residential + Commercial															
Expenses															
Rental Unit Expenses															
Operating Expenses															
Management Fee															
Property Taxes															
Reserves: \$326 PUPY															
Total Expenses															
NET OPERATING INCOME (NOI)															
Available Tax Increment Financing Receipts															
ADJUSTED NET OPERATING INCOME															
Minimum Improvements Cost:	28,187,571														
7.0% Annual Return on Cost Target:	1,973,130														
Cash on Cost Annual Return	6.36%	6.53%	6.70%	6.89%	7.07%	7.30%	7.50%	7.71%	7.03%	7.23%	5.93%	7.07%	7.74%	8.13%	8.37%
Average Cash on Cost Return	6.36%	6.44%	6.53%	6.62%	6.71%	6.81%	6.91%	7.01%	7.03%	6.93%	6.94%	7.00%	7.09%	7.17%	
TIF Adjustment:															
Adjusted Cash on Cost Annual Return	6.36%	6.53%	6.70%	6.89%	7.07%	7.30%	7.50%	7.71%	6.97%	7.23%	5.93%	7.07%	7.74%	8.13%	8.37%
Adjusted Average Cash on Cost Return	6.36%	6.44%	6.53%	6.62%	6.71%	6.81%	6.91%	7.01%	7.00%	6.93%	6.94%	7.00%	7.08%	7.17%	

Notes: Example TIF Adjustment for 7.0% Return on Cost Performance. In this example, annual TIF payments are made until the average Return on Cost exceeds 7.0% in Year 8. No TIF payments are necessary in Year 9 and an adjustment of \$17,874 is made to the TIF Note balance. The project continues to exceed 7.0% Return on Cost until a significant commercial vacancy in Year 11. TIF payments are made in Year 12 and 13 sized to recover to a 7.0% average. Commercial vacancy stabilizes by Year 13 and no further TIF payments are made.

Gross Tax Increment:	237,664	242,418	247,266	252,211	257,256	262,401	267,649	273,002	278,462	284,031	289,712	295,506	301,416	307,444	313,593
HRA Tax Increment (10% of Gross):	23,766	24,242	24,727	25,221	25,726	26,240	26,765	27,300	27,846	28,403	28,971	29,551	30,142	30,744	31,359
Available Tax Increment (90% of Gross):	213,898	218,176	222,539	226,990	231,530	236,161	240,884	245,702	250,616	255,628	260,740	265,955	271,274	276,700	282,234
Retained as excess above 7% Return on Cost:	0	0	0	0	0	0	0	0	250,616	255,628	260,740	0	106,305	276,700	282,234

EXHIBIT K

Sample TIF IRR Sale Lookback Calculation

[See attached.]

EXHIBIT K - Sample TIF IRR Sale Lookback Calculation
4500 France Redevelopment
City of Edina
46 Apartment Units; 6,511 (sf) Commercial Space
Example Sales Sensitivity Analysis

SALE ANALYSIS END OF YEAR		Year 6	Year 7	Year 8	Year 9	Year 10
Net Operating Income (End of Year)		2,058,867	2,115,062	2,172,951	1,981,970	2,038,391
Gross Sale Price		39,216,516	40,286,886	40,615,900	37,751,807	38,826,489
Minus Debt A		16,405,892	16,030,152	15,636,170	15,223,062	14,789,898
Net Sale Amount		22,810,624	24,256,734	24,979,729	22,528,745	24,036,591
Sales Expense	2.00%	(784,330)	(805,738)	(812,318)	(755,036)	(776,530)
SALES PROCEEDS		22,026,294	23,450,997	24,167,411	21,773,709	23,260,062
IRR ANALYSIS END OF YEAR		Year 6	Year 7	Year 8	Year 9	Year 10
Year	Potential Sales Proceeds	Cash Flow				
Initial Investment		(9,865,650)	(9,865,650)	(9,865,650)	(9,865,650)	(9,865,650)
2020		632,460	632,460	632,460	632,460	632,460
2021		680,895	680,895	680,895	680,895	680,895
2022		730,792	730,792	730,792	730,792	730,792
2023		782,194	782,194	782,194	782,194	782,194
2024		835,146	835,146	835,146	835,146	835,146
2025	22,026,294	22,926,251	899,957	899,957	899,957	899,957
2026	23,450,997	0	24,407,148	956,152	956,152	956,152
2027	24,167,411	0	0	25,181,452	1,014,041	1,014,041
2028	21,773,709	0	0	0	22,596,769	823,060
2029	23,260,062	0	0	0	0	24,139,543
Total		16,722,088	19,102,942	20,833,398	19,262,756	21,628,589
INTERNAL RATE OF RETURN		19.88%	18.72%	17.47%	15.07%	14.74%
Amount above (below) 16.0% IRR		\$4,426,771	\$3,911,000	\$2,393,434	-\$2,816,830	-\$4,512,422
PROJECT EXCESS RETURN:		\$4,426,771	\$3,911,000	\$2,393,434	\$0.00	\$0.00
Outstanding TIF Note Principal		(\$1,615,027)	(\$1,452,893)	(\$1,277,672)	(\$1,277,672)	(\$1,277,672)
Remaining Excess Return:		\$2,811,745	\$2,458,107	\$1,115,762	\$0.00	\$0.00
Prior TIF Payments:		\$1,349,294	\$1,590,178	\$1,835,880	\$1,835,880	\$1,835,880
PROJECT TIF ADJUSTMENT:		\$1,349,294	\$1,590,178	\$1,115,762	\$0	\$0

*This is a hypothetical example to illustrate calculating a Project TIF Adjustment triggered by receipt of sales proceeds and historical project cash flows which exceed an Internal Rate of Return of 16.0%. For all examples where proceeds do not cause an IRR to exceed 16.0%, there is no Project TIF Adjustment. When the IRR does exceed 16.0%, a clawback payment will be made equal to the sum of prior TIF payments up to the Project TIF Adjustment amount after first deducting any unpaid TIF Note balance.

EXHIBIT L

Form of TIF Note

LIMITED REVENUE TAXABLE TAX INCREMENT NOTE
(4500 France)

No. R-_____

\$_[_____]

**UNITED STATES OF AMERICA
STATE OF MINNESOTA
CITY OF EDINA**

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

The HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA (the “Authority”) acknowledges itself to be indebted and, for value received, promises to pay to the order of ORION 4500 FRANCE, LLC, a Delaware limited liability company, or its assigns (“Developer”), solely from the source, to the extent and in the manner hereinafter provided, up to the principal amount of this Limited Revenue Taxable Tax Increment Note (this “Note”) as provided herein, together with simple interest thereon accrued on the unpaid principal balance hereof from the date hereof, at the rate of interest of [_____] percent ([_____]%) per annum, on the Payment Dates (as hereinafter defined). This Note is executed and delivered in accordance with the terms and conditions of a Redevelopment Agreement dated as of December 18, 2018, by and among the City of Edina, Minnesota (the “City”), the Authority and Developer (the “Redevelopment Agreement”), and is subject to the terms, conditions, and limitations on payment set forth therein, including, without limitation, the provisions of Section 7.3 (TIF Lookback) of the Redevelopment Agreement.

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

This Note is a special and limited obligation and not a general obligation of the Authority, which has been issued by the Authority pursuant to, and in full conformity with, the Constitution and the laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794 (the “TIF Act”), and the terms and conditions of the Redevelopment Agreement and a resolution of the Board of the Authority, to aid in financing a “project” (as defined in Minnesota Statutes, Section 469.174, subdivision 8) of the Authority within the 44th & France 2 Tax Increment Financing District established by the Authority pursuant to Resolution

No. 2018-100 (the “TIF District”). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to them in the Redevelopment Agreement.

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

Principal of and interest on this Note shall be payable solely from and in the amount of Available Tax Increment (as hereinafter defined) on each February 1 and August 1 commencing on the first February 1 or August 1 immediately following the date hereof (the “Payment Dates”). On each Payment Date, the Authority shall apply Available Tax Increment to the payment of principal of and interest on this Note then due (except as set forth in Section 7.3 of the Redevelopment Agreement); provided, however, that in the event that Available Tax Increment is not sufficient to pay when due the principal of and interest on this Note, the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default under this Note as long as the Authority pays the principal of and interest on this Note to the extent of Available Tax Increment.

To the extent that the Authority is unable to pay the total principal and interest due on this Note at or prior to [_____] 1, 20[___] [*to be the Payment Date immediately preceding the 15th anniversary of the Authority’s first receipt of Tax Increment*] (the “Maturity Date”) hereof as a result of its having received as of such date insufficient Available Tax Increment, such failure shall not constitute a default under this Note and the Authority shall have no further obligation to pay unpaid balance of principal or accrued interest that may remain after such Maturity Date.

All payments made by the Authority on this Note shall be applied first to accrued interest and then to the principal amount of this Note. Interest shall be computed on the basis of a year of 360 days and charged for actual days principal is unpaid.

“Available Tax Increment” means up to 90% of the Tax Increment generated from parcels specifically within the Redevelopment Area and remitted to the Authority from the County of Hennepin, Minnesota, pursuant to the TIF Act, for the six months before each Payment Date.

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

Upon an Event of Default by Developer under the Redevelopment Agreement, the Authority may exercise the remedies with respect to this Note described in the Redevelopment Agreement, the terms of which are incorporated herein by reference, including, without limitation, the suspension or termination of the Authority’s obligation to make any payments under this Note.

The principal sum and all accrued interest payable under this Note is prepayable in whole

or in part at any time by the Authority without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Note.

The outstanding principal balance due under this Note shall be subject to redemption and prepayment, in whole or in part, at the option of the Authority and, if redemption is in part, installments of principal shall be applied to reduce the principal to become due on this Note in inverse order of maturity, or, at the written direction of the Authority, pro rata from each maturity.

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

THE AUTHORITY MAKES NO REPRESENTATION, COVENANT, OR WARRANTY, EXPRESS OR IMPLIED, THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE PRINCIPAL OF AND INTEREST ON THIS NOTE. NO HOLDER OF THIS NOTE SHALL HAVE RIGHTS AGAINST THE AUTHORITY EXCEPT FOR DISTRIBUTION OF AVAILABLE TAX INCREMENT.

This Note shall not be assignable or transferable without the prior written consent of the Authority; provided, however, that such consent shall not be unreasonably withheld or delayed if: (a) the assignee or transferee delivers to the Authority a written instrument acknowledging the limited nature of the Authority's payment obligations under this Note, and (b) the assignee or transferee executes and delivers to the Authority a certificate, in form and substance reasonably satisfactory to the Authority, pursuant to which, among other things, such assignee or transferee represents (i) that this Note is being acquired for investment for such assignee's or transferee's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, (ii) that the assignee or transferee has no present intention of selling, granting any participation in, or otherwise distributing the same, (iii) [intentionally deleted], (iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment in this Note and the assignee or transferee is able to bear the economic consequences thereof, (v) that in making its decision to acquire this Note, the assignee or transferee has relied upon independent investigations made by the assignee or transferee and, to the extent believed by such assignee or transferee to be appropriate, the assignee's or transferee's representatives, including its own professional, tax and other advisors, and has not relied upon any representation or warranty from the Authority, or any of its officers, employees, agents, affiliates or representatives, with respect to the value of this Note, (vi) that the Authority has not made any warranty, acknowledgment or covenant, in writing or otherwise, to the assignee or transferee regarding the tax consequences, if any, of the acquisition and investment in this Note, (vii) that the assignee or transferee or its representatives have been given a full opportunity to examine all documents and to ask questions of, and to receive answers from, the Authority and its representatives concerning the terms of this Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and

investment in this Note, and all such questions have been answered to the full satisfaction of the assignee or transferee, (viii) that the assignee or transferee has evaluated the merits and risks of investment in this Note and has determined that this Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects, (ix) that this Note will be characterized as "restricted securities" under the federal securities laws because this Note is being acquired in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be resold without registration under the Securities Act of 1933, as amended, except in certain limited circumstances, and (x) that no market for this Note exists and no market for this Note is intended to be developed.

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

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

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

[Remainder of this page intentionally left blank; signatures on following page]

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

Chair

Secretary

EXHIBIT M

**Inclusionary Housing Policy
Program Guide**

December 2018

DRAFT



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Introduction to the Inclusionary Housing Program (AHP)

Properties developed using local funds or because of inclusionary policies are subject to specific rules designed to ensure that affordability pledges made by owners and developers remain available to low and very low income tenants throughout the required Period of Affordability (the POA). This Guide is designed to assist owners and their agents with planning and maintaining compliance with the local requirements associated with these assisted rental properties. This guide does not pertain to Market Rate units.

It is the responsibility of City of Edina Housing and Redevelopment Authority (hereafter the "HRA") to monitor the continuing compliance of affordable units in accordance with local policy and governing agreements throughout the POA. The following procedures apply to all rental properties that received funds under the local Affordable Housing Policy (AHP). Any violation of the AHP requirements could constitute a covenant default of the governing agreement(s) and imposition of all local government rights and remedies.

While successful operation of an affordable property is management intensive, the owner/agent is responsible for ensuring that the governing agreement requirements are properly administered. Thorough understanding of requirements and compliance monitoring procedures requires training of owners/agents. The owner/agent should ensure that it knows and understands the requirements of the inclusionary housing policy and the compliance requirements since failure to comply may have very serious consequences. The HRA recommends that owners, management agents and site managers (collectively referred to as "owner/agent" throughout this document) receive compliance training before certifying or leasing any affordable units. At a minimum, training should cover key compliance terms, determination of rents, household eligibility, file documentation, procedures for maintaining the required unit mix and reporting. Record retention and property condition standards are also key to maintaining compliance. Attending educational opportunities as offered is strongly recommended to keep up with any procedural changes to the AHP.

Should the AHP assisted property also receive an allocation of Section 42 tax credits (Low Income Housing Tax Credits or LIHTC), and the property is found to be compliant with the tax credit program, then the HRA will consider the property compliant with the AHP.

Owners/Agents of AHP assisted properties must annually certify to the HRA that the property is compliant with the Low Income Housing Tax Credit program.

The HRA's determination to monitor the project for compliance with requirements of the AHP does not make it liable for an owner's/agent's noncompliance. This Guide will be made available to the owner/agent at project financial closing and will be posted on the website of the HRA. The HRA, in its sole discretion, may delegate its compliance reporting and monitoring responsibilities to a third party. AHP assisted properties will have a compliance review at initial lease up and every third (3rd) year thereafter. However, the HRA reserves the right to conduct a compliance review annually.

Chapter 1 – Overview

The following is an overview the Affordable Housing Policy. It is not intended to be detailed or comprehensive. The requirements of the AHP apply to market rate residential developments that receive a PUD approval from the City of Edina and/or financial assistance from the HRA. This includes new developments and mixed-used developments that create twenty (20) or more multi-family dwelling units and/or any change in use of all or part of an existing building from a non-residential use to a residential use that includes at least twenty (20) dwelling units.

1.01 Period of Affordability (POA)

Affordable units created under the Affordable Housing Policy (AHP) are rent and income controlled for 15 years. This term is referred to as the Period of Affordability or POA.

Owners/agents should refer to the property's governing agreements to determine the specific terms and conditions that govern the property.

1.02 Affordable Dwelling Units (ADUs)

At least ten percent (10%) to twenty percent (20%) of the total number of dwelling units in a development receiving a PUD and/or assisted with local funds under the AHP will be designated as Affordable Dwelling Units (ADUs). The percentage applied is based on the affordability standard of the development.

Affordability Standards – Rental Projects

If an AHP property is also assisted with Low Income Housing Tax Credits (LIHTC), the AHP Affordability Standard is based on the LIHTC election (20/50 or 40/60).

If an AHP property is NOT assisted with LIHTC, then the HRA together with the owner determine which affordability standard applies.

10% at 50%

At least ten percent (10%) of total units developed shall be occupied by households at or below fifty percent (50%) of the MTSP (Multifamily Tax Subsidy Income Limits, i.e. tax credit income limits).

20% at 60%

At least twenty percent (20%) of total units developed shall be occupied by households at or below sixty percent (60%) of the MTSP.

Affordability Standards – For Sale Projects

At least ten percent (10%) of total units developed shall be affordable for households at eighty (80%) of the Metropolitan Statistical Area (MSA).

1.03 Student Households

The AHP adopted the Low Income Housing Tax Credit (LIHTC) program restrictions on student households and excludes any household where all members are full time students. A full-time student household may qualify if one of the following exceptions is met:

1. Married and eligible to file joint tax return
2. Single parent with dependent child(ren)
3. Receives assistance (MFIP) under Title IV of Social Security Act
4. Enrolled in a job training program
5. At least one member was previously in foster care

1.04 Inclusionary Housing Program (AHP) Rent Limits

Every ADU is subject to maximum allowable rents based on bedroom size for the area in which the property is located. These maximum rents are referred to as the AHP rents. These limits represent the maximum that owners/agents can charge for rent, including an allowance for tenant paid utilities, and other non-optional charges (i.e. required renter's insurance).

In the event AHP rent limits decrease for an area, or utility allowances increase, an owner/agent may be required to reduce the rent charged but will not be required to lower rents below those in effect at the time of project commitment.

1.05 Rental Assistance

Tenant Based Section 8 Housing Choice Vouchers. Tenants with Section 8 vouchers, or similar state or federal tenant based rental assistance (TBRA) subsidies tied to a tenant and not a unit, **cannot** be charged rent that exceeds the applicable AHP rent for the unit. Rents charged must be comparable to other ADUs not receiving rent assistance. For example, if the owner/agent charges less than the maximum AHP rent for non-voucher holders, it cannot charge a higher rent to voucher holders.

Tenants receiving rental assistance, including Section 8 subsidy, must not be refused tenancy in an ADU based solely on the fact that they receive rental assistance.

1.06 Allowable Fees and Charges

Fees considered reasonable and customary may be charged, such as application fees and parking fees, if such fees are customary for rental housing in the neighborhood. Fees for services such as bus transportation or meals can only be charged if the services are voluntary and are not a condition of occupancy. An eligible tenant cannot be charged a fee for the work involved in completing the additional forms or documentation required for the AHP, such as the Tenant Income Certification.

Down payment fees/rent deposit for the ADU should not exceed one month's rent.

1.07 Fixed or Floating Affordable Dwelling Units

ADUs may be “fixed” or “floating” and are designated on a property-by-property basis. The enforcement agreement **must** contain fixed or floating unit designations.

Fixed Units – The ADUs are identified by unit number and never change. Units in properties where all units are ADUs are automatically considered fixed.

If units throughout a project are not comparable (as defined by the HRA) or are in several scattered sites, the ADU unit designation must/should be fixed.

Floating Units – The ADUs may change over time as long as the total number of ADUs in the property remains constant. If a property’s enforcement agreement does not specify floating units, then the units that were initially designated as ADUs at project completion will be used to determine comparable floating units.

See Chapter 2, Maintaining the Unit Mix, for more information.

1.08 Rent Increases

If ADU rents remain below the maximum allowed, an owner/agent may impose a rent increase as allowed by the enforcement agreement no earlier than one year from the date the project was completed and no more frequently than annually thereafter. If an owner/agent wishes to increase rents, the request must be within reasonable limits to cover increases in expenses such as real estate taxes or operating expenses. At no time can proposed rent increases exceed the current MTSP (LIHTC rents) rent limits for that development.

If the owner/agent increases rents as provided above, tenants must be given a written notice in accordance with lease provisions before implementation.

1.09 Utility Allowances

The AHP requires that an allowance for tenant paid utilities be considered as a housing cost to the tenant and be factored in when determining rent for an ADU. The HRA approved the use of Metro HRA’s Utility Allowance Schedule (effective 2/1/18) as the document to use to determine an ADU’s utility allowance.

Utility allowance schedules are usually updated annually. It is the owner’s/agent’s responsibility to obtain an updated utility allowance and retain in the property records. Changes in utility allowances must be implemented within 90 days. If an increase in the utility allowance causes the ADU rent to exceed the applicable AHP rent limit, the unit rent must be adjusted (lowered) to bring the gross rent of the unit into compliance with the AHP rent limits. However, at no time will the ADU rent be adjusted to an amount lower than the ADU rent in place at project commitment.

If the property is regulated by HUD, or another form of project based subsidy, the program approved utility allowance may be used.

1.10 Record Retention

Owners/agents must retain project records for a minimum of five years beyond the property's required POA. Tenant records, including income verifications, development rents, and unit inspections must be retained for the most recent five year period, until five years after the effective period terminates.

Owners/agents must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring a civil action for damages against the owner/agent and seek other relief, as appropriate. Owners/agents must dispose of records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

1.11 Leases

Each lease must include the legal name(s) of the parties to the agreement and all other occupants, a description of the unit to be rented (address), the term of the lease, the rental amount, the use of the premises, and the rights and obligations of each party. The lease shall also inform the tenant that fraudulent statements and information are grounds for eviction and that the tenant could become subject to penalties available under federal law.

Initial leases for ADUs must be for 12 months unless another term is mutually agreed to by owner/agent and tenant. If tenant agrees to a shorter term, that agreement must be in writing and kept in the tenant's file. At no time can a lease term be for less than 30 days.

ADU leases must contain language that the owner/agent reserves the right to adjust tenant rents in accordance with the AHP rent limits and/or in the event a tenant's income increases above the income limits of the AHP.

The lease must also contain a provision that the owner/agent retains the right to recertify the tenant's income and household composition on an annual basis. The tenant's failure to cooperate with the annual recertification constitutes a violation of the lease.

If the lease used for the ADU unit does not contain any of the required provisions and/or contains any prohibited provisions, an AHP Lease Addendum must be signed by the tenant and kept in the tenant's file. If a new lease is executed, a new AHP Lease Addendum must also be executed. Prohibited lease terms are defined in the AHP Lease Addendum (see Appendix B).

An AHP Lease Addendum is not required when the HUD model lease for subsidized housing is used.

1.12 Income Certification

The owner/agent must verify and certify tenant income eligibility and student status at move in and recertify at least annually thereafter. At initial move in, or when first being determined eligible for an ADU and in every 3rd year of the affordability period (not tenancy), household composition, income and income from assets must be verified via third party verification or other forms of supporting documentation and kept in the tenant's file. In other years, tenants must, at a minimum, self-certify to their anticipated income (including income from assets), family size, and composition.

As part of the monitoring process, tenant files will be reviewed at initial occupancy of the project and every 3rd year thereafter.

1.13 Increases in Income

The owner/agent must ensure that any tenant whose income increases above the AHP income eligibility guidelines pays not less than the market or similar rent as the other non-ADUs in the development. A minimum notice of 60 days is required for increases to tenant rent. The unit must be marketed to eligible tenants when vacated.

For units assisted with both AHP funds and Low Income Housing Tax Credits (LIHTC), a tenant is not considered over income until income exceeds the applicable 140% LIHTC limit. When a tenant's income exceeds the LIHTC limit, the tenant's rent is adjusted to the LIHTC rent limit if the project is 100% LIHTC or, if the project is mixed income, the market rent for similar non-ADUs in the property.

1.14 Property Standards

The owner/agent must keep all units in compliance with local codes and other applicable state and local building codes to ensure the units are decent, safe, and sanitary at all times.

1.15 Affirmative Marketing

Owners/agents must adhere to Equal Opportunity, Affirmative Marketing, and Fair Housing practices in all marketing efforts, eligibility determinations and other transactions. The Equal Housing Opportunity logo or statement (*We do business in accordance with the Federal Fair Housing Law. It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status, or national origin.*) must be used in all advertising of vacant units.

In addition to the federal protections mentioned above, the Minnesota Human Rights Act makes it illegal to discriminate against any person with respect to housing and real property, because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation or familial status.

A file must be maintained with all marketing efforts related to the property including newspaper ads, social service contacts, photos of signs posted, etc. Records will be reviewed

during on site monitoring to ensure that all efforts follow federal requirements and are being adequately documented.

1.16 Fair Lease and Grievance Procedures

Fair lease and grievance procedures should be objective. They should clearly state:

- To whom a tenant should direct a complaint;
- Who will investigate and/or respond to the complaint; and
- By when the tenant should expect to receive a response.

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Chapter 2 – Maintaining the Unit Mix

2.01 Fixed Affordable Dwelling Units

Properties with units that are not comparable in terms of size, amenities and features must have **fixed ADUs**. Fixed ADUs means specific units are designated as the ADUs for the duration of the affordability period. Owner/Agent must maintain these specific units as the ADUs.

Maintaining the required number of ADUs, is called complying with the **unit mix requirements**. At no time will non-ADUs be subject to AHP rent and income requirements when the ADUs are fixed.

When an owner/agent recertifies a tenant's income, he or she may find that the tenant's income has increased. A tenant is considered "**over income**" in the AHP when:

- The tenant occupies an ADU and the tenant income increases to 140% of the current AHP income limit for that family size; or
- For ADUs that are also LIHTC units, a tenant is considered "over income" when its income goes over 140% of the qualifying tax credit election (50% or 60%) for that unit.

When a tenant is over income, the unit that the tenant occupies is considered **temporarily out of compliance** with the AHP's occupancy and unit mix requirements. Temporary noncompliance due to an increase in an existing tenant's income is permissible if the owner/agent takes specific steps to restore the correct unit mix in the property as soon as possible. When the tenant's income exceeds the AHP's income limit (140%), its rent must also be adjusted.

The owner/agent cannot immediately terminate the lease based on the tenant's increase in income to above the AHP income limit. Instead, the owner/agent may extend /renew the lease for up to one year. If the tenant is still over income at the time of the next recertification, a 60-day notice to vacate may be issued to the tenant. If the tenant is determined to be under the AHP income limit at the time of recertification, the unit is considered back in compliance.

2.02 Floating Affordable Dwelling Units

Properties with units that are comparable in terms of size, amenities and features can have **floating ADUs**. Properties with floating ADUs must maintain the required number of ADUs throughout the POA, however the initial ADUs do not have to remain as ADUs throughout the POA.

When ADUs float, the specific units that carry the ADU designation may change, or float, among assisted and non-assisted units during the POA. If/when an initial ADU goes out of compliance due to a tenant's income going over the AHP (or LIHTC) income limit, a non-ADU can replace the out of compliance ADU if the tenant income and unit rent of the non-ADU meet the ADU requirements. In other words, the ADU designation "floats" to another unit.

For example, if a property has an over-income tenant in an ADU, when the next non-ADU comparable unit becomes available, it will be designated as an ADU and rented to an income eligible tenant. The unit occupied by the over income tenant is redesignated as a market rate unit.

Maintaining the required number of comparable ADUs is called complying with the **unit mix requirements**.

When recertifying a tenant's income, an owner/agent may find that the tenant's income has increased. A tenant is considered "**over income**" when:

- The tenant occupies an ADU and the tenant income increases over the current AHP income limit (140% AMI) for that family size; or
- In ADUs that are also LIHTC units, a tenant is considered "over income" when its income increases to 140% or more of the qualifying tax credit election (50% or 60%) for that unit.

When a tenant is over income, the unit that the tenant occupies is considered **temporarily out of compliance** with the AHP's unit mix requirements. Temporary noncompliance due to an increase in an existing tenant's income is permissible if the owner/agent takes specific steps to restore the required unit mix in the property. The rents of the over income tenants can be adjusted.

When redesignating units in a property with floating ADUs, owner/agent can choose to substitute a unit that is equal or "greater" than the original ADU, but generally they cannot substitute one that is "lesser". A lesser unit can be substituted only when doing so preserves the original unit mix. A greater unit is one that might be considered preferable because of larger size or additional bedrooms. The goal is to maintain the same number and type of ADUs as were originally designated. Therefore, if an owner/agent makes a substitution that is "greater," it can later substitute an available unit that is "lesser" to restore the original unit mix.

Once a comparable non-ADU unit is designated as the new ADU, the unit with the over income tenant is redesignated as a non-ADU or market rate unit. At this point, the owner/agent may adjust the tenant's rent without regard to the AHP rent requirements (although requirements from other funding sources may still apply). Rent increases are subject to the terms of the lease.

Note, a tenant in a floating ADU whose income exceeds AHP income limit is not required to pay more than the market rent for a comparable, unassisted unit in the property.

The owner/agent cannot terminate the lease based on the tenant's increase in income.

Chapter 3 – General Occupancy Guidelines

3.01 Qualification of Applicants

Applicants for ADUs shall be advised early in their initial visit to the property that there are maximum income limits that apply to these units. They will also be made aware that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification form prior to occupancy, and that tenant income and student status will be reviewed annually.

A tenant may not occupy an ADU in a property receiving AHP assistance if that tenant is considered a “full-time student household”. If at least one occupant of the household living in an ADU is a part-time student, the household is not considered a full-time student household and is exempt from the student rule.

If every member of a household that occupies an ADU is, was, and/or will be a full-time student during any part of any 5 calendar months (spanning previous, current and/or upcoming year), and no exceptions apply, then the household is not eligible to occupy an ADU.

The Student Rule exceptions are:

- 1) Married and eligible to file a joint federal tax return
- 2) Single parent(s) with dependent child(ren)
- 3) Receive assistance under Title IV of Social Security Act
- 4) Enrolled in job training program
- 5) At least one member of the HH was previously in foster care

Verification of student eligibility must be maintained in the tenant file along with the income certification (if mixed income property) and must be recertified annually.

3.02 Eligibility Determination

A fully completed Household Questionnaire is critical to an accurate determination of eligibility. The information furnished on the application should be used as a tool to determine all sources of anticipated income and assets.

After the tenant completes the Household Questionnaire, the owner/agent must have all income verified by obtaining source documentation (award letters, offers of employment, W-2's, check stubs (not paycheck), bank statements, investment records, etc.) or by a third party (public agency, employer, financial institution). If total cash value of assets is less than \$5000, assets can be self-certified using the HTC24 Under \$5000 Certification. Assets exceeding \$5000 must be third party verified. The application, income and asset verifications, and lease are to be executed prior to move in. All occupants in an ADU must be certified and have a valid lease on file. All household members age 18 and over must sign all required documents.

3.03 Change in Household Composition

If a tenant in an ADU (no LIHTC) wishes to have an additional person move into the unit within the first 6 months of occupancy the following steps must be taken:

1. The prospective tenant must complete a Household Questionnaire and allow time for verification of income and assets as required of the initial tenant; and
2. The prospective tenant's income must be added to the current tenant's certification and a determination made as to whether the new household is still within the AHP income guidelines. If the new household income exceeds the guidelines, then once proper notice is given, the tenant must pay the market rate. If the ADU is floating, the ADU designation must be floated to another eligible unit. The new rent of the now over income household cannot exceed market rent for a comparable unassisted unit.

The tenant file shall also be documented when any household member vacates the unit.

3.04 Minimum Lease Requirements

Initial tenant leases, including a signed and dated AHP lease addendum (if applicable) must be on file and must specify a term of at least 6 months. Subsequent lease terms may be of shorter duration. Leases must not contain any of the prohibited lease terms. Any non-renewal or termination of leases must be in accordance with the lease and/or AHP lease addendum.

The owner/agent must comply with AHP requirements on evictions as well as state law regarding eviction procedures. There must be a written notice that gives a tenant at least 30 days to vacate its unit, regardless of whether tenant has violated the law or lease terms.

Under the AHP, tenancy may be terminated only for:

- Serious or repeated violation of the terms and conditions of the lease.
- Violation of applicable federal, state, or local law.
- Other good cause.

Owners/agents must comply with the lease requirements found in Section 601 of the Violence Against Women Reauthorization Act (VAWA) of 2013. HRA highly encourages owners/agents to use the VAWA Lease Addendum, form HUD-91067 or its successor VAWA Lease Addendum form. In general, owner/agent may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim, or threatened victim, as good cause for terminating tenancy. However, in accordance with VAWA 2013, owner/agent may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

Owner/Agent should include a copy of HUD form 91066 or its successor form with each tenancy termination or eviction notice to allow an individual to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking. The form is to be completed and submitted to owner/agent within 14 business days or an agreed upon extension date, for the individual to receive protection under the VAWA.

3.05 House Rules

Developing a set of house rules is a good practice. The decision about whether to develop house rules for a property rests solely with the owner/agent. If house rules are listed in the lease as an attachment, then they must be attached to the lease. By identifying allowable and prohibited activities in housing units and common areas, the owner/agent provides a structure for treating tenants equitably and for making sure tenants treat each other with consideration. House rules are also beneficial in keeping properties safe and clean and making them more appealing and livable for the tenants. They are also extremely beneficial if it becomes necessary to evict a tenant for inappropriate behavior. For more information on House Rules, refer to Chapter 6-9 of the HUD 4350.3 REV 1, Change 4 Handbook.

3.06 Number of Persons Per Unit

There is no federal regulation governing the number of persons allowed to occupy a unit based on size however ADU's will have a minimum requirement of at least one person per bedroom. It is important, though, to be consistent when accepting or rejecting applications. It is required that the owner/agent determine the minimum and maximum number of people that will be allowed to occupy each size unit and put that formula in writing as part of the **Tenant Selection Plan** and submit to the HRA for approval. The owner/agent may refer to the HUD Handbook 4350.3 REV 1, Change 4, Chapter 3-23, regarding occupancy standards. By following the standards described, owners/agents can ensure that applicants and tenants are housed in appropriately sized units in a fair and consistent manner as prescribed by law.

3.07 Tenant Selection Plan

Owner/Agent must develop a formal written policy that clearly states the procedures and criteria the owner/agent will consistently apply in drawing applicants from the waiting list, screening for suitability for tenancy, and implementing income targeting requirements. The Tenant Selection Plan must state if there is an elderly restriction ("seniors only" building).

In accordance with the VAWA of 2013, the selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault or stalking. Owner/Agent should provide to each applicant/tenant HUD form 91066 or its successor form to allow the applicant/tenant to provide information regarding his or her status as a victim of domestic violence, dating violence or stalking.

Owners/agents may refer to the HUD Handbook 4350.3 REV 1, Change 4, Chapter 4, when developing a tenant selection plan. HRA will review the Tenant Selection Plan as part of its monitoring process.

3.08 Government Data Practices Act Disclosure Statement Form

In working with applicants and tenants, the owner/agent warrants compliance with applicable data privacy laws and regulations including the Minnesota Government Data Practices Act, which sets policies on the information that can be obtained, stored and/or released in connection with public programs. To comply with this law, the Inclusionary Housing Program Government Data Practices Act Statement form must be kept in each tenant's permanent file. Note that this is **not** a release authorization for verification of income and assets and must not be used as such. Each adult household member's name must be printed clearly at the top in the box provided. An unsigned and/or undated form is not valid and will be noted as insufficient at time of file inspection.

1. The form is to be signed one time and is valid as long as the resident lives at the property and participates in the program(s) identified in item #2 on page 1 of the form. If a resident moves from one unit to another, the original signed and dated form should be moved to the file for the new unit. A copy should be kept in the move out file for the old unit.
2. A valid form **must** include all relevant attachments. Some properties or units within a property may require 2 or more attachments for multiple programs.
3. Only one form is needed per unit as long as the head of household, spouse, co-head, and all household members over the age of 18 have signed and dated the form.
4. If an adult is added to the household or a minor reaches age 18, they must be added to, sign, and date the **original** form. It is not necessary to complete a new form.
5. A copy of the form should be made available to the applicant/tenant. It is acceptable to give them an unsigned copy.
6. For new residents, the form should be completed at the time of initial application.

A Government Data Practices Act Disclosure form that can be used for all ADUs is available on the HRA website.

3.09 Income Verification

At initial occupancy, owner/agent must determine whether prospective tenant(s) of ADUs qualify as low income households. Income eligibility is based on anticipated income as defined at 24 CFR 5.609 (Section 8). When collecting income verification documentation, owner/agent must consider any likely changes in income. Owner/Agent must follow appropriate steps in determining whether households are eligible prior to admittance.

Minnesota Housing provides [sample verifications and other forms](#) to assist owners/agents in qualifying eligible tenants. The release of information (at top of form) must be completed and signed by the person who is the subject of the verification prior to sending the form to an employer or other income source. Completed and returned verifications are used to calculate and document income.

An Income and Asset Calculation Worksheet form is also available and can be used to assist in showing the individual calculations of income and asset income. This is **highly recommended** and will greatly assist an inspector during a file review. This form should be dated and signed by the owner/agent.

3.10 Gross Annual Household Income

Gross annual income for households living in ADUs shall be determined in a manner consistent with Section 8 of the U.S. Housing Act of 1937.

Note that the information below only provides a summary. The [Technical Guide for Determining Income and Allowances for the HOME Program](#) is a good resource and can be found on HUD's website. The HUD Handbook 4350.3 is also an excellent resource.

The determination of annual income must include all types of income in the amount **anticipated** to be received by the tenant in the 12 months following certification/recertification. Owner/Agent should use current circumstances to project income, unless verification forms or other verifiable documentation indicate that a change will occur (increase/decrease in rate of pay and/or hours). However, if the owner/agent is unable to determine annual income using current information because the family reports little to no income, or because income fluctuates, the owner/agent may average past actual income received or earned within the last 12 months before the certification date to calculate annual income.

3.11 Factors that Affect Household Size

When determining family size for occupancy, the owner/agent must include the following individuals who are not currently living in the unit:

- Children temporarily absent due to placement in a foster home;
- Children in joint custody arrangements who are present in the household 50% or more of the time;
- Children who are away at school but who live with the family during school recesses;
- Unborn children of pregnant women. When a pregnant woman is an applicant, the unborn child is included in the size of the household and is included for purposes of determining the maximum allowable income. The rental application should ask the following question: "Will there be any changes in household composition within the next 12-month period?" If an applicant answers that a child is expected, the owner/agent should explain to the tenant that to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided.
- Children who are in the process of being adopted;
- Temporarily absent family members who are still considered family members. For example, the owner/agent may consider a family member who is working in another state on assignment to be temporarily absent. Persons on active military duty are considered temporarily absent (except if the person is not the head, co-head or spouse

or has no dependents living in the unit). If the person on active military duty is the head, co-head, or spouse, or if the spouse or dependents of the person on active military duty resides in the unit, that person's income must be counted in full;

- Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above.

Persons permanently confined to a hospital or nursing home are not considered household members.

When determining family size for establishing income eligibility, the owner/agent must include all persons living in the unit *except* the following:

- Live-in aides
- Children of live-in aides
 - *A live-in aide/attendant is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:*
 - Is determined to be essential to the care and well-being of the person(s);
 - Is not obligated for the support of the person(s); and
 - Would not be living in the unit except to provide the necessary supportive services.

While a relative may be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only if the individual needing supportive services requires the aide's services and remains a tenant, and may not qualify for continued occupancy as a remaining family member. The owner/agent must obtain verification from the person's physician, psychiatrist or other medical practitioner or health care provider that the live-in aide is needed to provide the necessary supportive services essential to the care and well-being of the person and should not add the attendant to the lease. The owner/agent may not require applicants or tenants to provide access to confidential medical records or to submit to a physical examination.

Some households may include other persons who are considered family members for the purposes of determining household size and income eligibility, including:

- Foster adults
- Foster children

Please see Appendix A for more detail on whose income is counted, what is counted as income and what is not, and how to account for income generated by assets.

3.12 General Income Verification Requirements

All income and asset sources must be disclosed on the eligibility application and verified. A properly completed application must be used as the basis for determining what verifications

will be necessary. The application, along with all supporting documentation and the Tenant Income Certification, will be reviewed by HRA staff or its agent during a tenant file review.

The following describes the types of third party verification in order of acceptability:

1. Third party verification from source (written):
 - a. An original or authentic document generated by a third-party source that is dated within six months from the date of receipt by the owner/agent. Such documentation may be in possession of the tenant (or applicant), and commonly referred to as tenant provided documents. These documents are considered third party verification because they originated from a third party source. Examples of tenant provided documentation that may be used include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

Owner/Agent must consider the following when using tenant provided documentation:

- i. Is the document current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.
 - ii. Is the documentation complete? Owner/Agent may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent two months of consecutive pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.
 - iii. Is the document an unaltered original? The greatest shortcoming of tenant provided documents as a verification source is their susceptibility to undetectable change through the use of high quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.
2. Written documentation sent directly to the third party source by mail or electronically by fax, email or internet.

Verification forms must contain a release authorization signed by the applicant/tenant. Do not use a blanket release authorization as this entitles the owner/agent to obtain information to which it is not entitled or needed for eligibility determination. The Data Practices Act Disclosure Statement is not a verification release. Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.

Income verification requests must be sent directly to and from the source. They are never given to the tenant to obtain signatures. It is suggested that a self-addressed stamped envelope be included with a mailed request for verification. If the returned verifications do not contain complete information (typical examples include failure to indicate interest rates, dates of anticipated raises, amounts of anticipated raises, etc.), owner/agent must follow up with the source to obtain complete information. All pertinent information must be documented in the file and must also include the name, phone number and title of the contact, the name of the person accepting the information, and the date.

3. Third party verification from source (verbal).

When clarifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Verbal verification must be documented in the file. When verifying information by phone, the owner/agent must record and include in the tenant's file the following information:

- a. Third party's name, position, and contact information;
- b. Information reported by the third party;
- c. Name of the person who conducted the telephone interview; and
- d. Date and time of the telephone call.

4. Self Certification

An owner/agent may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted only if the information cannot be verified by another acceptable verification method. In these instances, the owner/agent must document the file why third-party verification was not available. The owner/agent may witness the tenant signature(s) in lieu of a notarized statement or affidavit. The following describes use of electronic information when used as third party verification.

Electronic Verification. The owner/agent may obtain accurate third party written verification by facsimile, email, or Internet, if adequate effort is made to ensure that the sender is a valid third party source.

- a. Facsimile. Information sent by fax is most reliable if the owner/agent and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.
- b. Email. Similar to faxed information, information verified by email is more reliable when preceded by a telephone conversation and/or when the email address includes the name of an appropriate individual and firm.
- c. Internet. Information verified on the Internet is considered third party verification if the owner/agent is able to view web-based information from a

reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances.

Steps used to obtain written verification as described in 1, 2 and 3 above must be documented to show just cause for using other types of verification. The owner/agent must include the following documents in the tenant file:

1. A written note explaining why third party verification is not possible.
2. A copy of the date stamped original request that was sent to the third party.
3. Written notes or documentation indicating follow up efforts to reach the third party to obtain verification.
4. A written note indicating the request has been outstanding without a response from the third party.

Note: If a tenant is employed by a business owned by the tenant's family or is employed by the property owner/agent or the management company, a copy of a recent pay stub, verifying year-to-date earnings, is also required.

Upon receipt of all verifications, owner/agent must determine if the resident is qualified for participation in the AHP. All verifications should be reviewed and calculations made as necessary.

3.13 Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document that has been altered with correction fluid or "white out" will not be accepted by HRA. When a change is needed on a document, the person making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have all parties initial and date the change.

3.14 Effective Term of Verifications

Verifications of any kind are valid for 120 days prior to an ADU tenant's move in date or recertification date.

3.15 Over Income Households

When determining eligibility to occupy an ADU, the household's gross income must always be considered. However, if a tenant goes over the income guidelines at recertification, the owner/agent must raise the over income tenant's rent as soon as the lease permits in accordance with the terms of the lease (see Chapter 2). The AHP does not require interim rent adjustments.

3.16 Annual Recertification

All households occupying an ADU must be recertified at least annually from the date of occupancy. Annual recertifications must be effective on or before the occupancy anniversary date of the previous certification. Owner/Agent may align recertification dates with other

program certifications or so that all units in the property are recertified at one time during the year. However, if a period of twelve (12) months passes without a recertification being completed for any ADU, the unit is considered out of compliance. If the requirement to recertify is included in an ADU lease or addendum, tenant refusal to comply can be considered a violation of the lease and is grounds for termination.

Income must be third party verified in every 3rd year of the affordability period, **not** tenancy.

3.17 Tenant Files

Owner/Agent must maintain a tenant file for each ADU. All permanent documents must be kept together so they are accessible at each compliance review (income certification and supporting documentation, lease/AHP addendum, etc.). Annual recertification information, including the tenant questionnaires, release forms, verifications, and annual inspection reports must be grouped together by year, with the most recent year on top for review.

The tenant files must contain the following:

- HRA Government Data Practices Act Statement
- Household Questionnaire
- Acceptable verifications of income and assets
- Verification of student eligibility
- Tenant Income Certification (Initial Certification and Annual Recertifications)
- Signed lease agreement and AHP addendum (if needed)
- Move in inspection report
- Lead based paint acknowledgements (rental rehabilitation only; built pre-1978)

All move out files should also contain the following:

- Written 30-day (or greater) notice to vacate (if not available – document in file)
- Move out inspection report (both parties signed and dated)
- Security deposit refund (check number and date) or letter of intent to withhold security deposit within 14 days of move out
- Itemized list of costs charged to tenant within 45 days

Tenant records, including income verifications, development rents, and unit inspections must be retained for the most recent five year period, until five years after the affordability period terminates.

Chapter 4 – Reporting Requirements

The owner/agent must maintain a report of all tenants residing in each ADU at the time of application through the end of the affordability period and submit annual reports to HRA in a form and manner requested by HRA.

Annual compliance reports are due to HRA by **March 1** or as otherwise specified by HRA, of each year during the affordability period. If the due date falls on a weekend or a holiday, reports are due the following business day. Reports and other required documents must be submitted as directed by HRA on an annual basis.

4.01 Annual Owner/Agent Certifications

Complete the Owner/Agent Certification to certify compliance with AHP requirements for the preceding calendar year. Owner/Agent Certifications must be printed, signed and dated by the authorized Owner/Agent Representative, then scanned and submitted as directed by HRA on an annual basis.

4.02 Compliance Reports

HRA will annually monitor AHP compliance by reviewing annual Owner/Agent Certifications and analyzing compliance information submitted by the owner/agent. Failure to submit the Owner/Agent Certification and/or update the report on **all** units and their related activity by the due date will constitute noncompliance with the AHP and the related loan documents.

4.03 Utility Allowance Source Document

Owners/Agents must submit the utility allowance source documents applicable to the reporting period. Multiple utility allowance source documents may apply to one reporting period.

Chapter 5 – Compliance Inspections

Compliance inspections (file reviews) will be conducted every 3 years. This coincides with the tax credit monitoring schedule, if applicable. When possible, efforts will be made to combine AHP reviews with tax credit monitoring.

Inspections may be conducted more frequently if HRA determines it to be necessary based on concerns raised during a previous review or other information.

The compliance inspection includes, but is not limited to, an inspection of at least 20%, but up to 50%, of the ADU tenant files (with a minimum of four (4) units). Additionally, owners/agents of these properties must annually certify that each building and all units are suitable for occupancy and in compliance with State and local health, safety, and other applicable codes, ordinances and requirements.

HRA will contact the owner/agent in advance to schedule the tenant file review. The property inspection and tenant file review may be conducted at the same time or may be conducted separately by different HRA staff.

5.01 Physical Inspections

The goal of the physical inspection is to ensure that the property and units are being well maintained and in compliance with State and local health, safety, and other applicable codes, ordinances and requirements.

Owners/Agents should conduct routine property inspections and perform any needed maintenance to ensure that the property continually complies with all applicable requirements.

5.02 Review of Tenant Files and Property Records

During the tenant file review, HRA staff will review tenant income certifications, third party verifications or other forms of income documentation, leases, lead based paint disclosure forms, and other management information for selected units.

HRA staff will also review the following property information:

- Utility Allowances and supporting documentation
- Current written tenant selection plan, occupancy policy and/or house rules if changes were made since the last review
- Current lease and lease addenda
- Affirmative Fair Housing Marketing Plan (if applicable)
- Advertising
- Equal Housing Opportunity posters, logos
- Correspondence
- Marketing plans
- Tenant ledgers for all units inspected

Chapter 6 – Correction and Consequences of Non-Compliance

If HRA does not receive the required certifications and/or compliance reports when due, or discovers by audit, inspection, or review, or in some other manner, that the property is not in compliance with the requirements of the AHP, or with the property's loan documents, including the enforcement agreement, the HRA will notify the owner/agent as soon as possible.

6.01 Notice to Owner/Agent

HRA will provide prompt written notice to the owner/agent of an AHP assisted property if HRA does not receive the annual Owner/Agent Certification and income and occupancy report by the required due date. HRA will also notify the owner/agent if it does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records, or discovers by inspection, review, or in some other manner, that the property is not in compliance with the requirements of the AHP or with the property's loan documents, including the enforcement agreement.

6.02 Correction Period

The correction period will be established by the HRA and set forth in a Notice of Noncompliance to the owner and its agent. HRA may extend the correction period if HRA determines there is good cause for granting the extension. Requests for an extension must be in writing from the owner/agent, must be received by HRA no later than the last day of the correction period identified on the Notice of Noncompliance, and must include an explanation of the efforts to correct the noncompliance and the reason the extension is needed.

6.03 Owner's/Agent's Response

HRA will review the owner's/agent's response and supporting documentation, if any, to determine whether the noncompliance has been clarified, corrected or remains out of compliance.

Clarified noncompliance is, for example, where income eligibility was not properly documented and the inspector cannot make a reasonable determination that the unit is in compliance but the owner/agent conducts a retroactive (re)certification which completely and clearly documents the sources of income and assets that were in place at the time the certification should have been effective, and applies income and rent limits that were in effect on that date. If documentation is complete and it supports that the tenant was eligible as of the effective date, the file is considered clarified.

Corrected noncompliance is when a violation is observed and there is a period of time during which the unit is out of compliance, but the unit is brought back into compliance. For example, a late certification or re-certification is out of compliance on the certification due date, and back in compliance as of the date the last tenant signs the Tenant Income Certification.

Uncorrected noncompliance is a violation that is not corrected or clarified by the end of the correction period.

Failure to correct all noncompliance could result in extension of the end of the POA, loss of Tax Increment Financing, or other legal remedies and may also affect the owner's/agent's eligibility for financing from the HRA under any or all its programs.

HRA reserves the right to conduct a follow-up inspection if documentation is not sufficient to confirm that all life threatening health and safety violations and any other hazardous deficiencies have been corrected.

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Chapter 7 – Requests for Action

7.01 Sale or Transfer

Any property owner must provide prior written notice to the HRA before and sale or transfer of the property. The notice will provide that the new owner/agent acknowledges that the terms and conditions of the Inclusionary Housing Program as set forth in the governing documents recorded against the property remain in place.

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EXHIBIT N

DECLARATION OF COVENANTS AND RESTRICTIONS
(Affordable Housing)

THIS DECLARATION is made as of the ____ day of _____, 20____, by ORION 4500 FRANCE, LLC, a Delaware limited liability company (“Declarant”).

RECITALS

A. 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”).

B. The Housing and Redevelopment Authority 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 entered into that certain Redevelopment Agreement (as amended, the “Contract”) dated December 18, 2018.

C. The Contract provides for the redevelopment of the Property by Declarant in coordination with the Authority and with the cooperation and assistance of City and provides for the expenditure of certain public funds to assist in such redevelopment of the Property and construction of certain improvements thereon, including an approximately 46-unit apartment building (the “Project”).

D. The City, by Resolution No _____, dated _____, 2018, approved Declarant’s development plan and rezoning for the Project (“Approval”).

E. Pursuant to the Contract and as a condition to the Approvals, Declarant has agreed to impose restrictive covenants upon the Property to ensure that at least three of the residential units within the Project will remain affordable to certain low-income persons and households (“Affordable Units”).

F. 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 respective successors and assigns:

ARTICLE I.

OCCUPANCY, INCOME AND RENT RESTRICTIONS

Section 1.1. Declarant shall lease the Affordable Units only to individuals or households (each a “Qualified Household”) whose gross annual income is fifty percent (50%) 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”).

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, 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 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). No security deposit shall be required in excess of the amount of one month of rent in connection with any Affordable Unit.

Section 1.3. 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 1.4. 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 the Affordable Units and the Project in compliance with all requirements of the Contract and Approvals, 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. Declarant 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 and the Approvals, 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 the City (or such subdivision of the City administering the City's affordable housing program) annually for approval on the basis of compliance with this Declaration, with an initial deadline for submission of three (3) months following the Commencement Date (defined below) 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. Declarant shall, upon annual invoicing, reimburse the City (or such subdivision of the City administering the City's affordable housing program) for third-party expenses related to monitoring of Declarant's compliance with this Declaration, which such costs shall initially not exceed \$500.00 per year (plus any additional costs necessitated by re-inspections for noncompliance with this Declaration) and thereafter be subject to reasonable adjustment from time to time.

Section 3.3. At the City's or 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.

Section 3.4. Pursuant to the terms of the Contract, the Affordable Units shall be subject to the terms and condition of the Inclusionary Housing Policy Program Guide to be adopted by the City.

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 (as defined in the Contract) is issued by the Authority for the Minimum Improvements (as defined in the Contract) ("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 tax increment financing and other public assistance contemplated or given by the Authority or the City to Declarant under the Contract ("Public Assistance"). The provisions of this Declaration are intended to survive the termination or extinguishment of any Public Assistance, any mortgage securing the same, and any other security instruments placed of record in connection with the Public Assistance 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

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.

REMEDIES, ENFORCEABILITY

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.

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

Declarant intends, declares and covenants, on behalf of itself and all future owners and operators of the Property and the Project during the Term, 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, 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. 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, 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.

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:

Declarant at: Orion 4500 France, LLC
Attn: Ted Carlson
4530 West 77th Street, Suite 365
Edina, MN 55435

The Authority at: Housing and Redevelopment Authority of Edina, Minnesota
Attention: Executive Director
4801 West 50th Street
Edina, MN 55424

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

The City at: City of Edina
Attention: City Manager
4801 W. 50th Street
Edina, MN 55424

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

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

Section 9.2. This Declaration will be governed and construed in accordance with the laws of the State of Minnesota.

Section 9.3. If any provisions hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT O

Form of Right of First Purchase Option Agreement

RIGHT OF FIRST PURCHASE OPTION AGREEMENT

between

THE HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA

and

ORION 4500 FRANCE, LLC

Dated as of

_____, 20____

THIS DOCUMENT WAS DRAFTED BY:

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

RIGHT OF FIRST PURCHASE OPTION AGREEMENT
(4500 France)

THIS RIGHT OF FIRST PURCHASE OPTION AGREEMENT (this “Agreement”) is made and entered into this ___ day of _____, 20___ (“Effective Date”), by and between the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), and ORION 4500 FRANCE, LLC, a Delaware limited liability company (“Owner”).

RECITALS:

A. The City of Edina, Minnesota, a Minnesota statutory city (the “City”), the Authority, and Owner, as “Developer”, are parties to that certain Redevelopment Agreement dated December 18, 2018 (the “Contract”).

B. The Contract provides for the redevelopment by Owner of certain real property legally described on the attached Exhibit A (referred to herein and in the Contract as the “Redevelopment Area”) and located within the 44th & France 2 Tax Incremental Financing District, established by the Authority pursuant to Resolution No. 2018-100, in coordination with the Authority and with the cooperation and assistance of the City.

C. The Contract provides for the expenditure of certain public funds to assist in the redevelopment of the Redevelopment Area with certain “Minimum Improvements” consisting generally of a new 4-story, mixed use project, including an approximately 46-unit apartment building and approximately 6,500 square feet of ground-level restaurant and retail space.

D. The Contract requires that at least three of the residential units within the Minimum Improvements (the “Affordable Units”) will be leased at rates that are considered affordable to individuals or households earning less than 50% of the U.S. Department of Housing and Urban Development’s Area Median Income (“AMI”) for the Minneapolis-Saint Paul-Bloomington Metropolitan Statistical Area.

E. The Authority and Owner have agreed in the Contract that Owner shall grant the Authority the first right to purchase one or more of the Affordable Units (the “Purchase Right”) in the event the Affordable Units are converted from rental units to for-sale units, as more particularly set forth herein.

F. 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:

1. Right to Purchase. Upon and subject to the terms hereinafter set forth, Owner hereby grants to the Authority, and the Authority hereby accepts, an option to purchase (“Purchase Option”) one or more of the Affordable Units, together with an undivided interest in all common elements, all easements and rights benefiting or appurtenant to the Affordable Units (collectively,

the “Property”) upon the occurrence of a For-Sale Conversion (as defined below). The Purchase Option shall terminate only upon the occurrence of either of the following: (a) the Authority issues a Rejection Notice or fails to timely issue an Election Notice, as set forth in Section 3 below; (b) the execution of a written termination by the then-fee title owner of the Property and the Authority; or (c) the 25th anniversary of the Effective Date (the “Term”).

2. For-Sale Conversion. In the event Owner elects to convert (a “For-Sale Conversion”) all or part of the apartment component of the Minimum Improvements from rental units into condominium units, cooperative units, or otherwise subdivide such units into separately transferable and taxable housing units (“Separate Units”), Owner shall include the Affordable Units in such For-Sale Conversion, such that each Affordable Unit into also converted into a Separate Unit. Owner shall give the Authority prompt notice of Owner’s election to proceed with a For-Sale Conversion and the Owner shall give the Authority notice of date (the “Conversion Date”) on which Owner causes the operative documents effectuating the For-Sale Conversion to be recorded in the office of the County Recorder in and for Hennepin County, Minnesota and/or the office of the Registrar of Titles in and for Hennepin County, Minnesota, as applicable (e.g., recording of the common interest community declaration and plat, registered land survey, etc.), which such notice shall be delivered to the Authority no later than two business days after the Conversion Date.

3. Election Period. The Authority shall have 120 days after the Conversion Date to notify Owner of the Authority’s desire, in its sole discretion, and subject to approval by the Authority’s board of commissioners, to purchase one or more of the Affordable Units and related Property subject to the terms and conditions of the Agreement (the “Election Period”). Prior to the expiration of the Election Period, the Authority shall notify Owner that the Authority either (a) elects to so purchase one or more of the Affordable Units (“Election Notice”) (which such Election Notice will specify which Affordable Units the Authority elects to purchase) or (b) waives its right to purchase one or more of the Affordable Units (“Rejection Notice”). In the event the Authority issues a Rejection Notice or fails to timely issue an Election Notice, then the Purchase Option shall be deemed terminated and of no further force or effect, and Owner shall be free to sell the Affordable Units on terms and conditions acceptable to Owner in its sole discretion.

4. Documents; Inspection. Within 10 days after the Conversion Date, Owner shall either make available to the Authority copies of all documents, reports, studies, tests, drawings, surveys, agreements, contracts, and all other documentation relating to the Property in Owner’s possession or control or to which Owner has knowledge or access (“Property Documents”). During the Election Period (or until the Authority issues a Rejection Notice), the Authority may examine the Property Documents and Owner shall allow the Authority, and the Authority’s employees, agents, and contractors, access to the Property upon reasonable notice from the Authority without charge and for the purpose of the Authority’s reasonable inspection, investigation and testing of the same.

5. Title Examination. Within 15 days after the Conversion Date, Owner shall deliver to the Authority a current commitment (the “Commitment”) for an ALTA Form Owner’s Policy of Title Insurance insuring title to the Property in the amount of the Purchase Price issued by a reputable title company (the “Title Company”), legible copies of all documents cited, raised as exceptions or noted in the title commitment and Owner’s most recent survey of the Redevelopment

Area (provided, the Authority may elect to obtain a new survey at its sole cost and expense) (collectively [including the new survey if so obtained], the “Title Evidence”). During the Election Period, the Authority may make written objections (“Objections”) to the Title Evidence. All matter shown by the Title Evidence and not objected to by the Authority shall be a “Permitted Encumbrance” hereunder. Owner shall not have any obligation to cure or attempt to cure any Objections which cannot be cured solely by the payment of money, however Owner shall use commercially reasonable efforts to cure the Objections.

6. Purchase Terms. The following provisions are applicable to the Purchase Option:

(a) Purchase Price. The purchase price per each Affordable Unit (and related Property) (the “Purchase Price”) purchased by the Authority pursuant to the Purchase Option shall be the lesser of:

(i) the amount considered affordable for a household of two at 120% of AMI as of the Conversion Date (“Income Limit”), which such amount shall equal the maximum mortgage financing available for such Affordable Unit where the annual sum of the following “Mortgage Costs” equal 30% of the Income Limit, plus 3.01% of such maximum mortgage financing to adjust for the required equity: (A) principal and interest payments of a first mortgage based on a 30-year, level amortization mortgage loan with a fixed interest rate at the rate published by the Minnesota Housing Finance Agency (“MHFA”) as of the Conversion Date for the MHFA’s “Step-Up” mortgage program, assuming a 97% loan-to-value ratio, conventional financing under the HFA Preferred™ or HFA Advantage™ programs, no upfront paid mortgage insurance, and the MHFA 1.5% Service Release Premium rate option, or a comparable rate if the MHFA ceases to exist or ceases to publish such rates; (B) the Affordable Unit’s property taxes as reasonably estimated by the Authority based on the existing tax levy; (C) mortgage insurance (if any) payments which would be allowed by the MHFA in connection with the interest rate program described in clause (A); and (D) market insurance rates for similar units (but excluding homeowner association fees and dues) (the “Affordable Price”); and

(ii) the “Fair Market Value” of such Affordable Unit(s), which shall mean the fair market value of the Affordable Unit(s) that an independent third party would be willing to pay for the Affordable Unit(s) in an arm’s length transaction without any compulsion to proceed, which shall be determined as follows: if the parties are unable to agree on the purchase price within 30 days after the Conversion Date, then the Authority and Owner shall each select a qualified MAI appraiser to determine the Fair Market Value for the Affordable Unit(s) within 10 days after said 30-day period. If Owner fails to give notice identifying an appraiser within the time provided, Owner has waived the right to identify an appraiser and the decision of the Authority’s appraiser controls. If two appraisers are selected, they must within 15 days after the selection of the second agree to a third appraiser. If the two appraisers fail to identify the third appraiser within such 15-day period, the either the Authority or Owner may petition the district court (or its equivalent) having jurisdiction over the Property for the appointment of the third appraiser. The three

appraisers must each, within 30 days after the appointment of the third appraiser, simultaneously deliver to the Authority and Owner their expert opinions of the Fair Market Value in question. The Fair Market Value is the average of the three appraisals unless one appraisal is more than ten percent (10%) greater or lesser than the average of the other two appraisals, in which case that appraisal is disregarded, and the average of the remaining appraisals is the Fair Market Value. Each party must pay the cost of the appraiser selected by it and one-half of the cost of the third appraiser. All appraisers must be disinterested and must have the designation, MAI, SRA or equivalent and must have not less than five years' experience appraising real estate in the business market wherein the Property is located. The appraisers may, but need not, present formal written appraisals supporting their opinion but must, in any event, certify that the report was conducted in accordance with professional standards. The decision of this appraisal process is binding upon the parties and must not be subject to appeal to a court or other body except based upon fraud.

Notwithstanding anything to contrary herein, if the Authority exercises its Purchase Option hereunder during the first 15 years after the Effective Date, then the Authority may, but is not required to, elect the Affordable Price as the Purchaser Price, without the parties making a determination of the Fair Market Value. If the Authority exercises its Purchase Option hereunder after such initial 15-year period, but before the expiration of the Term, Owner may require that the Purchase Price equal the Fair Market Value.

(b) Closing. The closing of the purchase and sale pursuant to the Purchase Option (the "Closing") shall occur no later than 30 days after the Authority issues its Election Notice (the "Closing Date"). Owner agrees to deliver possession of the Property to the Authority on the Closing Date.

(c) Owner's Closing Deliveries. On the Closing Date, Owner shall execute and deliver to the Authority the following, all in form and content reasonably satisfactory to the Authority: (i) a limited warranty deed (the "Deed") conveying the applicable Property specified in the Election Notice to the Authority subject only to the Permitted Encumbrances; (ii) a non-foreign affidavit, properly executed, containing such information as is required by Internal Revenue Code Section 1445(b)(2) and its regulations; and (iii) such affidavits, certificates or other documents as may be reasonably required by Title Company in order to record the Deed and issue an ALTA Form Owner's Policy of Title Insurance insuring title to the Property in the amount of the Purchase Price subject only to the Permitted Encumbrances (the "Title Policy").

(d) The Authority's Closing Deliveries. On the Closing Date, the Authority will execute and/or deliver to Owner the following: (i) Purchase Price; and (ii) such affidavits, certificates or other documents as may be reasonably required by Title Company in order to record the Deed and issue the Title Policy.

(e) Prorations. If the Authority issues its Election Notice, Owner and the Authority agree to the following prorations and allocation of costs regarding this Agreement and Property purchased by the Authority:

(i) Title Charges and Closing Fee. Owner will pay all costs for the Commitment. The Authority will pay all title insurance premiums required for the issuance of the Title Policy, including the cost of all additional endorsements thereto. Owner and the Authority will each pay one-half of any closing fee or charge imposed by Title Company.

(ii) Taxes. Owner shall pay all state deed tax or transfer tax or fee payable in connection with this transaction. Special assessments, if any, shall be paid in full by Owner on or before the Closing Date. Real estate taxes shall be prorated as of the Closing Date. Accordingly, Owner shall pay all real estate taxes due and payable up to the Closing Date and the Authority shall pay all real estate taxes due and payable on and after the Closing Date.

(iii) Other Income and Expenses. All income (including, without limitation, rents) and other expenses shall be prorated and adjusted as of the Closing Date.

(iv) Attorney's Fees. Each of the parties will pay its own attorney's fees.

(f) Warranties and Representations by Owner. Owner warrants and represents to the Authority as follows:

(i) Owner has the requisite power and authority (including all necessary approvals and authorizations) to enter into and perform this Agreement and those closing documents to be signed by it; such documents have been duly authorized by all necessary action on the part of Owner and have been or will be duly executed and delivered; such execution, delivery and performance by Owner of such documents does not and will not conflict with or result in a violation of any judgment, order, or decree of any court or arbiter to which Owner is a party, or any law, statute, rule or regulation by which Owner is bound; such documents are and will be valid and binding obligations of Owner, and are and will be enforceable in accordance with their terms.

(ii) As of the Closing Date, the Property is not subject to any leases or possessory rights of any party other than Owner.

(g) As-Is. Except as herein expressly stated, the Authority is purchasing the Property (or the applicable part thereof) based upon its own investigation and inquiry and is not relying on any warranty or representation of Owner or any other person and is agreeing to accept and purchase the Property "as is, where is" subject to the conditions of examination herein set forth and the express warranties and representations herein contained.

(h) Condemnation; Casualty. If eminent domain proceedings are commenced against all or a part of the Property, or if all or a substantial part of the property is damaged by fire or other casualty, on or before the Closing Date, Owner shall immediately give written notice to the Authority, and the Authority shall have the right to terminate any exercised Purchase Option by giving written notice of such termination to Owner within

30 days after Owner's notice of such proceedings is given to the Authority. If the Authority shall fail to give such notice, then the parties shall proceed to Closing, and Owner shall assign to the Authority all rights to appear in and receive any award from such proceedings.

(i) Broker's Commission. Owner and the Authority warrant and represent to each other that they have dealt with no brokers, finders or the like in connection with this transaction, and agree to indemnify and hold each other harmless from all claims, damages, costs or expenses of or for any fees or commissions owing to any brokers, finders or the like resulting from their actions or agreements regarding the execution or performance of this Agreement, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorneys' fees.

(j) Remedies. If the Authority defaults in performance of its obligations under this Agreement, Owner shall have the right to terminate this Agreement in the manner provided by Minn. Stat. Sec. 559.21 (inclusive of a minimum 30-day notice and right to cure) as its sole and exclusive remedy. If Owner defaults in performance of its obligations under this Agreement, the Authority will provide written notice thereof to Owner. If Owner fails to cure such default within 30 days after such notice, the Authority shall have the right, in addition to all other rights under applicable law, including the right to seek and obtain specific performance of this this Agreement.

7. Notices. 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 (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, (b) sent by recognized overnight courier (such as Federal Express), or (c) delivered personally, as follows:

In the case of Owner: Orion 4500 France, LLC
Attn: Ted Carlson
4530 West 77th Street, Suite 365
Edina, MN 55435

In the case of the Authority: Housing and Redevelopment Authority of Edina,
Minnesota
Attention: Executive Director
4801 West 50th Street
Edina, MN 55424

with a copy to: Dorsey & Whitney LLP
Attn: Jay Lindgren
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.

8. Successors and Assigns. This Agreement and the purchase options set forth herein shall inure to the benefit of the Authority and its successors and assigns and be binding upon Owner and the heirs, personal representatives, successors and assigns of Owner, and upon any individual or entity acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or otherwise.

9. Waiver. The waiver by any party hereto of any breach or default of any provisions anywhere contained in this Agreement shall not be deemed to be a waiver of any subsequent breach or default thereof. No provision of this Agreement shall be deemed to have been waived by any party hereto unless such waiver is in writing and signed by the party charged with any such waiver.

10. 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 either party unless in writing and signed by both parties.

11. Joinder; Permitted Encumbrance. Except for the mortgagee consent attached hereto, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement shall constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between Owner and any construction lender or permanent lender.

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

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

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

AUTHORITY:

HOUSING AND REDEVELOPMENT
AUTHORITY OF EDINA, MINNESOTA

By _____
_____, Chair

By _____
_____, Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ and _____, the Chair and Secretary respectively, of the Housing and Redevelopment Authority of Edina, Minnesota, on behalf of said Authority.

Notary Public

EXHIBIT A

Legal Description of the Redevelopment Area

