

**REDEVELOPMENT AGREEMENT**

**by and among**

**CITY OF EDINA, MINNESOTA,**

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

**and**

**PENTAGON VILLAGE, LLC**

**Dated as of  
October 16, 2018**

THIS DOCUMENT WAS DRAFTED BY:  
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**REDEVELOPMENT AGREEMENT  
(Pentagon South)**

THIS REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into October 16, 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 PENTAGON VILLAGE, LLC, a Minnesota limited liability company (the “Redeveloper”).

**RECITALS**

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

WHEREAS, under 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 within a redevelopment project area; and

WHEREAS, the Authority and City established the Pentagon Park Tax Increment Financing District (redevelopment district) pursuant to Resolution No. 2014 – 2 (the “TIF District”), which TIF District encompasses approximately 42 acres of land located along 77th Street West between Minnesota Highway 100 and Parklawn Avenue (the “Redevelopment Area”), as such Redevelopment Area is more particularly described in Redevelopment Plan; and

WHEREAS, the City and the Authority established the TIF District having 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and building vacancies, poor soils and potential contamination, inconsistent legal restrictions on redevelopment and outdated and inadequate public infrastructure and circulation; and having analyzed current land use in the Redevelopment Area, including a building-by-building structural analysis, and after appropriate hearings and notices, the City adopted findings and determined that the TIF District is in the public interest and is a “redevelopment district” under the TIF Act; and

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

WHEREAS, the City and the Authority adopted findings determining that redevelopment would not occur solely through private investment within the reasonably foreseeable future and that the increased market value of the site that could reasonably be expected to occur without the use of the tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the project tax increments for the maximum duration of the TIF District permitted by the TIF Plan, that the

Redevelopment Plan conform to the general plan for the development or redevelopment of the City as a whole and that the Redevelopment Plan will 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; and

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

Whereas, the Redevelopment Area is subject to that certain Master Redevelopment Agreement dated May 20, 2014 by and among the City, the Authority, and Pentagon Revival, LLC, a Delaware limited liability company (“Master Redeveloper”), as amended by that certain First Amendment to Master Redevelopment Agreement dated as of an even date herewith (collectively the “Master Redevelopment Agreement”), pursuant to which Master Redeveloper proposed a redevelopment project covering approximately 42 acres in the Project Area on which the Master Redeveloper demolished and cleared existing blighted structures, and proposed to construct certain improvements that included, without limitation, a mixed-use hotel, office, medical and supporting retail elements, as well as a potential housing component, all driven by market demand; and

WHEREAS, pursuant to the First Amendment to the Master Redevelopment Agreement, the Project Area hereunder was released from the larger “Project Area” defined in the Master Redevelopment Agreement, Master Redeveloper designated Redeveloper as the redeveloper of the Project Area hereunder, and the Authority and the City accepted such designation,

WHEREAS, pursuant to City Council Resolution No. 2018-62 (“Pentagon South Approval Resolution”) and City Ordinance No. 2018-11 (“Pentagon South PUD Ordinance”), the City has now approved Redeveloper’s application for the rezoning of approximately 12 acres of the Redevelopment Area, referred to herein as the “Project Area” (being that area of the Redevelopment Area bound to the north by 77th Street West, to south by Viking Drive, to the east Computer Avenue, and to the west Minnesota Highway 100/Normandale Boulevard) to a planned unit development, and the City has approved the Final Plat, Pentagon South Final Development Plan, and Pentagon South Development Contract for a portion of the Project Area; and

WHEREAS, Redeveloper now proposes to construct certain Minimum Improvements on the Project Area pursuant to the terms and conditions of the Pentagon South Approval Resolution, Pentagon South PUD Ordinance, the Pentagon South Final Development Plan, the Pentagon South Development Contract (collectively, the “Pentagon South City Approvals”), and this Agreement; and

WHEREAS, as part of the Project, Redeveloper has agreed to construct and pay for certain street improvements and related City infrastructure improvements associated with the Project Area defined as the “Public Infrastructure Improvements” in this Agreement; and

WHEREAS, upon satisfaction of certain conditions set forth in this Agreement, the Authority will provide Redeveloper TIF Assistance in accordance with Article VIII of this Agreement in connection with Redeveloper’s construction and development of the Project; and

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

the residents of the City.

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

## **ARTICLE I DEFINITIONS**

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

**“Acquisition Costs”** means the allocable cost of acquisition of a building or buildings within the Project Area existing at the time of TIF District certification.

**“actually incurred or committed”** means Redeveloper (or its predecessors as to any pre-development costs) has expended Qualified Redevelopment Costs, entered into binding contracts for Qualified Redevelopment Costs, or otherwise complied with the requirements of the Five-Year Rule, in order to qualify for TIF Assistance in accordance with the TIF Act, this Agreement, and the applicable TIF Note.

**“Affiliate”** means one or more special purpose entities formed to develop a Phase or Element and which have common ownership with Redeveloper.

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

**“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 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.

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

**“City”** means the City of Edina.

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

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

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

**“Commencement”** with respect to a particular Element of the Minimum Improvements means the date of the first actual physical construction to the Project Area of an applicable Element (including, specifically, pouring footings and foundations), and with respect to the Plaza Element and the Project Site Work the start of actual physical construction of the Plaza Element and/or the Project Site Work, as applicable, pursuant to any applicable building or construction permits.

**“Completion”** means (i) with respect to a particular Element which is part of the Minimum Improvements, or the Plaza Element or the Project Site Work, Redeveloper’s receipt of a Certificate of Completion from the Authority for that Element, the Plaza Element, or the Project Site Work, as applicable and (ii) with respect to a particular Element which is not part of the Minimum Improvements, the issuance to Redeveloper of a final certificate of occupancy from the City’s buildings inspections division.

**“Controlling Interest Transfer”** means a transfer by Redeveloper of an Element Property to an entity in which a party other than Redeveloper or an Affiliate has more than a 50% interest.

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

**“Cost Submission Deadline”** has the meaning set forth in Section 8.1(b).

**“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 Redeveloper which becomes an Event of Default under this Agreement if it is not cured.

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

**“Element”** means a vertically constructed improvement to the Project Area, which is allowed under the Pentagon South PUD Ordinance and approved by the City pursuant to the Pentagon South Final Development Plan, including without limitation, the Retail Element, Hotel Element 1, and Hotel Element 2, or a different Element approved by the City.

**“Element Property”** means a Lot, shown on the Final Plat, on which an Element will be constructed.

**“Element TIF Pro Forma”** will be substantially in the form attached as Exhibit E and shall include fees payable to or charged by Redeveloper, Affiliates, and any third party, which fees will be commercially reasonable and common in the market place, and may include (i) tenant improvements and project management fee, (ii) space planning/design management fee, (iii) construction financing costs, (iv) financing, origination and guarantee fees, (v) marketing fees related to leasing, (vi) project management fee, (vii) development fees, and (viii) administrative overhead.

**“Engineer’s Certification”** means with respect to the Plaza Element and the Project Site Work, a written certification by a licensed professional engineer engaged by Redeveloper to the Authority and the City that the Plaza Element and/or the Project Site Work, as applicable, has been constructed and/or installed in conformance with the Pentagon South Final Development Plan and

Pentagon South Development Contract, and the City engineer has reviewed and accepted such certification.

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

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

**“Final Plat”** means the plat of Pentagon Village, Hennepin County, Minnesota, which subdivides the Project Area, a copy of which is attached hereto as Exhibit B-2.

**“Financing Commitment”** means a financing commitment or letter of interest from a mortgage lender for a Phase, or portion of a Phase, 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).

**“Five-Year Rule”** means Minnesota Statutes, Section 469.1763, Subd. 3.

**“Go-Ahead Letter”** means Redeveloper’s letters to the City and the Authority indicating that the Financing Commitment for the relevant Element or Phase has been received by Redeveloper and Redeveloper is prepared to proceed with the relevant Element or Phase.

**“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.

**“Hotel Developer”** has the meaning set forth in Section 12.3(a).

**“Hotel Element 1”** has the meaning set forth in Section 4.1(a)(2).

**“Hotel Element 2”** has the meaning set forth in Section 4.1(a)(3).

**“IRR”** means the internal rate of return for an Element, Phase or the Project (as applicable) as calculated in the TIF Pro Forma attached as Exhibit D, where the IRR is calculated as the annual return on the cash flow over the applicable period.

**“Land Carrying Costs”** means an agreed upon rate of 6% annually on Acquisition Costs for any Element Property from the time of TIF District certification until the closing on the Transfer of the final Element Property.

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

**“Lot”** or **“Lots”** means Lots 1 through 5, Block 1, Pentagon Village, according to the Final

Plat, or any further subdivision of said Lots that creates a separate tax parcel with a separate legal description. Whenever, in this Agreement, a portion of the Project Area is referenced by number (e.g., Lot 1), such reference shall be to the Lot number as set forth in the Final Plat.

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

**“Master Redeveloper”** means Pentagon Revival, LLC, a Delaware limited liability company.

**“Master Redevelopment Agreement”** means that certain Master Redevelopment Agreement dated May 20, 2014 by and among the City, the Authority, and the Original Redeveloper.

**“Memorandum of Agreement”** means the document described in Section 14.13 and substantially in the form shown in Exhibit H.

**“Minimum Improvements”** means, collectively the Phase 1A Minimum Improvements, the Phase 1B Minimum Improvements, the Phase 1C Minimum Improvements, and the Phase 2 Minimum Improvements (which for purposes of clarity, does not include the Projected Phase 2 Improvements).

**“Mortgage”** means any mortgage loan that is secured, in whole or in part, by any portion of the Project Area, and which is an approved encumbrance under Article IX.

**“Parking Element”** mean the approximately 522-stall parking structure to be integrated into Hotel Element 2, and extraordinary site work and site preparation directly associated with the construction of the Parking Element.

**“Parking Facilities Easement”** 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 as Exhibit C.

**“Parking Redevelopment Costs”** means those Project-related costs specified in Section 7.3, initially paid by Redeveloper from Redeveloper’s own sources and eligible for TIF Assistance.

**“Pentagon South Approval Resolution”** means City Council Resolution No. 2018-62.

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

**“Pentagon South Development Contract”** means that certain Development Contract Pentagon Village dated August 8, 2018 entered into by and between the City and Redeveloper, and recorded against the Project Area.

**“Pentagon South Final Development Plan”** means the Final Development Plan for Lots

1 through 5, approved by the City pursuant to the Pentagon South Approval Resolution, including, without limitation, (a) the plan set titled “Final Development Plan Site Improvements for Pentagon Village, Edina, MN” prepared by Westwood Professional Services, Inc. under Project number 0013450.00 dated April 9, 2018 and (b) the illustrative two-dimensional renderings of the Project Area and Minimum Improvements prepared by RSP Architects and presented to the City in connection with the City’s granting of the Pentagon South City Approvals.

“***Pentagon South PUD Ordinance***” means City Ordinance No. 2018-11.

“***Phase(s)***” means the phases of the Minimum Improvements described in this Agreement.

“***Phase 1A***” has the meaning set forth in Section 4.1(a)(1).

“***Phase 1B***” has the meaning set forth in Section 4.1(a)(2).

“***Phase 1C***” has the meaning set forth in Section 4.1(a)(3).

“***Phase 2***” has the meaning set forth in Section 4.1(a)(4).

“***Phase 1 Minimum Improvements***” means, collectively, the Phase 1A Minimum Improvements, the Phase 1B Minimum Improvements, and the Phase 1C Minimum Improvements.

“***Phase 1A Minimum Improvements***” has the meaning set forth in Section 4.1(a)(1).

“***Phase 1B Minimum Improvements***” has the meaning set forth in Section 4.1(a)(2).

“***Phase 1C Minimum Improvements***” has the meaning set forth in Section 4.1(a)(3).

“***Phase 2 Minimum Improvements***” has the meaning set forth in Section 4.1(a)(4).

“***Plaza Easement***” a permanent, public easement for access and use of the Plaza Element to be granted by Redeveloper to the City pursuant to an easement agreement in the form attached as Exhibit J.

“***Plaza Element***” has the meaning set forth in Section 4.1(a)(1)(ii).

“***Plaza Public Art***” means the two installations of public art within the Plaza Element as shown in the Pentagon South Final Development Plan, each of which shall be permanent sculptures or similar art installations.

“***Project***” means the Minimum Improvements under this Agreement.

“***Project Area***” means the area illustrated on the Project Area Map and legally described on Exhibit B-1.

“***Project Area Map***” means the Project Area map attached hereto as Exhibit A.

“***Project Redevelopment Costs***” means those Qualified Redevelopment Costs listed in

Section 7.2, initially paid by Redeveloper from Redeveloper's own sources and eligible for TIF Assistance.

***“Project Site Work”*** has the meaning set forth in Section 4.1(a)(1)(iii).

***“Projected Phase 2 Improvements”*** has the meaning set forth in Section 4.1(a)(4).

***“Public Art”*** means, collectively, the Plaza Public Art and the 77th Street Public Art.

***“Public Infrastructure Improvements”*** means those certain public infrastructure improvements to be constructed as part of Phase 1A, and including in the Site Work Element pursuant to and as specifically described in the Pentagon South Development Contract as follows: (a) 77th Street West and Commercial Driveway Access: (i) install eastbound right turn lane on 77th Street, (ii) install driveway access exiting the site with northbound left turn lane, northbound left turn / thru lane and northbound right turn lane, and (iii) subject to any private agreements, restriping of the existing exit lanes of the Burgundy Building and 4820 West 77th Street with a southbound left turn lane and southbound right turn/thru lane; and (b) 77th Street and Computer Drive: (i) install eastbound right turn lane on 77th Street, and (ii) install at grade pedestrian improvements at 77th Street.

***“Public Recreational Property”*** means any publicly owned park land and/or future regional trails established in close proximity to the Project Area, including Fred Richards Park.

***“Public Transit Improvements”*** means (a) two bus stops along 77th Street West, each of which shall include a covered shelter with bench, lighting and a trash can (subject to a final design approved by Metro Transit); sized to accommodate regular, express, or future rapid-transit service; and to be maintained by Redeveloper; and (b) accommodations (but not improvements) for a future bus stop on Computer Avenue or Viking Drive.

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

***“Qualified Redevelopment Costs”*** means, collectively, the Project Redevelopment Costs and the Parking Redevelopment Costs related to Redeveloper's Qualified Redevelopment Activities.

***“Redeveloper”*** means Pentagon Village, LLC, a Minnesota limited liability company.

***“Redevelopment Plan”*** means the redevelopment plan for the Southeast Edina Redevelopment Project Area originally adopted by the Authority pursuant to Resolution No. 2014-2 in accordance with Minnesota Statutes, Section 469.027 and originally approved by the City Council pursuant to Resolution No. 2014-23 in accordance with Minnesota Statutes, Sections 469.028 and 469.175, subdivision 3, as such redevelopment plan has been amended from time to time.

***“Retail Element”*** has the meaning set forth in Section 4.1(a)(1)(i).

***“Special Assessments”*** mean assessments levied against any portion of the Project Area or

other benefited property, by the City for purposes of paying for 77th Street Work.

**“Stabilization Costs”** means property improvement and operating costs incurred by Redeveloper (or its predecessors) on buildings which exist within the Project Area prior to demolition in accordance with this Agreement to maximize rental rates prior to demolition, less (i) net rental revenues generated by those buildings during that period and (ii) grants for demolition, remediation, and other activities related to stabilization.

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

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

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

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

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

**“TIF District”** means the Pentagon Park Tax Increment Financing District established by the Authority pursuant to Resolution No. 2014 – 2.

**“TIF Note(s)” or “Note(s)”** means **“TIF Note A”**, **“TIF Note B”**, and/or **“TIF Note C”** (as each such TIF Note is defined in Section 8.1), to be issued by the Authority to Redeveloper, in substantially the form attached hereto as Exhibit F in accordance with the terms and conditions of this Agreement.

**“TIF Plan”** means the Tax Increment Financing plan for the TIF District adopted by the Authority in accordance with Minnesota Statutes, Section 469.175 pursuant to Resolution No. 2014 – 2.

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

**“Transfer”** means any sale, assignment, conveyance, or any trust or power, or transfer in any other mode or form of or with respect to any portion of the Project Area or any Element.

**“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, fire or other casualty to the Project, (c) litigation commenced by third parties which directly results in delays, (d) acts of any federal, State, or local government unit which directly result in delays, (e) strikes, other labor trouble, or (f) delays in delivery of materials.

**“77th Street Public Art”** means the three installations of public art along 77th Street West as shown in the Pentagon South Final Development Plan, each of which shall be permanent sculptures or similar art installations.

**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) Other than items disclosed by the City to Redeveloper before the execution of this Agreement, 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 materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or as contemplated hereby or thereby, 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 Redeveloper with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the City to incur costs, except as otherwise provided in this Agreement or elsewhere.

(e) The execution, delivery and performance of this Agreement, and any other documents, instruments or actions required or contemplated pursuant to this Agreement by the City does not, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not conflict with or constitute on the part of the City a material breach of, default under or violation of any existing (i) agreement or instrument to which the City is a party or by which the City or any of its property is or may be bound, (ii) legislative act, charter or other proceeding or action establishing or relating to the establishment of the City or its officers or its resolutions, or (iii) order, decree, statute, rule or regulation of any court or of any state or Federal regulatory body having jurisdiction over the City.

**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, the Authority agrees to retain all of the captured net tax capacity of the Project Area to finance the Qualified Redevelopment Costs as provided in this Agreement, and will elect that the duration of the TIF District will be the maximum duration permitted by the TIF Act. The Authority will not voluntarily take any action to reduce the amount of captured tax capacity retained to finance the Qualified Redevelopment Costs or to

reduce the duration of the TIF District until the amount paid to Redeveloper from Available Tax Increment reaches the maximum amount specified in Section 8.1.

(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 material breach of, default under or violation of any existing (i) 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) order, decree, statute, rule or regulation of any court or of any state or Federal regulatory body having jurisdiction over the Authority.

(d) Other than items disclosed by the Authority to Redeveloper before execution of this Agreement, 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 materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or as contemplated hereby or thereby, 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 Redeveloper with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the Authority to incur costs, except as otherwise provided in this Agreement or elsewhere.

**Section 2.3 Representations and Warranties of Redeveloper.** Redeveloper represents and warrants that:

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

(b) The execution and delivery of this Agreement and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any material terms or conditions of Redeveloper's organizational documents, any restriction or any agreement or instrument to which Redeveloper is now a party or by which it is bound or to which any property of Redeveloper is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or Federal regulatory body having jurisdiction

over Redeveloper 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 Redeveloper contrary to the terms of any instrument or agreement to which Redeveloper is a party or by which it is bound.

(c) To the best of Redeveloper'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) Redeveloper (or its Affiliates) currently has fee title to the Project Area.

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

(g) Other than items disclosed by Redeveloper to the City and the Authority before execution of this Agreement, there are no pending or threatened legal proceedings, of which Redeveloper has notice, contemplating the liquidation or dissolution of Redeveloper or threatening its existence, or seeking to restrain or enjoin the transactions contemplated by the Agreement, or questioning the authority of Redeveloper to execute and deliver this Agreement or the validity of this Agreement.

(h) Redeveloper has not received any notice from any local, state or federal official that the activities of Redeveloper or the Authority with respect to the Project 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. Redeveloper represents, based solely on the information provided to Redeveloper by its environmental consultant, Braun Intertec, and the public records of the Minnesota Pollution Control Agency, that: (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) Redeveloper 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 Redeveloper to successfully construct the Minimum Improvements and fund the Public Infrastructure Improvements, as provided herein.

### **ARTICLE III**

#### **LAND USE AND DEVELOPMENT CONTROLS**

**Section 3.1**    **Restrictions on Development.** Redeveloper may not construct or permit

construction on any Element or Phase until Redeveloper satisfies the following conditions:

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

(b) Redeveloper satisfies all of the conditions established by the City in the Pentagon South Final Development Plan; and

(c) Redeveloper satisfies all of the conditions in the Pentagon South Development Contract and obtains approval of and records 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. Redeveloper has obtained all land use and zoning approvals necessary for the Minimum Improvements, including, without limitation, the Pentagon South Final Development Plan and the Pentagon South Development Contract. All zoning and land use approvals shall be by the City Council or the City Planning Commission in accordance with the ordinances of the City.

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

## **ARTICLE IV CONSTRUCTION OF MINIMUM IMPROVEMENTS**

### **Section 4.1 Minimum Improvements.**

(a) The Project includes the Minimum Improvements, which shall be constructed by Developer consistent with the Pentagon South City Approvals as a condition to the continuance of this Agreement and the City's and Authority's obligations hereunder, including the granting of TIF Assistance to Redeveloper in accordance with this Agreement.

(1) The Phase referred to herein as "Phase 1A" shall consist of the following Minimum Improvements, to be developed in accordance with the Pentagon South City Approvals (collectively, the "Phase 1A Minimum Improvements"):

(i) an approximately 7,500 square foot retail/restaurant building and an

approximately 4,300 square foot retail/restaurant building, with associated surface parking (collectively, “Retail Element”);

(ii) an approximately one acre outdoor green space with a water feature, the Plaza Public Art, related hardscaping and other pedestrian amenities, together with all sidewalks, paths, trails, and roads which provide access to the primary Plaza Element space, all to be constructed and installed by Redeveloper in accordance with the Pentagon South City Approvals (including, without limitation, adherence to the scale, scope, design, appearance, quality, and finishes depicted in the Pentagon South Final Development Plan) and which shall be open and accessible to the public pursuant to the terms and conditions of the Plaza Easement (the “Plaza Element”);

(iii) all site preparation for the entire Project Area (including soil correction, demolition, abatement and environmental remediation); all site infrastructure for the entire Project Area, including utilities, grading, internal roads, surface parking, Public Transit Improvements (for which Redeveloper shall, in good faith, collaborate and coordinate with Metro Transit with respect to the final design, location, construction, and maintenance of such Public Transit Improvements), the 77th Street Public Art, bicycle access improvements, district marker signs, other signage; and the Public Infrastructure Improvements, all to be constructed and installed by Redeveloper in accordance with the Pentagon South City Approvals, but specifically excluding the Parking Element or any other structured parking (collectively, the “Project Site Work”).

(2) The Phase referred to herein as “Phase 1B” shall consist of at least one additional Element, which such Element shall consist of at least 100,000 square feet of gross building area, to be developed and constructed in accordance with the Pentagon South City Approvals (the “Phase 1B Minimum Improvements”). This Element is anticipated to be, but is not required hereunder to be the 4-story, approximately 193-room dual-branded hotel, with associated surface parking (“Hotel Element 1”) as approved by the City in the Pentagon South City Approvals.

(3) The Phase referred to herein as “Phase 1C” 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 the Pentagon South City Approvals (the “Phase 1C Minimum Improvements”). This Element is anticipated to be, but is not required hereunder to be the 4-story, approximately 153-room extended stay hotel, together with the Parking Element (collectively, “Hotel Element 2”), as approved by the City in the Pentagon South City Approvals.

(4) 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 the Pentagon South City Approvals (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) an approximately 5-story office buildings containing

approximately 100,000 square feet, with an integrated parking structure with approximately 1,000 parking stalls, 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 2 lots to allow for construction of two office buildings) (collectively the “Projected Phase 2 Improvements”).

(b) The Minimum Improvements and the Projected Phase 2 Improvements are depicted in the Project Area Map attached as Exhibit A.

(c) Market Value of Minimum Improvements. It is anticipated that upon completion, the Minimum Improvements will have a Market Value of approximately \$100,000,000.00.

**Section 4.2 Public Art**. In addition to the requirements for the Public Art set forth in Section 4.1 above, Redeveloper shall (a) engage a professional art consultant experienced in public art visioning, commissioning, and implementation in connection with the creation of the Public Art and (b) invest no less than \$100,000, in the aggregate, in and for the Public Art (exclusive of fees paid to such professional art consultant and exclusive of costs for other aspects of the Plaza Premises and Project Site Work which are installed in connection with or ancillary to the Public Art, but which do not directly form a part of such Public Art).

**Section 4.3 Submission and Approval of Evidence of Financing**. No later than issuance of the applicable construction or building permit for an Element or Phase, Redeveloper shall provide a Go-Ahead Letter for such Element or Phase. The Go-Ahead Letter will be reasonably acceptable to the Executive Director of the Authority.

**Section 4.4 Construction and Inspection of Minimum Improvements**. The Minimum Improvements will be constructed according to the Pentagon South City Approvals. Prior to delivery of any Certificate of Completion to Redeveloper, upon the request of the Authority, Redeveloper shall provide the Authority and the City with reasonable access to the Project Area. During the construction and marketing of the Minimum Improvements, Redeveloper shall deliver progress reports to the Authority upon written request from the Authority.

**Section 4.5 Effect of Delay**. Redeveloper acknowledges that if there is a delay in Qualified Redevelopment Costs being actually incurred or committed or if construction of the Minimum Improvements is delayed, due to Unavoidable Delays or for any other reason, this could affect the amount of Qualified Redevelopment Costs and the amount of Available Tax Increment and thus the total amount which may be available to pay the TIF Note. Redeveloper acknowledges that if there is a delay in Qualified Redevelopment Costs being actually incurred or committed and/or 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 Redeveloper or any other party for any reduction in the amount available to pay or refund the TIF Note.

**Section 4.6 Additional Responsibilities of Redeveloper**. Subject to Cure Rights:

(a) Redeveloper shall ensure that those Phases and Elements of the Minimum Improvements that are completed are constructed, operated, and maintained in substantial accordance with the terms of this Agreement, the Pentagon South City Approvals, and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and

public health laws and regulations);

(b) Redeveloper shall 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; and

(c) Redeveloper shall 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 or has been approved by the utility involved.

**Section 4.7 Park Maintenance Fee**. If a Lot within the Project Area is improved with an Element containing residential units (which does not include hotel or extended stay rooms or suites), the City may assess and collect from the owner of each such residential unit (including Redeveloper, if applicable) a maintenance fee for the support and benefit of the Fred Richards Park. The City may not assess and collect such park maintenance fee in accordance with this section until the City has completed the wetland restoration/lake feature and installation and/or creation of integrated walking paths and all trails amenities throughout Fred Richards Park, reasonably consistent with the Master Plan for the Fred Richards Park. The initial amount of such maintenance fee shall not exceed \$7.50 per residential unit per month, and may be increased annually by an amount not to exceed 1.5% per annum. In no event will the City's power to assess the park maintenance fee under this section be deemed a waiver, replacement, alternative, or other impairment to the City's right to assess any park dedication fee in accordance applicable Law in connection with the initial approval of any residential Element to be developed within the Project Area.

**Section 4.8 Certificate of Completion**. Redeveloper shall notify the Authority when the final certificate of occupancy (exclusive of tenant build-outs) is received for each Element, and the Engineer's Certification is obtained by Redeveloper for the Plaza Element and the Project Site Work. Upon receipt of the final certificate of occupancy for an Element of the Minimum Improvements, or the City engineer's approval of the Engineer's Certification for the Plaza Element or the Project Site Work, as applicable, the Authority will furnish to Redeveloper a recordable Certificate of Completion in the form of Exhibit G, certifying the completion of that Element, Plaza Element, or the Project Site Work, as applicable.

**ARTICLE V  
[RESERVED]**

**ARTICLE VI  
PROJECT TIMELINE AND DEFAULT**

**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	Parking Element	No later than December 31, 2018	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
	Second parking element	June 1, 2019 preferred	N/A
	Sixth Element	June 1, 2019 preferred	N/A

**Section 6.2 Defaults.** Redeveloper's failure to satisfy Commencement or Completion obligations of the Minimum Improvements by the applicable date listed above shall be a Default under this Agreement. Following Commencement, construction of any Element, any other

component of the Minimum Improvements must continue in a sequence consistent with normal construction practices. For purposes of clarity, the Redeveloper’s failure to satisfy Commencement or Completion obligations of the Projected Phase 2 Improvements (as opposed to the Minimum Improvements) by the applicable date listed in the last three rows of the above table shall not be a Default under this Agreement.

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

**Section 7.1 Redeveloper Reimbursement Obligations.** Redeveloper is obligated to pay all reasonable out of pocket costs of the City and the Authority for the City Consultants in connection with the Project, including but not limited to costs of the development of this Agreement, the Redevelopment Plan, the TIF Plan and creation of the TIF District, the Pentagon South Final Development Plan, the Pentagon South Development Contracts, architectural and engineering studies for the Project, fiscal analysis, legal fees and all costs and expenses related thereto. Redeveloper must pay such costs monthly upon presentation of invoices and other documentation of such costs, not more than 45 days after the request for payment is delivered to Redeveloper. All such costs will be Project Redevelopment Costs pursuant to the TIF Pro Forma. The hourly rates of the City Consultants will be charged at the standard, regular rates paid by the City at the time such charges are paid.

**Section 7.2 Project Redevelopment Costs.**

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

<b>Project Redevelopment Cost</b>	<b>Estimated Amount</b>
(i) General site preparation, including soil correction, studies and improvements (including piling); storm water management studies and storm water management related improvements (reduced by any grant funds received for storm water management), studies, berm(s), soil relocation as part of site preparation, all Project Site Work and any additional site preparation work attributable to the Parking Element.	\$6,222,000
(ii) Demolition, abatement and environmental remediation (including asbestos, lead-based paint and hazardous materials) required within the Project Area (reduced by any grant funds received for this work).	\$822,000
(iii) Costs associated with site preparation for and the construction of the Plaza Element.	\$500,000
(iv) Design costs, construction costs, and inspection fees	\$500,000

related to the Public Infrastructure Improvements	
(v) Pre-development planning, engineering, legal and consulting costs related to the Project Area, costs related to application of Tax Increment Financing, the Master Redevelopment Agreement, this Agreement, and Pentagon South Development Contract (including predevelopment costs of the City/Authority paid by Redeveloper), all in amounts which are commercially reasonable and common in the marketplace.	\$1,104,000
	<b>\$9,148,000</b>

(b) The actual amount of Project Redevelopment Costs within each of the foregoing categories may be reallocated among such categories provided that Redeveloper provides reasonable evidence of the actual amounts of Project Redevelopment Cost actually incurred or committed in each such category.

**Section 7.3 Parking Redevelopment Costs.**

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

<b>Parking Redevelopment Costs</b>	<b>Estimated Amount</b>
(i) Costs associated with the development and construction of the Parking Element (which may include professional third party fees which are commercially reasonable and common in the marketplace)	\$9,386,000
	<b>\$9,386,000</b>

**Section 7.4 TIF Lookback.**

(a) Generally. The financial assistance to Redeveloper under this Agreement is based on certain assumptions regarding likely costs and expenses associated with constructing the Minimum Improvements, as well as proceeds to be derived by Redeveloper from the sale of Element Property. Specifically, the maximum aggregate principal amount of the TIF Notes has been determined based on the amount of assistance needed to make the Project financially feasible, as shown in the TIF Pro Forma attached as Exhibit D. The Authority and Redeveloper agree that those assumptions will be reviewed at the times described in this section, and that the amount of TIF Assistance provided herein may be adjusted in accordance with this section. Such review will be based on an Element TIF Pro Forma. Any fees which are paid to Redeveloper, as reflected in an Element TIF Pro Forma, will be commercially reasonable and common in the market place.

(b) Redeveloper as Phase Developer.

(i) Within 60 days after a Controlling Interest Transfer of any Element Property, Redeveloper shall submit a certified cost and revenue analysis for the Controlling Interest Transfer of that Element Property to the Authority in the form of an Element TIF Pro Forma attached as Exhibit E and prepared in accordance with generally accepted accounting principles. This analysis will include (1) a fair market value determination regarding the Element Property subject to the Controlling Interest Transfer, and (2) without limitation, all Acquisition Costs, Stabilization Costs, Land Carrying Costs, Project Redevelopment Costs, and all other improvement costs allocated to the Element Property subject to the Controlling Interest Transfer. Redeveloper shall provide to the Authority any reasonable and relevant background documentation, prepared in accordance with generally accepted accounting principles, related to the financial data, upon request. The Authority at its cost may retain an accountant to audit the submitted Element TIF Pro Forma.

(ii) The amount by which the actual IRR for a Controlling Interest Transfer of an Element Property shown in an updated TIF Pro Forma required under Section 7.4(b)(i) exceeds the percentages shown in Section 7.4(b)(ii)(2) – (4) below is referred to as the “Project Excess Percentage.” Redeveloper will be obligated to pay to the Authority, subject to Section 7.4(b)(iii), the Project Excess Percentage in an amount not to exceed 25% of the Project Excess Percentage to be capped by an amount not to exceed 25% of the issued TIF Notes (to be calculated pursuant to Section 7.4(b)(ii)(2) – (4)), plus interest calculated against the adjusted cumulative total of any amounts Redeveloper is obligated to pay to the Authority under this Section 7.4(b)(i) at a rate of 6% compounded annually until the date determined in accordance with Section 7.4(b)(iii) (the “Phase Developer TIF Adjustment”). For the sake of clarity, the Phase Developer TIF Adjustment will be recalculated as of each date an Element TIF Pro Forma identified in Section 7.4(b)(i) is submitted to the Authority for the purposes of calculating the applicable principal amount against which interest will be charged. In determining the Phase Developer TIF Adjustment the following shall apply:

(1) If the IRR realized from the Controlling Interest Transfer of an Element Property is less than 16% then there is no Phase Developer TIF Adjustment.

(2) If the IRR realized from the Controlling Interest Transfer of an Element Property is 16% or more, but less than 18% then the Phase Developer TIF Adjustment is limited to 10% of the Tax Increment as further limited in this Section 7.4(b)(ii).

(3) If the IRR realized from the Controlling Interest Transfer of an Element Property is 18% or more, but less than 20% then the Phase Developer TIF Adjustment is limited to 15% of the Tax Increment as further limited in this Section 7.4(b)(ii).

(4) If the IRR realized from the Controlling Interest Transfer of an Element Property is 20% or more then the Phase Developer TIF Adjustment is limited to 25% of the Tax Increment as further limited in this Section 7.4(b)(ii).

(iii) Upon the earlier date to occur of (a) 365 days from the Transfer of the last

Element Property or (b) August 18, 2034, Redeveloper shall submit an updated TIF Pro Forma to account for all Controlling Interest Transfers subject this Section 7.4(b), which will be subject to the calculation of a cumulative total Phase Developer TIF Adjustment. To the extent this amount exceeds the IRR amounts set forth in Section 7.4(b)(ii), Redeveloper shall pay the Authority in accordance with Section 7.4(e) the amounts at set forth in Section 7.4(b), less the Phase Developer TIF Adjustment, if any, for all Phases.

(iv) The purpose of the Phase Developer TIF Adjustment is to reimburse the Authority for payments that have been made to Redeveloper or to limit future payments to be made under the TIF Notes, in the amount as defined in Section 7.4(b)(iii) from the Controlling Interest Transfer, if any, of the Element Property. The Phase Developer TIF Adjustment is based on IRR for a Controlling Interest Transfer and is not based on an annual cash on cost calculation or analysis on Redeveloper's development and operation of an Element, Phase or the Project. The Phase Developer TIF Adjustment for a particular Element Property is a one-time adjustment following a Controlling Interest Transfer of that Element Property and, therefore, that Element Property is not subject to a Phase Constructor TIF Adjustment under Section 7.4(c) and the Authority shall have no right to any Phase Excess Amount (as that term is defined in Section 7.4(c)) regarding such Element Property if such Element Property has been improved and developed prior to the expiration of the cumulative total Phase Developer TIF Adjustment under Section 7.4(b)(iii). Provided, however, if a subsequent Transfer of such Element Property is made to Redeveloper and Redeveloper improves and develops the Element Property, the Element Property is then subject only to a Phase Constructor TIF Adjustment.

(c) Master Redeveloper as Phase Constructor.

(i) Within 60 days after Completion of an Element, Redeveloper shall submit certified cost and revenue analysis to the Authority in the form of an Element TIF Pro Forma and prepared in accordance with generally accepted accounting principles. Redeveloper shall provide to the Authority any reasonable and relevant background documentation, prepared in accordance with generally accepted accounting principles, related to the financial data, upon request. The Authority may retain an accountant to audit the submitted Element TIF Pro Forma, at Redeveloper's cost.

(ii) If a Transfer of an Element by Redeveloper occurs within three years from the date of Completion of such Element, Redeveloper shall submit an updated TIF Pro Forma, which will be subject to the calculation of the Phase Constructor TIF Adjustment in Section 7.3(c)(iii). Any Transfer by Redeveloper following the third anniversary of Completion, is at no time subject to a Phase Constructor TIF Adjustment.

(iii) The amount by which the actual IRR shown in an updated Element TIF Pro Forma required under Section 7.4(c)(ii) exceeds the percentages shown in Section 7.4(c)(iii)(2) – (4) below is referred to as the “Phase Excess Amount.” Redeveloper will be obligated to pay to the Authority in accordance with Section 7.4(e) the Phase Excess Amount in an amount not to exceed 25% of the Phase Excess Amount to be capped by an amount not to exceed 25% of the issued TIF Notes (to be calculated pursuant to Section 7.4(c)(iii)(2) – (4)), plus interest calculated against the adjusted cumulative total of any

amounts Redeveloper is obligated to pay to the Authority under this Section 7.4(c)(iii) at a rate of 6% compounded annually until the date determined in accordance with Section 7.4(d) (the “Phase Constructor TIF Adjustment”). For the sake of clarity, the Phase Constructor TIF Adjustment will be recalculated as of each date an Element TIF Pro Forma identified in Section 7.4(c)(ii) is submitted to the Authority for the purposes of calculating the applicable principal amount against which interest will be charged. In determining the Phase Constructor TIF Adjustment the following shall apply:

(1) If the IRR realized from the Transfer of the Element is less than 16% then there is no Phase Constructor TIF Adjustment.

(2) If the IRR realized from the Transfer of the Element is 16% or more, but less than 18% then the Phase Constructor TIF Adjustment is limited to 10% of the Tax Increment as further limited in this Section 7.4(c)(iii).

(3) If the IRR realized from the Transfer of the Element is 18% or more, but less than 20% then the Phase Constructor TIF Adjustment is limited to 15% of the Tax Increment as further limited in this Section 7.4(c)(iii).

(4) If the IRR realized from the Transfer of the Element is 20% or more then the Phase Constructor TIF Adjustment is limited to 25% of the Tax Increment as further limited in this Section 7.4(c)(iii).

(d) In addition, upon the earlier date to occur of (i) 365 days from the Transfer of the last Element Property, (ii) three years from the date of Completion for the last Element Property or (iii) August 18, 2034, Redeveloper shall submit an updated TIF Pro Forma to account for all Transfers subject to Section 7.4(c), which shows the cumulative total of all Phase Constructor TIF Adjustments. To the extent that the aggregate IRR realized from any Transfers exceeds the IRR amounts set forth in Section 7.4(c), Redeveloper shall pay the Authority in accordance with Section 7.4(e) the amounts as set forth in Section 7.4(c), less the Phase Constructor TIF Adjustment, if any, for all Phases.

(e) If the Authority determines that either a Phase Developer TIF Adjustment or a Phase Constructor TIF Adjustment is required, then (i) the Authority may elect to either require payment from Redeveloper to the Authority of the Phase Developer TIF Adjustment or the Phase Constructor TIF Adjustment or (ii) the Authority may elect to have the Phase Developer TIF Adjustment or the Phase Constructor TIF Adjustment applied to reduce the outstanding principal amount of the TIF Note (as a deemed prepayment) in accordance with the terms of the TIF Note.

(f) The purpose of the Phase Constructor TIF Adjustment is to reimburse the Authority for payments that have been made to Redeveloper under the TIF Notes or to limit future payments to be made to Redeveloper under the TIF Notes, in the amount determined under Section 7.4(c) from the Transfer of Element Property for which Redeveloper has achieved Completion. The Phase Constructor TIF Adjustment is based on IRR for a Transfer of an Element or Phase and is not based on an annual cash on cost determination of Redeveloper’s operation of an Element, Phase or the Project.

(g) For purposes of clarity, an example of the calculation of a hypothetical Phase

Developer TIF Adjustment is attached hereto as Exhibit I. The sample calculations included in this example could also be applied for determination of the Phase Constructor TIF Adjustment.

## **ARTICLE VIII TIF ASSISTANCE**

### **Section 8.1 TIF Notes; Conditions of Issuance; Limitations on Reimbursement of Qualified Redevelopment Costs.**

(a) TIF Notes. In order for Redeveloper to obtain the TIF Assistance contemplated by this Agreement, the Authority shall issue, subject to the terms and conditions of this Agreement, up to three “pay-as-you-go” TIF Notes to Redeveloper in the aggregate maximum original principal amount of up to \$18,100,000, plus simple interest on the unpaid principal balance thereof at a rate of 6%, as follows:

(i) a TIF Note for Project Redevelopment Costs up to the maximum principal amount of \$9,000,000 (“TIF Note A”);

(ii) a TIF Note for Parking Redevelopment Costs and additional Project Redevelopment Costs not included in TIF Note A up to the maximum principal amount of \$5,400,000 (“TIF Note B”); and

(iii) a TIF Note for additional Parking Redevelopment Costs and/or additional Project Redevelopment Costs not included in TIF Note A or TIF Note B up to the maximum principal amount of \$3,700,000 (“TIF Note C”).

(b) Timing and Conditions of Issuance. The Authority shall issue the TIF Notes no later than July 15, 2019, provided that Redeveloper provides evidence reasonably satisfactory to the Authority that Redeveloper has satisfied each of the following conditions:

(i) Redeveloper has actually incurred or committed Project Redevelopment Costs and/or Parking Redevelopment Costs, as applicable, in an amount equal to at least the amount of the requested TIF Note(s) on or before June 30, 2019 (the “Cost Submission Deadline”);

(ii) final execution of the Redevelopment Agreement and recording of a memorandum of the Redevelopment Agreement in the applicable land records no later than October 31, 2018; and

(iii) issuance of grading permit and commencement of grading of the entire Project Area by no later than May 15, 2019, provided that Redevelopers shall use commercially reasonable efforts to commence such work in the third or fourth quarter of 2018.

(c) Payments and Interest Accrual. Payments upon and accrual of interest on the unpaid principal balance of each TIF Note will commence upon the satisfaction of the conditions applicable to each TIF Note as set forth in Section 8.2.

(d) No Representation or Warranty. Payments of principal and interest under the TIF Notes shall be payable solely from Available Tax Increment from the Project. 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 Notes. The Authority will not reimburse Redeveloper for Qualified Redevelopment Costs from Authority revenues, other than from Available Tax Increment, nor guaranty the amount of money which Redeveloper will receive as a reimbursement, such amount being payable solely from the Available Tax Increment in accordance with this Section.

(e) Allocation of Available Tax Increment. The Authority will calculate Available Tax Increment for the Project Area as a whole, and the Authority will allocate such Available Tax Increment, pro rata, to principal and interest payments on any outstanding TIF Note(s) for which payments and accrual of interest has commenced in accordance with Section 8.2 below.

(f) Five-Year Rule. Redeveloper acknowledges and the Authority certifies that July 15, 2019 is the end of the five-year period following certification of the TIF District, and such date is the statutory deadline for Redeveloper to comply with the Five-Year Rule. However, in order for the Authority to issue any TIF Note(s) by such statutory deadline, Redeveloper shall provide the Authority evidence of all Qualified Redevelopment Costs as soon as reasonably practicable after such Qualified Redevelopment Costs are actually incurred or committed, but no later than the Cost Submission Deadline. Promptly following the Effective Date, Redeveloper shall provide the Authority with evidence of all Qualified Redevelopment Costs incurred by Redeveloper prior to the Effective Date. The Authority will use commercially reasonable efforts to review, process, and approve evidence of additional Qualified Redevelopment Costs submitted by Redeveloper after the Cost Submission Deadline, but Redeveloper acknowledges and agrees that the Authority makes no representation, warranty, promise, or guaranty that such costs incurred, or evidence thereof submitted to the Authority, later than the Cost Submission Deadline will be available as a Qualified Redevelopment Costs hereunder, such date being the date which is five years following the certification of the TIF District.

**Section 8.2 Preconditions to Payment and Accrual of Interest under TIF Notes.**

(a) Notwithstanding the earlier issuance of the TIF Notes pursuant to the Section 8.1(b), the commencement of payment of Available Tax Increment and accrual of interest under each TIF Note is subject to Redeveloper's satisfaction of each of the following conditions:

(i) The following conditions are applicable to each TIF Note:

(1) Redeveloper has satisfied all conditions of Section 8.1(b) with respect to the applicable TIF Note;

(2) Redeveloper is not in Default under the terms of this Agreement;

(3) Redeveloper has issued any applicable Go-Ahead Letter with respect to the Element and/or Phase to be constructed;

(4) Redeveloper has not allowed a Material Deviation (as such term is defined below) from the Pentagon South Final Development Plan which remains uncured.

A “Material Deviation” for purposes of this clause (4) equates to an objective deviation from the Pentagon South Final Development Plan, and not a subjective determination that the intent of the Pentagon South Final Development Plan is not met or there are minor variations to the final architecture or the color of building materials, excluding any deviation or amendment to the Pentagon South Final Development Plan that is approved by the City; and

(5) the Authority’s receipt of an updated TIF Pro Forma sufficient to allow the Authority to adopt a resolution finding that the “but for” requirement continues to be satisfied (including, if necessary to satisfy the “but for” requirement, Redeveloper’s delivery of a Minimum Assessment Agreement in order to achieve the Minimum Valuation, as described in Section 8.3 below).

(ii) The following conditions are applicable to TIF Note A:

(1) Commencement of construction of both components of the Retail Element;

(2) Completion of the Project Site Work, including the site preparation for the Plaza Element;

(3) Completion of the Plaza Element, the granting to the City of the Plaza Easement, and opening the Plaza Element to the public pursuant to the terms of the Plaza Easement agreement no later than 12 months following Redeveloper’s satisfaction of the conditions set forth in clauses (1) and (2) above; provided that Redeveloper shall grant the Plaza Easement and open the Plaza Element as provided above promptly following the Completion of the Plaza Element; and further provided that payments and accrual of interest under TIF Note A will commence following Redeveloper’s satisfaction of the conditions set forth in clauses (1) and (2) above, but if Completion of the Plaza Element, the granting of the Plaza Easement, and opening of the Plaza as provided above has not occurred within such 12-month period, it shall be an automatic Event of Default until the Completion of the Plaza Element, the granting of the Plaza Easement, and opening of the Plaza as provided above occurs, and the Authority may suspend payments and accrual of interest under TIF Note A until such Event of Default is so cured.

(iii) The following conditions are applicable to TIF Note B:

(1) The satisfaction of all conditions to the issuance and the commencement of interest and payment with respect to TIF Note A in accordance with this Section 8.2;

(2) Completion of the Retail Element;

(3) Commencement of at least the second Element (i.e., the Phase 1B Minimum Improvements), which such Element must consist of at least 100,000 square feet of gross building area pursuant to the Pentagon South Development Plan;

(4) Completion of the Parking Element; and

(5) Granting to the City of the Parking Facilities Easement as soon as reasonably practical following the Completion of the Parking Element and the opening of the Parking Element to the public pursuant to the terms of the Parking Facilities Easement (which the City and the Authority acknowledge and agree may not occur until construction of the associated commercial Element has progressed to a point where the Parking Element can be opened for parking purposes in accordance with applicable Law), but no later than 12 months following Completion of the Parking Element.

(iv) The following conditions are applicable to TIF Note C:

(1) The issuance of TIF Note A and TIF Note B by the Authority to the Redeveloper in accordance with this Section 8.2;

(2) Completion of the Phase 1B Minimum Improvements;

(3) Completion of at least the third Element (i.e., the Phase 1C Minimum Improvements), which such Element must consist of at least 100,000 square feet of gross building area, pursuant to the Pentagon South Final Development Plan; and

(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 the Pentagon South Final Development Plan. This is anticipated to be the first building in Phase 2.

(b) Following satisfaction of each of the conditions set forth in paragraph (a) above, interest will begin to accrue on the applicable TIF Note pursuant to the terms of each TIF Note and the Authority will commence making payments to Redeveloper of Available Tax Increment under the applicable TIF Note on the next occurring “Payment Date” (as defined in the applicable TIF Note).

**Section 8.3 Minimum Assessment Agreement.** If, by the date on which payment of Available Tax Increment and interest under each TIF Note is otherwise due pursuant to the terms and conditions of Section 8.2, the improvements to the Project Area which have reached completion have not, collectively, increased the Market Value of the Project Area to an amount of at least \$19,031,100 in the aggregate (“Minimum Valuation”), then, in order for the TIF Assistance provided by the Authority under this Agreement to comply with the requirements set forth in Section 469.175, Subd. 3, of the TIF Act, Redeveloper shall enter into one or more minimum assessment agreements (each a “Minimum Assessment Agreement”), in substantially the same form attached as Exhibit K with respect to all or a portion of the Project Area sufficient to satisfy the Minimum Valuation until such time as the Minimum Valuation is achieved by additional improvements to the Project Area. For purposes of clarity, Redeveloper may achieve the Minimum Valuation through the Completion of Elements of the Minimum Improvements and/or the Completion of other Elements or improvements to the Project Area, including Projected Phase 2 Improvements and/or the approximately 19,000 square foot retail/office Element with associated parking located at the intersection of West 77<sup>th</sup> and Computer Avenue as shown on the Project Area Map, so long as the Minimum Improvements and/or other improvements which have reached Completion have collectively increased the market value of the Project Area to an amount at least \$19,031,000 in the aggregate. Payments of Available Tax Increment shall not be made and interest

shall not accrue under the TIF Notes until the Minimum Valuation is achieved through the Minimum Assessment Agreements or otherwise. The Minimum Assessment Agreements will be sized and allocated across all five Lots of the Project Area approximately in the following per-Lot minimum valuations: Lot 1 - \$5,250,000; Lot 2 - \$3,250,000; Lot 3 - \$3,250,000; Lot 4 - \$1,600,000; and Lot 5 - \$5,650,000.

**Section 8.4 Tax Increment Eligibility.** Upon any Event of Default regarding any obligation under this Agreement related to the construction of an Element or other component of the Minimum Improvements, at the election of the Authority, payment of Available Tax Increment may be suspended on any TIF Note for which payment is conditioned upon the Commencement or Completion of construction for such Element or other component of the Minimum Improvements to which the Event of Default relates. For purposes of clarity, and by way of example and not limitation, if there is an Event of Default related to Redeveloper's failure to cause the Commencement of the second Element (as part of Phase 1B pursuant to Section 6.1, the Commencement of which is a condition to the payment of Available Tax Increment and accrual of interest under TIF Note B pursuant to Section 8.2(a)(iii)(3)) and Redeveloper has previously satisfied all conditions to the payment of Available Tax Increment and accrual of interest under TIF Note A, then the Authority will not be entitled to suspend payments under TIF Note A pursuant to this Section 8.4 or otherwise exercise any applicable remedy under Article XIII that results in the suspension or redirection of payments due under Note A.

**Section 8.5 Assignment of Note.** No TIF Note shall be assignable or transferable without the prior written consent of the Authority; provided, however, that such consent shall not be withheld if:

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

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

(i) that the 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;

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

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

(iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment in the 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.

(c) Notwithstanding Sections (a) and (b) above, Redeveloper may assign and pledge the TIF Note(s) to secure any loan financing the costs of the Project and may transfer such TIF Note(s) to:

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

(ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in Redeveloper; or

(iii) any Affiliate.

## **ARTICLE IX ENCUMBRANCE OF THE PROJECT AREA**

### **Section 9.1 Encumbrance of the Project Area.**

(a) Until the Completion of all Phases of the Minimum Improvements and Public Infrastructure Improvements, neither Redeveloper, nor any successor in interest to Redeveloper, will engage in any financing or any other transaction creating any mortgage (a “Mortgage”) or other encumbrance or lien upon the Project Area, or portion thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Project Area except for the purpose of obtaining funds only to the extent necessary for constructing the Public Infrastructure and constructing and developing the Minimum Improvements (including, but not limited to, land and building acquisition, labor and materials, professional fees, real estate taxes, construction interest, organization, marketing and other direct or indirect costs of Minimum Improvements, costs of constructing the Minimum Improvements, and an allowance for contingencies).

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

**Section 9.2 Copy of Notice of Default to Mortgagee.** If the Authority delivers any notice or demand to Redeveloper, or any successor in interest to Redeveloper, 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 to the Authority in a written notice from Redeveloper, any successor in interest to Redeveloper 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.**

(a) 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. 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 Project Area remains subject to each of the restrictions set forth in this Agreement and remains subject to all of the obligations of Redeveloper, or any successor in interest to Redeveloper, under the terms of this Agreement, but the purchaser at a foreclosure sale or 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 Project 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 Project 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 Redeveloper 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 Project Area it acquires through foreclosure or deed in lieu of foreclosure, the foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure or subsequent transferee) or other purchaser at a foreclosure sale desires to sell portions of the Project Area for construction of the Minimum Improvements, the purchaser at the foreclosure sale must assume and perform each of the obligations of Redeveloper, or the applicable successor to the interest of Redeveloper, under this Agreement as to the portion of the Project subject to foreclosure. This Section does not restrict the authority of the Authority to pursue its rights under any outstanding security, exercise remedies otherwise available under this Agreement or suspend the performance of the obligations of the Authority or Redeveloper 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 9.4 Events of Default Under Mortgage.** Redeveloper, or its successor or assign, will use commercially reasonable efforts to obtain an agreement from any mortgagee under a Mortgage that in the event Redeveloper 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. Redeveloper, 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 Redeveloper or its successors or assigns to obtain such an agreement from any such mortgagee shall not constitute a breach of this Agreement.

**Section 9.5 Subordination of Agreement.** In order to facilitate the obtaining of financing for the construction of the Minimum Improvements, the Authority agrees to subordinate the provisions hereof to the documents executed in connection with any Mortgage securing a Financing Commitment, provided that such subordination shall not deprive the Authority or otherwise limit any of the Authority's remedies which do not create a lien on the Project Area, except for Special Assessments, upon the occurrence of an Event of Default by Redeveloper.

**Section 9.6 Unit Mortgages.** The provisions of this Article do not apply to loans and mortgages to a purchaser of a unit in a common interest community within the Minimum Improvements.

## **ARTICLE X INSURANCE AND CONDEMNATION**

### **Section 10.1 Insurance.**

(a) Redeveloper, and any successor in interest to Redeveloper, 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 Redeveloper must obtain and continuously maintain, provided that Redeveloper shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Minimum Improvements (excluding excavation and footings):

(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 applicable Element at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) 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, with statutory coverage.

(b) All insurance required in this Article shall be obtained and continuously maintained by responsible insurance companies selected by Redeveloper or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Article, 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 10 days before the cancellation or modification becomes effective. Not less than 15 days prior to the expiration of any policy, Redeveloper, 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, Redeveloper or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) Redeveloper, 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 or any Element resulting from fire or other casualty.

**Section 10.2 Condemnation.** In the event that title to or possession of Project 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, Redeveloper, or its successor or assign, will notify the Authority of the threatened taking with reasonable promptness.

## **ARTICLE XI REDEVELOPER COVENANTS**

**Section 11.1 Maintenance and Operation of the Minimum Improvements.** Redeveloper, 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. Redeveloper, 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, Redeveloper, 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 Redeveloper, its successors or assigns.

**Section 11.2 Business Subsidy Agreement.** The Authority and Redeveloper 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 Redeveloper's investment in the purchase of the Project Area and site preparation thereon is 70% or more of the assessor's current year's estimated market value for the Project Area.

**Section 11.3 Property Tax Matters.** Redeveloper shall not, during the term of the TIF District, cause a reduction in the real property taxes paid in respect of the Project Area through: (a) willful destruction of the Project Area or any part thereof; or (b) willful refusal to reconstruct damaged or destroyed property. Redeveloper shall not, during the term of the TIF District, petition or seek reduction in market value (to a market value below \$19,031,100 for the entire Project area). or property taxes on any portion of the Project Area under any Law, or apply for a deferral of property tax on any portion of the Project Area pursuant to any Law.

## **ARTICLE XII TRANSFER LIMITATIONS AND INDEMNIFICATION**

**Section 12.1 Representation as to the Minimum Improvements.** Redeveloper represents to the City and the Authority that by executing this Agreement, it intends on developing the Minimum Improvements and not for the purpose of speculation in land holding. Redeveloper

acknowledges that, in view of the importance of 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 Redeveloper are of particular concern to the Authority. Redeveloper further acknowledges that the City and the Authority are willing to enter into this Agreement with Redeveloper because of the qualifications and identity of Redeveloper.

**Section 12.2 Limitation on Transfers.**

(a) Until Redeveloper achieves Completion of an Element, Redeveloper shall not Transfer any of its right, title, and interest in and to this Agreement, all or any part of the Project 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 Project Area as provided in Article IX hereof; and

(ii) leasing the Minimum Improvements and other improvements made to the Project Area in the normal course of business in a manner consistent with the Pentagon South City Approvals.

(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 Project 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 Redeveloper;

(ii) Any proposed transferee, by instrument in writing reasonably 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 Redeveloper (or such part thereof as is appropriate for one particular Phase or Element) under this Agreement and agree to be subject to all the conditions and restrictions to which Redeveloper is subject as the same relate to the Phase or Element to be transferred;

(iii) Redeveloper 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 Authority to the contrary, no such Transfer or consent by the Authority thereof shall be deemed to relieve Redeveloper or any other party bound in any way by this Agreement or otherwise with respect to its obligations under

this Agreement.

**Section 12.3 Hotel Developer.**

(a) Lot 2 and Lot 3 Transfers. The Authority and the City acknowledge that Redeveloper desires to Transfer Lot 2 and Lot 3 (together with any Minimum Improvements then constructed thereon) to separate developers and/or operators with expertise in the development, construction and operation of first-class hotels (each a “Hotel Developer”) for the purpose of such Hotel Developers developing, constructing and/or the operating Hotel Element 1 and Hotel Element 2, respectively. Unless a Hotel Developer is a Pre-Approved Hotel Developer (as defined herein), Redeveloper shall obtain the Authority’s prior written consent for each such Transfer to a Hotel Developer, which such consent shall not be unreasonably conditioned, delayed or withheld; provided, however, in determining whether to consent to either such Transfer to a Hotel Developer, the Authority may take into account the following:

(i) whether the Hotel Developer is, in the Authority’s reasonable judgement, reputable and has the experience, qualifications, expertise and financial capacity to construct, develop, and/or operate, Hotel Element 1 or Hotel Element 2, as applicable, in conformance with this Agreement, the Pentagon South City Approvals, and applicable Law; and

(ii) whether the Authority has received evidence, acceptable to the Authority in its reasonable discretion, that the final plans for the Hotel Element 1 and Hotel Element 2, as applicable conform to the Pentagon South City Approvals, including, without limitation, adherence to the scale, scope, design, appearance, quality, and finishes depicted in the Pentagon South Final Development Plan.

(b) Subject to Section 12.3(b) and (c) below, Authority hereby consents to (without any further required consent) the transfer of Lot 2 to Hawkeye Hotels, Inc., an Iowa corporation (or its affiliates) and Lot 3 to WaterWalk RE Development Services, LLC, a Kansas limited liability company or its affiliates) for construction of the respective hotels as identified on the Pentagon South City Approvals.

(c) No Release of Redeveloper. No Transfer to a Hotel Developer shall, or be deemed to, release Redeveloper from its obligations and responsibilities hereunder. Notwithstanding such Transfers, Redeveloper shall continue to be responsible for fulfilling, or causing the applicable Hotel Developer to fulfill, all obligations of Redeveloper under this Agreement related to Lot 2, Lot 3, Hotel Element 1, and Hotel Element 2 (including granting the Parking Easement to the City if a Hotel Developer becomes the owner of the Parking Element). Any failure by a Hotel Developer to adhere to the requirements and deadlines for construction of Hotel Element 1 or Hotel Element 2 (including the Commencement and Completion dates set forth in Section 6.1) shall be a Redeveloper Default hereunder and failure of the applicable condition to payment of Available Tax Increment and accrual interest under the applicable TIF Note pursuant to Section 8.2. Any other Default or Event of Default hereunder caused by an act or omission of a Hotel Developer shall be Default or Event of Default of Redeveloper hereunder.

(d) Right of Reversion. As further assurance to the Completion of Hotel Element 1 and

Hotel Element 2 hereunder, in connection with each transfer to a Hotel Developer, Redeveloper shall retain a right of reversion in any Lot, Element, and/or other improvement conveyed to such Hotel Developer, exercisable by Redeveloper in the event that the Hotel Developer related to the construction of Hotel Element 1 or Hotel Element 2, as applicable, does not commence and complete the applicable Hotel Element on dates required by Redeveloper. Any such right of reversion retained by Redeveloper shall be subject to and subordinate to all rights of the Authority pursuant to this Agreement. Notwithstanding the foregoing, at the closing of the conveyance of any Lot, Element, and/or other improvement to a Hotel Developer, and if requested by Redeveloper, Redeveloper and the City and Authority shall enter into a “stand aside” agreement pursuant to which the Authority shall permit Redeveloper to proceed under Redeveloper’s reversion right so long as Redeveloper repossesses the Lot and improvements thereon owned by a defaulting Hotel Developer and proceeds reasonably to complete the applicable Element, both within reasonable time. Such “stand aside” agreement shall be in form and substance acceptable to the City and Authority and Redeveloper.

**Section 12.4 Indemnification.**

(a) Redeveloper releases and covenants and agrees that the City Parties shall not be liable for and agree, jointly and severally, 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 Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, Redeveloper 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 Redeveloper (or if other persons acting on their behalf or 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 constructed by Redeveloper; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Authority in this Agreement.

**Section 12.5 Limitation.** All covenants, stipulations, promises, agreements and obligations of the City, the Authority or Redeveloper contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, the Authority and Redeveloper, and not of any governing body member, officer, agent, servant or employee of the City, the Authority or Redeveloper 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 Redeveloper Events of Default.** The following shall be Events of Default

for Redeveloper:

(a) subject to Unavoidable Delays and Cure Rights, Redeveloper's failure to achieve Commencement and Completion of any the Phase 1 Minimum Improvements by the applicable dates set forth in accordance with Section 6.1;

(b) if Redeveloper is obligated to convey the Plaza Easement and/or Parking Facilities Easement to the City in accordance with this Agreement, failure by Redeveloper to so convey the Plaza Easement and/or Parking Facilities Easement to the City for a period of 10 business days after written notice of such failure from the City or the Authority;

(c) subject to Cure Rights, failure by Redeveloper 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; and

(d) prior to the delivery of a Certificate of Completion with respect to any Element or Phase of the Minimum Improvements owned by Redeveloper, Redeveloper 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 Redeveloper, 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 Redeveloper, or of the Minimum Improvements, or part thereof, shall be appointed in any proceeding brought against Redeveloper, and shall not be discharged within 90 days after such appointed, or if Redeveloper 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) or (c) 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 Redeveloper Events of Default.** Whenever any Event of Default occurs by Redeveloper, the Authority may take any one or more of the following

actions:

(a) terminate this Agreement (but not any previously issued TIF Note, as regards that Element or Phase), except the Authority will have no right to terminate this Agreement as a result of a default under Sections 4.6 and 11.1, except as otherwise provided herein;

(b) exercise its rights under Section 8.2(a)(ii)(3), Section 8.2(a)(iii)(3), and/or Section 8.4 of this Agreement regarding Redeveloper's TIF eligibility;

(c) suspend performance under this Agreement until it receives assurances from Redeveloper, deemed adequate by the Authority, that Redeveloper will cure the Event of Default and continue its performance under this Agreement, withhold the Certificate of Completion for any Element or Phase of the Minimum Improvements not yet delivered, and 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 Redeveloper under this Agreement; and

(d) 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 Redeveloper Events of Default.** Whenever any Event of Default occurs by Redeveloper, 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 Redeveloper under this Agreement, including an action for specific performance.

**Section 13.7 Redeveloper Remedies on City or Authority Events of Default.** Whenever any Event of Default occurs by the City or the Authority, Redeveloper, 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 Redeveloper 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 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 Redeveloper 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 Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City or the Authority shall be personally liable to the City or the Authority in the event of any Default or breach by Redeveloper 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 registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of Redeveloper, is addressed to or delivered personally to Redeveloper at:

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, Suite 1300  
Minneapolis, MN 55401

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

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

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

City of Edina  
Attention: City Manager  
4801 W. 50th 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 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 Legal Opinions.** Upon execution of this Agreement, each party shall, upon request of the other parties, supply the other parties with an opinion of its legal counsel to the effect that this Agreement is legally issued or executed by, and valid and binding upon, such party, and enforceable in accordance with its terms.

**Section 14.7 Consents and Approvals.** In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

**Section 14.8 Representatives.** Except as otherwise provided herein, all approvals and other actions required of or taken by the Authority shall be effective upon action by the Authority Representative. All actions required of or taken by Redeveloper shall be effective upon action by a duly authorized officer of its general partner.

**Section 14.9 Superseding Effect.** This Agreement reflects the entire agreement of the parties with respect to the items covered by this Agreement, and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to the items covered by this Agreement.

**Section 14.10 Relationship of Parties.** Nothing in this Agreement is intended, or shall be

construed, to create a partnership or joint venture among or between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement.

**Section 14.11 Term.** The term of this Agreement shall be effective from the day and year first above written until the earlier of (a) the date this Agreement is terminated, (b) payment in full of the TIF Notes, or (c) date of termination of the TIF District.

**Section 14.12 Provisions Surviving Rescission or Expiration.** Section 12.4 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 14.13 Memorandum of Agreement.** Neither party shall cause this Agreement to be recorded or filed in the real estate records of Hennepin County. However, Redeveloper shall cause a Memorandum of Agreement to be so recorded or filed in the form attached hereto as Exhibit H, and hereby incorporated herein by reference upon execution of this Agreement upon that portion of the Minimum Improvement Area owned by Redeveloper. At the time of execution of this Agreement the parties hereto will also execute and acknowledge the Memorandum of Agreement. At such time as Redeveloper further acquires fee title to any additional portion of the Project Area, Redeveloper shall cause the Memorandum to be recorded against the additional portion of the Project 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 14.14 Conflicts Between this Agreement and the Development Contract.** In the event of any inconsistency or conflict between the requirements of this Agreement and the Pentagon South Development Contract, the provisions of the Pentagon South Development Contract shall control; provided, however, that for the purposes of Section 9.3 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 14.15 Limited Liability.** Notwithstanding anything to contrary provided in this Agreement, it is specifically understood and agreed, such agreement being the primary consideration for the execution of this Agreement by Redeveloper, that (a) there should be absolutely no personal liability on the part of any director, officer, manager, member, employee or agent of Redeveloper or the City or Authority with respect to any terms, covenants and conditions in this Agreement; (b) Redeveloper 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) Redeveloper 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 14.16 Estoppel Certificates.** Each party, respectively, agrees that at any time and from time to time within 10 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: (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 matter that the requesting party, a prospective purchaser or assignee 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 and any such statement on behalf of the Authority may be executed by the Executive Director without Authority Board approval.

**Section 14.17 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 Redeveloper, 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.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

**CITY OF EDINA,  
MINNESOTA**

By \_\_\_\_\_  
James B. Hovland, Mayor

By \_\_\_\_\_  
Scott H. Neal, City Manager

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by James B. Hovland and Scott H. Neal the Mayor and City Manager, respectively, of the City of Edina, Minnesota, on behalf of the City of Edina.

\_\_\_\_\_  
Notary Public

**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



## LIST OF EXHIBITS

EXHIBIT A	Project Area Map
EXHIBIT B-1	Legal Description of Project Area
EXHIBIT B-2	Plat of Pentagon Village, Hennepin County, Minnesota
EXHIBIT C	Form of Parking Facilities Easement Agreement
EXHIBIT D	TIF Pro Forma
EXHIBIT E	Element TIF Pro Forma
EXHIBIT F	Form of TIF Note
EXHIBIT G	Form of Certificate of Completion
EXHIBIT H	Memorandum of Redevelopment Agreement
EXHIBIT I	TIF Lookback Example
EXHIBIT J	Form of Plaza Easement Agreement
EXHIBIT K	Form of Minimum Assessment Agreement

**EXHIBIT A**

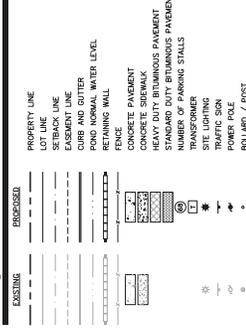
Project Area Map

[See Attached]

**General Site Notes**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE PROJECT PROVIDED BY SOURCE SURVEY.
2. LOCATIONS AND ELEVATIONS OF EXISTING TOPOGRAPHY AND UTILITIES AS SHOWN ON THIS PLAN ARE APPROXIMATE. CONTRACTOR SHALL FIELD VERIFY EXISTING CONDITIONS. IF ANY DISCREPANCIES ARE FOUND, THE ENGINEER SHOULD BE NOTIFIED IMMEDIATELY.
3. REFER TO BOUNDARY SURVEY FOR LOT BEARINGS, DIMENSIONS AND AREAS. UNLESS OTHERWISE NOTED.
4. REFER TO ARCHITECTURAL PLANS FOR EXACT BUILDING DIMENSIONS AND LOCATIONS OF EXITS, RAMPS, AND TRUCK DOORS.
5. ALL CURBS AND GUTTERS SHALL BE 3.0 FEET (TO FACE OF CURB) UNLESS OTHERWISE NOTED.
6. ALL CURBS AND GUTTERS SHALL BE 3.0 FEET (TO FACE OF CURB) UNLESS OTHERWISE NOTED.
7. ALL CURBS AND GUTTERS SHALL BE 3.0 FEET (TO FACE OF CURB) UNLESS OTHERWISE NOTED.

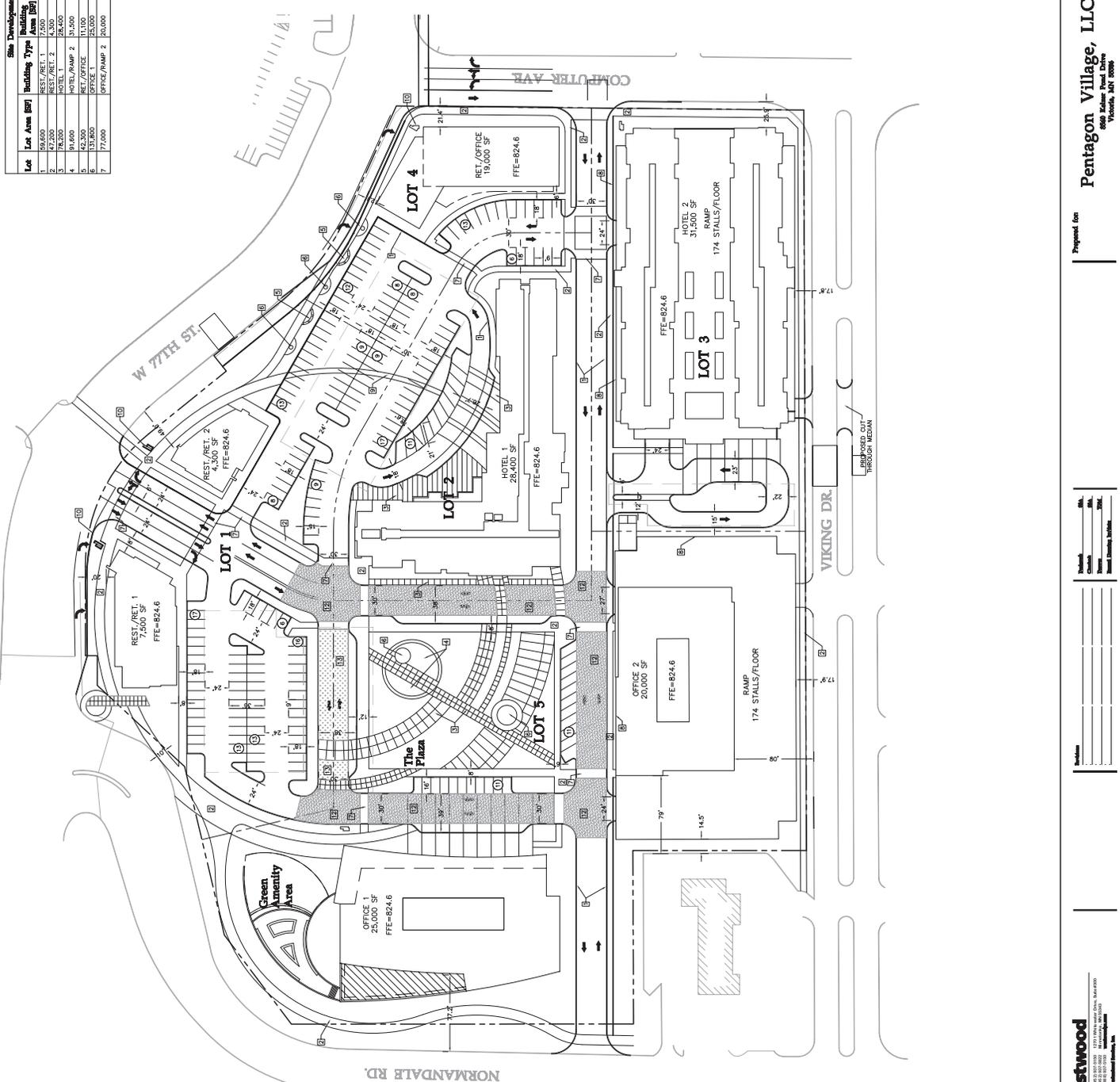
**Site Legend**



**Site Details**

1. 1/2" = 1'-0" SCALE
2. 1/4" = 1'-0" SCALE
3. 1/8" = 1'-0" SCALE
4. 1/16" = 1'-0" SCALE
5. 1/32" = 1'-0" SCALE
6. 1/64" = 1'-0" SCALE
7. 1/128" = 1'-0" SCALE
8. 1/256" = 1'-0" SCALE
9. 1/512" = 1'-0" SCALE
10. 1/1024" = 1'-0" SCALE
11. 1/2048" = 1'-0" SCALE

Lot	Lot Area (SF)	Building Type	Building Area (SF)	Floors	Green Building Area (SF)	Units	Trucking Shafts
1	58,600	REST./RET. 1	7,500	1	7,500	---	53
2	42,000	REST./RET. 2	4,300	1	4,300	---	58
3	91,600	HOTEL/RAMP 2	31,500	3 RAMP	127,500	153	522
4	42,300	REST./OFFICE	11,000	2	9,000	---	41
5	131,800	OFFICE 1	25,000	5	125,000	---	22
6	77,000	OFFICE/RAMP 2	20,000	5	100,000	---	696



**Pentagon Park South**  
Mills, MN

**Pentagon Village, LLC**  
6860 Keller Road Drive  
Victoria, MN 55080

Prepared for

Project No.	---
Client	---
Drawn	---
Scale	---

Scale

**EXHIBIT B-1**

Legal Description of Project Area

Lots 1 through 5, Block 1, Pentagon Village, Hennepin County, Minnesota

**EXHIBIT B-2**

Plat of Pentagon Village, Hennepin County, Minnesota

[See Attached]

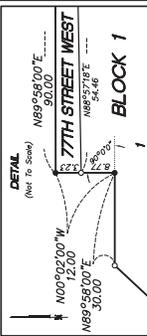
# PENTAGON VILLAGE

FOR EASEMENT DETAIL  
SEE SHEET 3 OF 3 SHEETS

R.T. DOC. NO.

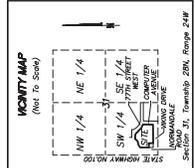
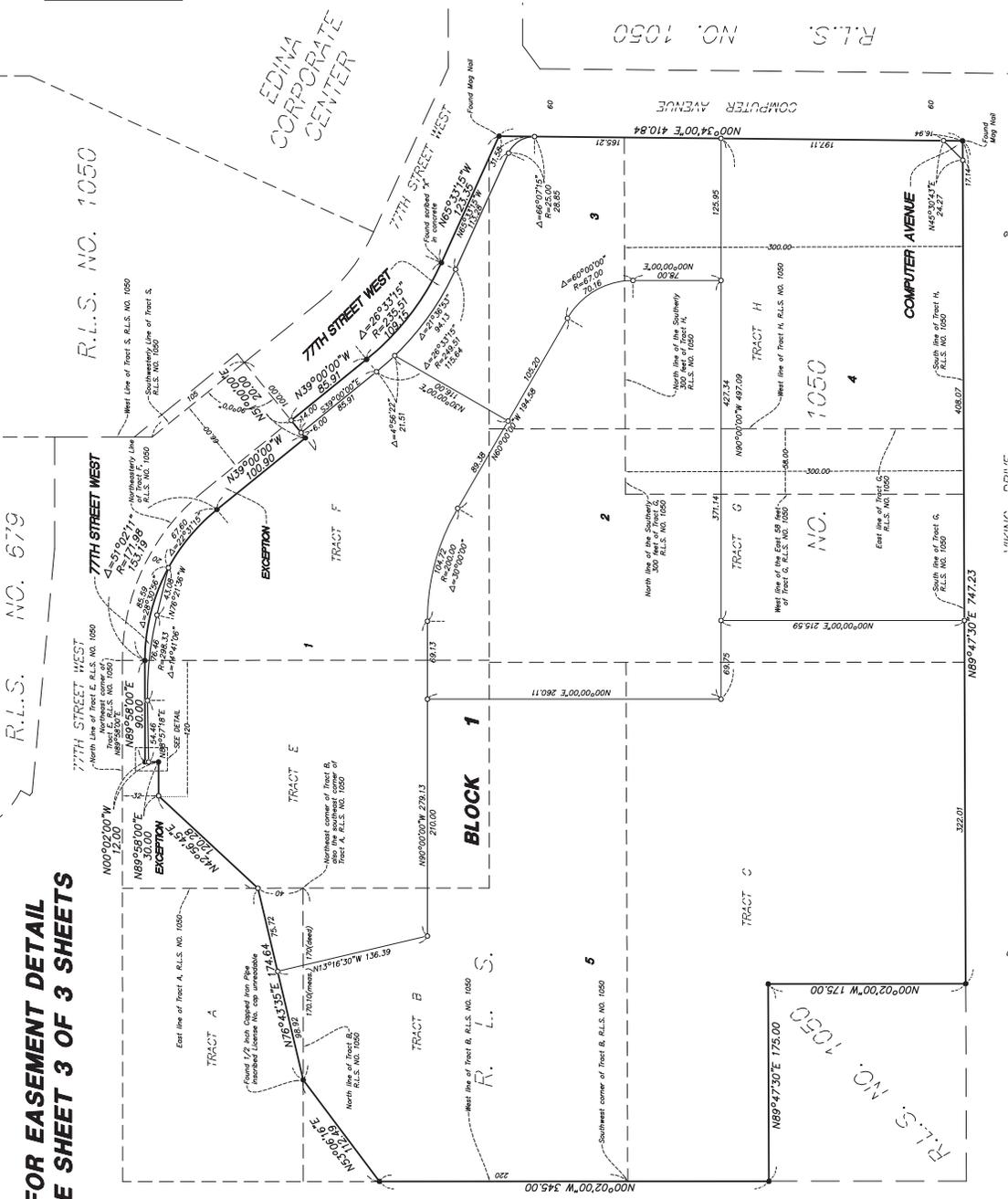
R.L.S. NO. 679

R.L.S. NO. 1050



(STATE HIGHWAY NO. 100)

NORMANDALE ROAD



The orientation of this bearing system is based on the South line of Tract H, R.L.S. NO. 1050, which is assumed to bear N 89°47'30\"/>

- Denotes set 1/2 inch x 14 inch iron rebar marked with plastic cap inscribed LS 23021, which has been assumed to be set in accordance with MS 30510261, Subd. 10
- Denotes Found 1/2 inch Copper first pipe marked with Plastic Cap inscribed with Lic. No. 17256, unless otherwise noted.

ASSOCIATION ADDITION | PAT MOORE 1ST ADDITION

EXHIBIT B-2  
PLAT OF  
PENTAGON VILLAGE

Westwood  
Professional Services, Inc.

**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:

WHEREAS, 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 (the “Contract”); and

WHEREAS, 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; and

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

WHEREAS, such Minimum Improvements include a 3-level, approximately 522-space parking structure (the “Parking Facility”, and defined in the Contract as the Parking Element) which such Parking Facility is integrated into, connected to, and forming a part of that certain [153-room hotel] located above the Parking Facility (the “Associated Commercial Element”), which such Parking Facility and Associated Commercial Element are located on certain real property within the Project Area legally described on the attached Exhibit A (“the Burdened Property”); and

WHEREAS, 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; and

WHEREAS, 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 Associated Commercial Element and other commercial elements within the Project Area, 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 Parking Facility; and

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

WHEREAS, 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; and

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

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

## ARTICLE I

### GRANT OF 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, 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 Associated Commercial Element and/or any other commercial element within the Project Area), 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 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 a prominent, permanent "Parking" sign at or near each vehicular entrance to the Parking Facility, such that an ordinary member of the general public would be reasonably expected to understand or expect that parking is available to the general public within the Parking Facility (provided that such "Parking" sign, may, but does not need to explicitly state that such parking is "public"). Owner shall also install and maintain in the main lobby or foyer of the Parking Facility a permanent placard (to be no smaller than approximately 8 1/2 by 11 inches) which states that the public parking available in the Parking Facility 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 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 within the Parking Facility for exclusive use by and for Owner, or its tenants, occupants, and/or other users of the Associated Commercial Element (or any other commercial element within the Project Area), and/or their respective permittees or invitees;

(b) [To the extent certain amenities, components, and/or fixtures of the Parking Facility are intended for the exclusive use of Owner, or its tenants, occupants and/or other users of the Associated Commercial Element, and/or their respective permittees or invitees, Owner reserves the right to reserve the same for exclusive use by such 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 party from access to the Parking Facility for cause and on a non-discriminatory basis;

(e) 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;

(f) Subject to the terms of the Contract, 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;

(g) 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.

## **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 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 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 Parking Facility, Associated Commercial 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 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 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 7.2 Property Insurance. At all times during the term hereof, Owner, at its sole cost and expense, shall keep the Parking Facility, Associated Commercial 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 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;  
and

- (c) robbery and hold-up insurance.

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, 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 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 Notes 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 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 X**

### **EMINENT DOMAIN**

Section 10.1 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 XI**

### **DEFAULT AND TERMINATION**

Section 11.1 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 11.2 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 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 Project 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 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 12.5 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 12.6 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

with a copy to: Jay R. Lindgren

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

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

Section 12.1 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 12.2 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 12.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.4 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 12.5 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 12.6 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 12.7 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

**[A legal description of the Burdened Property; Lot 3, Pentagon Village is the Lot that would contain the Parking Facility per the Pentagon South City Approvals.]**

C-15

Exhibit A to  
Parking Facilities Easement Agreement  
(Pentagon South)

**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**  
**Full Redevelopment**

<b>SOURCES</b>			
	<u>% OF TOTAL</u>	<u>% OF FINANCE</u>	<u>TOTALS</u>
DEVELOPER FINANCING - Loans			73,493,971
DEVELOPER EQUITY			35,325,981
<b>AMOUNT FINANCED</b>			<b>108,819,952</b>
GRANT #1			1,073,100
GRANT #2			0
EXTERNAL EQUITY			0
<b>TOTAL SOURCES</b>			<b>109,893,052</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		2.98%	3,280,000	<b>3,405,438</b>
Land Commission		0.21%	229,023	
Stabilization			(103,585)	
<b>SITE COSTS</b>				
Site Improvement Costs (Demo/Soils/Storm/Green Space)		8.16%	8,971,558	<b>23,410,738</b>
Parking Ramps		10.82%	11,886,000	
Infrastructure Costs (Public ROW Improvements)		0.61%	668,238	
Professional Services		0.63%	694,213	
Sitework Development Fee		1.08%	1,190,729	
<b>CONSTRUCTION COSTS</b>				<b>58,943,953</b>
Retail Construction		3.12%	3,433,100	
Retail/Office Construction		3.86%	4,245,000	
Office 1 Construction		29.34%	32,240,985	
Office 2 Construction		17.31%	19,024,868	
<b>TENANT IMPROVEMENTS</b>				<b>12,187,220</b>
Tenant Improvements - Retail		0.85%	936,770	
Tenant Improvements - Office		10.24%	11,250,450	
<b>SOFT COSTS</b>				
<b>PREDEVELOPMENT COSTS</b>				<b>2,052,900</b>
Architect & Civil		1.66%	1,820,000	
Governmental		0.01%	7,500	
LLC Insurance (Builders Risk + Liability)		0.00%	3,500	
City Application Fees & Traffic Study		0.10%	105,500	
Survey & Soil Testing		0.11%	116,400	
<b>INTEREST EXPENSE</b>				<b>2,207,000</b>
Construction Costs		2.01%	2,207,000	
Land Carrying Cost			0	
<b>GOVERNMENTAL FEES</b>				<b>0</b>
Park Dedication Fees			0	
Special Assessments			0	
<b>LEGAL</b>		0.52%	570,000	<b>570,000</b>
<b>REAL ESTATE TAXES</b>		1.28%	1,406,530	<b>1,406,530</b>
<b>FINANCING</b>				<b>491,250</b>
Title Insurance/Mortgage Registration			0	
Financing, Origination and Guarantee Fees		0.03%	33,750	
Bank/Borrower Legal			0	
Recording & Closing Costs		0.12%	127,500	
Loan Costs (Construction)		0.30%	330,000	
<b>LEASING</b>				<b>3,094,595</b>
Leasing Commissions - Tenant Rep		1.36%	1,491,667	
Leasing Commissions - Landlord Rep		1.00%	1,093,771	
Leasing Commissions - Solomon		0.46%	509,158	
<b>OPENING CONTINGENCY</b>		0.06%	65,000	<b>65,000</b>
<b>OFFICE OVERHEAD</b>				<b>0</b>
CAM,RET & Mgmt			0	
<b>DEVELOPER FEE</b>		1.87%	2,058,428	<b>2,058,428</b>
<b>MISC</b>				<b>0</b>
<b>Total Soft Costs</b>				<b>11,945,703</b>
<b>TOTAL USES</b>				<b>109,893,052</b>

EQUITY REQUIREMENT ASSUMPTION	
Year	
Amount of Equity	35,325,981
Minimum Rate Of Return - Percent	0.00%
Minimum Rate Of Return - Amount	0

SALES ANALYSIS ASSUMPTIONS	
Net Operating Income End 2024	Various
Divided By Cap Rate	6.75%
Gross sales price	94,632,814
Plus Unamortized TIF Note Principal	17,435,762
Minus Debt - Bank	70,025,244
Net Sales amount	42,043,331
Sales expenses -	2,365,820
<b>Final Net Amount</b>	<b>39,677,511</b>

INTERNAL RATE OF RETURN ANALYSIS - EQUITY PARTNERS WITH TIF					
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	(791,283)	(20,407,948)	13,859,523	(7,339,708)
7	2020	(5,132,659)	15,035	0	(5,117,624)
8	2021	(2,362,377)	683,589	0	(1,678,787)
9	2022	0	1,610,594	4,812,283	6,422,877
10	2023	0	1,540,558	8,892,297	10,432,854
11	2024	0	893,379	12,113,408	13,006,787
12	2025	0	0	0	0
<b>Total</b>		<b>(8,286,319)</b>	<b>(22,153,453)</b>	<b>39,677,511</b>	<b>9,237,739</b>
					<b>IRR: 7.35%</b>

INTERNAL RATE OF RETURN ANALYSIS - WITHOUT TIF					
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	(791,283)	(20,407,948)	6,873,750	(14,325,481)
7	2020	(5,115,467)	(22,354)	0	(5,137,820)
8	2021	(2,269,623)	313,105	0	(1,956,519)
9	2022	0	958,064	3,099,769	4,057,833
10	2023	0	855,295	4,322,519	5,177,814
11	2024	0	582,417	8,457,586	9,040,003
12	2025	0	0	0	0
<b>Total</b>		<b>(8,176,373)</b>	<b>(24,210,082)</b>	<b>22,753,624</b>	<b>(9,632,831)</b>
					<b>IRR: -8.60%</b>

**EXHIBIT E**

Element TIF Pro Forma

[See Attached]

**EXHIBIT E - SAMPLE ELEMENT TIF PRO FORMA**

City of Edina

**Pentagon Village Redevlopment Agreement**

Element

Site Cost Allocation:

Construction: \_\_\_\_\_

Occupied: \_\_\_\_\_

Sale: \_\_\_\_\_

<b>SOURCES</b>			
	<u>% OF TOTAL</u>	<u>% OF FINANCE</u>	<u>TOTALS</u>
DEVELOPER FINANCING - Construction Loan			0
DEVELOPER EQUITY			0
<b>AMOUNT FINANCED</b>			<b>0</b>
GRANT #1			0
GRANT #2			0
EXTERNAL EQUITY			0
<b>TOTAL SOURCES</b>			<b>0</b>

IRR:  
Cash on Cost:  
Cash on Cash:

<b>USES</b>				
	<u>PER S.F.</u>	<u>% OF TOTAL</u>	<u>SUBTOTAL</u>	<u>TOTALS</u>
<b>ACQUISITION COSTS</b>	0			
Land Acquisition			0	0
Land Commission			0	
Stabilization Expenses (Income)			0	
<b>SITE COSTS</b>				
Site Improvement Costs (Demo/Soils/Storm/Green Space)			0	0
Parking Ramp			0	
Infrastructure Costs (Public ROW Improvements)			0	
Professional Services			0	
Sitework Development Fee			0	
<b>CONSTRUCTION COSTS</b>				
Shell Construction			0	0
General conditions/Builder Profit			0	
Permits			0	
Misc. Site Work			0	
Additional Building & Hardscape; Pylon Signs			0	
SAC/WAC			0	
Contingency			0	
<b>TENANT IMPROVEMENTS</b>				
Tenant Improvements - A	\$		0	0
Tenant Improvements - B	\$		0	
<b>SOFT COSTS</b>				
<b>PREDEVELOPMENT COSTS</b>				
Architect & Civil			0	0
Governmental			0	
LLC Insurance (Builders Risk + Liability)			0	
City Application Fees & Traffic Study			0	
Survey & Soil Testing			0	
<b>INTEREST EXPENSE</b>				
Construction Costs			0	0
Land Carrying Cost			0	
<b>GOVERNMENTAL FEES</b>				
Park Dedication Fees			0	0
Special Assessments			0	
<b>LEGAL</b>			0	0
<b>REAL ESTATE TAXES</b>			0	0
<b>FINANCING</b>				
Title Insurance/Mortgage Registration			0	0
Financing, Origination and Guarantee Fees			0	
Bank/Borrower Legal			0	
Recording & Closing Costs			0	
Loan Costs (Construction)			0	
<b>LEASING</b>				
Leasing Commissions - Tenant Rep	\$		0	0
Leasing Commissions - Landlord Rep	\$		0	
Leasing Commissions - Solomon	\$		0	
<b>OPENING CONTINGENCY</b>			0	0
<b>OFFICE OVERHEAD</b>				
CAM,RET & Mgmt			0	0
<b>DEVELOPER FEE</b>			0	0
<b>MISC</b>			0	0
<b>Total Soft Costs</b>			0	0
<b>TOTAL USES</b>				<b>0</b>

<b>PROJECT REVENUE ASSUMPTIONS</b>			
<u>TYPE</u>	<u>RENT PER SQ. FT.</u>	<u>TOTAL SQ. FT.</u>	<u>ANNUAL REVENUE</u>
Tenant A			0
Tenant B			0
Other Office			0
Parking			0
Total Rental Income			0
Management Fee Income	0.00	0	0
CAM & Insurance Income	0.00	0	0
Real Estate Tax Income	0.00	0	0
Total Other Income			0
			0

<b>PROJECT SALE ASSUMPTIONS</b>	
Total Cost	0
First Year N. O. I.	0
C.A.P Rate	0.00%
Sales Expense	0.00%

<b>PROJECT DEBT ASSUMPTIONS</b>	
<b>Private Debt:</b>	
Lender NOI	0
C.A.P Rate	0.00%
C.A.P Loan Amount	0
Max Loan Amount	% 0
<b>Amount of Loan - Series A</b>	<b>0</b>
Term Of Loan	0
Rate of Loan	0.00%
Monthly Payment - P&I	
Annual Payment	
<b>Amount of Loan - Series B</b>	<b>0</b>
Term Of Loan	0
Rate of Loan	0.00%
Monthly Payment	
Annual Payment	

<b>INFLATION ASSUMPTIONS</b>					
<u>YEAR</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Rental Revenue	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - Management Fee	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - CAM & Insurance	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - RE Tax	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - Management Fee	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - CAM & Insurance	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - RE Tax	0.00%	0.00%	0.00%	0.00%	0.00%
Office Vacancy	0.00%	0.00%	0.00%	0.00%	0.00%
Retail Vacancy	0.00%	0.00%	0.00%	0.00%	0.00%
MONTHS OPERATING	0				

<u>YEAR</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Rental Revenue	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - Management Fee	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - CAM & Insurance	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - RE Tax	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - Management Fee	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - CAM & Insurance	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - RE Tax	0.00%	0.00%	0.00%	0.00%	0.00%
Office Vacancy	0.00%	0.00%	0.00%	0.00%	0.00%
Retail Vacancy	0.00%	0.00%	0.00%	0.00%	0.00%

<u>YEAR</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>
Rental Revenue	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - Management Fee	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - CAM & Insurance	0.00%	0.00%	0.00%	0.00%	0.00%
Other Income - RE Tax	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - Management Fee	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - CAM & Insurance	0.00%	0.00%	0.00%	0.00%	0.00%
Expenses - RE Tax	0.00%	0.00%	0.00%	0.00%	0.00%
Office Vacancy	0.00%	0.00%	0.00%	0.00%	0.00%
Retail Vacancy	0.00%	0.00%	0.00%	0.00%	0.00%

<b>CASH FLOW - INCOME</b>					
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
<b>Rental Revenue</b>					
Tenant A	0	0	0	0	0
Tenant B	0	0	0	0	0
Other Office	0	0	0	0	0
Parking	0	0	0	0	0
<b>Total Rental</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Other Revenue</b>					
Management Fee Income	0	0	0	0	0
CAM & Insurance Income	0	0	0	0	0
Real Estate Tax Income	0	0	0	0	0
<b>Total Other</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Gross Revenue	0	0	0	0	0
Office Vacancies	0	0	0	0	0
Retail Vacancies	0	0	0	0	0
<b>Effective Income</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
<b>Rental Revenue</b>					
Tenant A	0	0	0	0	0
Tenant B	0	0	0	0	0
Other Office	0	0	0	0	0
Parking	0	0	0	0	0
<b>Total Rental</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Other Revenue</b>					
Management Fee Income	0	0	0	0	0
CAM & Insurance Income	0	0	0	0	0
Real Estate Tax Income	0	0	0	0	0
<b>Total Other</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Gross Revenue	0	0	0	0	0
Office Vacancies	0	0	0	0	0
Retail Vacancies	0	0	0	0	0
<b>Effective Income</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>
<b>Rental Revenue</b>					
Tenant A	0	0	0	0	0
Tenant B	0	0	0	0	0
Other Office	0	0	0	0	0
Parking	0	0	0	0	0
<b>Total Rental</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Other Revenue</b>					
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0
<b>Total Other</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Gross Revenue	0	0	0	0	0
Office Vacancies	0	0	0	0	0
Retail Vacancies	0	0	0	0	0
<b>Effective Income</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CASH FLOW - EXPENSES AND DEBT</b>					
	2014	2015	2016	2017	2018
<b>DEVELOPMENT</b>					
Property Purchase	0	0	0	0	0
Acquisition Closing Costs / Broker Commissions	0	0	0	0	0
Demo/Abatement/Construction (Net Grants)	0	0	0	0	0
Real Estate Taxes	0	0	0	0	0
Other Rental (Income) Loss	0	0	0	0	0
Real Estate Tax Refund (Income)	0	0	0	0	0
Legal / Professional Services	0	0	0	0	0
Land Carry Cost at 6%	0	0	0	0	0
Sitework Development Fee	0	0	0	0	0
<b>MANAGEMENT AND OTHER FEES</b>					
Management Fees (4%)	0	0	0	0	0
CAM & Insurance	0	0	0	0	0
Real Estate Taxes	0	0	0	0	0
Tenant Improvements	0	0	0	0	0
Leasing Commissions	0	0	0	0	0
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>NET OPERATING INCOME</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TIF PAYMENTS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
CASH FLOW AVAILABLE	0	0	0	0	0
DEBT SERVICE (-) - Series A	0	0	0	0	0
<b>CASH FLOW AFTER FINANCING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>RETURN ON INVES.-ANNUAL</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>
<b>RETURN ON INVES.-AVERAGE</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>

	2019	2020	2021	2022	2023
<b>DEVELOPMENT</b>					
Property Purchase	0	0	0	0	0
Acquisition Closing Costs / Broker Commissions	0	0	0	0	0
Demo/Abatement/Construction (Net Grants)	0	0	0	0	0
Real Estate Taxes	0	0	0	0	0
Other Rental (Income) Loss	0	0	0	0	0
Real Estate Tax Refund (Income)	0	0	0	0	0
Legal / Professional Services	0	0	0	0	0
Land Carry Cost at 6% (Lookback)	0	0	0	0	0
Sitework Development Fee	0	0	0	0	0
<b>MANAGEMENT AND OTHER FEES</b>					
Management Fees (4%)	0	0	0	0	0
CAM & Insurance	0	0	0	0	0
Real Estate Taxes	0	0	0	0	0
Tenant Improvements	0	0	0	0	0
Leasing Commissions	0	0	0	0	0
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>NET OPERATING INCOME</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TIF PAYMENTS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
CASH FLOW AVAILABLE	0	0	0	0	0
DEBT SERVICE (-) - Series A	0	0	0	0	0
<b>CASH FLOW AFTER FINANCING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>RETURN ON INVES.-ANNUAL</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>
<b>RETURN ON INVES.-AVERAGE</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>

	2024	2025	2026	2027	2028
<b>DEVELOPMENT</b>					
Property Purchase	0	0	0	0	0
Acquisition Closing Costs / Broker Commissions	0	0	0	0	0
Demo/Abatement/Construction (Net Grants)	0	0	0	0	0
Real Estate Taxes	0	0	0	0	0
Other Rental (Income) Loss	0	0	0	0	0
Real Estate Tax Refund (Income)	0	0	0	0	0
Legal / Professional Services	0	0	0	0	0
Land Carry Cost at 6%	0	0	0	0	0
Sitework Development Fee	0	0	0	0	0
<b>MANAGEMENT AND OTHER FEES</b>					
Management Fees (4%)	0	0	0	0	0
CAM & Insurance	0	0	0	0	0
Real Estate Taxes	0	0	0	0	0
Tenant Improvements	0	0	0	0	0
Leasing Commissions	0	0	0	0	0
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>NET OPERATING INCOME</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TIF PAYMENTS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
CASH FLOW AVAIL. FOR DEBT SERVICE	0	0	0	0	0
DEBT SERVICE (-) - Series A	0	0	0	0	0
<b>CASH FLOW AFTER FINANCING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>RETURN ON INVES.-ANNUAL</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>
<b>RETURN ON INVES.-AVERAGE</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>

ANNUAL EQUITY REQUIREMENT	
Year	
Amount of Equity	0
Minimum Rate Of Return - Percent	0.00%
Minimum Rate Of Return - Amount	0

SALE ANALYSIS	
Net Operating Income End 2024	0
Divided By Cap Rate	0.00%
Gross sale price	0
Plus TIF Note Principal	0
Minus Debt - Bank	0
Net Sale amount	0
Sales expense -	0
Final amount	0

INTERNAL RATE OF RETURN ANALYSIS - EQUITY PARTNERS					
Years	Year	Element Investment	CASH Flow	Net Sale Price	Total Cash Flow
1	2014		0		0
2	2015		0		0
3	2016		0		0
4	2017		0		0
5	2018		0		0
6	2019		0		0
7	2020		0		0
8	2021	0	0		0
9	2022		0		0
10	2023		0		0
11	2024		0	0	0
12	2025				0
<b>Total</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
IRR:					

**EXHIBIT F**

Form of TIF Note

**LIMITED REVENUE TAX INCREMENT NOTE [A | B | C]**  
(Pentagon South)

No. R-\_\_\_\_\_

\$[\_\_\_\_\_]

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

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

Interest Rate		Date of Original Issue		Maturity Date

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_

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 PENTAGON VILLAGE, LLC, a Minnesota limited liability company, or its assigns (“Redeveloper”), 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 Accrual Date (as hereinafter defined), at the rate of interest of six and zero hundredths percent (6.00%) 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 October 16, 2018, by and among the City of Edina, Minnesota (the “City”), the Authority and Redeveloper (the “Redevelopment Agreement”), and an authorizing resolution (the “Resolution”) duly adopted by the Authority on October 12, 2018. This is TIF Note [A | B | C] under 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 Redeveloper and mailed to Redeveloper at its postal

address within the United States which shall be designated from time to time by Redeveloper.

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 Pentagon Park Tax Increment Financing District established by the Authority pursuant to Resolution No. 2014 – 2 (the “TIF District”). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to them in the Redevelopment Agreement.

This Note is being issued as of the date hereof at the request of Redeveloper. Notwithstanding the date of issuance of this Note, the accrual of interest and payment of Available Tax Increment (as hereinafter defined) hereunder is fully conditioned upon, and will commence no earlier than the date (the “Accrual Date”) upon which Redeveloper satisfies all requirements and conditions relating to accrual of interest and payment of Available Tax Increment applicable to this Note hereunder and under the Redevelopment Agreement, specifically including, but not limited to, the requirements and conditions set forth in Section 8.2 and Section 8.3 of the Redevelopment Agreement (the “Accrual Requirements”), which such Accrual Date shall be fixed by the Authority and Redeveloper executing an allonge to this TIF Note in substantially the form attached as Exhibit A as soon as reasonable practical after the satisfaction of the applicable Accrual Requirements.

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

Provided Redeveloper has satisfied the Accrual Requirements, principal of and interest on this Note shall be payable solely from and in the amount of Available Tax Increment on each February 1 and August 1 commencing on the first February 1 or August 1 immediately following the Accrual Date and continuing through [February 1, 2044] (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; 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. Redeveloper acknowledges and agrees that the payment of all or any portion of the outstanding principal amount of this Note and all interest hereon from Available Tax Increment shall be pari passu in right of payment and in all other respects to the other TIF Notes issued to Redeveloper pursuant to the Redevelopment Agreement, to the extent the Accrual Requirements have been satisfied with respect to such other TIF Notes.

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 accruing from the Accrual Date through and including the first Payment Date will be added to principal. Interest shall be computed on the basis of a year of 360 days and charged for actual days principal is unpaid.

“Available Tax Increment” means 90% of the tax increment generated from parcels specifically within the Project 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. 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 principal of and interest on this Note then due shall not constitute a default hereunder.

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 Redeveloper under the Redevelopment Agreement, the Authority may exercise the remedies with respect to this Note described in Section 13.5 of 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.

Redeveloper 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) that the assignee or transferee is an "accredited investor" within the meaning of Rule 501 of the Regulation D under the Securities Act of 1933, as amended, (iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment in 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, Redeveloper may assign and pledge this Note to secure any Mortgage that is permitted under Section 9.1 of the Redevelopment Agreement and may transfer this Note to (i) any entity controlling, controlled by or under common control with Redeveloper, (ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in Redeveloper, or (iii) any Affiliate.

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

**ALLONGE**  
**TO**  
**LIMITED REVENUE TAX INCREMENT NOTE [A | B | C]**  
(Pentagon South)

This Allonge to Limited Revenue Tax Increment Note is attached to that certain Limited Revenue Tax Increment Note dated \_\_\_\_\_, 2019, designated as No. R-\_\_\_\_\_, in the original amount of \$\_\_\_\_\_ (the “TIF Note”), executed by the Housing and Redevelopment Authority of Edina, Minnesota (the “Authority”) to Pentagon Village, LLC, a Minnesota limited liability company.

The “Accrual Date” (as defined in the TIF Note) is hereby deemed to be and fixed at \_\_\_\_\_, 20\_\_\_\_.

The undersigned do hereby acknowledge and accept the foregoing Allonge to the TIF Note, fixing the Accrual Date as set forth above.

HOUSING AND REDEVELOPMENT  
AUTHORITY OF EDINA, MINNESOTA

PENTAGON VILLAGE, LLC,  
a Minnesota limited liability company

By \_\_\_\_\_  
\_\_\_\_\_, Chair

By: \_\_\_\_\_

Name: \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_, Secretary

Its \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

**EXHIBIT G**

Form of Certificate of Completion

**CERTIFICATE OF COMPLETION**

A. PENTAGON VILLAGE, LLC (“Redeveloper”), 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 Redeveloper, dated effective as of October 16, 2018 (the “Contract”), has agreed to complete the \_\_\_\_\_, 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. Redeveloper has substantially completed construction of \_\_\_\_\_ 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 \_\_\_\_\_ including, but not limited to, the quality of materials, workmanship or the fitness of the \_\_\_\_\_ for it/their proposed use.

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

Dated: \_\_\_\_\_, 20\_\_\_\_

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





## EXHIBIT H

### Memorandum of Redevelopment Agreement

#### MEMORANDUM OF REDEVELOPMENT AGREEMENT

THIS MEMORANDUM OF REDEVELOPMENT AGREEMENT (this "Memorandum") is entered into as of October 16, 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 PENTAGON VILLAGE, LLC., a Minnesota limited liability company ("Redeveloper").

#### RECITALS:

A. City, Authority, and Redeveloper (collectively, the "Parties") have entered into a certain Redevelopment Agreement dated as of October 16, 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 \_\_\_\_\_  
\_\_\_\_\_, 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

PENTAGON VILLAGE, LLC  
a Minnesota limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Pentagon Village, LLC, a  
Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

THIS DOCUMENT WAS DRAFTED BY:

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

**EXHIBIT I**

TIF Lookback Example

[See Attached]

**EXHIBIT I - TIF LOOKBACK EXAMPLE\***  
**City of Edina**  
**Pentagon Village Redevelopment Agreement**  
**Phase Constructor**

Issued TIF Note(s): 18,100,000

Constructor Lookback Adjustment

Element Property	Completion	Transfer	Cumulative IRR Cash Flow	IRR	Phase Excess IRR (IRR > 16%)	Excess Profit	A		B	
							Max. Adjustment (Excess Profit x 0.25)	Note Adjustment % (10%,15%,or 25%)	Note Adjustment (TIF Note x Adj. %)	TIF Adjustment (Lesser of A or B)
Retail Element	2019	2022	1,338,825	16.00%	0.00%	-	-	0%	-	-
Retail/Office Element	2019	2022	2,317,570	23.21%	7.21%	950,096	237,524	25%	4,525,000	237,524
Office 1 Element	2020	2023	10,351,642	16.00%	0.00%	-	-	0%	-	-
Office 2 Element	2023	2026	14,503,194	15.33%	-0.67%	(1,024,340)	(256,085)	0%	-	(256,085)

\*This is a hypothetical example to illustrate the method to calculate the Phase Constructor TIF Adjustment in accordance with Section 7.4. In the example above, the Retail/Office Element is completed in 2019 and sold within 3 years in 2022. The cumulative investment and net revenue from operations and sale of \$2,317,570 are calculated to an Internal Rate of Return of 23.21%. Of this return, the amount exceeding the Section 7.4 threshold is calculated at \$950,096. An adjustment is made based on the lesser of 25% of this overage (\$237,524) or 25% of the TIF Note balance (\$4,525,000). An adjustment of \$237,524 is recorded in 2022 and a 6% interest carry is applied to all outstanding amounts. The cumulative adjustments are compiled until final adjustment per 7.4d: in this example as a final Phase Constructor TIF Adjustment of \$46,411 occurring 365 days from the Transfer of the Last Element Property (2027).

Year	New Transfer Adjustment	6% Carry	Total Cumulative Adjustments	Final Constructor TIF Adjustment**
2019	-	-	-	
2020	-	-	-	
2021	-	-	-	
2022	237,524	-	237,524	
2023	-	14,251	251,775	
2024	-	15,107	266,882	
2025	-	16,013	282,895	
2026	(256,085)	16,974	43,784	
2027	-	2,627	46,411	46,411
2028				
2029				
2030				
2031				
2032				
2033				
2034				

\*\* Repayment of the cumulative adjustment to occur as per Section 7.4d. This example assumes Transfer of last Element in 2026.

**EXHIBIT I - TIF LOOKBACK EXAMPLE\***  
**City of Edina**  
**Pentagon Village Redevelopment Agreement**  
**Phase Developer with Controlling Interest Transfer**

Issued TIF Note(s): 18,100,000

Phase Developer Lookback Adjustment

Element Property	Completion	Controlling Interest Transfer	Cumulative IRR Cash Flow	IRR	Phase Excess IRR (IRR > 16%)	Excess Profit	A		B	
							Max. Adjustment (Excess Profit x 0.25)	Note Adjustment % (10%,15%,or 25%)	Note Adjustment (TIF Note x Adj. %)	TIF Adjustment (Lesser of A or B)
Hotel 2	N/A	2019	1,110,971	16.56%	0.56%	48,097	12,024	10%	1,810,000	12,024
Hotel 1	N/A	2022	1,057,058	12.82%	-3.18%	(337,321)	(84,330)	0%	-	(84,330)
						-	-	0%	-	-
						-	-	0%	-	-

\*This is a hypothetical example to illustrate the method to calculate the Phase Developer TIF Adjustment in accordance with Section 7.4. In the example above, the Hotel 2 Property undergoes a controlling interest transfer in 2019. The cumulative investment and net revenue from stabilization and sale of \$1,110,971 are calculated to an Internal Rate of Return of 16.56%. Of this return, the amount exceeding the Section 7.4 threshold is calculated at \$48,097. An adjustment is made based on the lesser of 25% of this overage (\$12,024) or 10% of the TIF Note balance (\$1,810,000). An adjustment of \$12,024 is recorded in 2019 and a 6% interest carry is applied to all outstanding amounts. The Hotel 1 Property also undergoes a controlling interest transfer in 2022 and its adjustment of -\$84,330 is added into the cumulative adjustment, now below zero. The cumulative adjustments are compiled until final adjustment per 7.4b(iii); in this example as a final Phase Developer TIF Adjustment of \$0 365 days from the transfer of the last Element Property (2027).

Year	New Transfer		Total Cumulative Adjustments	Final Developer TIF Adjustment**
	Adjustment	6% Carry		
2019	12,024	-	12,024	
2020	-	721	12,746	
2021	-	765	13,510	
2022	(84,330)	811	(70,009)	
2023	-	-	(70,009)	
2024	-	-	(70,009)	
2025	-	-	(70,009)	
2026	-	-	(70,009)	
2027	-	-	(70,009)	-
2028				
2029				
2030				
2031				
2032				
2033				
2034				

\*\* Repayment of the cumulative adjustment to occur as per Section 7.4b(iii). This example assumes Transfer of last Element in 2026.

**EXHIBIT J**

Form of Plaza Easement Agreement

**PLAZA 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

**PLAZA EASEMENT AGREEMENT**  
(Pentagon South)

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 PENTAGON VILLAGE, LLC, a Minnesota limited liability company (“Owner”).

RECITALS:

WHEREAS, 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 (the “Contract”); and

WHEREAS, 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; and

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

WHEREAS, such Minimum Improvements include a ground-level, outdoor plaza and amenity area (the “Plaza”; defined in the Contract as the Plaza Element), which such Plaza is located on certain real property within the Project Area legally described on the attached Exhibit A (the “Plaza Property”); and

WHEREAS, 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; and

WHEREAS, Owner has agreed to operate, manage, and maintain the Plaza pursuant and subject to the terms and conditions of the Contract and this Agreement; and

WHEREAS, 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; and

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

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

**ARTICLE I.**

## GRANT OF EASEMENTS

Section 1.1. Easement Premises. 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, pathways, retaining walls, and other hardscapes and (ii) all amenities, components and fixtures now or hereafter located thereon, including, without limitation, all lighting, water features, benches, tables, chairs, fences, planters and plantings, trees, shrubs, landscaping, irrigation systems, and signage, all as required by, or reasonably inferable from, 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 for their respective intended purposes, including use as public gathering and event space, in accordance with and subject to the terms and conditions of this Agreement, and

(b) a non-exclusive, perpetual public easement over, across, upon and through 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 Plaza Premises located on the Project 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, all as [legally described and/or depicted] on the attached Exhibit B (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.

**[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 Plaza Premises.]**

## ARTICLE II.

### TERM

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

the 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. 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 Plaza 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. 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. Owner shall be entitled to charge a commercially reasonable use fee for such special events to cover expenses, management, and overhead costs associated with such special events.

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; Easement Use Limitations. The City's easement rights under this Agreement shall be subject to the following reservations and limitations 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 and retains the right at any time and from time to time to exclude and restrain any person or entity who is using the Easement Premises to engage in disruptive civic, public, charitable or political activities, including, without limitation, (i) exhibiting any placard, sign or notice, (ii) distributing any circular, handbill, placard or booklet, (iii) soliciting memberships, signatures or contributions for private, civic, public, charitable or political purposes, (iv) parading, picketing or demonstrating, or (v) failing to follow Rules (as defined below) relating to the use and operation of the Easement Premises.

(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 (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.

(e) Owner reserves and retains any and all other property and use rights in and to the Easement Premises (including, without limitation, the right to grant other easements over, under and upon the Easement Premises), so long as such use does not materially and unreasonably interfere with or 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 (it being expressly understood that the use of the Easement Premises for underground utilities, pedestrian traffic, landscaping and/or signage shall be deemed not to materially interfere with such passage or accommodation).

(f) Subject to the terms of the Contract, 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.

(g) Owner reserves the right to hold or allow private and exclusive events on

the Plaza Premises or otherwise periodically exclusively use the Plaza Premises from time to time, so long as not to 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.

(h) The use of bicycles, segways, rollerblades, skateboards or other wheeled or motorized devices (other than wheeled and motorized devices utilized by handicapped/disabled persons) shall not be permitted on the Plaza Premises.

(i) Nothing in this Agreement shall grant or declare any easements or other rights whatsoever with respect to any interior portions of any Element in the Project Area.

#### **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 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 in the condition and repair required by 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) 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 Easement Premises security; and

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

It is distinctly understood that the preceding shall not require maintenance and/or repair of the Easement 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 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; provided, however, if the City organizes, sponsors, and carries out a special event on the Plaza Premises, the City will assume responsibility for extraordinary clean-up and repair arising from and related to the use of the Plaza Premises for such special event in accordance with Rules and any standard license agreement for special events on the Plaza Premises adopted by Owner in accordance with Section 3.2 above.

## **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 Assessment. 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. 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 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 7.2. Property Insurance. At all times during the term hereof, Owner, at its sole cost and expense, shall keep the Easement 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 the Easement Premises, at commercially reasonable coverage levels, to be reviewed from time to time by Owner.

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, 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 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 Notes issued under the terms of the Contract, 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 IX.**

### **CASUALTY**

Section 9.1. Destruction. In the event that all or any part of the Easement Premises is 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 Easement Premises, the proceeds from any and all insurance policies covering risks against loss or damage shall be used to rebuild or reconstruct.

## **ARTICLE X.**

### **EMINENT DOMAIN**

Section 10.1. Major Condemnation. If all of the Plaza 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.

## **ARTICLE XI.**

### **DEFAULT AND REMEDIES**

Section 11.1. 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 11.2. 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 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 Easement Premises 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. 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 12.5. 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 12.6. 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

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

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

Section 12.7. 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 12.8. 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 12.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.10. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 12.11. 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 12.12. 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 12.13. 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]



**OWNER:**

PENTAGON VILLAGE, LLC  
a Minnesota limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Pentagon Village, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

## EXHIBIT A

Legal Description of the Plaza Property

[an approximately one acre parcel within Lot 5, Block 1, Pentagon Village, depicted as “The Plaza” in the Pentagon South Final Development Plan, and to be more particularly described following any necessary further subdivision of said Lot 5]

J-15

Exhibit A to  
Plaza Easement Agreement  
(Pentagon South)

**EXHIBIT B**

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

[To be inserted]

J-16

Exhibit B to  
Plaza Easement Agreement  
(Pentagon South)



**EXHIBIT K**

Form of Minimum Assessment Agreement

**MINIMUM ASSESSMENT AGREEMENT**

**by and among**

**CITY OF EDINA, MINNESOTA,**

**HOUSING AND REDEVELOPMENT AUTHORITY  
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

**MINIMUM ASSESSMENT AGREEMENT**  
(Pentagon South)

THIS MINIMUM ASSESSMENT AGREEMENT (this “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (“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 PENTAGON VILLAGE, LLC, a Minnesota limited liability company (“Redeveloper”).

RECITALS:

WHEREAS, pursuant to Minnesota Statutes, Sections 469.174 to 469.1799, as amended (the “TIF Act”), the Authority and the City established the Pentagon Park Tax Increment Financing District (redevelopment district) (the “TIF District”) pursuant to Authority Resolution No. 2014 – 2, which such TIF District encompasses approximately 42 acres of land located along 77th Street West between Minnesota Highway 100 and Parklawn Avenue (the “Redevelopment Area”), as such Redevelopment Area is more particularly described in the redevelopment plan for the Southeast Edina Redevelopment Project Area originally adopted by the Authority pursuant said resolution; and

WHEREAS, Redeveloper is the fee simple owner of that portion of Redevelopment Area legally described as Lots 1 through 5, Block 1, Pentagon Village, Hennepin County, Minnesota, according to the plat thereof (collectively, the “Land”, and when, in this Agreement, a portion of the Land is referenced by Lot and/or number (e.g., “Lot” or “Lot 1”), such reference shall be to a Lot, generally, or a specific numbered Lot, as set forth in said plat of Pentagon Village); and

WHEREAS, the City, the Authority, and Redeveloper are parties to that certain Redevelopment Agreement dated October 16, 2018 (the “Contract”), which contemplates that Redeveloper, and/or its successors or assigns, will construct or caused to be constructed certain improvements on each Lot (“Improvements”), which such Improvements may consist of vertical improvements and/or site improvements pursuant to different plans for each individual Lot, which, when taken together, will consist of an integrated, mixed-use project on the Land (collectively, the “Project”); and

WHEREAS, in connection with Redeveloper’s construction and development of the Improvements, and the Project as a whole, the Authority has agreed to issue certain TIF Notes to Redeveloper, and upon satisfaction of certain conditions set forth in the Contract, the Authority will provide certain TIF Assistance to Redeveloper through payment of Available Tax Increment and interest under and in accordance with such TIF Notes; and

WHEREAS, the City, the Authority, and Redeveloper have reviewed certain architectural and engineering plans and specifications for the Improvements (“Plans”); and

WHEREAS, pursuant to Minnesota Statutes, Section 469.177, subdivision 8, the City, the Authority, and Redeveloper wish to establish certain minimum assessed values for each Lot, together with associated Improvements for each respective Lot, as set forth herein.

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants, and agreements made by each to the other, do hereby agree as follows:

1. Recitals; Exhibits; Definitions. The foregoing Recitals and the exhibits attached to this Agreement are incorporated by reference as if fully set forth herein. Capitalized terms used but not defined herein shall have the meanings given such terms in the Contract, unless the context hereof clearly requires otherwise.

2. Minimum Assessed Values.

(a) Agreed Upon Minimum. As of the date hereof, Redeveloper has satisfied the conditions under the Contract which are necessary for the Authority to be obligated to make payments of Available Tax Increment and interest under TIF Note [A] pursuant to the terms and conditions of such TIF Note and the Contract, but the Land, together with the Improvements which have reached substantial completion as of the date hereof in accordance with the applicable Plans, have not, collectively, caused the market value of the Land and such completed Improvements, as determined by the assessor of the City (the “Assessor”) in accordance with Minnesota Statutes, Section 273.11 (the “Assessed Value”), to be increased to amount of at least \$19,031,100 in the aggregate (“Minimum Valuation”) as required by the Contract. Therefore, for the assessments of the Lots and Improvement made as of [\_\_\_\_\_, 20\_\_], and continuing until the Termination Date (as defined below), the minimum assessed values of the Lots and Improvements for ad valorem tax purposes (the “Minimum Assessed Values”), shall be as follows:

<u>Lot</u>	<u>Minimum Assessed Value</u>
1	\$5,250,000
2	\$3,250,000
3	\$3,250,000
4	\$1,600,000
5	\$5,650,000
Total	\$19,031,100

Such Minimum Assessed Values shall not be reduced by any action taken by Redeveloper (other than a deed in lieu of, or under threat of, condemnation by the City, Hennepin County or other condemning authority), to less than the said amount, and that during the term of this Agreement no reduction of the Assessed Values therefor below said Minimum Assessed Values shall be sought by Redeveloper or granted by any public official or court except in accordance with Minnesota Statutes, Section 469.177, subdivision 8. Redeveloper acknowledges and agrees that the Land and the Project are subject to ad valorem property taxation and that such property taxes constitute taxes on “real property” (as provided in Section 469.174, subdivision 7(d) of the TIF Act) and, to the extent reflecting net tax capacity rates of taxing jurisdictions levied against the captured net tax capacity of the TIF District, tax increment.

(b) Term; Termination. This Agreement and the Minimum Assessed Values (or such higher Assessed Values determined by the Assessor in accordance with Section 2(c) below) shall continue in full force and effect until the earlier of (i) the first assessment date (i.e., January

2 of a given calendar year) upon which the Assessed Value of the Land and Improvements, collectively, exceeds the Minimum Valuation; (ii) the TIF District is decertified, defeased or terminated in accordance with its terms; or (iii) the date of full and final payment of the TIF Notes issued under the terms of the Contract) (the “Termination Date”). Upon the earlier of such dates, this Agreement shall automatically terminate and the market values of the Lots and associated Improvements for ad valorem tax purposes shall be based on the then Assessed Values of the same. The Authority shall duly execute and record a release of this Agreement upon the written request and sole expense of the Redeveloper or the then holder of fee title to the Land or any applicable Lot.

(c) Higher Assessed Values. Nothing in this Agreement shall limit the discretion of the Assessor or any other public official or body having the duty to determine the market value of the Lots, the Land, the Project and other facilities on the Land for ad valorem tax purposes, to assign to one or more Lots, the Land, the Project or to any other improvements constructed on the Land, on a nondiscriminatory basis and treated fairly and equally with all other property so classified in the respective counties, an assessed value in excess of the Minimum Assessed Values specified in Section 2(a) hereof. Subject to the terms of the Contract, Redeveloper shall have the normal remedies available under the law to contest the Assessor’s Assessed Values in excess of said Minimum Assessed Values, but only to the extent of the excess.

3. Filing and Certification.

(a) Assessor Certification. The City shall present this Agreement to the Assessor and request the Assessor to execute the certification attached hereto as Exhibit A. Redeveloper shall provide to the Assessor all information relating to the Land, Improvements, and the Project requested by the Assessor for the purposes of discharging the Assessor’s duties with respect to the certification.

(b) Filing. Promptly following the Effective Date, Redeveloper shall cause this Agreement and a copy of Minnesota Statutes, Section 469.177, subdivision 8, attached hereto as Exhibit B, to be recorded in the office of the County Recorder or Registrar of Titles of Hennepin County, and shall pay all costs of such recording.

4. Relation to Contract. The covenants and agreements made by Redeveloper in this Agreement are separate from and in addition to the covenants and agreements made by Redeveloper in the Contract and nothing contained herein shall in any way alter, diminish or supersede the duties and obligations of Redeveloper under the Contract. No preamble, recital, or provision of this Agreement is intended to modify the terms of the Contract.

5. Successor. This Agreement shall insure to the benefit of and be binding upon the successors and assigns of the parties.

6. Waiver. Redeveloper hereby waives any rights that it may have to protest or contest the amounts of the assessments set forth herein.

7. Miscellaneous Provisions.

(a) Binding Effect/Severability/Counterparts. This Agreement shall inure to the benefit of and shall be binding upon the Authority, the City, and Redeveloper and their respective successors and assigns, and upon all subsequent owners of the Land and the Project. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(b) Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by the Authority, the City, and Redeveloper, and otherwise in compliance with Section 469.177, subdivision 8, of the TIF Act.

(c) Further Assurances. The Authority, the City, and Redeveloper shall, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Land or the Project, or for carrying out the expressed intention of this Agreement.

(d) Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota.

(e) Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

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







EXHIBIT A

ASSESSOR'S CERTIFICATE

The undersigned, being the duly qualified and acting assessor of the City of Edina, Minnesota, hereby certifies that.

1. I am the assessor responsible for the assessment of the Land described in the foregoing Minimum Assessment Agreement (the "Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_;

2. I have read the Agreement and I have received and read a duplicate copy of the Contract referred to in the Agreement;

3. I have received and reviewed the Plans for the Improvements agreed to be constructed on the Lots pursuant to the Contract;

4. I have received and reviewed an estimate prepared by Redeveloper of the cost of each Lot and the Improvements to be constructed thereon;

5. I have reviewed the market value previously assigned to the Land, and the minimum assessed values to be assigned to the Lots and/or Improvements by the Agreement is a reasonable estimate; and

6. I hereby certify that the market value assigned to the Lots and/or the Improvements by the Agreement is reasonable and the market value assigned to the Lots and/or the Improvements, for the assessment as of \_\_\_\_\_, 20\_\_\_\_, and continuing throughout the term of the Agreement, shall be not less than \$\_\_\_\_\_.

Dated: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
City Assessor, City of Edina, Minnesota

## EXHIBIT B

### MINNESOTA STATUTES, SECTION 469.177, SUBDIVISION 8

Assessment agreements. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the termination date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable.

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.