

**FIRST AMENDMENT**

**to**

**REDEVELOPMENT AGREEMENT**

**by and among**

**CITY OF EDINA, MINNESOTA,**

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

**and**

**PENTAGON VILLAGE, LLC**

**Dated as of  
February 5, 2019**

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

**FIRST AMENDMENT TO  
REDEVELOPMENT AGREEMENT  
(Pentagon South)**

THIS FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT (“Amendment”) is made and entered into as of February 5, 2019, 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 PENTAGON VILLAGE, LLC, a Delaware limited liability company (“Redeveloper”).

**RECITALS**

A. The City, the Authority and Redeveloper are parties to a Redevelopment Agreement dated October 16, 2018 (the “Original Agreement”, and such Original Agreement as modified by this Amendment, collectively, the “Agreement”).

B. Upon the terms and conditions set forth in the Original Agreement, the Authority and the City agreed to provide Redeveloper with certain tax increment financing assistance in connection with Redeveloper’s redevelopment of certain property located within in the City’s Pentagon Park Tax Increment Financing District, as such property more particularly described in the Agreement.

C. As set forth in the Original Agreement, one of the conditions to the Authority providing Redeveloper tax increment financing assistance is Redeveloper’s construction of certain “Minimum Improvements” in accordance with the “Pentagon South Final Development Plan” and other “Pentagon South City Approvals”.

D. Redeveloper has requested the City’s regulatory approval of certain modifications to the Pentagon South Final Development Plan (such Pentagon South Final Development Plan as so modified referred to herein as the “First Amended Final Development Plan”) and the City has approved such First Amended Final Development Plan and certain other changes to the original Pentagon South City Approvals pursuant to City Ordinance No. 2019-03 and City Council Resolution No. 2019-17 (collectively, the “First Amended City Approvals”).

E. Redeveloper has requested that (i) the Authority consent to the First Amended Final Development Plan and the corresponding changes to some of the “Elements” of the “Minimum Improvements” described in the Original Agreement and (ii) the Authority and the City amend the Original Agreement so as to otherwise incorporate the provisions of the First Amended City Approvals therein.

F. Upon the terms and conditions set forth in this Amendment, the Authority has agreed to consent to the First Amended Final Development Plan, and the parties have otherwise agreed to amend the Original Agreement as set forth herein.

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

1. Recitals; Definitions. The foregoing recitals are true and accurate and are incorporated herein as part of the agreement of the parties. Any word or term with an initial capital letter shall have the meaning given to it in this Amendment or if not so defined herein shall have the meaning given to it in the Original Agreement.

2. Consent. Subject to the terms and conditions of this Amendment, the Authority and the City hereby consent to the First Amended Final Development Plan and the First Amended City Approvals.

3. Defined Terms; Exhibits. For all purposes under the Agreement, the following capitalized terms are hereby amended to have the meanings set forth below and Exhibits A, C and D are hereby replaced as set forth below:

(a) “Expansion Parking Element” means any future expansions and/or additions to the number of parking stalls in the Initial Parking Element.

(b) “Future Project Site Work” has the meaning set forth in Section 4 of this Amendment, which such section amends and restates Section 6.1 of the Original Agreement.

(c) “Future Vertical Element” means the Element of Phase 2 which may be constructed above, integrated into, and connected to the Parking Facility.

(d) “Hotel Element 1” means the 5-story, approximately 235-room dual-branded hotel to be constructed on Lot 2, with associated surface parking as approved by the City in the Pentagon South City Approvals

(e) “Hotel Element 2” means the 4-story, approximately 153-room extended stay hotel to be constructed on Lot 3, with associated surface parking, as approved by the City in the Pentagon South City Approvals

(f) “Initial Parking Element” means the approximately 423-stall, free-standing, three-level parking structure to be constructed on the southerly portion of Lot 5.

(g) “Parking Element” means, collectively, the Initial Parking Element and the Expansion Parking Element.

(h) “Parking Facilities Easement” means a permanent, public easement for access and use of the Parking Element to be granted by Redeveloper to the City pursuant to an easement agreement in the form attached hereto as Exhibit C; and Exhibit C to the Original Agreement is hereby deleted in its entirety and Exhibit C attached hereto is inserted in lieu thereof.

(i) “Pentagon South City Approvals” means the original Pentagon South City Approvals, as revised and amended by the First Amended Final Development Plan and the First City Approval Amendment.

(j) “Pentagon South Final Development Plan” means the First Amended Final

Development Plan, approved by the City pursuant to the First Amended City Approvals, including, without limitation, (a) the plan set entitled Final Development Plan Site Improvements 12/14/18 Plan Update for Pentagon Village prepared by Westwood Professional Services, Inc. (the “Final Civil Plans”), and (b) Pentagon Village Master Plan Concept prepared by RSP Architects, dated January 16, 2019 and presented to the City in connection with the City’s granting of the First Amended City Approvals.

(k) “Project Area Map” means the Project Area map attached hereto as Exhibit A; and Exhibit A to the Original Agreement is hereby deleted in its entirety and Exhibit A attached hereto is inserted in lieu thereof.

(l) Phase 1C Minimum Improvements. The definition of Phase 1C Minimum Improvements shall be amended to delete the reference to Parking Element, as Hotel Element 2 will be served by the Parking Element as defined in this Amendment, not as defined in the Original Agreement.

(m) Phase 2, Phase 2 Minimum Improvements, and Projected Phase 2 Improvements. Section 4.1(a)(4) is deleted in its entirety and replaced with the following:

“The Phase referred to herein as “Phase 2” shall consist of at least one additional Element consisting of at least 100,000 square feet of gross building area, to be developed and constructed in accordance with amended Pentagon South City Approvals approved by the City Council in connection with the site plan, PUD and other requisite land use applications submitted by Redeveloper for the actual development of such Element (the “Phase 2 Minimum Improvements”). This Element is anticipated to be, but is not required hereunder to be, (A) an approximately 5-story office building containing approximately 125,000 square feet or (B) a multi-story building integrated into the Parking Element (i.e., the Future Vertical Element) which is anticipated to contain approximately 100,000 square feet (but the actual square footage of which will be driven and supported by market conditions at the time a land use application is submitted to the City for such Future Vertical Element), together with the Expansion Parking Facility, each of which Redeveloper currently anticipates that, based on current market conditions, will be developed and constructed on Lot 5 (which may be subdivided into lots to allow for construction of two buildings) (the Elements described in clauses (A) and (B) above, collectively, the “Projected Phase 2 Improvements”).

(n) “TIF Pro Forma” is hereby amended to mean the detailed TIF pro forma attached hereto as Exhibit D; and Exhibit D to the Original Agreement is hereby deleted in its entirety and Exhibit D attached hereto is inserted in lieu thereof.

4. Commencement and Completion of Minimum Improvements. Section 6.1 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

**“Section 6.1 Commencement and Completion of Minimum**

**Improvements.** The chart below is Redeveloper’s current anticipated timeline for the Commencement and Completion of the Minimum Improvements and the remaining Projected Phase 2 Improvements. The Commencement and Completion dates for the Minimum Improvements shall be substantially in accordance with the below timeline, and failure to meet such dates shall be a Default as described in Section 6.2. The actual completion of the remaining Phase 2 Minimum Improvements will be driven by market conditions and failure to meet the below dates for the remaining Projected Phase 2 Minimum Improvements will not be a Default under this Agreement. Redeveloper shall notify the Authority of material changes to the following Commencement and Completion dates. Redeveloper shall periodically provide the Authority with written notification related to meeting proposed construction benchmarks.

<b>Minimum Improvements Timeline</b>			
<b>Minimum Improvements</b>		<b>Commencement</b>	<b>Completion</b>
Phase 1A	Retail Element	No later than July 31, 2019	No later than December 31, 2020
	Plaza Element	No later than March 1, 2019	No later than 12 months following Completion of the Project Site Work
	Project Site Work	No later than December 1, 2018	No later than December 31, 2019
Phase 1B	Second Element (Hotel Element 1 anticipated)	July 1, 2019 preferred, but no later than July 1, 2020	No later than June 30, 2021
Phase 1C	Initial Parking Element	No later than April 15, 2019	No later than July 31, 2020
	Third Element (Hotel Element 2 anticipated)	No later than September 1, 2019	No later than December 31, 2021
Phase 2	Fourth Element	July 1, 2019 preferred, but no later than October 1, 2021	No later than October 1, 2023
<b>Projected Phase 2 Improvements</b>			
	Fifth Element	June 1, 2019 preferred	N/A

	Expansion Parking Element	June 1, 2019 preferred	N/A
	Sixth Element	June 1, 2019 preferred	N/A

Notwithstanding anything to the contrary set forth in the foregoing Minimum Improvements timeline, the following Completion dates shall apply to those certain portions of the Project Site Work described in clauses (a) through (c) below (collectively, the “Future Project Site Work”):

(a) Redeveloper shall cause the Completion of the following aspects of the Project Site Work to occur by no later than **September 30, 2020**:

(i) any item of Project Site Work identified on the Final Civil Plans as “future” work, including the Public Infrastructure Improvements on W. 77th Street and Computer Avenue, the sidewalk improvements and trees adjacent to the retail buildings on W. 77th Street (i.e., the Retail Element), the sidewalk improvements and trees adjacent to the retail/office building on Computer Avenue, and the curb, sidewalks and trees adjacent to the Plaza Element and the surface parking lot; and

(ii) rough-grading and seeding (without any perimeter landscaping or sidewalk) for that portion of Lot 5 that will contain the Phase 2 Minimum Improvements (expected to be the first office Element).

(b) If, subject to Unavoidable Delay, Commencement of the Phase 1C Minimum Improvements (expected to be Hotel Element 2) has not occurred by June 30, 2022, Redeveloper shall cause the Completion of the installation of the perimeter sidewalk and trees along Computer Avenue and Viking Drive to occur by no later than **September 30, 2022**.

(c) If, subject to Unavoidable Delay, Commencement of the Phase 2 Minimum Improvements (expected to be the first office Element) has not occurred by June 30, 2022, Redeveloper shall cause the Completion of the installation of the perimeter sidewalk and trees along Normandale Road to occur by no later than **September 30, 2022.**”

5. Conditions Applicable to TIF Note A. Section 8.2(a)(ii)(2) is hereby deleted in its entirety with the following inserted in lieu thereof:

“(2) Completion of the Project Site Work, including the site preparation for the Plaza Element, but excluding the Future Project Site Work, all in accordance with the Pentagon South City Approvals (including, specifically, the Final Civil Plans); provided, however, Redeveloper shall cause the Completion of the Future Project Site Work to occur by no later than the dates set forth in Section 6.1(a) through (c); and further provided that if Completion of the Future Project Site Work as provided above has not occurred by such applicable Completion dates, it shall be an automatic

Event of Default until the timely Completion of the applicable Future Project Site Work, and, notwithstanding anything to the contrary regarding the remedies afforded to the Authority following an Event of Default, the Authority's sole remedy for the failure to meet the applicable Completion Dates for the Future Project Site Work shall be the suspension of payments and accrual of interest under TIF Note A until such Event of Default is so cured;"

6. Conditions Applicable to TIF Note B. Sections 8.2(a)(iii)(4) and (5) are hereby deleted in their entirety with the following inserted in lieu thereof:

“(4) Completion of the Initial Parking Element; and

(5) Granting to the City of the Parking Facilities Easement as soon as reasonably practical following the Completion of the Initial Parking Element, but no later than thirty days following Completion of the Initial Parking Element.”

7. Conditions Applicable to TIF Note C. Sections 8.2(a)(iv)(4) is hereby deleted in its entirety with the following Sections 8.2(a)(iv)(4) and (5) inserted in lieu thereof:

“(4) Commencement of at least the fourth Element, which such Element must consist of at least 100,000 square feet of gross building area, pursuant to revised and amended Pentagon South City Approvals approved by the City Council in connection with the site plan, PUD and other requisite land use applications submitted by Redeveloper for the actual development of the fourth Element (the “Phase 2 City Approvals”), which such Phase 2 land use applications for the Phase 2 City Approvals shall include design considerations for the Future Vertical Element, for shared access routes, shared parking resources and utility service from utilities installed as part of the Project Site Work; and

(5) the installation of enhanced or additional pilings or footings within the Initial Parking Element to support the Future Vertical Element and Expansion Parking Element.”

8. Authority Remedies. Section 13.5(b) is hereby amended to add reference to the Authority's rights regarding Redeveloper's TIF eligibility under Section 8.2(a)(ii)(2).

9. Ratification. Except as specifically modified by this Amendment, the terms and provisions of the Original Agreement shall remain in full force and effect.

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

11. Counterparts. This Amendment may be executed simultaneously in one or more

counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or email copies shall be deemed originals.

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



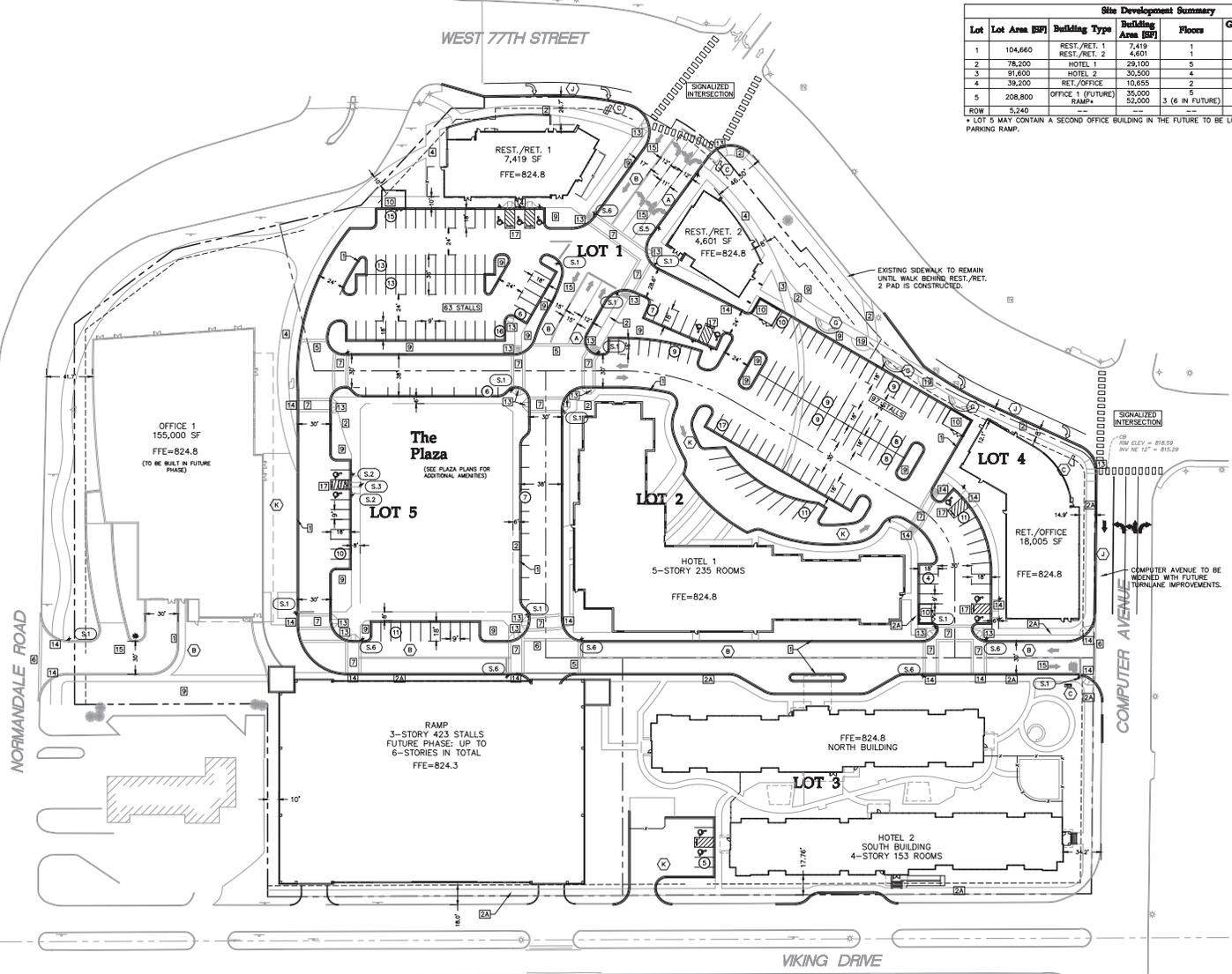




**EXHIBIT A**

**Project Area Map**

[See attached.]



Site Development Summary						
Lot	Lot Area [SF]	Building Type	Building Area [SF]	Floors	Gross Building Area [SF]	Units
1	104,660	REST./RET. 1	7,419	1	7,419	---
		REST./RET. 2	4,601	1	4,601	---
2	78,200	HOTEL 1	29,100	5	134,000	235
3	91,600	HOTEL 2	30,500	4	122,000	153
4	39,200	RET./OFFICE	10,555	2	18,000	---
5	208,800	OFFICE 1 (FUTURE) RAMP*	35,000 52,000	5 3 (6 IN FUTURE)	155,000 312,000	---
ROW	5,240					---

\* LOT 5 MAY CONTAIN A SECOND OFFICE BUILDING IN THE FUTURE TO BE LOCATED ON TOP OF THE PARKING RAMP.

- ### General Site Notes
- BACKGROUND INFORMATION FOR THIS PROJECT PROVIDED BY WESTWOOD PROFESSIONAL SERVICES.
  - LOCATIONS AND ELEVATIONS OF EXISTING TOPOGRAPHY AND UTILITIES AS SHOWN ON THIS PLAN ARE APPROXIMATE. CONTRACTOR SHALL FIELD VERIFY SITE CONDITIONS AND UTILITY LOCATIONS PRIOR TO EXCAVATION/CONSTRUCTION. IF ANY DISCREPANCIES ARE FOUND, THE ENGINEER SHOULD BE NOTIFIED IMMEDIATELY.
  - REFER TO BOUNDARY SURVEY FOR LOT BEARINGS, DIMENSIONS AND AREAS.
  - ALL DIMENSIONS ARE TO FACE OF CURB OR EXTERIOR FACE OF BUILDING UNLESS OTHERWISE NOTED.
  - REFER TO ARCHITECTURAL PLANS FOR EXACT BUILDING DIMENSIONS AND LOCATIONS OF EXITS, RAMPS, AND TRUCK DOORS.
  - ALL CURB RADI SHALL BE 3.0 FEET (TO FACE OF CURB) UNLESS OTHERWISE NOTED.
  - ALL CURB AND GUTTER SHALL BE B612 UNLESS OTHERWISE NOTED.
  - THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING AND MAINTAINING TRAFFIC CONTROL DEVICES SUCH AS BARRICADES, WARNING SIGNS, DIRECTIONAL SIGNS, FLAGS AND LIGHTS TO CONTROL THE MOVEMENT OF TRAFFIC WHERE NECESSARY. PLACEMENT OF THESE DEVICES SHALL BE APPROVED BY THE CITY AND ENGINEER PRIOR TO PLACEMENT. TRAFFIC CONTROL DEVICES SHALL CONFORM TO APPROPRIATE MNDOT STANDARDS.
  - BITUMINOUS PAVEMENT AND CONCRETE SECTIONS TO BE IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE GEOTECHNICAL ENGINEER.
  - CONTRACTOR SHALL MAINTAIN FULL ACCESS TO ADJACENT PROPERTIES DURING CONSTRUCTION AND TAKE ALL PRECAUTIONS NECESSARY TO AVOID PROPERTY DAMAGE TO ADJACENT PROPERTIES.
  - SITE LIGHTING SHOWN ON PLAN IS FOR REFERENCE ONLY. REFER TO LIGHTING PLAN PREPARED BY OTHERS FOR SITE LIGHTING DETAILS AND PHOTOMETRICS.
  - PARKING LOT STRIPING TO BE TWO COATS OF 4" WHITE PAINT WITH EPOXY AND SILICA SAND.

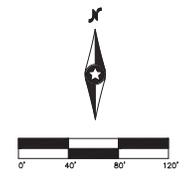
### Site Legend

EXISTING	PROPOSED	
---	---	PROPERTY LINE
---	---	LOT LINE
---	---	SEBACK LINE
---	---	EASEMENT LINE
---	---	CURB AND GUTTER
---	---	POD NORMAL WATER LEVEL
---	---	RETAINING WALL
---	---	FENCE
---	---	NUMBER OF PARKING STALLS
---	---	TRANSFORMER
---	---	SITE LIGHTING
---	---	TRAFFIC SIGN
---	---	POWER POLE
---	---	BOLLARD / POST

- ### Site Details
- B612 CURB & GUTTER (TYP.)
  - CONCRETE SIDEWALK
  - FUTURE CONCRETE SIDEWALK
  - DECORATIVE CONCRETE
  - FUTURE DECORATIVE CONCRETE
  - CONCRETE BANDING
  - CONCRETE VALLEY GUTTER
  - DECORATIVE CROSSWALK
  - LANDSCAPED AREA
  - TRASH ENCLOSURE
  - PAVERS / STAMPED CONCRETE
  - PRIVATE PEDESTRIAN CURB RAMP
  - DEPRESSED CURB FOR FUTURE PEDESTRIAN CURB RAMP
  - PAINTED TRAFFIC ARROWS
  - PUBLIC PEDESTRIAN CURB RAMP
  - ACCESSIBLE PARKING LOOD, STRIPING, & SIGNAGE
  - BIKE RACKS
  - BENCH
  - LIGHT POLE ROAD/RED DOUBLE LIGHT
  - LIGHT POLE ROAD LIGHT
  - LIGHT POLE SHOE BOX PARKING LOT
- ### Site Notes
- 4" WHITE LINE STRIPE
  - 4" DOUBLE YELLOW LINE STRIPE
  - MONUMENT SIGN
  - SAWTOOTH AND MATCH EXISTING PAVEMENT
  - NOT USED
  - NOT USED
  - ARTWORK DISPLAY
  - GREEN SCREEN FOR VINES (WITH FUTURE BUILDING)
  - FUTURE TURNLANE IMPROVEMENTS
  - FUTURE CONCRETE CURBING AND PAVEMENTS
- SEE PAVEMENT PLAN FOR SITE DETAILS, AND PAVEMENT AND CONCRETE DESIGN.

### S.10 Sign Legend

REFERENCE	SIZE	MODEL
S.1 STOP SIGN	30"x30"	RT-1
S.2 HANDICAP ACCESSIBLE	12"x18"	R7-BM
S.3 NO PARKING	12"x12"	R8-38
S.4 FIRE LANE (LOCATIONS BY FIRE DEPT.)	12"x18"	R7-6-9
S.5 LANE USE SIGN	48"x30"	R3-BAELA
S.6 PEDESTRIAN CROSSWALK	30"x30"	WH-2



**EXHIBIT C**

**Form of Parking Facilities Easement Agreement**

**PARKING FACILITIES EASEMENT AGREEMENT**

**between**

**THE CITY OF EDINA, MINNESOTA**

**and**

**PENTAGON VILLAGE, LLC**

**Dated as of**

\_\_\_\_\_, 20\_\_\_\_

**THIS DOCUMENT WAS DRAFTED BY:**

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

**PARKING FACILITIES EASEMENT AGREEMENT**  
(Pentagon South)

THIS PARKING FACILITIES 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 PENTAGON VILLAGE, LLC, a Minnesota 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 “Redeveloper”, are parties to that certain Redevelopment Agreement dated October 16, 2018, as amended by First Amendment to Redevelopment Agreement dated February 5, 2019 (the “Contract”).

B. Such Contract provides for the redevelopment by Owner of the Project Area (as defined in the Contract) and located within the Pentagon Park Tax Incremental Financing district, established by the Authority pursuant to Resolution No. 14 – 2014 – 2, in coordination with the Authority and with the cooperation and assistance of the City.

C. The Contract provides for the expenditure of public and other funds for certain Minimum Improvements to assist in the redevelopment of the Project Area.

D. Such Minimum Improvements currently include a three-level, approximately [423]-space parking structure (the “Initial Parking Facility”), which such Initial Parking Facility is designed such that it can be expanded vertically in the future to include (i) additional levels of parking located directly above the Initial Parking Facility (the “Expansion Parking Facility”, together with the Initial Parking Facility collectively, the “Parking Facility”) and (ii) an office, hotel, and/or residential building located above, integrated into, and connected to the Parking Facility (the “Future Vertical Element”), which such Parking Facility is located on certain real property within the Project Area legally described on the attached Exhibit A (the “Burdened Property”).

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

F. The essential purpose of the Parking Facility is to support and promote commercial activity within the Project Area by serving the private parking needs of the commercial elements within the Project Area (including the Future Vertical Element), and the rights granted to the City and the general public by Owner in this Agreement are in recognition of the tax increment financing assistance provided by the City and the Authority used to finance the construction of the Initial Parking Facility.

G. Owner has agreed to own, operate, manage, and maintain the Parking Facility pursuant to the terms of this Agreement.

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

I. 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 EASEMENT

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 all levels and areas of the Parking Facility, together with and including all ancillary amenities, components, and fixtures directly related to such vehicular parking use located thereon and therein for the users of the Parking Facility in general and as required by, or reasonably inferable from, the Final Development Plan, Development Contract, and the Contract (e.g., bike racks and storage units, bike repair facilities and equipment, EV charging stations) (collectively, the "Parking Premises") for the purpose of the general public utilizing the parking stalls within the Parking Facility for vehicular parking and utilizing such other amenities, components, and fixtures of the Parking Premises for their respective intended purposes, all in accordance with and subject to the terms and conditions of this Agreement, **except**, notwithstanding the foregoing, the Parking Premises shall not include the top level of any Expansion Parking Facility, which such level shall be utilized to serve the Private Party(ies) using and occupying the Future Vertical Element; and

(b) a non-exclusive, perpetual public easement over, across, upon and through those certain portions of the Project Area which provide 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 Project 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 commercial elements within the Project Area (including the Future Vertical Element), all as [legally described and/or depicted] on the attached Exhibit B (collectively, the "Access Premises", and together with the Parking Premises, collectively the "Easement Premises"), all in accordance with and subject to the terms and conditions of this Agreement. The Easement Premises do not include the air rights lying above the Parking Facility.

**[NTD: The final description and/or depiction of the Access Premises will be determined after construction of site improvements, and such Access Premises will be consistent with**

**the non-exclusive ingress/egress routes available to all parcels in the Project Area and otherwise sufficient to provide the public reasonable means of access to and from the Parking Premises.]**

## ARTICLE II

### TERM

Section 2.1 Term. The easements granted hereby, and each reservation, covenant, condition and restriction contained in this Agreement, shall be effective as of the date hereof, shall be perpetual, and shall remain in effect until affirmatively released by the City. Such release shall be evidenced by the recording of a release or termination of this Agreement in the real estate records of Hennepin County, Minnesota, at which time this Agreement shall terminate, subject to reconciliation of expenses and obligations incurred through the date of release or termination and the continuation of those provisions that specifically survive termination of this Agreement, and the Parking Facility 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, and the Parking Facility as a whole, in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders pertaining to parking facilities generally from time to time, 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 and the Burdened Property. 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 Parking Facility by the general public shall be free of charge and Owner shall not charge any fee to the general public for the use of the Parking Facility pursuant to this Agreement. Owner may engage such employees, agents, or independent contractors as it may deem advisable to conduct the management, repair, maintenance, and operation of the Easement Premises from time to time during the term of this Agreement. Except as specifically set forth herein, Owner is entitled to make all decisions and to execute all agreements, in its sole discretion, with respect to the Parking Facility so long as such decisions and agreements do not violate the provisions of this Agreement, the Contract, the approved Final Development Plan, or any applicable governmental laws, ordinances, regulations or orders, as each of the foregoing may be amended and so long as each of the foregoing remains in effect.

Section 3.2 Signage. Owner shall install and maintain the following signage:

(a) A prominent, permanent "Public Parking" sign at or near two out of the three vehicular entrances to the Parking Facility, including the entrance located off of

Viking Drive.

(b) A permanent placard (to be no smaller than approximately 8 1/2 by 11 inches) in the main lobby or foyer of the Parking Facility which states that the public parking available in the Parking Facility is provided in partnership with the City and the Authority.

(c) Prominent, permanent wayfinding signage located with and in form and design consistent with other wayfinding signage within the Project Area, which such signage indicates the presence of and direction to the public parking available in the Parking Facility.

The final design and wording of each element of the foregoing signage 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 public 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 designate and reserve (including by the posting of appropriate signage and/or by the erection of physical barriers) up to 10% of the parking stalls and all EV charging stations within the Parking Facility for exclusive use by and for Owner, or its tenants, occupants, and/or other users of the commercial elements within the Project Area, and/or their respective permittees or invitees (hereinafter individually referred to as “Private Party”, collectively referred to as “Private Parties”);

(b) [To the extent certain amenities, components, and/or fixtures of the Parking Facility are intended for the exclusive use of Owner, or any Private Party (including the Future Vertical Element), Owner reserves the right to reserve the same for exclusive use by such Private Parties and not provide the same to the general public.] **[NTD: The preceding will be revised prior to execution of this Agreement to more specifically describe the Parking Facility amenities, if any, which are intended for the exclusive use of such Owner/tenant-related parties.]**

(c) 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;

(d) Owner reserves the right at any time and from time to time to exclude and restrain any private third party from access to the Parking Facility for cause and on a non-discriminatory basis;

(e) Owner reserves the right to adopt and enforce reasonable rules and regulations (as the same may be revised from time to time, collectively “Rules”) for the safe, efficient, and orderly use and operation of the Easement Premises, so long as such Rules are applied on a non-discriminatory basis and do not adversely impact the City’s or the public’s rights to the use of the Easement Premises as set forth in this Agreement beyond a de minimis extent.

(f) In addition to Owner’s Rights with respect to future expansion of the Parking Facility, as set forth in Article IV:

(i) Owner reserves the right to temporarily erect or place barriers in and around areas on the Easement Premises or the Burdened Property which are being constructed and/or repaired in order to ensure either safety of persons or protection of property;

(ii) Subject to the terms of the Contract and Article IV below, Owner reserves the right to redesign, redevelop, renovate and otherwise change the Easement Premises so long as (i) Owner obtains all requisite governmental approvals, (ii) such changes do not diminish the overall quality, quantity, and/or size of the Easement Premises (or any of its component parts) beyond a de minimis extent, and (iii) such changes do not otherwise adversely impact the City’s or the public’s rights to the use of the Easement Premises as set forth in this Agreement beyond a de minimis extent.

## **ARTICLE IV**

### **FUTURE EXPANSION OF PARKING FACILITY**

Section 4.1 General. As stated in Recital D above, the parties anticipate that Owner will modify and vertically expand the Initial Parking Facility in the future to include the Expansion Parking Facility and the Future Vertical Element (individually and collectively referred to as, the “Expansion”). The design and construction of the Expansion shall be performed at Owner’s sole cost and expense. For purposes of clarity, upon completion of the construction of the Expansion Parking Facility and/or any part thereof, the Parking Facility, the Easement Premises, the easement rights granted herein, and the rights and obligations of Owner herein shall automatically be deemed to be expanded to include and apply to the Expansion Parking Facility on the same terms and conditions set forth herein with respect to the original Parking Facility and original Easement Premises.

Section 4.2 Notice of Work. When Owner intends to commence construction of the Expansion, it will first give the Authority written notice thereof and include reasonably detailed information and plans regarding the construction, and anticipated scheduling and sequencing of

the Expansion for the Authority's review and reasonable, prompt approval by the Authority's staff (e.g., Executive Director, Economic Development Manager, etc.). Such information and plans will be deemed approved by the Authority if the Authority, via its staff, has not given written notice of disapproval within 30 days of such notice. By way of example, and not limitation, the Authority may object to such information and/or plans if the same fail to comply with the terms and conditions of the Contract and/or this Agreement. If Owner makes any "material deviation" (as defined below) to the Expansion information and plans required hereunder after the Authority has approved the same, Owner will notify the Authority of such changes, and the Authority shall thereafter have 30 days to approve such material deviation in accordance with this Section. For purposes of this Section, a "material deviation" equates to an objective deviation from the information and/or plans for the Expansion originally approved by the Authority, and not a subjective determination that the intent of such information and/or plans is not met. The Authority's review and approval of such plans and information shall in no way be deemed a representation or warranty that such plans comply with applicable law or otherwise create any liability for Authority, nor shall the Authority's review and approval of such plans and information be deemed to satisfy any plan review or permitting requirements imposed by the regulations and ordinances of the City or any other governmental entity.

Section 4.3 Manner of Work. Owner shall cause all work related to the construction of the Expansion to be performed with reasonable diligence and in a manner so as to minimize interference with the use and operation of the Parking Facility. Specifically, at all times during construction of the Expansion (a) at least one point of ingress and egress to and from the Parking Facility shall remain open and accessible and (b) Redeveloper shall use commercially reasonable efforts to limit the times and durations when the Parking Facility (or portions thereof) is not open and available for the purpose of the general public utilizing the Parking Premise in accordance with this Agreement. During construction of the Expansion, Owner shall maintain, or cause to be maintained, the Easement Premises in a safe, clean, and orderly condition, and perform, or require to be performed, all of construction activities in a commercially reasonable manner, including installation and maintenance of all necessary barricades, fences, overhead protection, and signage to ensure the health and safety of all users of the Parking Facility. If there is imminent danger of injury or damage to person or property due to damage or failure of any structural element or other facility in the Parking Facility, the City shall give reasonable notice (under the circumstances) to Owner and Owner shall immediately correct such damage or failure or otherwise take reasonable steps to prevent such injury or damage. The City may correct such damage or failure if Owner fails to do so following receipt of the notice required hereunder.

Section 4.4 Temporary Closure. Notwithstanding anything herein to the contrary, the City and Authority acknowledge that construction of the Expansion may require the temporary closure of the Parking Facility, provided, however, Owner, subject to Unavoidable Delays (as defined below) shall not permit the Parking Facility to be closed for a period of longer than twelve (12) consecutive calendar months in connection with such construction of the Expansion. If, in connection with such construction of the Expansion, the Parking Facility is closed to the general public for a period of twelve (12) consecutive calendar months or longer, the City may give Owner written notice of such default and (a) suspend payment of Available Tax Increment and accrual of interest under any outstanding TIF Note and/or (b) pursue all available remedies at law and in equity, until such default is cured, if such default is not cured within fifteen (15) days of receipt of written notice of a default. For purposes of this Section, "Unavoidable Delays" means delays,

outside the control of Owner, which are the direct result of (i) unusually severe or prolonged bad weather, (ii) acts of God, fire or other casualty to the Parking Facility, (iii) litigation commenced by third parties which directly results in delays, (iv) acts of any federal, State, or local government unit which directly result in delays, (v) strikes, other labor trouble, or (vi) delays in delivery of materials.

Section 4.5 Insurance. During the construction of the Expansion, Owner's contractor performing such construction activities, shall maintain in full force and effect: (a) commercial general liability insurance with limits of at least \$2,000,000 for bodily or personal injury or death; (b) automobile liability insurance having a combined single limit of at least \$1,000,000; and (c) workers' compensation insurance in accordance with applicable law. All liability policies shall list the City as an additional insured. All policies shall provide that the City shall receive at least 10 days' notice prior to any cancellation or termination of such insurance policies. Owner's contractor performing the construction activities shall deliver to the City a certificate evidencing such insurance and coverages as a condition to commencement of the construction of the Expansion.

## **ARTICLE V**

### **MAINTENANCE OF THE EASEMENT PREMISES**

Section 5.1 Maintenance. At all times during the term hereof, Owner, at its cost and expense, shall keep and maintain the Parking Facility and Access Premises 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 Parking Facility in the condition and repair required by this Agreement;
- (b) maintaining all drive and parking surfaces in a smooth and evenly-covered condition, which maintenance work shall include cleaning, sweeping, restriping, repairing and resurfacing the same;
- (c) maintaining in good working order (including cleaning and painting as necessary), repairing, and replacing as necessary the Access Premises;
- (d) maintaining in good working order, repairing, and replacing as necessary all ventilation and mechanical systems;
- (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 safety systems, and any and all other utility or similar services used, rendered, or supplied, upon, at, from, or in

connection with the Parking Facility;

(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 Parking Facility and Accesses Premises; and

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

It is distinctly understood that the preceding shall not require maintenance and/or repair of the Parking Facility and the Access Premises and/or improvements hereinafter erected thereon in perfect condition or is a condition equal to new at all times, but Owner shall use commercially reasonable efforts to keep and maintain the same in such condition as to minimize, so far as is practicable, by reasonable care, maintenance, replacement, and repair, the effects of use, decay, injury, and destruction of the same or any part thereof, the City recognizing that depreciation and diminution by reason of ordinary wear and tear, age, use, and environmental factors is unavoidable and expected.

Section 5.2 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 VI**

### **UTILITIES**

Section 6.1 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 VII**

### **TAXES AND ASSESSMENTS**

Section 7.1 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 Parking Facility, the Future Vertical Element, and the Access Premises. 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 VIII

### INDEMNIFICATION, INSURANCE

Section 8.1 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 indemnify and save harmless the City and its employees 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 8.2 Property Insurance. At all times during the term hereof, Owner, at its sole cost and expense, shall keep the Parking Facility, the Future Vertical Element, the Access Premises, and all alterations, extensions, and improvements thereto and replacements thereof, insured, 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, at commercially reasonable coverage levels, to be reviewed from time to time by Owner.

Section 8.3 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 8.4 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 8.1 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;  
and
- (c) robbery and hold-up insurance.

Section 8.5 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, within a commercially reasonable time following the City's request therefor, furnish the City with copies of policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel it without giving written notice to the City at least 10 days before the cancellation becomes effective. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 8.6 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 IX**

### **ASSIGNMENT**

Section 9.1 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 9.2 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 Notes issued under the terms of the Contract, Owner may assign this Agreement without consent of the City.

## **ARTICLE X**

### **CASUALTY**

Section 10.1 Destruction. In the event that all or any part of the Parking Facility and/or Access Premises 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. If Owner rebuilds or reconstructs the Parking Facility and/or Access Premises, the proceeds from any and all insurance policies covering risks against loss or damage shall be used to rebuild or reconstruct.

## **ARTICLE XI**

### **EMINENT DOMAIN**

Section 11.1 Major Condemnation. If all of the Parking Facility 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.

## **ARTICLE XII**

### **DEFAULT AND TERMINATION**

Section 12.1 Default by the City. If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after 90 days' written notice of such default, then in such case Owner may (a) declare the termination of this Agreement and re-enter and take possession of the Easement Premises or (b) pursue all available remedies at law and in equity. In such case, or at such time as this Agreement is terminated pursuant hereto, the City agrees to execute and deliver to Owner a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota.

Section 12.2 Default by Owner. If Owner fails to perform any of its obligations under this Agreement, and fails to cure such default after 90 days' written notice of such default or, if such default cannot reasonably be cured within such 90 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 XIII**

### **MISCELLANEOUS**

Section 13.1 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 13.2 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 Project Area as contemplated in the Contract.

Section 13.3 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 13.4 Estoppel Certificate. Each party, respectively, agrees that at any time and from time to time, within ten business days after receipt of a written request by the other party, to execute, acknowledge and deliver to such party a statement in writing and in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments certifying as of the date of such certification: (a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that the same are in full force and effect as modified and identifying the modifications; (b) that no party is in default under any provisions of this Agreement or, if there has been a default, the nature of such default; (c) that all work to be performed, under this Agreement or any related agreement has been performed or, if not so performed, specifying the work to be performed; and (d) as to any other factual matter that the requesting party or a prospective mortgagee or other lender shall reasonably request. It is intended that any such statement may be relied upon by any person, prospective mortgagee of, or assignee of any mortgage, upon such interest. Any such statement on behalf of the City may be executed by the City Manager without City Council approval.

Section 13.5 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 13.6 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:

Pentagon Village, LLC  
Attn: Jay Scott  
8560 Kelzer Pond Drive  
Victoria, MN 55386

with a copy to:

Anthony J. Gleekel  
Siegel Brill P.A.  
100 Washington Avenue South  
Minneapolis, MN 55401

In the case of the City:

City of Edina  
Attn: City Manager  
4801 W. 50th Street

Edina, MN 55424

In the case of the Authority:

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

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

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

Section 13.1 Dispute Resolution. Owner and the City will use the following special dispute resolution process for those unresolved disputes or the lack of agreement following a request for consent or approval, before exercising any applicable legal remedies. Upon the occurrence of such an unresolved dispute, Jay Scott (or his successor or delegate), as Owner's representative, and the City Manager (or its delegate), as the City's representative, shall promptly meet in person and explore resolution until either party determines that effective resolution is not possible without more formal dispute resolution. Owner and the City, through their respective representative shall complete this special dispute resolution process in good faith before resorting to any other applicable legal process or remedy. The foregoing notwithstanding, the special dispute resolution process, as set forth in this section, shall be deemed a failure if such dispute or matter is not resolved within 30 days of the initial written request by a party to commence the process, at which time the parties may pursue any other applicable legal remedies.

Section 13.2 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 13.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 13.4 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 13.5 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 13.6 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 13.7 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 Burdened Property

**[The final legal description of the Burdened Property; which will be a portion of Lot 5, Pentagon Village that would contain the Parking Facility per the Pentagon South City Approvals, or a separate tax parcel/lot to be subdivided out of Lot 5.]**

**EXHIBIT B**

**[Legal Description and/or Depiction]** of the Access Premises

[To be inserted]



**EXHIBIT D**

TIF Pro Forma

[See attached.]

**EXHIBIT D - TIF PRO FORMA**

**City of Edina / Pentagon Village Redevelopment Agreement - First Amendment**  
**Full Redevelopment**

<b>SOURCES</b>			
	<u>% OF TOTAL</u>	<u>% OF FINANCING</u>	<u>TOTALS</u>
DEVELOPER FINANCING - Loans			60,688,160
DEVELOPER EQUITY			39,615,564
<b>AMOUNT FINANCED</b>			<b>100,303,724</b>
GRANT #1			1,073,100
GRANT #2			0
EXTERNAL EQUITY			0
<b>TOTAL SOURCES</b>			<b>101,376,824</b>

<b>USES</b>				
	<u>PER S.F.</u>	<u>% OF TOTAL</u>	<u>SUBTOTAL</u>	<u>TOTALS</u>
<b>ACQUISITION COSTS</b>	<b>0</b>			
Land Acquisition		3.24%	3,280,000	<b>3,405,438</b>
Land Commission		0.23%	229,023	
Stabilization			(103,585)	
<b>SITE COSTS</b>				
Site Improvement Costs (Demo/Soils/Storm/Gre)		8.63%	8,746,600	<b>30,878,556</b>
Parking Ramp		19.09%	19,348,392	
Infrastructure Costs (Public ROW Improvements)		0.51%	514,028	
Professional Services		1.07%	1,081,899	
Sitework Development Fee		1.17%	1,187,637	
<b>CONSTRUCTION COSTS</b>				<b>47,219,375</b>
Retail Construction		3.47%	3,513,125	
Retail/Office Construction		3.46%	3,508,750	
Office 1 Construction		19.93%	20,205,000	
Office 2 Construction		19.72%	19,992,500	
<b>TENANT IMPROVEMENTS</b>				<b>9,070,500</b>
Tenant Improvements - Retail		0.93%	945,500	
Tenant Improvements - Office		8.01%	8,125,000	
<b>SOFT COSTS</b>				
<b>PREDEVELOPMENT COSTS</b>				<b>1,516,900</b>
Architect & Civil		1.44%	1,460,000	
Governmental		0.01%	10,000	
LLC Insurance (Builders Risk + Liability)		0.00%	5,000	
City Application Fees & Traffic Study		0.02%	24,500	
Survey & Soil Testing		0.02%	17,400	
<b>INTEREST EXPENSE</b>				<b>1,970,000</b>
Construction Costs		1.94%	1,970,000	
Land Carrying Cost			0	
<b>GOVERNMENTAL FEES</b>				<b>0</b>
Park Dedication Fees			0	
Special Assessments			0	
<b>LEGAL</b>		0.29%	295,000	<b>295,000</b>
<b>REAL ESTATE TAXES</b>		1.39%	1,406,530	<b>1,406,530</b>
<b>FINANCING</b>				<b>416,250</b>
Title Insurance/Mortgage Registration			0	
Financing, Origination and Guarantee Fees		0.31%	311,250	
Bank/Borrower Legal			0	
Recording & Closing Costs			0	
Loan Costs (Construction)		0.10%	105,000	
<b>LEASING</b>				<b>3,487,500</b>
Leasing Commissions - Tenant Rep		1.69%	1,717,000	
Leasing Commissions - Landlord Rep		1.04%	1,054,000	
Leasing Commissions - Solomon		0.71%	716,500	
<b>OPENING CONTINGENCY</b>		0.16%	165,000	<b>165,000</b>
<b>OFFICE OVERHEAD</b>				<b>0</b>
CAM,RET & Mgmt			0	
<b>DEVELOPER FEE</b>		1.52%	1,545,775	<b>1,545,775</b>
<b>MISC</b>				<b>0</b>
<b>Total Soft Costs</b>				<b>10,802,955</b>
<b>TOTAL USES</b>				<b>101,376,824</b>

Note: The above represents the anticipated project costs incurred by Pentagon Village, LLC in redeveloping the Project Area, including Acquisition Costs and Stabilization Costs incurred since the date of TIF District Certification. These costs do not include \$30-40 million of anticipated construction costs to build Hotel Elements 1 and 2 as they are anticipated to be incurred by other parties not subject to this agreement.

**Exhibit D, continued**

<b>EQUITY REQUIREMENT ASSUMPTION</b>	
Year	
Amount of Equity	39,615,564
Minimum Rate Of Return - Percent	0.00%
Minimum Rate Of Return - Amount	0

*Assumption of 100% equity for site costs attributable to the Hotel Elements and 70%/30% debt to equity for other Elements*

<b>SALES ANALYSIS ASSUMPTIONS</b>	
Net Operating Income End 2024	Various
<u>Divided By Cap Rate</u>	<u>6.75%</u>
Gross sales price	95,175,473
Plus Unamortized TIF Note Principal	17,435,762
<u>Minus Debt - Bank</u>	<u>57,799,709</u>
Net Sales amount	54,811,526
<u>Minus sales expenses</u>	<u>2,379,387</u>
<b>Final Net Amount</b>	<b>52,432,139</b>

<b>INTERNAL RATE OF RETURN ANALYSIS - EQUITY PARTNERS WITH TIF</b>					
Years	Year	Element Investment	Cash Flow	Net Sales	Total Cash Flow
1	2014	0	(4,035,838)	0	(4,035,838)
2	2015	0	(480,984)	0	(480,984)
3	2016	0	(395,158)	0	(395,158)
4	2017	0	(438,152)	0	(438,152)
5	2018	0	(1,138,528)	0	(1,138,528)
6	2019	(465,709)	(27,875,764)	13,006,398	(15,335,075)
7	2020	(1,962,693)	234,348	0	(1,728,345)
8	2021	(2,674,720)	1,576,748	0	(1,097,972)
9	2022	0	2,510,524	7,945,957	10,456,481
10	2023	0	2,293,725	22,169,274	24,463,000
11	2024	0	710,613	9,310,509	10,021,122
12	2025	0	0	0	0
<b>Total</b>		<b>(5,103,122)</b>	<b>(27,038,466)</b>	<b>52,432,139</b>	<b>20,290,551</b>
					<b>IRR: 12.50%</b>

<b>INTERNAL RATE OF RETURN ANALYSIS - WITHOUT TIF</b>					
Years	Year	Element Investment	Cash Flow	Net Sales	Total Cash Flow
1	2014	0	(4,035,838)	0	(4,035,838)
2	2015	0	(480,984)	0	(480,984)
3	2016	0	(395,158)	0	(395,158)
4	2017	0	(438,152)	0	(438,152)
5	2018	0	(1,138,528)	0	(1,138,528)
6	2019	(465,709)	(27,875,764)	5,508,750	(22,832,723)
7	2020	(1,945,499)	196,956	0	(1,748,543)
8	2021	(2,586,932)	1,375,493	0	(1,211,439)
9	2022	0	1,848,667	6,233,443	8,082,110
10	2023	0	1,583,887	17,599,497	19,183,384
11	2024	0	388,510	5,654,687	6,043,197
12	2025	0	0	0	0
<b>Total</b>		<b>(4,998,140)</b>	<b>(28,970,911)</b>	<b>34,996,377</b>	<b>1,027,326</b>
					<b>IRR: 0.68%</b>