**City of Wayzata Housing and Redevelopment Authority**
**Meeting Agenda**
Tuesday, June 30, 2015

**7:30 am – 8:30 am**
Wayzata City Hall Community Room
600 Rice Street East
Wayzata, MN 55391

1. Call to Order – Chairman Shaver

2. Approval of Agenda

3. Approval of Minutes of May 29, 2015

4. Old Business
   a. Updated boundary survey outlining the boundaries/clarifying lot lines between 801 Superior Blvd. (City owned lot), 755 Lake St. (Bar Lazy H Five LLC), and 747 Mill St. (the Muni)
   b. Update on TIF districts, increments created, and anticipated tax revenue

5. New Business
   a. Approve Amended and Restated Redevelopment Agreement for Wayzata Bay Redevelopment LLC
   b. Review of Wayzata Bay Redevelopment Company memo re: Lake/Superior Parcel and draft City Council meeting minutes of June 16, 2015

6. Next Meeting Dates: July 30, 2015 and October 29, 2015

7. Adjournment

HRA members present: T. Shaver, B. Ambrose, D. McGill, R. Wothe, B. Petit
City Staff/HRA Executive Director present: Heidi Nelson
City Staff present: Bryan Gadow, Don Uram, and Darla Frink
Others present: Stacie Kvilvang with Ehlers and Associates, and John Mehrkens with Presbyterian Homes

Chairman Shaver called the meeting of the HRA to order at 7:35 am.

## APPROVAL OF AGENDA

McGill motioned to approve the May 29, 2015, meeting agenda as presented, seconded by Wothe. The motion passed 5/0 by voice vote.

## APPROVAL OF MINUTES – MINUTES OF APRIL 30, 2015

McGill motioned to approve the April 30, 2015 minutes as presented, seconded by Wothe. The motion passed 5/0 by voice vote.

Shaver suggested moving New Business before Old Business due to Ms. Kvilvang's other obligations.

## NEW BUSINESS

### a. Wayzata Bay Center Redevelopment Agreement Amendments

Nelson reviewed the Staff Memo and updated the HRA on the meetings that have occurred since April 30, 2015 and the process for approving the Redevelopment Agreement amendments.

Kvilvang reviewed the Preliminary Term Sheet and the changes since the last HRA meeting. She explained for Item 3 the date Bohland Development submitted plans was May 21, 2015. She clarified the Applicant would like to start construction in August rather than September and there is this flexibility in the agreement. She stated the Developer will receive 95% of the tax increment; not the City/HRA as stated in Item 6. The first year will be 2015 and will continue until Block E is at least 50% complete for tax valuation purposes. After that, the Developer will receive 100% of the TIF generated from development within the TIF District, excluding Block E. The City/HRA will receive 100% of the TIF for Block E. These fund would then be used for the construction of a parking ramp on Mill Street. She pointed out that the TIF Note would be increased by $149,121, in order to reimburse the Developer for additional landscaping required at the end of East Lake Street. She clarified in Item 10 the Developer would be providing an outline by June 15 and a plan by September 30.

Shaver clarified Item 10 outlined the "right of first refusal" or the "right of first negotiation." This occurs only if the HRA/City decides to sell this parcel.

Kvilvang stated Item 12 outlines the construction work force parking plan, which would be updated, monitored, and enforced (including mandatory fines).

Nelson stated the additional funds for landscaping at the end of East Lake Street (Item 14) would be for the full landscape plan, including the roundabout.

Ambrose clarified that the term sheet was not binding but rather an outline of the items that would be included in the agreement.

Petit asked if a schematic outline for the project would be available by the June 15 deadline.

Mr. John Mehrkens, Presbyterian Homes, stated there would be an outline and a number of development scenarios, in narrative for, available by the June 15 deadline.

Shaver clarified this would provide the City some ideas on the development of this parcel to be included in the discussions regarding the downtown parking.

Nelson explained the Development Agreement Amendment and the parking discussions and plans are moving parallel. As the site plan and predesign of the ramp moves forward, the City will be meeting every two-weeks to work through the parking issues and how the different development scenarios would impact parking.

Mehrkens explained that development on this parcel would require parking off-site and the parking that is available in a parking ramp would drive the type of development that is done.

Petit asked about the TIF and what that would generate annually.

Kvilvang stated explained the tables included in the Staff report showed the value of the TIF under the current agreement at $3,493,125 and the amended agreement would be $12,388,031. There are concerns if the project does not move forward for the East Block or the valuations are not there. The proposed agreement provides 5% of the increment. The proposed hotel and condos are one building and would be constructed at one time. The true increment value or driver on a development is coming from the condominium values. The Developer does have the financing in place and they have entered into a management agreement, so the project is expected to move forward.

Shaver stated there is also a retail component to this project and Presbyterian Homes would take ownership of this. He clarified, in regards to underwriting and valuation going forward, the runs had been conservative to be sure the base line is set and the TIF increment is at a zero base for inflation. He asked what the retail rent would be for this project and how this compares to the current market.

Mehrkens stated they have been conservative on the retail as it relates to valuation and they have used the County estimates.

Petit asked if the HRA would continue to pursue the modification with the State.

Nelson explained the session ended without a tax bill and a special session is spending. They are continuing to work with Senator Osmek and they are hoping there will be a tax bill passed during a special session. If the City is successful in getting the amendment to the Widsten District the City would receive an additional $3.1 Million over the next 7-years that could be used for the parking ramp project.

Ambrose asked if the hotel could be converted to condominiums in the future if the hotel is not successful.

Mehrkens stated this would not be an easy transition but it may happen if something unforeseen should happen.

Petit asked what the bottom line would be for the City if the TIF request with the State fails and the taxes were going to the City's General Fund.

Kvilvang stated if the Widsten legislation is not approved this year the City would wait one more year and then hopefully it would be included in the following year's tax bill. If it is not passed the District would be decertified and the value would go to the tax rolls. The City would get the existing proportionate share.

Mehrkens clarified the parking within the Promenade is private parking. They understand that as part of a parking district there would be some cross over parking where people park there and go to other locations but the private parking would remain private and be policed by the development. The concern is that the public parking is assigned to the retail on site and not pure public parking.

Shaver clarified pure public parking exists at the street level and the private parking would be in the parking ramp.

Mr. Jay Lindgren, Dorsey and Whitney, stated in the original, existing agreement, there are 50 parking spaces, in which the City has an easement right for public parking. These are on the private streetscape of the Development. The parking structures that are part of the Development are private parking that is intended to serve the retail and other users within the development.

McGill motioned to adopt the Term Sheet as amended and forward it to the City Council on June 2, 2015, seconded by Wothe. The motion passed 5/0 by voice vote.

<u>OLD BUSINESS</u>

a. <u>Receipt of Financial Reports for 2013 and 2014</u>

Uram reviewed the Staff Report and Financial Statements provided. He stated there is a significant change between 2013 and 2014. The Central Area TIF district was decertified and is no longer an active fund. The Widsten TIF district has one remaining debt payment scheduled for 2015 unless the City receives special legislation to extend the term of the district. Due to previous expenditures within the Bay Center TIF district with no offsetting revenue, this fund currently shows a negative balance.

Shaver inquired about the Widsten fund balances. He asked if the $200,000 increase was due to additional increment and if it was anticipated to continue following the special legislation.

Uram stated there is a bond payment of $270,000 annually, which would be paid off this year. What the City expects to receive in 2015 is about $425,000 in that district. If the extension is approved then the tax income generated is expected to be about $400,000 annually for the next 7-years.

McGill motioned to accept the 2013 and 2014 Financial Reports as presented, seconded by Wothe. The motion passed 5/0 by voice vote.

Shaver requested a spreadsheet regarding the districts, the increments created, and what is anticipated to be the increment tax coming into the City.

Uram stated he would prepare these for future reference.

NEXT MEETING DATE: APRIL 30, 2015

Shaver stated the next meeting would be at 7:30 am on July 30, 2015.

Ambrose stated he would not be available in mid-June for a workshop.

Nelson explained on June 2 they would be doing preliminary work with the City Council regarding the ramp. On June 16 they would have information on the corner of Lake and Superior from Mr. Mehrkens available.

Petit asked if the size of the building had been determined for the development of the Mill St. and Broadway Ave. intersection.

Nelson stated they are working on this currently.

Nelson stated there is a line drawn on a map and the agreement states that development has to occur north of this line. The City interprets the agreement as: If the City proceeds with a project and the Beltz owners are not involved then something could be worked out that would benefit their commercial development. The City's intent if Beltz were not involved would be to stay north of the line.

Shaver stated the City has put landscape projects in place and improvement projects. He expressed concerns that there is no funding established for the maintenance of these projects moving forward. He asked if TIF could be used for this.

Nelson stated the City cannot allocate TIF for general maintenance but Staff is looking at how to fund the maintenance of these improvements.

Uram clarified TIF is for the capital improvement piece not the ongoing maintenance of these capital improvements.

Shaver stated sprinklers could be included in the capital piece and this would help with the ongoing maintenance of the landscaping improvements.

Shaver asked for an update on the Carisch Ramp.

Nelson stated that the Carisch Family has not expressed an interest in what the City would bring to the table in terms of improvements. They intend to make some improvements but the ramp was intended for private use. They are not interested in extending the public easement. If the City builds parking they may continue to consider an easement but they are concerned that their ramp would be the backstop for the downtown area and they would not be able to meet the needs of their tenants.

ADJOURNMENT

There being no further business; McGill motioned to adjourn at 8:23 a.m., Wothe seconded the motion and the motion passed 5/0 by voice vote.

Respectfully submitted,

Becky Malone
Deputy City Clerk
City of Wayzata

Drafted by Tina Borg, *TimeSaver Off Site Secretarial, Inc.*

## Becky Malone

**From:** Becky Malone
**Sent:** Monday, June 01, 2015 2:44 PM
**Subject:** Maps depicting square up of property at Lake St & Superior Blvd
**Attachments:** Lake and Superior Square Up Map 2.pdf; Lake and Superior Square Up Map 1.pdf

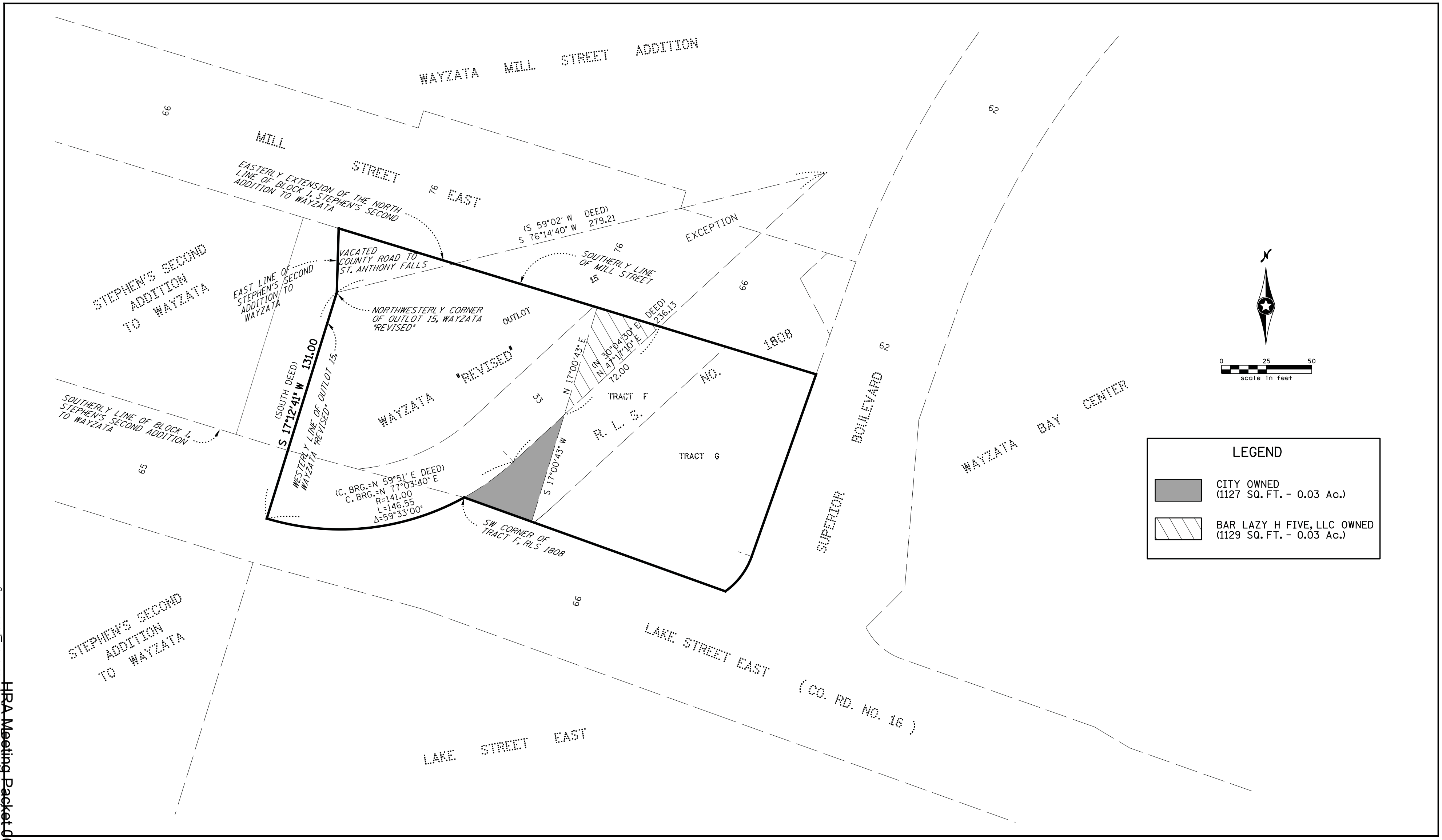
Hello HRA Commissioners:

Bryan Gadow asked that I forward the two attached maps depicting the square up of property at Lake St and Superior Blvd between the City and property owner at 755 Lake St. This information is in response to a question from Chair Shaver at the May 29th meeting. Both properties are within the C-4B Zoning District. The C-4B Zoning District has a zero (0) ft building setback on all sides.

Sincerely,

*Becky Malone*

Deputy City Clerk/Office Manager
City of Wayzata
600 Rice Street E
Wayzata, MN 55391
Phone: 952-404-5303



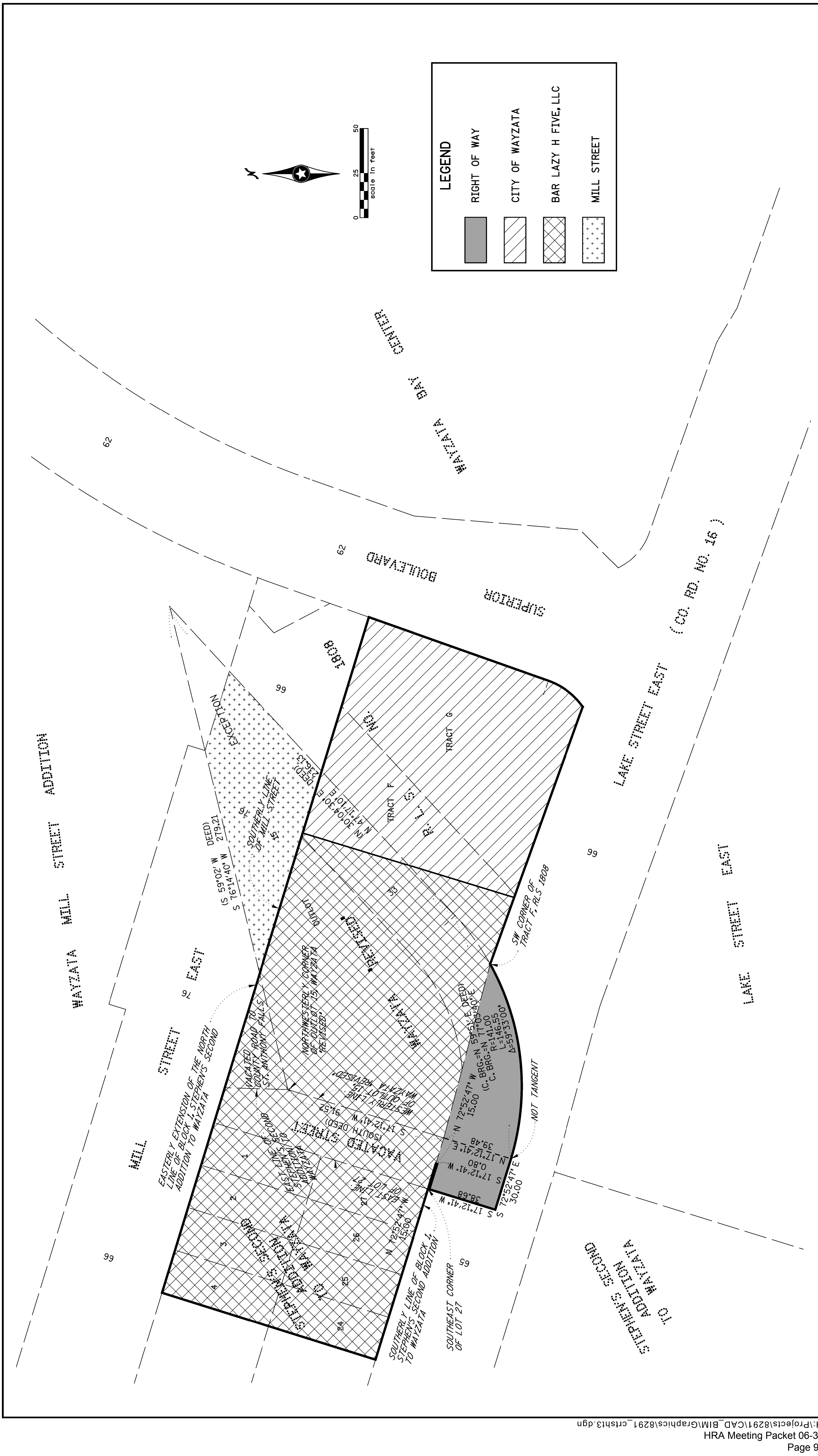

SRF Consulting Group, Inc.

**City of Wayzata**

Parcel Swap Descriptions

8291
12/11/2013

H:\Projects\8291\CAD_BIM\Graphics\8291_psdsht1.dgn




City of Wayzata
Parcel Division Sketch

SRF Consulting Group, Inc.
8291
2/19/2015

H:\Projects\8291\CAD_BIM\Graphics\8291_crtsht3.dgn

June, 2015

# Management Review & Analysis
## Tax Increment Financing Districts

## City of Wayzata, Minnesota

EHLERS
LEADERS IN PUBLIC FINANCE

www.ehlers-inc.com

Minnesota
Offices also in Wisconsin and Illinois

phone 651-697-8500
fax 651-697-8555
toll free 800-552-1171

3060 Centre Pointe Drive
Roseville, MN 55113-1122

# Executive Summary
## Management Review & Analysis-Tax Increment Financing Districts

Revenue from tax increment financing (TIF) districts is a financial asset of the City of Wayzata for the projects which were initially assisted and for the City as a whole. This revenue will first be used to pay debt service on outstanding bonds and developer financed obligations. A portion (but not all) of the remaining revenues can be used to participate in other eligible development projects. Ehlers worked with City staff to create the following plan for the management of TIF districts and the related obligations.

The management of TIF districts is an ongoing activity. TIF requires administrative oversight for reporting to the State, tracking parcel information, maintaining compliance with use restrictions in the TIF law and the development agreements, and matching TIF revenue to debt service. The factors that produce tax increment revenues such as tax rates, assessor's values, and class rates change every year. The state property tax laws have changed significantly since 1997, including the major reforms enacted in 2001. Despite reductions in revenue due to the reform and due to capped tax rates and lower property values, the City has adequate cash flow to pay for all outstanding general obligation (G.O.) tax increment financing bonds.

The revenues from the City's districts are largely site specific, meaning that the revenues are restricted by law and/or by contract with the developers. The TIF must be used primarily to address housing or redevelopment needs for the parcels in the TIF district within a specified period of time. The City has given itself flexibility to utilize TIF on a limited basis for affordable housing or redevelopment outside of the TIF boundaries, but it has used that authority sporadically.

The Office of the State Auditor (OSA) has a TIF division which is mandated by state law to collect annual reporting forms and, if necessary, audit the use of TIF. Such audits could result in a letter to the county attorney or attorney general for enforcement actions. To date the City has not been audited.

# Assumptions

Before discussing the findings of the current TIF analysis, it is important to understand the assumptions used in making these projections.

1. Fund balances shown for TIF funds are based on actual amounts for December 31, 2014.

2. Pay 2015 tax increment revenues are based on Hennepin County reports. Revenue projections for payable 2016 and beyond are based on assumptions of tax capacity growth based on development agreement documents. .

3. Projected revenues do not account for additional development (except the developments under a development agreement) or inflation of existing values.

# TIF Summary

The following is a brief summary of each TIF district:

| DISTRICT | TIF 3 WIDSTEN | TIF 5 WAYZATA BAY (Replacement) |
|---|---|---|
| TIF Authority | Wayzata HRA | Wayzata HRA |
| District Type | Redevelopment | Redevelopment |
| Project Area | Central Area Redevelopment District | Central Area Redevelopment District |
| Adopted | 2/21/1995 | 11/15/2011 |
| Legal max term | 12/31/2022 | 12/31/2040 |
| Anticipated term | 3/1/2020 | 12/31/2033 |
| TIF Plan term | 3/1/2020 | 12/31/2040 |
| Obligation end date | 12/1/2015 | 2/1/2033 |
| First Increment | 1997 | 2015 |
| Current Obligations | GO Tax Increment Refunding Bonds of 2010B | 1. PAYGO to Wayzata Bay Redevelopment LLC<br>2. Intefund Loan payable to TIF 3 Widsten |
| Amount outstanding at 12/31/2014 | $270,000 | TBD |
| Admin percent allowed | 10% | 10% |
| Other Uses | Streets, utilities and public parking | Public parking facility, streets, utilities |
| 2015 Estimated TIF Revenue | $426,665 | $1,001,172 |
| Fiscal Disparities Election | A | B |
| Projected ending 2015 fund balance | $865,467 | $11,867 |
| County Number | 1406 | 1408 |

The fiscal disparities election above refers to the commercial and industrial (C/I) tax capacity sharing program that is in effect for the seven county metropolitan area. The counties include: Hennepin, Ramsey, Anoka, Washington, Dakota, Carver and Scott Counties. It was designed so that local governments could share in the collective resources of commercial and industrial properties of the region, without creating pressure to compete between local governments for those resources. Under the program, a percent of C/I tax capacity is contributed to the pool, or removed, from a local government's tax base. In turn, a certain percent of C/I tax capacity is returned, or distributed back to a local government for computation of the ending local tax rate. For the City of Wayzata, more C/I tax capacity is contributed to the pool than is distributed back to the City.

For tax increment purposes, fiscal disparities election can be inside (B) the district or outside (A) the district. If tax capacity is calculated outside the district, or the A election, TIF revenues for a district do not include a deduction for this contribution/distribution mechanism. If tax capacity is calculated inside the district, or the B election, TIF revenues do include a deduction for the final tax base calculation. Fiscal disparities is calculated on C/I property only so there may be instances where the district includes only residential property and thus there is no property tax shift under A election.

## TIF 3 – Widsten

### Description:

The Widsten TIF District (County number 1406) is a Redevelopment District established in 1995 and is located within the Central Area Redevelopment Project. The Wayzata Housing and Redevelopment Authority is responsible for this district.

Adopted: 2/21/1995
Requested Date: 2/22/1995
Certified Date: 3/1/1996

Obligation end date: 2015

**Modified:** Modified on February 6, 2001, to increase the budget

### Parcels:

Original Parcels

- 06-117-22-42-0002
- 06-117-22-42-0003
- 06-117-22-42-0045
- 06-117-22-45-0046

Current Parcels

| | | | | | |
|---|---|---|---|---|---|
| 06-117-22-42-0051 | 06-117-22-42-0056 | 06-117-22-42-0061 | 06-117-22-42-0066 | 06-117-22-42-0071 | 06-117-22-42-0076 |
| 06-117-22-42-0052 | 06-117-22-42-0057 | 06-117-22-42-0062 | 06-117-22-42-0067 | 06-117-22-42-0072 | 06-117-22-42-0077 |
| 06-117-22-42-0053 | 06-117-22-42-0058 | 06-117-22-42-0063 | 06-117-22-42-0068 | 06-117-22-42-0073 | 06-117-22-42-0078 |
| 06-117-22-42-0054 | 06-117-22-42-0059 | 06-117-22-42-0064 | 06-117-22-42-0069 | 06-117-22-42-0074 | 06-117-22-42-0079 |
| 06-117-22-42-0055 | 06-117-22-42-0060 | 06-117-22-42-0065 | 06-117-22-42-0070 | 06-117-22-42-0075 | 06-117-22-42-0084 |

## Fiscal Disparities Election:

The City elected to calculate fiscal disparities from outside the district (A election).

## Original and Current Tax Rate:

Original: 126.7960%
Current 2015: 109.8780%

## Allowable Uses:

MN Statute 469.176 sub 4j specifies the activities on which tax increment from a redevelopment district may be spent. In general, tax increment must be spent on correcting those conditions which caused the area to be designated a redevelopment district. Allowable uses include property acquisition, demolition, rehabilitation, installation of public utilities, road, sidewalks, public parking facilities, and allowable administrative expenses.

## Pooling:

Approximately 25% of the increment, after adjusting for administrative expenses, can be used outside the physical boundaries of the District, but within the Project Area. The City has pooled $500,000 in 2010 to the Storm Water CIP for Superior Blvd and Lake Street and has also pooled $450,000 in 2012 for street projects.

## Obligations:

In 2010, the City of Wayzata issued the $1,265,000 General Obligation Tax Increment Refunding Bonds of 2010B. This issue refunded the 2010 through 2015 maturities of the City's $3,195,000 General Obligation Tax Increment Bonds, Series 2001, dated February 1, 2001. As of December 31, 2014, $270,000 was outstanding on the 2010B bonds. The bonds are fully repaid in 2015, or 7 years before the District is required to expire.

## Five Year Rule:

The original five year deadline was March 2001. The Five Year rule was satisfied when the 2001 Bonds were issued.

## Recommendations:

The District is currently paying on the 2010B Tax Increment Refunding Bonds. These bonds are fully paid in 2015, after which, the District is required to be decertified. The City is currently seeking Special Legislation to extend the term of the District to its maximum statutory limit. The projections below assume that the Special Legislation will be granted and funds can be spent inside the District for the proposed public parking ramp on Mill Street and Broadway Avenue. It is estimated that the City will have approximately $3.9 million available for financing this project through the remaining term of the District (2022). If the City chooses to not utilize all of these funds inside the District, but rather use some of them outside the District under its applicable pooling limitations, the estimated amount available would be approximately $900,000. If the Special Legislation is not granted, the District would need to be decertified at the end of 2015. If this were the case, the City would only have approximately $846,000 for use within the District, or $242,000 that could be used outside the District. Overall, if the Special Legislation is granted, we would recommend that the City adopt a formal modification to align the actual operating results with the budget and to clarify the ending term of the District.

City of Wayzata
TIF District 3 Widsten

| DISTRICT INFORMATION | | ORIGINAL | HSS | Geo. Enlargement |
|---|---|---|---|---|
| District Type | | Redevelopment | | |
| Project Area | | | | |
| Fiscal Disparities | | A Election | | |
| County Number | | 1406 | | |
| Frozen Rate | UTA #1 | 129.796% | 0.000% | 0.000% |
| | | 0.000% | | |

A

| ASSUMPTIONS | |
|---|---|
| Interest Income | 1.00% |
| Admin Expense | 3.00% |

| RECOMMENDATIONS | | |
|---|---|---|
| 1) Limited Pooling options available | | |
| 2) Budget Mod: Not Recommended at this time | | |
| 3) Admin. Expense is currently: | 3.5% | At or Under Limit |

## TIF PLAN BUDGET ANALYSIS

| | City Approved | Cert Request | Certified | Legal Term (Decertifies) | Expected Term (Decertifies) | Tax Increment (Revenues) | Interest Income | Transfer In | Other Revenue | TOTAL REVENUES | Widsten Redevel Bonds (Expenditures) | GO TI Refunding Bonds | Interfund Loan | Admin Expense | County Admin | Outside District | Other Expense | TOTAL EXPENSE | Total Budget |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Original Budget | 2/21/1995 | 2/22/1995 | 3/1/1996 | 12/31/2022 | 12/31/2022 | | | | | - | | | | | | | | - | - |
| Cumulative Modified | | | | | | 5,701,038 | | | 3,195,000 | 8,896,038 | 4,363,443 | - | | 274,779 | | | 4,470,606 | 9,108,828 | 9,108,828 |
| | | | | | End of District Projected Actual Total | 8,960,003 | 392,326 | - | 4,506,835 | 13,859,163 | 4,161,554 | 1,331,883 | - | 390,737 | 15,018 | 950,000 | 3,106,598 | 9,955,790 | 9,955,790 |
| | | | | | Under / (Over) Budget | (3,258,965) | (392,326) | | (1,311,835) | (4,963,125) | 201,889 | (1,331,883) | - | (115,958) | | (950,000) | 1,364,008 | (846,962) | (831,944) |

## CASH FLOW PROJECTIONS ROLL UP

| TIF Year | Year | Base (Tax Capacity) | Current | Fiscal Disparities | Captured | Current Local Tax Rate | Tax Increment (Revenues) | Interest Income | Transfer In | Other Revenue | TOTAL REVENUES | Widsten Redevel Bonds (Expenditures) | GO TI Refunding Bonds | Interfund Loan | Admin Expense | County Admin | Outside District | Other Expense | TOTAL EXPENSE | Ending Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 15 | 2012 | 14,451 | 462,992 | - | 448,541 | 109.058% | 487,410 | 5,117 | | | 492,527 | | 271,025 | | 20,000 | 1,215 | 450,000 | | 742,240 | 330,264 |
| 16 | 2013 | 14,451 | 438,995 | - | 424,544 | 112.575% | 476,209 | 53 | | | 476,262 | | 266,025 | | 20,450 | 1,382 | | | 287,857 | 518,669 |
| 17 | 2014 | 14,451 | 428,033 | - | 413,582 | 113.208% | 466,523 | 8,709 | | | 475,232 | | 270,600 | | 20,552 | 1,381 | | | 292,533 | 701,368 |
| 18 | 2015 | 14,451 | 402,759 | - | 388,308 | 109.878% | 426,665 | 7,014 | | | 433,679 | | 255,400 | | 12,800 | 1,380 | | | 269,580 | 865,467 |
| 19 | 2016 | 14,451 | 402,759 | - | 388,308 | 109.878% | 426,665 | 8,655 | | | 435,320 | | | | 12,800 | 1,380 | | | 14,180 | 1,286,607 |
| 20 | 2017 | 14,451 | 402,759 | - | 388,308 | 109.878% | 426,665 | 12,866 | | | 439,531 | | | | 12,800 | 1,380 | | | 14,180 | 1,711,958 |
| 21 | 2018 | 14,451 | 402,759 | - | 388,308 | 109.878% | 426,665 | 17,120 | | | 443,785 | | | | 12,800 | 1,380 | | | 14,180 | 2,141,562 |
| 22 | 2019 | 14,451 | 402,759 | - | 388,308 | 109.878% | 426,665 | 21,416 | | | 448,081 | - | - | - | 12,800 | 1,380 | - | - | 14,180 | 2,575,463 |
| 23 | 2020 | 14,451 | 402,759 | - | 388,308 | 109.878% | 426,665 | 25,755 | | | 452,420 | - | - | - | 12,800 | 1,380 | - | - | 14,180 | 3,013,703 |
| 24 | 2021 | 14,451 | 402,759 | - | 388,308 | 109.878% | 426,665 | 30,137 | | - | 456,802 | - | - | - | 12,800 | 1,380 | - | - | 14,180 | 3,456,325 |
| 25 | 2022 | 14,451 | 402,759 | - | 388,308 | 109.878% | 426,665 | 34,563 | | - | 461,228 | - | - | - | 12,800 | 1,380 | - | - | 14,180 | 3,903,373 |
| | | | | | | | 8,960,003 | 392,326 | - | 4,506,835 | 13,859,163 | 4,161,554 | 1,331,883 | - | 390,737 | 15,018 | 950,000 | 3,106,598 | 9,955,790 | |

District would need to be decertified in 2015 if Special Legislation extending the term of the District is not approved.

**City of Wayzata**
**TIF District 3 Widsten**

***Pursuant to M.S. 469.176 Subd. 3:***
Admin limit is based on: Expenses

| ADMINISTRATIVE EXPENSE TEST | | |
|---|---|---|
| ***TEST 1:*** | Admin per TIF Plan | $274,779 |
| ***TEST 2:*** | Estimated TIF Admin Allowable (10%) | $883,405 |
| | Estimated Total TIF Expenses per TIF Plan | $8,834,049 |
| ***TEST 3:*** | Cumulative TIF Admin Allowable (10%) | $956,505 |
| | Total TIF Expenses for the Project | $9,565,053 |
| ***RESULTS:*** | **Admin per TIF Plan** | **$274,779** |
| | Actual Admin Expenses | $390,737 |
| | **Available Admin** | **($115,958)** |
| | Actual Percentage | **4.1%** |

***Pursuant to M.S. 469.1763 Subd. 2:***

| | |
|---|---|
| District Type: | Redevelopment |
| Does this section apply? | Yes |
| Certification Request Date: | 2/22/1995 |
| Does TIF Plan Specify Assisting Housing Outside Project Area? | No |
| If so, What is the Additional % Allowed in TIF Plan (Up to 10%): | 0% |
| Total Pooling %: | 25% |

| | | ADMINISTRATIVE EXPENSE CALCULATION | | | POOLING CALCULATION (25% Outside of District) | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Accummulated Totals | | | Tax Increment | | | | | | |
| **TIF Year** | **Year** | **Admin. Expenses** | **Total** | **% Allowable** | **Current Year** | **Cummulative** | **Admin Costs** | **25% for Qualified Costs** | **Spent Outside** | **Cumulative** | **Available for Pooling** |
| 15 | 2012 | 247,335 | 8,219,367 | 3.0% | 487,410 | 4,603,950 | 247,335 | 903,653 | 950,000 | (46,347) | (46,347) |
| 16 | 2013 | 267,785 | 8,220,749 | 3.3% | 476,209 | 5,080,159 | 267,785 | 1,002,255 | 950,000 | 52,255 | 52,255 |
| 17 | 2014 | 288,337 | 8,222,130 | 3.5% | 466,523 | 5,546,682 | 288,337 | 1,098,334 | 950,000 | 148,334 | 148,334 |
| 18 | 2015 | 301,137 | 8,223,510 | 3.7% | 426,665 | 5,973,347 | 301,137 | 1,192,200 | 950,000 | 242,200 | 242,200 |
| 19 | 2016 | 313,937 | 8,224,890 | 3.8% | 426,665 | 6,400,012 | 313,937 | 1,286,066 | 950,000 | 336,066 | 336,066 |
| 20 | 2017 | 326,737 | 8,226,270 | 4.0% | 426,665 | 6,826,677 | 326,737 | 1,379,932 | 950,000 | 429,932 | 429,932 |
| 21 | 2018 | 339,537 | 8,227,650 | 4.1% | 426,665 | 7,253,342 | 339,537 | 1,473,799 | 950,000 | 523,799 | 523,799 |
| 22 | 2019 | 352,337 | 8,229,030 | 4.3% | 426,665 | 7,680,007 | 352,337 | 1,567,665 | 950,000 | 617,665 | 617,665 |
| 23 | 2020 | 365,137 | 8,230,410 | 4.4% | 426,665 | 8,106,672 | 365,137 | 1,661,531 | 950,000 | 711,531 | 711,531 |
| 24 | 2021 | 377,937 | 8,231,790 | 4.6% | 426,665 | 8,533,337 | 377,937 | 1,755,398 | 950,000 | 805,398 | 805,398 |
| 25 | 2022 | 390,737 | 8,233,170 | 4.7% | 426,665 | 8,960,003 | 390,737 | 1,849,264 | 950,000 | 899,264 | 899,264 |

# TIF 5 – Wayzata Bay (Replacement)

## Description:

TIF 5 Wayzata Bay (Replacement) TIF District (County number 1408) is a Redevelopment District established in 2011 and is located within the Central Area Redevelopment Project. The Wayzata Housing and Redevelopment Authority is responsible for the administration of this district. This District was approved in 2011 pursuant to Special Legislation that was granted to the City. The 2010 Legislature adopted the Special Legislation for this District, in recognition of the detrimental impact of the 2008 economic downturn, which allowed the City to decertify the original TIF 5 and recertify a new district (TIF 5 Wayzata Bay Replacement TIF District). The Special Legislation further allowed additional flexibility in that each parcel in the District was deemed to have met the requirements for coverage tests, extended the Five Year rule to 10 years and extend the first receipt of increment to 2015.

Adopted: 11/15/2011
Requested Date: 12/19/2011
Certified Date: 3/29/2012
Obligation end date: 2033

## Parcels:

Original Parcels

- 06-117-22-41-0037
- 06-117-22-41-0076
- 06-117-22-41-0077
- 06-117-22-42-0085

Current Parcels

| | | | | | |
|---|---|---|---|---|---|
| 06-117-22-41-0088 | 06-117-22-41-0096 | 06-117-22-41-0101 | 06-117-22-42-0095 | 06-117-22-42-0100 | 06-117-22-42-0105 |
| 06-117-22-41-0090 | 06-117-22-41-0097 | 06-117-22-41-0102 | 06-117-22-42-0096 | 06-117-22-42-0101 | 06-117-22-42-0106 |
| 06-117-22-41-0092 | 06-117-22-41-0098 | 06-117-22-41-0103 | 06-117-22-42-0097 | 06-117-22-42-0102 | 06-117-22-42-0107 |
| 06-117-22-41-0093 | 06-117-22-41-0099 | 06-117-22-42-0085 | 06-117-22-42-0098 | 06-117-22-42-0103 | |
| 06-117-22-41-0094 | 06-117-22-41-0100 | 06-117-22-42-0094 | 06-117-22-42-0099 | 06-117-22-41-0104 | |

## Fiscal Disparities Election:

The City elected to calculate fiscal disparities from inside (B election) the district.

## Original and Current Tax Rate:

Original: 109.0580%
Current 2015: 109.0870%

## Allowable Uses:

MN Statute 469.176 sub 4j specifies the activities on which tax increment from a redevelopment district may be spent. In general, tax increment must be spent on correcting those conditions which caused the area to be designated a redevelopment district. Allowable uses include property acquisition, demolition, rehabilitation, installation of public utilities, road, sidewalks, public parking facilities, and allowable administrative expenses.

## Obligations:

The Five Year for this District was extended to ten years from the certification of the original TIF 5 district, and that deadline is now June 2019.

The District is obligated to pay on a $23,060,000 paygo note to Wayzata Bay Redevelopment LLC. The HRA signed a development agreement with the Wayzata Bay Redevelopment LLC on October 21, 2008. The Developer agreed to construct a mixed use development that included retail, hotel, condos and an independent senior living facility. The Development Agreement was further amended in December of 2009 and in December of 2011. The City and HRA are considering an amended and restated Development Agreement for the project and it is anticipated it will be approved in July 2015.

The District is also obligated to pay an interfund loan to the TIF 3 Widsten District.

Future obligation will include a GO TIF bond that will be issued to pay for the construction of a municipal-owned parking facility located at Mill Street and Broadway Avenue. This obligation is contingent upon the City Council determining to move forward with the project.

## Geographic Enlargements:

MN Statute 469.175 sub 4 (f) places limits on the length of time a TIF district may add parcels. No parcels may be added five years after the certification date. TIF 5 may not be enlarged after March of 2017.

## Recommendations:

The City should monitor the Developer for compliance with the development agreement.

Repayment to the developer is 95% of increment collected in 2015-2017 and 100% of increment collected from all development, with the exception of the East Block in 2018 and beyond (City receives 100% of the TIF from the East Block and 0% from the North, Superior, West and Plaza Blocks). The City intends to pool the tax increment generated from the East Block to assist in paying for the proposed, City-owned parking ramp to be constructed at Mill Street and Broadway Avenue. The City and HRA will need to monitor the annual pooling available to ensure compliance with the statutory requirement. In addition, the City and HRA will have to monitor administrative expenses in the District very closely in order to avoid a negative balance. If a negative balance occurs, the City and HRA should adopt an interfund loan resolution before the fund goes negative.

**City of Wayzata**
**TIF District 5 Bay Center**

| DISTRICT INFORMATION | | ORIGINAL | HSS | Geo. Enlargement |
|---|---|---|---|---|
| District Type | | Redevelopment | | |
| Project Area | | | | |
| Fiscal Disparities | | B Election | | |
| County Number | | 1408 | | |
| Frozen Rate | UTA #1 | 109.058% | 0.000% | 0.000% |
| | | 0.000% | | |
| A | | | | |

| ASSUMPTIONS | |
|---|---|
| Interest Income | 1.00% |
| Admin Expense | 5.00% |

| RECOMMENDATIONS | | |
|---|---|---|
| 1) Limited Pooling options available | | |
| 2) Budget Mod: Not Recommended at this time | | |
| 3) Admin. Expense is currently: | 1.4% | At or Under Limit |

**TIF PLAN BUDGET ANALYSIS**

| | City Approved | Cert Request | Certified | Legal Term (Decertifies) | Expected Term (Decertifies) | Tax Increment (Revenues) | Interest Income (Revenues) | Bond Proceeds (Revenues) | Other Revenue (Revenues) | TOTAL REVENUES (Revenues) | (Expenditures) | Debt (Expenditures) | Interfund Loan (Expenditures) | Admin Expense (Expenditures) | (Expenditures) | Outside District (Expenditures) | Other Expense (Expenditures) | TOTAL EXPENSE (Expenditures) | Total Budget |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Original Budget | 11/15/2011 | 12/19/2011 | 3/29/2012 | 12/31/2040 | 12/31/2032 | | | | | - | | | | | | | | - | - |
| Cumulative Modified | | | | | | 102,225,092 | | 22,910,879 | | 125,135,971 | | 91,109,073 | | 4,795,214 | | | 80,350,381 | 176,254,668 | 176,254,668 |
| End of District Projected Actual Total | | | | | | 47,486,652 | (30,424) | - | - | 47,505,814 | 48,515,383 | - | 22,680 | 231,509 | 9,000 | - | - | 48,778,572 | 48,778,572 |
| Under / (Over) Budget | | | | | | 54,738,440 | 30,424 | | - | 77,630,157 | (48,515,383) | 91,109,073 | (22,680) | 4,563,705 | | - | 80,350,381 | 127,476,096 | 127,485,096 |

**CASH FLOW PROJECTIONS ROLL UP**

| TIF Year | Year | Base (Tax Capacity) | Current (Tax Capacity) | Fiscal Disparities (Tax Capacity) | Captured (Tax Capacity) | Current Local Tax Rate | Tax Increment (Revenues) | Interest Income (Revenues) | Transfer In (Revenues) | Other Revenue (Revenues) | TOTAL REVENUES (Revenues) | Paygo (Expenditures) | (Expenditures) | Interfund Loan (Expenditures) | Admin Expense (Expenditures) | County Admin (Expenditures) | Outside District (Expenditures) | Other Expense (Expenditures) | TOTAL EXPENSE (Expenditures) | Ending Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2014 | | | | | | | | | | - | | | | 12,261 | 1,067 | 9,352 | | 22,680 | (22,680) |
| 0 | 2015 | 335,250 | 1,260,386 | 3,801 | 921,335 | 109.878% | 1,001,172 | | | | 1,001,172 | 951,125 | | 22,680 | 15,000 | 500 | | | 989,305 | 11,867 |
| 1 | 2016 | 335,250 | 2,003,450 | 38,413 | 1,629,787 | 109.878% | 1,771,014 | 119 | | | 1,771,133 | 1,682,465 | | | 88,551 | 500 | | | 1,771,516 | 11,485 |
| 2 | 2017 | 335,250 | 2,848,728 | 158,389 | 2,355,089 | 109.878% | 2,559,167 | 115 | | | 2,559,282 | 2,321,306 | | | 127,958 | 500 | | | 2,449,764 | 121,002 |
| 3 | 2018 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,210 | | | 2,811,563 | 2,810,354 | | | | 500 | | | 2,810,854 | 121,711 |
| 4 | 2019 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,217 | | | 2,811,570 | 2,810,354 | | | | 500 | | | 2,810,854 | 122,427 |
| 5 | 2020 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,224 | | | 2,811,578 | 2,810,354 | | | | 500 | | | 2,810,854 | 123,151 |
| 6 | 2021 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,232 | | | 2,811,585 | 2,810,354 | | | | 500 | | | 2,810,854 | 123,882 |
| 7 | 2022 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,239 | | | 2,811,592 | 2,810,354 | | | | 500 | | | 2,810,854 | 124,620 |
| 8 | 2023 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,246 | | | 2,811,599 | 2,810,354 | | | | 500 | | | 2,810,854 | 125,365 |
| 9 | 2024 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,254 | | | 2,811,607 | 2,810,354 | | | | 500 | | | 2,810,854 | 126,118 |
| 10 | 2025 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,261 | | | 2,811,614 | 2,810,354 | | | | 500 | | | 2,810,854 | 126,879 |
| 11 | 2026 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,269 | | - | 2,811,622 | 2,810,354 | - | - | | 500 | - | - | 2,810,854 | 127,647 |
| 12 | 2027 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,276 | | - | 2,811,630 | 2,810,354 | - | - | | 500 | - | - | 2,810,854 | 128,422 |
| 13 | 2028 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,284 | | - | 2,811,637 | 2,810,354 | - | - | | 500 | - | - | 2,810,854 | 129,206 |
| 14 | 2029 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,292 | | - | 2,811,645 | 2,810,354 | - | - | | 500 | - | - | 2,810,854 | 129,997 |
| 15 | 2030 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,300 | | - | 2,811,653 | 2,810,354 | - | - | | 500 | - | - | 2,810,854 | 130,796 |
| 16 | 2031 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,308 | | - | 2,811,661 | 2,810,354 | - | - | | 500 | - | - | 2,810,854 | 131,604 |
| 17 | 2032 | 335,250 | 3,135,172 | 213,677 | 2,586,245 | 109.878% | 2,810,353 | 1,316 | | - | 2,811,669 | 2,810,354 | - | - | | 500 | - | - | 2,810,854 | 132,419 |
| | | | | | | | 47,486,652 | (68,607) | - | - | 47,505,814 | 48,515,383 | - | 22,680 | 231,509 | 9,000 | - | - | 48,778,572 | |

***Pursuant to M.S. 469.176 Subd. 3:***
Admin limit is based on: Revenues

| ADMINISTRATIVE EXPENSE TEST | | |
|---|---|---|
| ***TEST 1:*** | Admin per TIF Plan | $4,795,214 |
| ***TEST 2:*** | Estimated TIF Admin Allowable (10%) | $10,222,509 |
| | Estimated Total TIF Revenues per TIF Plan | $102,225,092 |
| ***TEST 3:*** | Cumulative TIF Admin Allowable (10%) | $4,745,623 |
| | Total TIF Revenues for the Project | $47,456,228 |
| ***RESULTS:*** | **Cumulative TIF Admin Allowable (10%)** | **$4,745,623** |
| | Actual Admin Expenses | $231,509 |
| | **Available Admin** | **$4,514,114** |
| | Actual Percentage | **0.5%** |

N
Y

***Pursuant to M.S. 469.1763 Subd. 2:***

| | |
|---|---|
| District Type: | Redevelopment |
| Does this section apply? | Yes |
| Certification Request Date: | 12/19/2011 |
| Does TIF Plan Specify Assisting Housing Outside Project Area? | No |
| If so, What is the Additional % Allowed in TIF Plan (Up to 10%): | 0% |
| Total Pooling %: | 25% |

| | | ADMINISTRATIVE EXPENSE CALCULATION | | | POOLING CALCULATION (25% Outside of District) | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Accummulated Totals | | | Tax Increment | | | | | | |
| **TIF Year** | **Year** | **Admin. Expenses** | **Total** | **% Allowable** | **Current Year** | **Cummulative** | **Admin Costs** | **25% for Qualified Costs** | **Spent Outside** | **Cumulative** | **Available for Pooling** |
| **0** | | 15,000 | 974,305 | 1.5% | 1,001,172 | 1,001,172 | 15,000 | 246,543 | - | 246,543 | 11,867 |
| 1 | 2016 | 103,551 | 2,657,270 | 3.9% | 1,771,014 | 2,772,187 | 103,551 | 420,616 | - | 667,159 | 11,485 |
| 2 | 2017 | 231,509 | 4,979,076 | 4.6% | 2,559,167 | 5,331,353 | 231,509 | 854,345 | - | 1,521,504 | 121,002 |
| 3 | 2018 | 231,509 | 7,789,930 | 3.0% | 2,810,353 | 8,141,707 | 231,509 | 1,803,918 | - | 3,325,422 | 121,711 |
| 4 | 2019 | 231,509 | 10,600,784 | 2.2% | 2,810,353 | 10,952,060 | 231,509 | 2,506,506 | - | 2,506,506 | 122,427 |
| 5 | 2020 | 231,509 | 13,411,638 | 1.7% | 2,810,353 | 13,762,413 | 231,509 | 3,209,094 | - | 3,209,094 | 123,151 |
| 6 | 2021 | 231,509 | 16,222,492 | 1.4% | 2,810,353 | 16,572,766 | 231,509 | 3,911,683 | - | 3,911,683 | 123,882 |
| 7 | 2022 | 231,509 | 19,033,346 | 1.2% | 2,810,353 | 19,383,120 | 231,509 | 4,614,271 | - | 4,614,271 | 124,620 |
| 8 | 2023 | 231,509 | 21,844,200 | 1.1% | 2,810,353 | 22,193,473 | 231,509 | 5,316,859 | - | 5,316,859 | 125,365 |
| 9 | 2024 | 231,509 | 24,655,054 | 0.9% | 2,810,353 | 25,003,826 | 231,509 | 6,019,447 | - | 6,019,447 | 126,118 |
| 10 | 2025 | 231,509 | 27,465,908 | 0.8% | 2,810,353 | 27,814,179 | 231,509 | 6,722,036 | - | 6,722,036 | 126,879 |
| 11 | 2026 | 231,509 | 30,276,762 | 0.8% | 2,810,353 | 30,624,533 | 231,509 | 7,424,624 | - | 7,424,624 | 127,647 |
| 12 | 2027 | 231,509 | 33,087,616 | 0.7% | 2,810,353 | 33,434,886 | 231,509 | 8,127,212 | - | 8,127,212 | 128,422 |
| 13 | 2028 | 231,509 | 35,898,470 | 0.6% | 2,810,353 | 36,245,239 | 231,509 | 8,829,801 | - | 8,829,801 | 129,206 |
| 14 | 2029 | 231,509 | 38,709,324 | 0.6% | 2,810,353 | 39,055,592 | 231,509 | 9,532,389 | - | 9,532,389 | 129,997 |
| 15 | 2030 | 231,509 | 41,520,178 | 0.6% | 2,810,353 | 41,865,946 | 231,509 | 10,234,977 | - | 10,234,977 | 130,796 |
| 16 | 2031 | 231,509 | 44,331,032 | 0.5% | 2,810,353 | 44,676,299 | 231,509 | 10,937,566 | - | 10,937,566 | 131,604 |
| 17 | 2032 | 231,509 | 47,141,886 | 0.5% | 2,810,353 | 47,486,652 | 231,509 | 11,640,154 | - | 11,640,154 | 132,419 |

**City of Wayzata**
**Wayzata Bay Center**

| Maximum amount | $ 23,060,000 | Interest Rate | 8.75% |
|---|---|---|---|
| Note Issue Date | 8/1/2015 | | |
| Final Payment | 8/1/2041 | | |

| Date | Interest Due | Total Tax Increment Available | Tax Increment Available at 95.00% | Principle Paid | Unpaid Interest | Cumulative Tax Increment Paid | Note Balance | Year |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | $ 23,060,000.00 | |
| 8/1/2015 | - | 500,592.00 | 475,562.40 | 475,562.40 | - | 475,562.40 | $ 22,584,437.60 | 0.5 |
| 2/1/2016 | 988,069.15 | 500,592.00 | 475,562.40 | - | (512,506.75) | 951,124.80 | $ 22,584,437.60 | 1 |
| 8/1/2016 | 988,069.15 | 885,508.00 | 841,232.60 | - | (146,836.55) | 1,792,357.40 | $ 22,584,437.60 | 1.5 |
| 2/1/2017 | 988,069.15 | 885,508.00 | 841,232.60 | - | (146,836.55) | 2,633,590.00 | $ 22,584,437.60 | 2 |
| 8/1/2017 | 988,069.15 | 1,221,740.00 | 1,160,653.00 | - | 172,583.86 | 3,794,243.00 | $ 22,584,437.60 | 2.5 |
| 2/1/2018 | 988,069.15 | 1,221,740.00 | 1,160,653.00 | - | 172,583.86 | 4,954,896.00 | $ 22,584,437.60 | 3 |
| 8/1/2018 | 988,069.15 | 1,405,177.00 | 1,405,177.00 | - | 417,107.86 | 6,360,073.00 | $ 22,584,437.60 | 3.5 |
| 2/1/2019 | 988,069.15 | 1,405,177.00 | 1,405,177.00 | - | 417,107.86 | 7,765,250.00 | $ 22,584,437.60 | 4 |
| 8/1/2019 | 988,069.15 | 1,405,177.00 | 1,405,177.00 | 417,107.86 | - | 9,170,427.00 | $ 22,167,329.75 | 4.5 |
| 2/1/2020 | 969,820.68 | 1,405,177.00 | 1,405,177.00 | 435,356.32 | - | 10,575,604.00 | $ 21,731,973.42 | 5 |
| 8/1/2020 | 950,773.84 | 1,405,177.00 | 1,405,177.00 | 454,403.16 | - | 11,980,781.00 | $ 21,277,570.26 | 5.5 |
| 2/1/2021 | 930,893.70 | 1,405,177.00 | 1,405,177.00 | 474,283.30 | - | 13,385,958.00 | $ 20,803,286.96 | 6 |
| 8/1/2021 | 910,143.80 | 1,405,177.00 | 1,405,177.00 | 495,033.20 | - | 14,791,135.00 | $ 20,308,253.76 | 6.5 |
| 2/1/2022 | 888,486.10 | 1,405,177.00 | 1,405,177.00 | 516,690.90 | - | 16,196,312.00 | $ 19,791,562.86 | 7 |
| 8/1/2022 | 865,880.88 | 1,405,177.00 | 1,405,177.00 | 539,296.12 | - | 17,601,489.00 | $ 19,252,266.74 | 7.5 |
| 2/1/2023 | 842,286.67 | 1,405,177.00 | 1,405,177.00 | 562,890.33 | - | 19,006,666.00 | $ 18,689,376.41 | 8 |
| 8/1/2023 | 817,660.22 | 1,405,177.00 | 1,405,177.00 | 587,516.78 | - | 20,411,843.00 | $ 18,101,859.63 | 8.5 |
| 2/1/2024 | 791,956.36 | 1,405,177.00 | 1,405,177.00 | 613,220.64 | - | 21,817,020.00 | $ 17,488,638.99 | 9 |
| 8/1/2024 | 765,127.96 | 1,405,177.00 | 1,405,177.00 | 640,049.04 | - | 23,222,197.00 | $ 16,848,589.94 | 9.5 |
| 2/1/2025 | 737,125.81 | 1,405,177.00 | 1,405,177.00 | 668,051.19 | - | 24,627,374.00 | $ 16,180,538.75 | 10 |
| 8/1/2025 | 707,898.57 | 1,405,177.00 | 1,405,177.00 | 697,278.43 | - | 26,032,551.00 | $ 15,483,260.32 | 10.5 |
| 2/1/2026 | 677,392.64 | 1,405,177.00 | 1,405,177.00 | 727,784.36 | - | 27,437,728.00 | $ 14,755,475.96 | 11 |
| 8/1/2026 | 645,552.07 | 1,405,177.00 | 1,405,177.00 | 759,624.93 | - | 28,842,905.00 | $ 13,995,851.03 | 11.5 |
| 2/1/2027 | 612,318.48 | 1,405,177.00 | 1,405,177.00 | 792,858.52 | - | 30,248,082.00 | $ 13,202,992.52 | 12 |
| 8/1/2027 | 577,630.92 | 1,405,177.00 | 1,405,177.00 | 827,546.08 | - | 31,653,259.00 | $ 12,375,446.44 | 12.5 |
| 2/1/2028 | 541,425.78 | 1,405,177.00 | 1,405,177.00 | 863,751.22 | - | 33,058,436.00 | $ 11,511,695.22 | 13 |
| 8/1/2028 | 503,636.67 | 1,405,177.00 | 1,405,177.00 | 901,540.33 | - | 34,463,613.00 | $ 10,610,154.89 | 13.5 |
| 2/1/2029 | 464,194.28 | 1,405,177.00 | 1,405,177.00 | 940,982.72 | - | 35,868,790.00 | $ 9,669,172.16 | 14 |
| 8/1/2029 | 423,026.28 | 1,405,177.00 | 1,405,177.00 | 982,150.72 | - | 37,273,967.00 | $ 8,687,021.45 | 14.5 |
| 2/1/2030 | 380,057.19 | 1,405,177.00 | 1,405,177.00 | 1,025,119.81 | - | 38,679,144.00 | $ 7,661,901.63 | 15 |
| 8/1/2030 | 335,208.20 | 1,405,177.00 | 1,405,177.00 | 1,069,968.80 | - | 40,084,321.00 | $ 6,591,932.83 | 15.5 |
| 2/1/2031 | 288,397.06 | 1,405,177.00 | 1,405,177.00 | 1,116,779.94 | - | 41,489,498.00 | $ 5,475,152.89 | 16 |
| 8/1/2031 | 239,537.94 | 1,405,177.00 | 1,405,177.00 | 1,165,639.06 | - | 42,894,675.00 | $ 4,309,513.83 | 16.5 |
| 2/1/2032 | 188,541.23 | 1,405,177.00 | 1,405,177.00 | 1,216,635.77 | - | 44,299,852.00 | $ 3,092,878.06 | 17 |
| 8/1/2032 | 135,313.42 | 1,405,177.00 | 1,405,177.00 | 1,269,863.58 | - | 45,705,029.00 | $ 1,823,014.48 | 17.5 |
| 2/1/2033 | 79,756.88 | 1,405,177.00 | 1,405,177.00 | 1,325,420.12 | - | 47,110,206.00 | $ 497,594.36 | 18 |
| 8/1/2033 | 21,769.75 | 1,405,177.00 | 1,405,177.00 | 497,594.36 | - | 48,515,383.00 | $ (0.00) | 18.5 |
| **TOTAL** | **24,196,366.53** | **48,776,167.00** | **48,515,383.00** | **23,060,000.00** | **373,203.59** | | | |

# Special Legislation

**Laws of 2010, Chapter 389, Article 7, Section 23**

**CITY OF WAYZATA; TAX INCREMENT FINANCING DISTRICT; SPECIAL RULES.**

**Subdivision 1. First receipt extended.**

Notwithstanding Minnesota Statutes, section 469.175, subdivision 1, paragraph (b), the city of Wayzata may modify the tax increment financing plan for Redevelopment Tax Increment Financing District No. 5 to change the first year in which it elects to receive increment, up to six years following the year of approval of the district. Minnesota Statutes, section 469.175, subdivision 4, paragraph (b), does not apply to such modification of the tax increment financing plan.

**Subd. 2. Five-year rule.**

The requirement of Minnesota Statutes, section 469.1763, subdivision 3, that activities must be undertaken within a five-year period from the date of certification of a tax increment financing district, is considered to be met for Redevelopment Tax Increment Financing District No. 5 in the city of Wayzata if the activities were undertaken within ten years from the date of certification of the district.

**Subd. 3. Parcels deemed occupied.**

Any parcel in Redevelopment Tax Increment Financing District No. 5 in the city of Wayzata is deemed to meet the requirements of Minnesota Statutes, section 469.174, subdivision 10, paragraph (d), clause (1), if the following conditions are met:

(1) a building on the parcel was demolished by a developer or the city after the city council found the building to be structurally substandard upon approval of original tax increment financing plan for the district; and

(2) the city decertifies Redevelopment Tax Increment Financing District No. 5, but files a request with the county auditor for certification of the parcel as part of a subsequent redevelopment or renewal and renovation district within ten years after the date of demolition.

**EFFECTIVE DATE.**

This section is effective upon compliance by the governing body of the city of Wayzata with the requirements of Minnesota Statutes, section 645.021, subdivision 3.

# Map of the TIF Districts

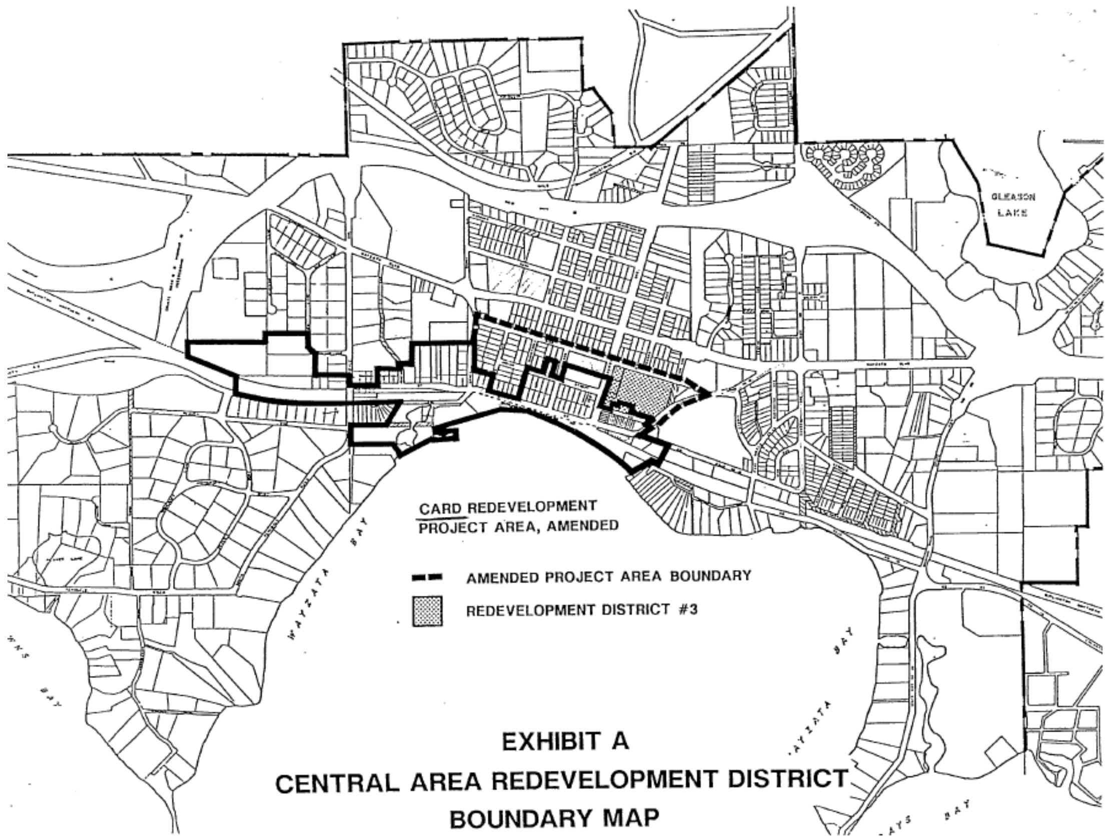
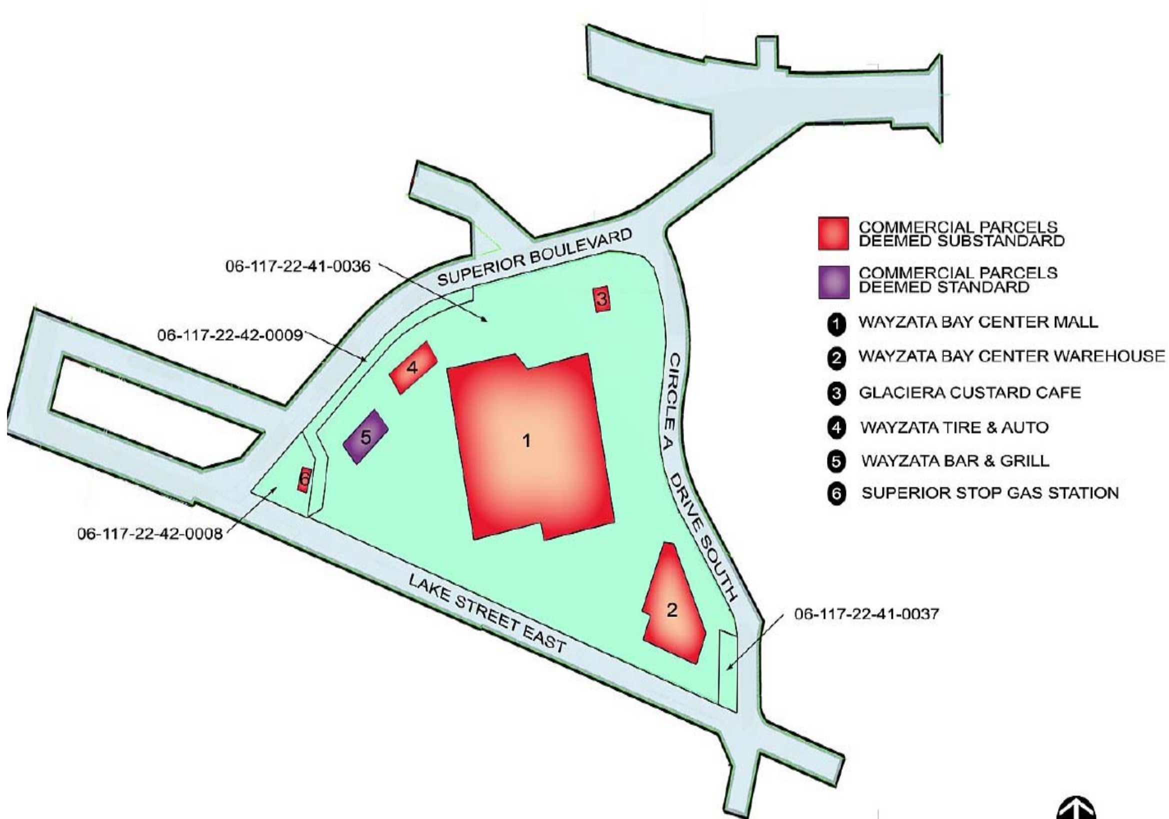



EXHIBIT A
CENTRAL AREA REDEVELOPMENT DISTRICT
BOUNDARY MAP




# MAP OF PROPOSED WAYZATA BAY CENTER TIF DISTRICT

**City of Wayzata**
600 Rice Street
Wayzata, MN 55391-1734



Date: June 25, 2015

To: Chair Shaver and the HRA

From: Heidi Nelson, HRA Executive Director

Subject: Amended and Restated Redevelopment Agreement – Wayzata Bay Center

Included in your packet is a draft of the Amended and Restated Redevelopment agreement for the Wayzata Bay Center. Also included is a memo from Ehler's, the City's TIF consultant that summarizes the key points within the redevelopment agreement. Staff is requesting that the HRA review and approve the agreement subject to HRA Executive Director and legal counsel approval. Once approved, this item will be presented to the City Council at their meeting on July 7, 2015.

Phone: 952-404-5300 Fax: 952-404-5318 e-mail: city@wayzata.org home page: www.wayzata.org

# Memo

**To:** Heidi Nelson – Executive Director

**From:** Stacie Kvilvang

**Date:** June 29, 2015

**Subject:** Amended and Restated Development Agreement – Wayzata Bay Center

---

On March 17th the HRA met jointly with the City Council and Presbyterian Homes to review the proposed changes to the development of the East Block and changes required in the TIF Agreement for the project. On April 30, 2015 the HRA appointed the HRA Chair to review amended terms for the Agreement on their behalf at a meeting with the City Council. On May 21, 2015, the City Council met to discuss the amended terms and provided staff and the developer further comments to incorporate into the Agreement. On May 29, 2015 staff reviewed the proposed changes to the Development Agreement with the HRA.

Since that time, staff and consultants have had on-going discussions with Presbyterian Homes regarding the proposed changes. It was determined by staff and legal counsel to draft an Amended and Restated Development Agreement that would include the first and second amendments to the original Agreement, delineate and memorialize what has happened to date and to outline the proposed changes outlined in the term sheet. Following is a summary of the Amended and Restated Agreement:

1. **Definitions:**
    a. Available tax increment changed from 95% to 95% until the East Block has a minimum value of $21 million; then available tax increment is 100% derived from everything, but for the East Block (100% of this goes to the City/HRA).

    b. East Block commencement means date upon which actual physical development commences, including grading and excavating.

    c. Added East Block completion to mean date in which the City issues a certificate of occupancy (CO) for the project.

    d. Added East Block plans and defined as the plans dated May 21, 2015.

    e. Added East block developer, which is Bohland Development Inc.

    f. Acknowledges that the General Plans were amended by the City Council on June 2, 2015.

    g. Added definition of initial TIF period to be August 1, 2015.

h. Added definition of remaining TIF period to commence on August 1st of the first year in which the East Block has a minimum valuation of $21 million for tax assessment purposes.

i. Added definition for Parking and Mobility District.

j. Changed definition of Phase I and Phase II Improvements to coincide with actual phasing.

k. Amended TIF district to state district name, approval timing and certification.

**2. <u>Land Use and Development Controls</u>**

a. Restrictions on development
   i. Developer has to apply for an amendment to the existing PUD Agreement for the East Block.

b. Demolition timing
   i. Acknowledges that all demolition has occurred on the Redevelopment Property.

**3. <u>TIF Project Area and Land Assembly</u>**

a. Right of First Offer
   i. Amended to state that the term expires on November 30, 2015 and that the City/HRA will notify the Developer if they choose to sell the property in the future, if the Development Agreement is not expired.

b. Land Assembly
   i. States that the Developer and City have acquired all land necessary for the redevelopment and that the Developer has transferred land as appropriate to the City for the realignment of Superior Boulevard and the former gas station parcel.

**4. <u>Construction of Minimum Improvements</u>**

a. Minimum improvements defined as:
   i. North Block – 164 senior housing units including independent, assisted living and memory care

   ii. Superior Block – 90 senior independent living units, 32,000 sq/ft of retail and 270 parking stalls

   iii. West Block – 99 residential units consisting of 73 senior apartments and 29 non-age restricted apartments and 41,000 sq/ft of retail

   iv. Plaza Block – 59 condos and 22,000 sq/ft retail

   v. East Block – 29 to 31 Condos, 80 to 90-unit full service hotel and 15,000 sq/ft of retail

b. Market value of minimum improvements
    i. Increased from $203 million to $233 million and further defined as follows:
        1. Sr. Housing - $95.4M
        2. Retail - $38.7M
        3. Hotel - $6.97M
        4. Condo - $84.55M
        5. Non-age Restricted Apartments - $7.6M

c. North Linear Park and initial part of East Linear Park
    i. Added East Lake Landscaping and that Developer will incur $149,121 as a qualified cost for the improvements.

    ii. Added East Buffer Landscaping.
        1. Developer needs to complete in accordance with approved plans by September 30, 2015.

        2. Developer provides City escrow amount equal to 25% of the overall costs of the landscaping proposed for use by the City within 3 years to augment, restore or mitigate the landscaping if it is deemed necessary. These dollars will be returned to the developer if not used/needed.

**5. <u>Project Defaults/Deadline Adjustments</u>**

a. Commencement and completion of minimum improvements
    i. East Block to begin construction by September 30, 2015 and be substantially complete by December 31, 2017.

    ii. Acknowledgement of all the minimum improvements completed to date.

b. Commencement and completion of public infrastructure
    i. Acknowledgement of required public infrastructure that has been completed to date, what is left to be completed (Portion of Superior Boulevard) and what has and has not yet been assessed.

c. Public access security
    i. Amount was reduced to $1.5 million and applies to the remaining public improvements to be completed. Letter of credit has to be submitted by the earlier of issuance of a building permit for the East Block or January 2, 2016.

**6. <u>Master Redeveloper Reimbursement Obligations Qualified Redevelopment Costs and Performance Review</u>**

a. Reimbursement obligations
    i. Added that the City and the Developer are responsible for their respective legal and financial advisor expenses related to the drafting and execution of the amended Agreement from creation of the Term Sheet through execution of the Agreement.

b. Performance review of TIF assistance
    i. Acknowledges that the look back has been completed and that the principal amount of TIF that was originally contemplated is needed ($22.910 million).

7. **TIF and Other Public Assistance**
    a. TIF District
        i. Acknowledges everything done to date and added the dates of the certification of the district under the special legislation received by the City in 2010.

    b. TIF Assistance
        i. Sets new principal amount at $23.060 million (original $22.910 million plus the added $149,121 for the East Buffer Landscaping).

        ii. Takes out the portion relating to the HRA adjusting the interest rate on the note upward (set at 8.75%)

    c. TIF Bonds
        i. Added that the HRA may require reasonable assurances from the Developer that during the term of any TIF bonds, no actions will be taken that would reduce the market value of the minimum improvements. However, the HRA/City cannot require the Developer to sign a minimum assessment agreement on property it owns, if in the opinion of bond counsel would make the bonds taxable.

8. **Master Redeveloper Covenants**
    a. Parking and Mobility District
        i. The Developer agrees to support and participate in the Parking District.

        ii. Developer will not protest validity or creation of the Parking and Mobility District.

        iii. Developer has same rights as all other participants in the District to petition or protest fees to be levied.

        iv. If City elects to not create the District, then the Developer and City shall negotiate in good faith on alternative financing options regarding parking and mobility needs within the City.

    b. Parking illumination and wayfinding
        i. Prior to issuance of a CO for any retail or commercial space, the Developer will install/change the brown “P” signs to blue so public understands they can park there.

        ii. Developer will install additional wayfinding signage as reasonably required by the City to better direct the public to parking within the development.

c. Construction Work Force and Parking
    i. Prior to issuance of CO (inclusive of tenant buildouts), the Developer shall provide the City a work force parking and project access plan acceptable to the City. City is not obligated to issue building permits or CO's if the plan is not in a form acceptable to the City.

    ii. Plan will be regularly monitored for compliance and updated as required by the City and must include:
        1. Monthly estimated work force needed

        2. Evidence of sufficient off-site parking locations

        3. Copies of notices to contractor and subcontractor personnel outlining the requirements

        4. Consequences for failing to abide with the protocols required

        5. Mandatory fines of $500 per day for the first 5 days and $1,000 per day thereafter.

d. Access during construction of City ramp
    i. Developer will allow City to direct parkers who would otherwise utilize City-controlled parking facilities to park within the development as long as it doesn't materially or negatively impact the parking required for the existing retail/commercial uses.

    ii. The City and the Developer will work in good faith to create a permit system which includes enforcement procedures.

Please contact me at 651-697-8506 with any questions.

**Preliminary Term Sheet**

Developer, HRA and City entered into that certain Redevelopment Agreement, dated as of December 7, 2011 (as amended to date) (the "Original Agreement"). This Term Sheet is executed as of this 2nd day of June, 2015 by and between Developer, HRA and City and is intended to set forth the general terms upon which the parties hereto may be willing to enter into an amendment to or amended and restated version of the Original Agreement (the "Redevelopment Agreement"). This Term Sheet shall not be deemed conclusive or legally binding upon either party and neither party shall have any obligations regarding the property defined below unless and until a definitive Redevelopment Agreement is approved by the City and executed by both parties. All capitalized terms contained herein shall have the meaning given to them in the Original Agreement, unless defined in this term sheet.

1. Developer Conditions, as determined to date:
    a. Execution of Amended and Restated Redevelopment Agreement
    b. Execution of a TIF Note

2. City Conditions, as determined to date:
    a. City Council approval of Planning Application
    b. City approval of Construction Plans
    c. Execution of an Amended and Restated Redevelopment Agreement

3. East Block Minimum Improvements: Improvements to the East Block will include the construction and equipping of a total of approximately 29 for sale condominiums, an approximately 80 to 90-unit full service hotel and approximately 14,000 sq/ft of retail space and related parking, consistent with plans submitted by Bohland Development Inc., dated 05-21-2015. Developer shall construct and provide for operation of parking consistent with plans submitted by Bohland Development Inc. dated May 21, 2015.

4. Construction Schedule: Commence construction by September 30, 2015, and substantially complete construction by December 31, 2017. For the purpose hereof, "Commence" shall mean beginning of physical improvement to the Property, including grading, excavation, or other physical site preparation work; and "Completed" shall mean that the Minimum Improvements are sufficiently complete for the issuance of a Certificate of Occupancy. Upon Completion the City shall issue, in recordable form, a "Certificate of Completion."

5. Amended PUD: The developer will apply for an amendment to the existing PUD agreement and must meet all City requirements and obtain all City approvals.

6. Available Tax Increment: Available tax increment definition will be changed to state that the Developer will receive 95% of the increment beginning in 2015 and up until the construction of the East Block is at least 50% complete for tax valuation purposes. Beginning in the year after that, the Developer shall receive 100% of the TIF generated from all development within the TIF district, excluding the East Block.

7. Parking District: Developer agrees to initiate a request to be included in the City's parking district for the downtown area and pay fees required for the development as determined through the parking district ordinance that will be adopted in 2015.

Developer's agreement requires meeting any petition requirements under Minnesota Statutes Chapter 428A and waiving the right to protest the establishment of fees.

8. Lookback: Developer has supplied, or will supply, the documentation necessary to complete the lookback contemplated in Section 8.4 and work with the City's Financial Advisor to complete the lookback to determine the size of the TIF Note prior to approval of the Amended and Restated Redevelopment Agreement.

9. TIF Note: The City agrees to issue a TIF Note to the Developer based upon the amount determined through the lookback, plus an additional $149,121 to reimburse the Developer for additional landscaping required at the end of East Lake Street. The TIF Note will bear interest at the originally agreed to rate of 8.75% and will be payable over 26 years, beginning on the date of issuance (presumed to be in August 2015).

10. Remnant Parcel: Developer agrees to provide the City with conceptual development plans for the site by September 1, 2015. Developer further agrees to supply an outline of development scenarios and parking impacts by June 15, 2015. Such plans shall include sq/ft of the buildings, intended uses, calculation on the number of parking stalls required and how the parking will be accommodated. The City and Developer agree to work in good faith on approval of such plans to meet the goals of the City and the Developer, including but not limited to meeting parking requirements. If plans are not submitted by this date, the Developer's right of first refusal for the parcel shall be terminated.

11. Existing Parking Illumination and Wayfinding: Developer agrees to change the covers on the illuminated parking signs from brown to universal standard blue on all retail parking in the Superior, Plaza, West and East Blocks and public parking text with blue "P" signage on street signs to assure the public understands that they can park within the development when accessing retail businesses within the development. These installations shall be complete prior to the issuance of the Certificate of Occupancy for future retail/commercial space within the Superior, Plaza, West and East Blocks. In addition, the Developer agrees to work with the City to install additional wayfinding signage, including but not limited to real-time signage, as appropriate to direct the public to parking within the Development.

12. Construction Work Force and Parking: The Developer and City agree to work together in good faith to minimize the impact of the construction while allowing the construction of the project to proceed in an efficient and effective manner. The Developer agrees to supply the City with a work force parking and project access plan that can be regularly updated, monitored, and enforced (including mandatory fines which shall be payable to the City). This will include monthly estimated work force needed on site, agreements showing needed off-site parking locations to accommodate project personnel, copies of notices to contractor and subcontractor forces outlining of the requirements of the plan and consequences for failing to abide with protocols.

13. East Buffer Landscaping: Developer shall complete landscaping of East Buffer per plan to be reviewed and approved by the City per the revised landscape plan associated with the East Block plans. Developer shall complete the landscaping in the East Buffer within the 2015 planting season, except for the landscaping directly adjacent to the East Block

construction which will be completed by Completion of the East Block Minimum Improvements. Developer shall provide the City with a lump sum payment of $25,000 to provide for additional landscaping, restoration or mitigation of the East Buffer at the City's discretion following the completion of the project. If no additional landscaping is required in the buffer within three years following the completion of the project (CO east block), they funds will be returned to the developer.

14. Landscaping at end of East Lake Street: Developer agrees to pay an additional $149,121 for landscaping at the end of East Lake Street. The City agrees it increase the principal amount of the TIF Note by $149,121.

15. Future City Ramp: Developer agrees to work cooperatively with the City to allow the City to direct public parking to the development beginning after occupancy of the West Block and while the new public ramp is under construction at Mill Street, to the extent it does not negatively impact the parking required for the existing uses within the Development. The City will work with the developer on a permit system for employees as needed and enforcement issues that arise during the construction period.

16. Fees: Developer and HRA agree to pay their own fees related to the negotiating and drafting of the Amended Agreement.

17. Execution of the Amended Redevelopment Agreement: The amended Redevelopment Agreement must be executed before a building permit will be issued for the East Block

IN WITNESS WHEREOF, the parties have agreed to this non-binding term sheet as of the date first set forth above.

WAYZATA BAY REDEVELOPMENT
COMPANY, LLC

By: ______________________
Its: ______________________

By: ______________________
Its: ______________________

CITY OF WAYZATA

By: ______________________
Its: Mayor

WAYZATA HOUSING AND
REDEVELOPMENT AUTHORITY

By: Tom Shaw
Its: Chair

**AMENDED AND RESTATED**

**REDEVELOPMENT AGREEMENT**

**by and among**

**THE CITY OF WAYZATA, MINNESOTA,**

**THE HOUSING AND REDEVELOPMENT AUTHORITY
OF THE CITY OF WAYZATA, MINNESOTA,**

**and**

**WAYZATA BAY REDEVELOPMENT COMPANY, LLC**

**Dated as of
July [__], 2015**

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

# TABLE OF CONTENTS

**Page**

## LIST OF EXHIBITS

# REDEVELOPMENT AGREEMENT

**THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this __ day of July, 2015 (the "Effective Date"), among the **CITY OF WAYZATA, MINNESOTA,** a Minnesota home rule charter city (the "City"), the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the "Authority") and **WAYZATA BAY REDEVELOPMENT COMPANY, LLC**, a Minnesota limited liability company (the "Master 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**, the City and the Authority have determined that the TIF Project Area, depicted on the TIF Project Area Map, 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

**WHEREAS**, the City and the Authority have determined that redevelopment of the TIF Project Area has been impeded by the difficulty of redevelopment without a consistent overall plan ensuring compatible land uses; and

**WHEREAS**, the City and the Authority have determined that the TIF Project Area also offers the principal opportunity within the City for creation of a unified, mixed use redevelopment, with significant opportunities for new senior housing, other housing, and commercial redevelopment; and

**WHEREAS**, the Master Redeveloper is engaged in developing  a redevelopment project covering approximately 14.5 acres in the TIF Project Area on which the Master Redeveloper proposes to demolish and clear existing blighted structures, and construct approximately 327 senior housing units, 88 condominium units, 26 market rate apartments, approximately 108,000 leasable square feet of retail space, and a full-service hotel with up to 100 rooms, in addition to street improvements, public parks, and public parking; and

**WHEREAS**, the City has determined to realign the intersection of Superior Boulevard and Lake Street to achieve the optimal configuration for land use, pedestrian access, safety and engineering, and the realigned streets, including any additional right-of-way or easements obtained with regard thereto, will be acquired for a public purpose and owned by the City for the use, occupation and enjoyment of the general public; and

**WHEREAS,** the Master Redeveloper has agreed to finance a portion of such road realignment and other sanitary sewer improvements within the TIF Project Area (collectively the "Public Infrastructure Improvements"); and

**WHEREAS**, the TIF Project Area includes the Minimum Improvements Area and the Public Infrastructure Improvements Area and the TIF Project Area is the same as the proposed TIF District; and

**WHEREAS**, the Authority has analyzed current land use in the TIF Project Area, including a building-by-building structural analysis, and after appropriate hearings and notices, the City adopted findings to determine that the TIF Project Area is "blighted" within the meaning of the HRA Act and that more than 50% of the buildings in the TIF Project Area are "structurally substandard" within the meaning of the TIF Act; and

**WHEREAS**, the City and the Authority adopted findings that included a determination that "but for" the assistance contemplated in the TIF Plan and provided under this Agreement, the redevelopment as proposed herein would not be expected to occur in the reasonably foreseeable future; and

**WHEREAS**, a major component of the proposed Redevelopment Plan is to redevelop blighted areas, prevent the emergence of blight, and foster an increase in commercial and retail development providing jobs, create new rental housing, particularly senior housing, and create new for sale housing appropriate for various life stages of the City's residents and not currently available in the City; and

**WHEREAS,** in order to achieve the objectives of the Redevelopment Plan, to facilitate completion of the site improvements, including the Public Infrastructure Improvements, and the development and construction of the Minimum Improvements, the City has agreed to convey certain parcels to the Master Redeveloper pursuant to the terms of this Agreement, and the Master Redeveloper has agreed to convey certain parcels to the City; and

**WHEREAS**, the Master Redeveloper may, pursuant to the terms of this Agreement, assign certain Blocks of the Minimum Improvements to Secondary Redevelopers which will then have certain rights and obligations under this Agreement related to the assigned Block, which assignments will be approved by the Authority, and thereafter the Secondary Redevelopers will undertake those Blocks in accordance, in each case, with the provisions of this Agreement and the PUD Agreement; and

**WHEREAS**, under TIF Act, the Authority is authorized to finance certain Qualified Redevelopment Costs of a redevelopment project with tax increment revenues derived from a tax increment financing district established within a redevelopment TIF Project Area; and

**WHEREAS**, consistent with the TIF Act, the City and the Authority has held a public hearing to consider the need and desirability for adoption of a tax increment financing plan and the creation and establishment of the TIF 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 adopted a TIF plan and established a portion of the Central Area Redevelopment District ("CARD") Project Area as a redevelopment TIF district; and

**WHEREAS**, the Authority has certified the TIF District consistent with this Agreement and delayed receipt of the first Tax Increment until 2015; and

**WHEREAS,** the Authority will issue TIF Assistance in accordance with Article IX of this Agreement;

**WHEREAS**, on October 21, 2008, the City, the Authority, and the Master Redeveloper entered into that certain Redevelopment Agreement (the "Original Redevelopment Agreement");

**WHEREAS**, the City, the Authority, and the Master Redeveloper have previously entered into that certain (i) First Amendment to Redevelopment Agreement dated as of December 15, 2009 (the "First Amendment") and (ii) Second Amendment to Redevelopment Agreement dated as of December 7, 2011 (the "Second Amendment"; the First Amendment, Second Amendment, and the Original Redevelopment Agreement are collectively referred to herein as, the "Amended Redevelopment Agreement");

**WHEREAS**, in order to supplement the Amended Redevelopment Agreement, the City, the Authority, and the Master Redeveloper enter into this Agreement to amend and restate the Amended Redevelopment Agreement and, in so doing, (i) the provisions of the First Amendment and Second Amendment will be fully incorporated into this Agreement to be effective from and after December 15, 2009 and December 7, 2001, respectively, (ii) all other provisions that are added to this Agreement other than the First Amendment and Second Amendment provisions shall be effective from and after the Effective Date, and (iii) all of the provisions of the Original Redevelopment Agreement shall be and remain unaffected, except to the extent modified by this Agreement; 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:

"***Agreement***" means this Amended and Restated Redevelopment Agreement.

***"Amended Redevelopment Agreement"*** has the meaning given in the Recitals.

"***Authority***" means the Wayzata Housing and Redevelopment Authority.

"***Authority Representative***" means the Executive Director of the Authority or his or her designee.

"***Available Tax Increment***" means, (i) during the Initial TIF Period, ninety-five percent (95%) of the Tax Increment derived from the TIF District and received by the Authority from the County in the six months before each Payment Date (as defined in the TIF Note); and (ii) during the Remaining TIF Period, one hundred percent (100%) of the Tax Increment derived from all tax parcels in the TIF District, *except* the tax parcels that make up the East Block and received by the Authority from the County in the six months before each Payment Date.

"***Block***" or "***Blocks***" refers to one or more portions of the Minimum Improvements, specifically the West Block, East Block, East Block Linear Park, Plaza Block, Park Plaza, Superior Block, North Block, or North Block Linear Park.

"***Board***" means the Board of Commissioners of the Authority.

"***CARD Amendment***" means an amendment to the City's Central Area Redevelopment District addressing the Project which serves as the Redevelopment Plan.

"***Certificate of Completion***" means the certificates in substantially the form attached as Exhibit K, signed by the Authority Representative certifying completion of various Blocks of the Minimum Improvements, and releasing such Block from obligations to construct the Minimum Improvements under this Agreement, as specified in Section 5.9, or certifying Completion of the Public Infrastructure Improvements, and releasing Master Redeveloper from obligations to finance and construct the Public Infrastructure Improvements under this Agreement, as specified in Section 6.13.

"***City***" means the City of Wayzata.

"***City Consultants***" means the financial, engineering, legal and other similar advisors to the City and the Authority regarding the Project.

"***City Council***" means the Wayzata City Council.

"***City Documents***" has the meaning given in Section 4.9(b).

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

"***Commencement***" means the date on which a building permit application is deemed complete by the City in accordance with Minnesota Statutes, Section 15.99 for a given Block (except for the East Block, which means East Block Commencement) and the corresponding Segment of the Public Infrastructure Improvements.

"***Commencement Date***" means the date of Commencement.

"***Completion***" of a particular Block or Segment means Master Redeveloper receipt of a Certificate of Completion for that Block or Segment (except for the East Block, which means East Block Completion).

"***Completion Date***" means any date a Certificate of Completion with respect to any Block of the Minimum Improvements or any Segment of the Public Infrastructure Improvements is delivered.

"***Contract for Deed***" means the contract for deed provided for by the Sale and Purchase Agreement, pursuant to which the Gas Station Parcel shall be purchased from Wayzata Circle LLC.

"***Costs of Issuance***" means all costs and expenses incurred in connection with the issuance of the TIF Assistance, including, but not limited to fees of the placement agent, fiscal consultant, bond counsel, counsel to the Authority and placement agent, and paying agent.

"***County***" means the County of Hennepin, Minnesota.

"***Cure Rights***" means the rights to cure a Default as specified in Section 14.4.

"***Deed***" means a quit claim deed in the form attached hereto as <u>Exhibit F</u>.

"***Default***" means an act or omission by the City, the Authority or the Master Redeveloper which becomes an Event of Default under this Agreement if it is not cured.

"***Default Date(s)***" means the Commencement and Completion Dates outlined in the Minimum Improvements Timeline in Section 7.1 and the Public Infrastructure Improvements Timeline in Section 7.2.

"***DNR***" means the Minnesota Department of Natural Resources.

"***DNR Parcel***" means the parcel of land described as Tract F, Registered Land Survey No. 1168, as depicted on the Land Transfer Map.

"***DNR Parcel Act***" means 2008 Minnesota Laws, Chapter 368, Article 1, Section 34, as amended by 2009 Minnesota Laws, Chapter 176, Article 3, Section 2.

"***DNR Parcel Closing***" means the date on which the City transfers certain rights in the DNR Parcel to the Master Redeveloper as detailed in Sections 4.5 and 4.9.

"***East Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***East Block Commencement***" means the date on which actual physical improvement commences on the East Block, including grading, excavation, or other physical site preparation work.

"***East Block Completion***" means the date on which the City issues a certificate of occupancy for the East Block.

"***East Block Linear Park***" is defined in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***East Block Plans***" means those plans submitted to the City by the East Block Redeveloper, dated May 21, 2015, which provide for the construction, equipping and parking operations for the East Block.

"***East Block Redeveloper***" means Bohland Development Inc. as Secondary Redeveloper for the East Block.

"***East Lake Street Parcel***" means 1001 East Lake Street, Wayzata, Minnesota, as depicted on the Land Transfer Map.

"***EAW***" means the Environmental Assessment Worksheet.

"***Entry Deposits***" mean those funds deposited by residents of the independent senior housing components of the Minimum Improvements and received by the Master Redeveloper pursuant to an entry deposit agreement.

"***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 the Master Redeveloper described in Article XIV.

"***Final Plans***" means the final design and architectural plans for a given Block of the Minimum Improvements submitted to the City for approval pursuant to the City's ordinances.

"***Final Plat***" means the final plat or replat for any Block of the Minimum Improvements when approved by the City and the County.

"***Financing Commitment***" means a commitment from a mortgage lender, or in the case of a conduit bond, a term sheet from an investment banking firm.

"***First Amendment***" means that certain First Amendment to Redevelopment Agreement dated as of December 15, 2009 among the City, the Authority, and the Master Redeveloper.

"***FOFR Parcel***" means a portion of the Old Superior Boulevard Parcel identified as Parcel 1A on Exhibit D-2 of the Redevelopment Agreement as shown on Attachment 2 to the First Amendment, and the Remnant Parcel identified as Parcel 2A on Exhibit D-2 of the Redevelopment Agreement as shown on Attachment 2 to the First Amendment.

"***Gas Station Parcel***" means the parcel of land located at 800 Superior Boulevard in the City, which is legally described as Tract E, Registered Land Survey No. 1168, Hennepin County, Minnesota and is depicted on the Land Transfer Map.

"***Gas Station Work***" means the Master Redeveloper's obligation to remove the building, foundation and underground tanks, canopy, pumps and piping located on the Gas Station Parcel.

“***General Plan Approval***” means all the land use terms and conditions contained in Resolution No. 25-2008 adopted by the City Council on June 10, 2008, as shown in the minutes for the July 15, 2008 City Council meeting as amended by the City Council on June 2, 2015.

“***General Plans***” means the preliminary design and architectural plans for the Project submitted by the Master Redeveloper to the City and the Authority and approved in the General Plan Approval.

“***Go-Ahead Letter***” means the Master Redeveloper’s letters to the City and the Authority demonstrating satisfaction of the Project financing contingency for the relevant Block and indicating the Master Redeveloper is prepared to proceed with the relevant Block.

“***Grantee***” means the party receiving land in each Land Transfer, and includes that party’s successors and assigns.

“***Grantor***” means the party granting land in each Land Transfer, and includes that party’s successors and assigns.

“***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.

“***HRA Act***” means Minnesota Statutes, Sections 469.001 to 469.047, as amended.

“***Independent Senior Housing***” means that portion of the Minimum Improvements for residents fifty-five years of age or older with limited healthcare needs.

“***Initial Superior Boulevard Improvements***” means those public infrastructure improvements detailed in Exhibit N of the Redevelopment Agreement, and as Attachment 1 to the First Amendment.

“***Initial Superior Boulevard Improvements Costs***” means the sum of total City costs related to construction of the Initial Superior Boulevard Improvements as detailed in Exhibit N of the Redevelopment Agreement, and as Attachment 1 to the First Amendment.

“***Initial TIF Period***” means the period commencing on August 1, 2015 (the first Payment Date on the TIF Note); and ending on the February 1 immediately preceding the commencement of the Remaining TIF Period.

“***Lake Street and Superior Boulevard Realignment***” has the meaning given in Section 6.1 and shown on the Public Infrastructure Improvements Site Plan.

“***Lake Street Improvements***” means that portion of the Public Infrastructure Improvements on Lake Street, which includes Segment 4.

“***Land Transfer(s)***” mean one or more transfers of land between the City and the Master Redeveloper outlined in Article IV.

"***Land Transfer Closing***" means the simultaneous closing on all of the Land Transfers, pursuant to Section 4.9.

"***Land Transfer Closing Date***" means the date on which the Land Transfers occur, with the possible exception of the DNR Parcel, pursuant to Section 4.9, which shall occur on a date determined by the City, to be no earlier than January 15, 2010.

"***Land Transfer Map***" means the revised map shown in Exhibit D of the Redevelopment Agreement, as amended by Attachment 2 to the First Amendment.

"***Linear Park***" means both the East Block Linear Park and the North Block Linear Park.

"***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 Wayzata Bay Redevelopment Company, LLC.

"***Master Redeveloper Documents***" has the meaning given in Section 4.9(c).

"***Maximum Redeveloper Amount***" has the meaning given in Section 6.2.

"***Memorandum of Agreement***" means the document described in Section 15.13 and substantially in the form shown in Exhibit L.

"***Minimum Improvements***" means the Master Redeveloper's obligations in both Phase I and Phase II as described in Article V subject to the timing and sequence of Blocks and Segments provided in Section 7.3.

"***Minimum Improvements Area***" means the area on which the Master Redeveloper will construct the Minimum Improvements, which is illustrated on the TIF Project Area Map and legally described on Exhibit B-1.

"***Minimum Improvements Site Plan***" is attached as Exhibit B.

"***Minimum Improvements Timeline***" means the Minimum Improvements schedule established in Section 7.1.

"***Mortgage***" means any mortgage loan that is secured, in whole or in part, by any portion of the Minimum Improvements Area, and which is an approved encumbrance under Article X.

"***MPCA***" means the Minnesota Pollution Control Agency.

"***New Superior Boulevard Parcel***" is depicted on the Land Transfer Map.

"***North Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***North Block Linear Park***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***Note Lender***" means a financial institution or other lender that loans funds to the Master Redeveloper secured by a pledge of the TIF Note.

"***Old Superior Boulevard Parcel***" is depicted on the Land Transfer Map.

***"Original Redevelopment Agreement"*** has the meaning given in the Recitals.

"***Park Plaza***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***Parking and Mobility District***" means a special service district to be established by the City in accordance with Minnesota Statutes § 428A.01 to 428A.101 to provide parking and related services within the City.

"***Parking Facilities***" means the portion of the Minimum Improvements in the East Block, West Block, Plaza Block and Superior Block, as approved in a Final Plan, available for public parking through the Public Access Areas Easement.

"***Park Improvements***" means the portion of the Minimum Improvements, as approved in a Final Plan, available for public use as a park through a Park Improvements Easement.

"***Park Improvements Easement***" has the meaning given in Section 5.8.

"***Phase(s)***" means one or both phases of the Minimum Improvements described in this Agreement.

"***Phase I***" means the Master Redeveloper's obligation to construct the Superior Block, North Block, North Block Linear Park, West Block, and East Block Linear Park, subject to the sequencing provisions of Section 7.3.

"***Phase II***" means the Master Redeveloper's obligation to construct the East Block, Plaza Block and Park Plaza, subject to the sequencing provisions of Section 7.3.

"***Plaza Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***Preliminary Plat***" means the preliminary plat for any Block of the Minimum Improvements.

"***Project***" means the Minimum Improvements and the Public Infrastructure Improvements under this Agreement.

"***Project Completion TIF Pro Forma***" means a detailed TIF pro forma in substantially the same format as the TIF Pro Forma, or in another format reasonably approved by the

Authority's financial advisor, updated to reflect actual project costs and related cash flow information as of the Effective Date.

"***Public Access Area***" means the portions of the Project covered by the Public Access Area Easement, including, but not limited to, roads, curbs, gutters, and on-street public parking.

"***Public Access Area Easement***" has the meaning given in Section 5.7.

"***Public Access Improvements***" means the portion of the Minimum Improvements, as approved in a Final Plan, available for public use through a Public Access Area Easement.

"***Public Infrastructure Improvements***" mean Sanitary Sewer Improvements and the Lake Street Improvements and Superior Boulevard Improvements to be completed by the City or the Master Redeveloper.

"***Public Infrastructure Improvements Area***" means the area in which the Public Infrastructure Improvements will be constructed which is depicted on the TIF Project Area Map.

"***Public Infrastructure Improvements Plans***" means one or more plans designed and specified by the City for the Public Infrastructure Improvements, which shall include standards for the engineering of the Public Infrastructure Improvements.

"***Public Infrastructure Improvements Site Plan***" means the map depicting the Segments of the Lake Street and Superior Boulevard Realignment and the Sanitary Sewer Improvements, attached as Exhibit C.

"***Public Infrastructure Improvements Timeline***" means the Public Infrastructure Improvements schedule established in Section 7.2.

"***PUD Agreement***" means one or more planned unit development agreements to be negotiated, approved, executed, and recorded against each Block of the Minimum Improvements by the City and the Master Redeveloper, as the same may be amended from time-to-time.

"***PUD Ordinance***" means Section 801.33 of the City's ordinances.

"***Qualified Redevelopment Activities***" mean the Master Redeveloper's Project-related activities eligible for TIF Assistance, as authorized by this Agreement and the TIF Act.

"***Qualified Redevelopment Costs***" means the certain costs and expenses related to Master Redeveloper's Qualified Redevelopment Activities to be paid by the Master Redeveloper from Master Redeveloper sources and in specific cases reimbursed by Available Tax Increment, which costs and expenses as approved herein are set forth in the TIF Pro Forma.

"***Redevelopment Plan***" means the redevelopment plan adopted by the Authority in accordance with Minnesota Statutes, Section 469.027 and approved by the City Council in accordance with Minnesota Statutes, Sections 469.028 and 469.175, subdivision 3, which is the same as the CARD Amendment.

"***Release***" means the spilling, leaking, disposing, discharging, emitting, depositing, ejecting, leaching, escaping or any other release, however defined, whether intentional or unintentional, of any Hazardous Material.

"***Remaining Public Infrastructure Improvements***" means the Remaining Superior Boulevard Improvements described in Section 6.1.

"***Remaining Superior Boulevard Improvements***" has the meaning given in Section 6.1.

"***Remaining TIF Period***" means the period commencing August 1 of the first tax-payable year in which property taxes for the East Bock are based on an estimated market value of at least ~~[$________________________],~~$21,000,000, which amount represents fifty percent (50%) of the projected valuation of the entire East Block upon completion of all the East Block Improvements.

"***Remediation Costs***" mean any and all costs, expenses and fees incurred to conduct actions required by a governmental entity under Environmental Law to: (i) clean up, remove, treat, or in any other way address any Release of Hazardous Material, (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Materials; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care relating to a Release.

"***Remnant Parcel***" means that portion of the Gas Station Parcel which is not dedicated as a right of way by the City for the realignment of Superior Boulevard as part of the Superior Boulevard Improvements, which is depicted on Land Transfer Map as Parcel 2A.

"***Reverter Closing Date***" means 30 days after the Master Redeveloper's receipt of the City's notice exercising the City's right of reverter for the East Lake Street Parcel.

"***Reverter Deed***" means the quit claim deed through which the Master Redeveloper will convey the East Lake Street parcel and any improvements thereon back to the City upon City's exercise of its right of reverter.

"***Right of First Offer/Refusal***" means the rights provided in Section 4.12 hereof to the Master Redeveloper by the City with respect to the potential purchase of the Remnant Parcel and the New Superior Boulevard Parcel, in substantially the form attached to the First Amendment as Attachment 3 (the "FOFR Agreement").

"***Sanitary Sewer Improvements***" means improvements to the sanitary sewer system within the TIF Project Area, which are part of the Public Infrastructure Improvements as shown on the Public Infrastructure Improvements Site Plan and which are included in the costs described in Attachment 1 to the First Amendment.

"***Secondary Redeveloper***" means any redeveloper other than the Master Redeveloper that has been authorized by the City and the Authority to construct the Minimum Improvements as described in Section 13.2.

"***Second Amendment***" means that certain Second Amendment to Redevelopment Agreement dated as of December 7, 2011 among the City, the Authority, and the Master Redeveloper.

"***Secondary Redevelopment Agreement***" means any redevelopment agreement negotiated and entered into by and among a Secondary Redeveloper, the City and the Authority consistent with this Agreement.

"***Segment***" means refers to one or more portions of the Public Infrastructure Improvements, as described in Section 6.1 and shown on the Public Infrastructure Improvements Site Plan.

"***Senior Community Town Center***" means common areas and amenities for the North Block and Superior Block.

"***Special Assessments***" mean assessments levied against any portion of the Minimum Improvements Area or other benefited property, by the City for purposes of paying for Public Infrastructure Improvements.

"***State***" means the State of Minnesota.

"***Superior Boulevard Improvements***" means that portion of the Public Infrastructure Improvements on Superior Boulevard, which includes Segments 2, 3 (southerly third) and 6, the Initial Superior Boulevard Improvements, and the Sanitary Sewer Improvements.

"***Superior Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***Tax Increment***" means the tax increment from the TIF District as calculated in accordance with the TIF Act.

"***Tax Official***" means any City or County assessor; County auditor; City, County, or State board of equalization; the Commissioner of Revenue of the State; or any State or Federal district court, the Tax Court of the State, or the State Supreme Court.

"***TIF***" means tax increment financing.

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

"***TIF Assistance***" means the TIF Notes or the TIF Bonds.

"***TIF Bond(s)***" or "***Bond(s)***" means the TIF revenue bonds which may be issued by the Authority pursuant to Section 9.7.

"***TIF District***" or "***District***" means TIF district 5 which was created by the Authority and the City under the TIF Act on November 15, 2011 and for which TIF District Certification was filed on March 29, 2012.

"***TIF District Certification***" means the Authority's request to the County Auditor to certify the TIF District in accordance with Minnesota Statutes, Section 469.175, subdivision 3, which was filed on March 29, 2012.

"***TIF Note(s)***" or "***Note(s)***" means the TIF revenue note or notes to be issued by the Authority to the Master Redeveloper, in substantially the form attached hereto as Exhibit J to pay or reimburse the Master Redeveloper for the funding of Qualified Redevelopment Costs.

"***TIF Plan***" means the TIF plan adopted by the Authority for the TIF Project Area in accordance with Minnesota Statutes, Section 469.175, as the same may be amended from time-to-time.

"***TIF Pro Forma***" means the detailed TIF pro forma shown in Exhibit I of the Redevelopment Agreement, as amended by Attachment 4 to the First Amendment.

"***TIF Project Area***" consists of the property which includes the Minimum Improvements Area and the Public Infrastructure Improvements Area. The TIF District covers a larger area than the TIF Project Area, but excludes those parcels within the TIF District west of new Superior Boulevard resulting from the Superior Boulevard Improvements, as illustrated on the TIF Project Area Map.

"***TIF Project Area Map***" means the map depicting the TIF Project Area, attached as Exhibit A.

"***Title***" or "***Title Company***" means such title insurance company, reasonably acceptable to the City, the Authority and the Master Redeveloper, which will provide the title insurance and escrow and disbursement services described in this Agreement.

"***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, (f) delays in delivery of materials for the Project, (g) soil conditions on the TIF Project Area, (h) delays caused by market inability to issue conduit revenue bonds at rates and conditions consistent with the TIF Pro Forma, or (i) resolution of leases in force which impact the Master Redeveloper's ability to comport with the Minimum Improvements Timeline.

"***West Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

## 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 a home rule charter city 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) The City is authorized by law to undertake the Public Infrastructure Improvements and pay for such Public Infrastructure Improvements, in accordance with the provisions of this Agreement.

(c) The City is authorized by law to convey the East Lake Street Parcel to the Master Redeveloper, in accordance with the terms of this Agreement.

(d) The City is authorized by law to enter into the various additional agreements contemplated herein, including, but not limited to, the use and maintenance agreements, all in accordance with the terms of this Agreement, and subject to approval as to form and substance by the City Attorney.

(e) Other than items disclosed by the City to the Master 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.

(f) 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.

(g) The City will reasonably cooperate with the Master 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.

(h) The City will assist and reasonably cooperate with the Master Redeveloper in complying with any Environmental Law or land use regulation or Project review procedure applicable to the TIF Project Area to the extent any federal, state or local law requires the participation of the City; however, this provision does not obligate the City to incur costs, except as otherwise provided in this Agreement or elsewhere, nor to limit, waive or modify any regulatory requirements or standards applicable to the Project.

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

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

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

(b) The Authority has approved the TIF Assistance, the TIF District, the TIF Plan and the Redevelopment Plan as required under the TIF Act.

(c) Under the TIF Plan, the Authority will fund fiscal disparities from within the TIF District, in accordance with Minnesota Statutes, Section 469.177, subdivision 3, but otherwise agrees to retain all of the captured net tax capacity of the TIF Project Area to finance the Qualified Redevelopment Costs as provided in this Agreement, and has elected that the duration of the 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 District until the amount paid to the Master Redeveloper from Available Tax Increment reaches the maximum amount specified in Section 9.2.

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

(e) Other than items disclosed by the Authority to the Master 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.

(f) 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.

(g) The Authority will reasonably cooperate with the Master 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.

(h) The Authority will assist and reasonably cooperate with the Master Redeveloper in complying with any Environmental Law or land use regulation or development review procedure applicable to the TIF Project Area; however, this provision does not obligate the Authority to incur costs, except as otherwise provided in this Agreement or elsewhere.

(i) The Authority, as regards the Project, is aware of no facts, the existence of which would cause it to be in violation of Environmental Law or which would give any person a valid claim under the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act.

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

(a) The Master Redeveloper is a limited liability company organized and in good standing under the laws of 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 of the terms or conditions of the Master Redeveloper's organizational documents, any restriction or any agreement or instrument to which the Master Redeveloper is now a party or by which it is bound or to which any property of the Master 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 the Master 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 the Master Redeveloper contrary to the terms of any instrument or agreement to which Master Redeveloper is a party or by which it is bound.

(c) To the best of the Master 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) As of the date of the Original Agreement (except for the East Lake Street Parcel and the DNR Parcel) , the Master Redeveloper had the unconditional right to acquire fee title to the Minimum Improvements Area and the Master Redeveloper will acquire the entire Minimum Improvements Area. As of the date of this Agreement, the Master Redeveloper has fee title to any Block which has not been Completed and will take all actions necessary to file the Final Plat for each Block of the Minimum Improvements prior to Commencement of construction of the applicable Block.

(e) The Master Redeveloper would not acquire the Minimum Improvements Area and 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) The Master Redeveloper will 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 the Master Redeveloper to incur costs, except as otherwise provided in this Agreement or elsewhere.

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

(h) The Master Redeveloper has not received any notice from any local, state or federal official that the activities of the Master Redeveloper or the Authority with respect to the Minimum Improvements Area, New Superior Boulevard Parcel, Old Superior Boulevard Parcel 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. The Master Redeveloper 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 the Master Redeveloper 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) The Master 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 the Master Redeveloper to successfully acquire the Minimum Improvements Area and construct the Minimum Improvements and Public Infrastructure Improvements, as provided herein.

(j)

## ARTICLE III
## LAND USE AND DEVELOPMENT CONTROLS

**Section 3.1 Restrictions on Development**. The Master Redeveloper may not construct or permit construction on any part of the Minimum Improvements Area until the Master Redeveloper satisfies the following conditions:

(a) The Master Redeveloper acquires fee title to all of the property required for the Block proposed to be built, obtains approval of the Final Plans for such Block, executes and records the relevant PUD Agreement and causes any lien holder affecting any of the property to subject its interest as provided herein to this Agreement and the PUD Agreement;

(b) The Master Redeveloper satisfies all of the conditions established by the City in the General Plan Approval;

(c) The Master Redeveloper satisfies all of the conditions in the PUD Agreement and obtains approval of and records the Final Plat; and

(d) With respect to the East Block, the Master Redeveloper applies for an amendment to the existing PUD Agreement and meets all City requirements and obtains all City approvals.

**Section 3.2** **Homeowners' Associations and Restrictive Covenants**. The Master Redeveloper shall submit any deed restrictions, covenants, agreements, architectural controls, homeowners' associations and other means to control the use and to ensure the maintenance of land within the Minimum Improvements Area to the City and the Authority as may be required under the PUD Agreement.

**Section 3.3** **Environmental Review**. The City has prepared an EAW on the Minimum Improvements Area in accordance with the rules of the Minnesota Environmental Quality Board, and made a "negative declaration" in accordance with such rules regarding the need for an Environmental Impact Statement. The time for the appeal of the negative declaration under applicable law has expired.

**Section 3.4** **Zoning and Land Use Approvals**. Nothing in this Agreement shall limit the authority of the City with respect to zoning and land use approvals. Subject to the foregoing, the staff of the City and the Authority shall cooperate with the Master Redeveloper and assist the Master Redeveloper in the processing and obtaining of zoning and land use approvals. The Master Redeveloper shall be responsible for applying for and obtaining all land use and zoning approvals necessary for the Minimum Improvements including, without limitation, the conditions contained in the General Plan Approval and the PUD Agreement. 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 3.5** **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 and Public Infrastructure Improvements. The Master Redeveloper shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits prior to construction.

**Section 3.6** **Demolition Timing**. The Parties acknowledge that as of the Effective Date all demolition required for construction of the Minimum Improvements within the Minimum Improvements Area has occurred.

**Section 3.7** **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
## TIF PROJECT AREA LAND ASSEMBLY

Under the Amended Redevelopment Agreement, the following have or will occur and, specifically, the ongoing rights and obligations provided in Section 4.12 below are as provided in this Agreement:

**Section 4.1 <u>Minimum Improvements Area Acquisition by the Master Redeveloper</u>**. With the exception of the DNR Parcel, the Master Redeveloper will acquire fee ownership of the Minimum Improvements Area and close on this property consistent with the Minimum Improvements Timeline described in Section 7.1 below. The Master Redeveloper shall provide all related title commitments if requested by the Authority.

**Section 4.2 <u>Transfer of New Superior Boulevard Parcel to the City</u>**. The Master Redeveloper agrees to transfer fee ownership of the New Superior Boulevard Parcel, depicted as Parcel 4 on the Land Transfer Map included as Exhibit D, to the City for the Lake Street and Superior Boulevard Realignment on the Land Transfer Closing Date, in consideration of the conveyances outlined in this Article IV and the other terms contained in this Agreement.

**Section 4.3 <u>Transfer of Old Superior Boulevard Parcel to the City</u>**. The Master Redeveloper agrees to transfer fee ownership of the Old Superior Boulevard Parcel, depicted as Parcels 1A and 1B on the Land Transfer Map, to the City on the Land Transfer Closing Date in consideration of the conveyances outlined in this Article IV and the other terms contained in this Agreement. The City agrees to grant the Master Redeveloper a Right of First Offer/Refusal for the FOFR Parcel, pursuant to the terms of Section 4.12 hereof.

**Section 4.4 <u>Transfer of East Lake Street Parcel to the Master Redeveloper; Reversion</u>**. The City will transfer fee ownership of the East Lake Street Parcel, depicted as Parcel 5 on the Land Transfer Map, to Master Redeveloper on the Land Transfer Closing Date in consideration of the conveyances outlined in this Article IV and on the condition that the Master Redeveloper continue to satisfy its obligations under this Agreement in compliance with the Minimum Improvements Timeline.

(a) If the Master Redeveloper fails to complete the grading required for the Minimum Improvements for the East Block, as specified in the grading permit for the East Block by June 30, 2011, then the City may require the East Lake Street Parcel to revert back to the City. The City may, but shall not be obligated to, cause the Master Redeveloper to reconvey the East Lake Street Parcel and all improvements thereon to the City by giving the Master Redeveloper notice of the City's exercise of its right of reverter pursuant to this Section. Such notice shall be subject to the notice and right to cure provisions in Article XIV. The right of reverter under this section for the East Lake Street Parcel shall terminate and no longer be of any force and effect upon the completion of grading permit conditions. The City agrees to execute a recordable release of its right of reverter, in a form reasonably acceptable to the Master Redeveloper, within thirty (30) days after completion of grading permit conditions. The City will agree to subordinate such reversion rights to one or more lenders if necessary in order to secure financing for land acquisition or construction of the Minimum Improvements, or both.

On the Reverter Closing Date, the Master Redeveloper will convey fee title to the East Lake Street Parcel and all improvements thereon to the City by the Reverter Deed, as follows:

(i) the City will pay the Master Redeveloper $1.00 as consideration for receiving the Reverter Deed;

(ii) the Master Redeveloper will convey the East Lake Street Parcel and any improvements thereon to the City free and clear of all encumbrances, subject only to easements benefiting the City or another public entity, and other encumbrances which the City or the Authority has previously approved in writing;

(iii) the Master Redeveloper shall have no further rights to the East Lake Street Parcel or any improvements thereon;

(iv) On or before the Reverter Closing Date, the Master Redeveloper will execute and deliver to the City a standard "seller's affidavit" stating under oath, *inter alia*, that the Master Redeveloper has paid for all work performed or supplies ordered or delivered with respect to the East Lake Street Parcel; and

(v) the Master Redeveloper shall deliver an updated title insurance commitment to the City evidencing the status of title to the East Lake Street Parcel.

**Section 4.5 DNR Parcel**. The City has purchased the DNR Parcel and will execute and deliver the DNR Easement or a reasonably equivalent license agreement to the Master Redeveloper at the Land Transfer Closing, subject to DNR approval of the DNR Easement. City staff will cooperate with the Master Redeveloper in a manner consistent with General Plan Approval to address any land use issues related to Master Redeveloper's use of the DNR Parcel for the Project.

**Section 4.6 Wetland Mitigation Parcel**. The Master Redeveloper has developed a wetland mitigation plan (the "Plan") utilizing a parcel owned by the City within a current wetland delineation area located north of I-394 and east of Broadway Avenue in the City, as shown on Exhibit E (the "Wetland Parcel"). The Plan has been approved by the Minnehaha Creek Watershed District and the City. At such time as the City issues a building permit for the East Block: (i) the City will make available the Wetland Parcel to the Master Redeveloper at the City's expense to mitigate wetland issues created by construction of the Linear Park and the East Block; and (ii) the Master Redeveloper shall pay the City One Hundred Twenty-Nine Thousand Five Hundred Ninety-One and No/100 Dollars ($129,591.00). All costs of implementing the Plan in excess of the $129,591.00 payment by the Master Redeveloper shall be paid by the City.

Notwithstanding any provisions in this Section 4.6 to the contrary, Master Redeveloper shall have the right to satisfy its wetland mitigation obligations with regard to the Project on a site other than the Wetland Parcel, pursuant to a plan approved by the City and the Minnehaha Creek Watershed District, at the sole expense of the Master Redeveloper.

**Section 4.7 Conveyance of Rights-of-Way by the Master Redeveloper**. On the Land Transfer Closing Date, the Master Redeveloper will provide a Deed to the City for all property rights it owns under the existing right-of-way for Superior Boulevard and Lake Street within the TIF Project Area in accordance with standard City requirements and at no cost, but shall not be obligated to acquire additional land beyond the TIF Project Area.

**Section 4.8 Contingencies to Land Transfer Closing**. The City's and the Master Redeveloper's obligations to close on the Land Transfers outlined in Sections 4.2 to 4.7 and 4.11 are conditioned upon the City and the Authority's approval of the TIF Plan and the PUD Agreement and further conditioned as follows:

(a) City Contingencies. The City's obligation to close on the Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The Master Redeveloper shall have performed all of the obligations required to be performed by the Master Redeveloper under the PUD Agreement and this Agreement as of the Land Transfer Closing Date and shall not be in Default under the PUD Agreement and this Agreement.

(ii) The Master Redeveloper shall have delivered to the City all of the Master Redeveloper Documents described in Section 4.9(c).

(iii) The Contract for Deed shall be unamended, in full force and effect, and without any defaults and the Master Redeveloper shall have the right to assign the Contract for Deed to the City free from any claims and encumbrances against its vendee's interest.

(iv) The City shall have determined that the Master Redeveloper has the title and legal authority to transfer unencumbered fee title to the New Superior Boulevard Parcel, the Old Superior Boulevard Parcel and the vendee interest in the Contract for Deed.

(b) Master Redeveloper Contingencies. The Master Redeveloper's obligation to close on the Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The City shall have performed all of the obligations required to be performed by the City under this Agreement as of the Land Transfer Closing Date and shall not be in Default under this Agreement.

(ii) The City shall have delivered to the Master Redeveloper all of the City Documents described in Section 4.9(b).

(iii) The Master Redeveloper shall have determined that the City has the title and legal authority to transfer unencumbered fee title to the East Lake Street Parcel to the Master Redeveloper

(iv) If the DNR has transferred title for the DNR Parcel to the City, then the Master Redeveloper shall have determined that the City has the title and legal authority to transfer the unencumbered license or easement rights to the DNR Parcel (as described in Section 4.9(a)(ii)) to the Master Redeveloper and the City shall have executed the DNR Easement.

(v) The City shall have executed the FOFR Agreement.

(vi) The City and all relevant governmental authorities shall have consented to any and all subdivisions and or plats that may be required in order to assemble and transfer the Old Superior Boulevard Parcel and the New Superior Boulevard Parcel.

(c) City and Master Redeveloper Options. In the event that any of the foregoing contingencies fail to be satisfied on or before the Land Transfer Closing Date, the Master Redeveloper or the City, as the case may be, may:

(i) terminate this Agreement in the case of the failure to satisfy a contingency under subsection (a) or (b) hereof; or

(ii) waive such failure and proceed to close; or

(iii) cure the unsatisfied contingency and charge related costs to the other party.

**Section 4.9 Land Transfer Closings.** All of the Land Transfers will close as outlined herein:

(a) Time and Place. With the exception of the DNR Parcel, all Land Transfers will close simultaneously at the Land Transfer Closing.

(i) *Land Transfer Closing*. Subject to the terms and conditions of this Agreement, the Land Transfer Closing shall be on the Land Transfer Closing Date at a location determined by the City. The Land Transfer Closing Date shall occur on a date determined by the City, but no earlier than January 15, 2010, provided that the closing may not occur until all contingencies in Section 4.8 and 4.9 are satisfied. Possession for all transferred parcels shall be delivered on the Land Transfer Closing Date.

(ii) *DNR Parcel Transfer Closing*. Pursuant to the DNR Parcel Act, the City cannot obtain the DNR Parcel from the DNR until the City completes its acquisition of the Gas Station parcel. The City agrees to transfer to the Master Redeveloper the interests contemplated in Section 4.5, including the DNR Easement, no later than the DNR Parcel Deadline.

(b) City Documents. At the Land Transfer Closing, the City shall execute, where appropriate, and deliver all of the following (collectively, the "City Documents"):

(i) A Deed properly executed on behalf of the City conveying the East Lake Street Parcel to the Master Redeveloper, together with any other documents reasonably required to be delivered by the City.

(ii) An affidavit of the City indicating on the Land Transfer Closing Date that there are no outstanding unsatisfied judgments, tax liens or bankruptcies against or involving the City or the East Lake Street Parcel; that there has been no skill, labor or material furnished to such property for which payment has not been made or for which mechanic's liens could be filed; and that, to the best of the City's knowledge and belief, there are no other unrecorded interests in such property.

(iii) Any abstracts of title in the City's possession to any portion of the East Lake Street Parcel (if abstract property), and any owner's duplicate certificate of title in the City's possession to any portion thereof (if Torrens). The City has no obligation to update any abstracts.

(iv) Any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the City and not previously delivered to the Master Redeveloper.

(v) An assignment and assumption of the Master Redeveloper's vendee's interest in the Contract for Deed.

(vi) The FOFR Agreement.

(vii) The DNR Easement (if the City has previously acquired title to the DNR Parcel).

(viii) Payment of Fifty Thousand and No/100 Dollars ($50,000.00), in partial consideration of the transfer of the Gas Station Parcel, in the physical condition described in Section 4.9(c)(x).

(c) Master Redeveloper Documents. At the Land Transfer Closing, the Master Redeveloper shall execute, where appropriate, and deliver all of the following (collectively, the "Master Redeveloper Documents"):

(i) A Deed properly executed on behalf of the Master Redeveloper conveying the New Superior Boulevard Parcel to the City, together with any other documents reasonably required to be delivered by the Master Redeveloper.

(ii) A Deed properly executed on behalf of the Master Redeveloper conveying the Old Superior Boulevard Parcel to the City, together with any other documents reasonably required to be delivered by the Master Redeveloper.

(iii) An affidavit of the Master Redeveloper indicating on the Land Transfer Closing Date that there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving the Master Redeveloper or the Old Superior Boulevard Parcel, the New Superior Boulevard Parcel, or the Gas Station Parcel; that there has been no skill, labor or material furnished to such property for which payment has not been made or for which mechanic's liens could be filed; and that, to the best of the Master Redeveloper's knowledge and belief, there are no other unrecorded interests in such property.

(iv) Any abstracts of title, in the Master Redeveloper's possession, to any portion of the Old Superior Boulevard Parcel, the New Superior Boulevard Parcel, and the Gas Station Parcel (if abstract property), and any owner's duplicate certificate of title in the Master Redeveloper's possession to any portion thereof (if Torrens). The Master Redeveloper has no obligation to update any abstracts.

(v) Any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the Master Redeveloper and not previously delivered to the City.

(vi) The FOFR Agreement.

(vii) An assignment and assumption of the vendee's interest in the Contract for Deed.

(viii) Estoppels, in a form reasonably requested by the City, from the Contract For Deed vendor and the holders of mortgages on the Gas Station Parcel.

(ix) As provided for in the Sale and Purchase Agreement, the mortgage maturity date extensions, Lender Agreement, Waivers, and Escrow Agreement, together with assignments of these documents by the Master Redeveloper to the City.

(x) Evidence reasonably satisfactory to the City that the lease for the Gas Station Parcel has been terminated and the tenant has vacated, and that the Gas Station Work has been completed.

(xi) An assignment or alternate arrangement for issuance to the City of an owner's policy of title insurance in the amount of the purchase price for the Gas Station Parcel and with coverage reasonably acceptable to the City.

(xii) Consents, approvals or conveyances by all third parties holding a title or lien interest in any of the properties transferred by the Master Redeveloper to the City, with respect to such transfers.

**Section 4.10 Land Transfer Indemnification**. Except as to the Gas Station Parcel and except as otherwise provided herein and in Section 6.11 below, the City and the Master Redeveloper, acting as both Grantor and Grantee for each Land Transfer outlined in this Article IV, agree to the following indemnification terms with regard to those Land Transfers. The

Grantor in each Land Transfer agrees that the Grantee will bear no responsibility or liability to the Grantor for any Hazardous Material identified on the transferred parcel after the transfer that are determined by a preponderance of evidence to have been Released prior to the transfer, and will indemnify and hold harmless the Grantee against all claims, costs, and liabilities arising out of the presence or Release of any such Hazardous Material to the extent the Grantee may have legal responsibility therefor due to its acquisition of the transferred parcel or is required under Environmental Law or by the MPCA to incur Remediation Costs with respect to such Hazardous Materials in order to construct the Public Infrastructure Improvements.

In the event that a Grantee is named as a defendant in any legal or administrative action alleging liability against the Grantee due to the presence of any Hazardous Material on or about the transferred parcel in violation of any Environmental Law, and such Hazardous Material was Released prior to the transfer date, the Grantor shall indemnify and hold the Grantee harmless from any judgments, damages and liabilities of any kind determined in such legal or administrative action to be due and owing by the Grantee.

If the Grantor fails to defend the Grantee, the Grantee shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter, for the account of and at the risk of the Grantor. In the event that the Grantor fails to defend, all attorneys' fees incurred by the Grantee related to such defense shall be paid for by the Grantor.

Notwithstanding anything to the contrary in this Redevelopment Agreement, however, the parties acknowledge and agree that within the cost budget for the Initial Superior Boulevard Improvements attached hereto as Attachment 1, a total of $194,940.00 (the "RAP Budget") has been allocated for the following costs (the "RAP Costs") related to the construction of the Initial Superior Boulevard Improvements:

(a) complete any additional environmental investigation required to delineate the scope and extent of any Hazardous Materials present in the soil, subsoil, or groundwater in the Public Infrastructure Improvements Area with respect to the Initial Superior Boulevard Improvements to the satisfaction of the MPCA;

(b) prepare and obtain MPCA approval of a development response action plan and construction contingency plan addressing the presence of Hazardous Materials in the Public Infrastructure Improvements Area with respect to the Initial Superior Boulevard Improvements;

(c) implement such plans in accordance with all MPCA requirements and applicable Environmental Laws, including requirements for reimbursement of Remediation Costs from the Minnesota Petrofund; and

(d) obtain reimbursement from the Minnesota Petrofund for all eligible Remediation Costs associated with the Initial Superior Boulevard Improvements.

The City and Master Redeveloper acknowledge and agree that any RAP Costs incurred with regard to the construction of the Initial Superior Boulevard Improvements in excess of the RAP Budget shall be the sole cost and responsibility of the City.

Notwithstanding anything to the contrary in this Redevelopment Agreement, Master Redeveloper and the City acknowledge and agree that they will cooperate with each other and use their best efforts to obtain any and all third-party reimbursements, grants and/or funds that may be available to pay for any Remediation Costs arising with respect to any Public Infrastructure Improvement.

**Section 4.11** **<u>Transfer of the Gas Station Parcel</u>**.

(a) The Master Redeveloper shall assign its interest in the Contract for Deed to the City at the Land Transfer Closing; provided, however, that if the DNR will not allow a transfer of the DNR Parcel to the City simultaneously with the assignment to the City of the vendee's interest in the Contract for Deed, then the Master Redeveloper shall assign its interest in the Contract for Deed ten (10) days prior to the Land Transfer Closing date.

(b) The Master Redeveloper shall remain obligated for timely payment to the City of all obligations of the vendee under the Contract for Deed, notwithstanding the assignment of the vendee's interest in the Contract for Deed by Master Redeveloper to the City, including but not limited to:

(i) The Master Redeveloper shall pay $950,000 for the escrow and down payment and all closing and other costs required of the "Buyer" under the Sale and Purchase Agreement.

(ii) The Master Redeveloper agrees to make interest only monthly payments to the City in the amounts and on the dates required under the Contract for Deed to be made to Wayzata Circle LLC for the interest accruing on the $1,400,000 balance of the purchase price, in full compliance with the terms of the Contract for Deed. The Master Redeveloper shall also pay to the City the remaining $1,400,000 balance plus all interest owed and payable to Wayzata Circle LLC pursuant to the Contract for Deed no later than November 17, 2010. If Wayzata Circle LLC defaults in its payment of the underlying mortgages, Master Redeveloper shall cure such defaults.

(iii)

(c) The City shall have the right, but not the obligation, to accelerate the Contract for Deed payments, to prepay some or all of the remaining balance owed thereunder and to obtain fee title to the Gas Station Parcel.

(d) If the City elects to prepay amounts due under the Contract for Deed, the Master Redeveloper remains obligated to make timely interest only payments and the final balloon payment in the amounts and on the dates required under the Contract for Deed and as summarized in Section 4.11(b), and such payments shall continue to be made directly to the City; provided that Master Redeveloper may also elect to prepay to the City the final balloon payment and such accrued interest paid by the City to Wayzata Circle LLC, in Master Redeveloper's discretion.

(e) The Master Redeveloper shall have the right, but not the obligation, to accelerate the Contract for Deed payments to the City and to prepay some or all of the remaining balance owed thereunder to the City prior to the City paying off the Contract for Deed. If the Master Redeveloper so elects to prepay the final balloon payment and any accrued interest to the City, the City shall promptly pay such prepayment to the Contract for Deed vendor.

(f) Prior to the Land Transfer Closing, the Master Redeveloper shall terminate the existing lease for the Gas Station Parcel and effect the removal of the tenant at the Master Redeveloper's expense.

**Section 4.12 Right of First Offer/Refusal**.

(a) Introduction. Subject to the transfer by the Master Redeveloper to the City of the Old Superior Boulevard Parcel and to the conveyance to the City of the Gas Station Parcel by Wayzata Circle LLC, the City shall grant to the Master Redeveloper a right of first offer and a right of first refusal for the purchase of the FOFR Parcel, in the form and substance set forth in the FOFR Agreement.

(b) Right of First Offer. At such time, if any, as the City determines that it intends to sell the FOFR Parcel, the City shall notify Master Redeveloper. Thereafter, for a period of sixty (60) days (the "Initial Negotiation Period"), the parties shall negotiate in good faith to attempt to determine mutually agreeable terms for the purchase and sale of the FOFR Parcel. No later than five (5) days before the expiration of the Initial Negotiation Period, the City shall deliver a final offer to the Master Redeveloper indicating a sale price for the FOFR Parcel that would be acceptable to the City (the "Final Offer"). In the absence of a mutually acceptable agreement for the sale and purchase of the FOFR Parcel, at the request of the City, the Master Redeveloper shall certify in writing as to the receipt and terms of the Final Offer, the expiration of the Initial Negotiation Period, and the absence of such an agreement.

(c) Right of First Refusal. Upon expiration of the Initial Negotiation Period, the City shall be free to sell, encumber or otherwise transfer the FOFR Parcel according to such terms and conditions as the City may elect, provided, however, that if the City receives an offer from a third party (the "Offeror") to purchase the FOFR Parcel (the "Offer") which the City determines that it may accept (whether such Offer is communicated in a non-binding letter of intent or a proposed purchase agreement) that is for a proposed purchase price equal to or less than ninety five percent (95%) of the purchase price stated in the Final Offer, then the City shall deliver a purchase agreement to the Master Redeveloper containing the same terms and conditions of such Offer. Master Redeveloper shall then have the right, but not the obligation, to purchase the FOFR Parcel according to the terms of the Offer as detailed in such purchase agreement. To exercise such right, Master Redeveloper shall execute and deliver to the City four (4) duplicate copies of such purchase agreement within fifteen (15) days of its receipt from the City (the "Election Period"). If Master Redeveloper does not elect to so purchase, the City shall have three hundred and sixty-five (365) days after the passing of the Election Period to close the sale of the FOFR Parcel pursuant to such Purchase Offer to the Offeror, an affiliate or subsidiary of Offeror, or to an entity in which the Offeror owns at least twenty percent (20%) equity interest (collectively, the "Offeror Purchaser"). If the City does not close on the sale to an Offeror Purchaser pursuant to the Offer within said three hundred and sixty-five (365) day time period, then all terms and provisions of this right of first refusal shall be reinstated in full force and effect with respect to the FOFR Parcel. Any transfer or attempted transfer of the FOFR Parcel in violation of this right of first refusal shall be void. If the Master Redeveloper declines to exercise its rights hereunder on or before the expiration of the Election Period, it shall execute a written acknowledgement of its decision to decline the Offer upon written request from the City, and a release of all rights in the FOFR Parcel in the event of a closing by the City to an Offeror Purchaser on an Offer declined by the Master Redeveloper.

(d) Expiration. The FOFR Agreement shall expire on the earlier of: (i) the sale of the FOFR Parcel to an Offeror Purchaser pursuant to an Offer that has been declined by Master Redeveloper within the three hundred and sixty-five (365) day time period discussed in Section 14.12(c) above; (ii) the sale of the FOFR Parcel to an Offeror Purchaser pursuant to an Offer for a purchase price that was greater than 95% of the price stated in the Final Offer; or (iii) five (5) years after commencement of the Initial Negotiation Period; or (iv) November 30, 2015. Following expiration of the FOFR Agreement, but prior to termination of this Agreement under Section 15.11, the City shall give notice to the Master Redeveloper if the City determines that it intends to sell the FOFR Parcel. The City shall deliver such notice to the Master Redeveloper at least 60 days before approving a purchase agreement to sell the FOFR Parcel to a third party.

(e) Replatting. At or subsequent to the Land Transfer Closing, the City reserves the right to replat the FOFR Parcel, which may change the boundary between the FOFR Parcel and the adjoining parcel to the west currently owned by Vodegel Properties, L.L.P., provided that any such platting may not materially alter the square footage, dimensions or boundary lines of the FOFR Parcel without first obtaining the prior written consent of Master Redeveloper, which consent shall not be unreasonably withheld.

(f) Transfer to the Authority. The City reserves the right to transfer the FOFR Parcel to the Authority, and such transfer shall not be subject to the Master Redeveloper's right of first offer or refusal as detailed above; provided, however, that the Authority shall thereafter be subject to Master Redeveloper's right of first offer and Master Redeveloper's right of first refusal as provided in subparagraphs (b) and (c) above.

**Section 4.13 Current Status of Land Assembly**. This Agreement cumulatively represents the Original Redevelopment Agreement and the First Amendment and Second Amendment. However, as of the Effective Date, the parties agree and understand that the following obligations of the parties under this Article IV (as identified by Section number below) have been satisfactorily completed: **[Note: City to confirm the following have occurred]**

Section 4.1. Master Redeveloper has acquired all land except the DNR Parcel.

Section 4.2. Master Redeveloper has transferred the New Superior Boulevard Parcel to the City.

Section 4.3. Master Redeveloper has transferred Old Superior Boulevard Parcel to the City, subject to the terms of Section 4.12 with regard to the FOFR Parcel.

Section 4.4 City has transferred the East Lake Street Parcel to Master Redeveloper, and the reverter in favor of the City (described in Section 4.4) has expired.

Section 4.5. The City has purchased the DNR Parcel and has executed and delivered the DNR Easement.

Section 4.7 The Master Redeveloper completed the conveyance to the City described in Section 4.6.

Sections 4.8 and 4.9. All contingencies and requirements to close on the Land Transfers described in Sections 4.8 and 4.9 were satisfied or waived by the parties to this Agreement.

Section 4.10. The parties acknowledge that there are no outstanding RAP Costs described in Section 4.10.

Section 4.11. The Master Redeveloper has acquired fee title to the Gas Station Parcel and otherwise satisfied all terms of Section 4.11.

## ARTICLE V
## CONSTRUCTION OF MINIMUM IMPROVEMENTS

**Section 5.1** **Minimum Improvements**. The project includes Minimum Improvements required to be constructed by the Master Redeveloper in both Phase I and Phase II, as depicted in the Minimum Improvements Site Plan. The Master Redeveloper agrees to construct the following Minimum Improvements:

(a) Phase I Minimum Improvements. Consistent with the General Plan Approval (as revised November 15, 2011), the anticipated Minimum Improvements for Phase I of the Project include construction of the Superior Block, North Block, West Block, the North Block Linear Park and portions of the East Block Linear Park improvements, defined as follows:

(i) "*Superior Block*" includes approximately (i) 32,000 gross square feet ("GSF") of retail space; (ii) 90 independent living senior housing units; and (iii) 270 parking spaces.

(ii) "*North Block*" includes approximately (i) 164 senior housing units, including memory care, skilled care, assisted living and independent living units; and (ii) the Senior Community Town Center.

(iii) "*North Block Linear Park*" is shown on the Minimum Improvements Site Plan.

(iv) “*West Block*” includes approximately (i) 41,000 GSF of retail; (ii) 99 residential units (comprised of 73 senior apartments and 26 non-age restricted apartments); and (iii) 380 parking spaces. The residential units will be no more than 75 percent age-restricted senior housing and the balance of not less than 25 percent conventional rental or for sale housing, to be distributed based on the City’s final design review of the West Block and shall satisfy the conditions stipulated in City Council Resolution No. 47-2011.

(v) “*East Block Linear Park*” includes parkland as shown on the Minimum Improvements Site Plan. The portion of the East Block Linear Park shown on Attachment F will be constructed as part of the Minimum Improvements for Phase I and the remainder of the East Block Linear Park Improvements will be constructed as part of the Minimum Improvements for Phase II.

(b) Phase II Minimum Improvements. Consistent with the General Plan Approval (as revised November 15, 2011), the anticipated Minimum Improvements Blocks for Phase II of the Project include construction of the Plaza Block and Park Plaza, defined as follows, and the portion of the East Block Linear Park not constructed in Phase I:

(i) “*East Block*” includes approximately (i) 29 – 31 for sale condominiums, (ii) 80 to 90-unit full service hotel and (iii) 15,000 sq/ft of retail space and related parking, consistent with the East Block Plans.

(ii) “*Plaza Block*” includes approximately (i) ~~26,000~~22,000 GSF of retail space; (ii) ~~63~~59 conventional for-sale residential units; and (iii) 230 parking spaces.

(iii) “*Park Plaza*” includes a plaza and park as shown on the Minimum Improvements Site Plan.

(c) Market Value of Minimum Improvements. It is anticipated that upon completion, the Minimum Improvements will have a Market Value of approximately $233 Million, with approximate Market Values for the components as follows:

- Senior housing units, $95.4 Million
- Retail, $38.7 Million
- Hotel, $~~16.97~~6.97 Million
- Condominiums, $84.55 Million
- Non-age restricted housing, $7.6 Million

The minimum values described above are intended to represent current expectations, and the parties do not anticipate entering into assessment agreements within the meaning of the TIF Act, unless requested by the Master Redeveloper.

(d) Minimum Improvements Timeline. The Master Redeveloper must achieve Commencement and Completion for each Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline set forth below in Section 7.1.

(e) Liquor Store. The City acknowledges the Master Redeveloper has met its obligations regarding the municipal liquor store.

The Master Redeveloper hereby covenants and agrees, on behalf of itself and its successors and assigns, that age-restricted senior housing within the Minimum Improvements will be contained only within the North Block, the Superior Block and the West Block in a manner consistent with the General Plan Approval (as revised November 15, 2011).

(f) East Lake Street Landscaping. Developer will incur $149,121 in Qualified Redevelopment Costs for landscaping at the end of East Lake Street consistent with the Circle A - Lake Street East roundabout landscape plan, dated February 6, 2015.

(g) East Buffer Landscaping. Master Redeveloper shall complete landscaping of the East Block Linear Park in accordance with the Final Plans for the East Block. Master Redeveloper shall complete the specified landscaping in the East Block Linear Park within the 2015 planting season, except for landscaping that could be damaged because of East Block construction, which will be completed by issuance of a certificate of completion for the East Block. Master Redeveloper shall provide the City with a lump sum payment of $25,000 to be held by the City in escrow for additional landscaping, restoration or mitigation of the East Block Linear Park at the City's discretion following the issuance of such certificate of completion for the East Block. The amounts of landscaping, restoration or mitigation required by the City shall be released from escrow at the City's discretion. Within three years following the issuance of a certificate of completion for the East Block, the City will have expended all necessary funds and any remaining funds will be released from escrow and returned to the Master Redeveloper.

**Section 5.2 Submission and Approval of Evidence of Financing**. Concurrent with submission to the City of building permit applications for each Block, the Master Redeveloper shall provide evidence of a Financing Commitment for the Block and Public Access Improvements for which permits are sought and provide a Go-Ahead Letter for that Block and Public Access Improvements. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority, and that the Financing Commitment is adequate to achieve Completion of the proposed Block and Public Access Improvements. The City attorney shall review the Financing Commitment to determine that the Financing Commitment will not impair the rights of the City or the Authority under this Agreement or the PUD Agreement. The City must complete its review of the Financing Commitment and render a decision regarding its adequacy to the Master Redeveloper within 21 days of receipt of the Financing Commitment, and if the City fails to render a decision to the Master Redeveloper within this time frame, the Finance Commitment will be deemed approved.

Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

**Section 5.3** **Relocation Indemnification**. The Master Redeveloper agrees that the City Parties will bear no responsibility or liability for any relocation obligations and will indemnify and hold harmless the City Parties against all claims, costs, and liabilities arising out of the Master Redeveloper's relocation efforts. In the event that the City Parties are named as a defendant in any legal or administrative action alleging liability against the City Parties due to relocation benefits, the Master Redeveloper shall indemnify and hold the City Parties harmless from any judgments, damages and liabilities of any kind determined in any legal or administrative action.

**Section 5.4** **Construction and Inspection of Minimum Improvements.** The Minimum Improvements will be constructed by the Master Redeveloper on the Minimum Improvements Area in substantial conformity with the Final Plans approved by the City and pursuant to this Agreement, the General Plan Approval and the PUD Agreement. Prior to delivery of the Certificate of Completion to the Master Redeveloper, upon the request of the Authority, the Master Redeveloper will provide the Authority and the City with reasonable access to the Minimum Improvements Area. If during any inspection, the Authority observes that the Minimum Improvements are not being constructed in accordance with the Final Plans, it shall immediately notify the Master Redeveloper; provided that failure to provide such notice shall not result in a waiver of any such deficiency. "Reasonable access" means at least two site inspections per month during regular business hours. During the construction, marketing and rental of the Minimum Improvements, the Master Redeveloper will deliver progress reports to the Authority upon request from the Authority.

**Section 5.5** **Effect of Delay.** The Master Redeveloper acknowledges that if construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, this could affect the amount of Available Tax Increment and thus the total amount which may be available to pay the TIF Note or TIF Bonds. The Master Redeveloper acknowledges that if the Completion of the construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, there will be no compensation to the Master Redeveloper or any other party for any reduction in the amount available to pay or refund the TIF Note or TIF Bonds.

**Section 5.6** **Additional Responsibilities of the Master Redeveloper**.

(a) The Master Redeveloper will ensure each Block of the Minimum Improvements is constructed, operated and maintained in substantial accordance with the terms of this Agreement, the General Plan Approval, the Redevelopment Plan, the Final Plans, the PUD Agreement, and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).

(b) The Master Redeveloper will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Authority agrees to use reasonable efforts to assist the Master Redeveloper in obtaining any permits, licenses and approvals necessary for the construction of the Minimum Improvements, at no cost to the Authority.

(c) The Master Redeveloper will not construct any building or other structures on, over, or within the boundary lines of any public utility easement unless such construction is provided for in such easement or has been approved by the utility involved.

(d) The Master Redeveloper will comply or assure compliance with all applicable Environmental Law as they relate to the Minimum Improvements Area and the Minimum Improvements.

**Section 5.7 Easement for the Use and Maintenance of Public Access Areas; Ensuring Other Public Access.** After Final Plans for the Minimum Improvements on any Block have been approved by the City, and prior to Commencement of construction on that Block of the Minimum Improvements, the Master Redeveloper shall deliver to the City an easement for the installation, use and maintenance of roadways, on-street public parking, curbs and gutters, sanitary sewer lines, all public and private utilities, water lines and related site work to be constructed (the "Public Access Areas Easement") on outlots to be shown in Final Plans and as specified in the PUD Agreement. Each Public Access Areas Easement shall be in the form attached as Exhibit G and must be recorded by the Master Redeveloper within seven (7) days after the Public Access Areas Easement is delivered to the City in accordance with this Section. The Master Redeveloper shall require that the documents identified in Section 3.2 ensure public access to areas within the Minimum Improvements Area which are not covered by the Public Access Area Easement, such as the sidewalks and will submit such relevant portions of such instruments to the City for review and approval as to public access. The Public Access Areas Easements must include a total of at least fifty (50) public parking spaces.

**Section 5.8 Easement for the Use and Maintenance of Park Improvements.** After Final Plans for the Minimum Improvements on any Block have been approved by the City, and prior to Commencement of construction of Park Improvements on that Block of the Minimum Improvements, the Master Redeveloper shall deliver to the City an easement for the installation, use and maintenance of the Park Improvements to be constructed (the "Park Improvements Easement") located on each Block. Each Park Improvements Easement shall be in the form attached as Exhibit H and must be recorded by the Master Redeveloper within seven (7) days after the Park Improvements Easement is delivered to the City in accordance with this Section. The reservation contained in Section 1.3(a)(vii) of the form attached as Exhibit H regarding special events or festivals shall only apply to the Park Improvements Easement including the Plaza Block. No such reservation will be included in the Park Improvements Easement including the Linear Park.

**Section 5.9 Certificate of Completion.** The Master Redeveloper shall notify the Authority when the final certificate of occupancy (exclusive of tenant build-outs) is received for each Block. Upon receipt of the final certificate of occupancy for a Block, the Authority will furnish to the Master Redeveloper a recordable Certificate of Completion in the form of Exhibit K, certifying the completion of the Minimum Improvements for that Block. The Certificate of Completion shall conclusively satisfy and terminate the agreements and covenants of the Master Redeveloper in this Agreement to construct Minimum Improvements on the Block covered by the Certificate of Completion, including without limitation terminating the restrictions related to encumbering the Minimum Improvements described in Article X.

## ARTICLE VI
## CONSTRUCTION AND FINANCING OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

**Section 6.1 Public Infrastructure Improvements.** The Project includes Public Infrastructure Improvements to be constructed in coordination with both Phase I and Phase II of the Minimum Improvements. The City and the Master Redeveloper agree to cooperate in constructing the following Public Infrastructure Improvements:

(a) Lake Street and Superior Boulevard Realignment. Consistent with the City's decision to realign the intersection of Superior Boulevard and Lake Street in order to achieve the optimal configuration for land use, pedestrian access and engineering, the Project includes reconstruction of Superior Boulevard and Lake Street and which includes the following components further described in Exhibit N to the First Amendment:

(i) Lake Street Improvements, which include Segment 4;

(ii) Initial Superior Boulevard Improvements, which include Segments 1, 2, and southerly one-third of Segment 3;

(iii) Remaining Superior Boulevard Improvements, which include Segment 6 and the northerly two-thirds of Segment 3; and

(iv) Sanitary Sewer Improvements.

The Lake Street and Superior Boulevard Realignment Area will be acquired by the City and the FOFR Parcel will be subject to the FOFR Agreement.

(b) Public Infrastructure Improvements Timeline. The Public Infrastructure Improvements must be constructed in accordance with the Public Infrastructure Improvements Timeline in Section 7.2.

**Section 6.2 Financing the Public Infrastructure Improvements.** The Master Redeveloper has agreed with the City on a method to finance the Public Infrastructure Improvements as further described in this Section 6.2 and in the balance of this Article. The Master Redeveloper is responsible for Public Infrastructure Improvements costs up to $9,839,500, however the transfer of and payment for the Gas Station Parcel by the Master Redeveloper pursuant to Section 4.11, payment of the City's wetland mitigation fees pursuant to Section 4.6 and payment of the City's Initial Superior Boulevard Improvements through the Initial Special Assessments pursuant to Section 6.14, offset a portion of these costs and, therefore, the Master Redeveloper's maximum remaining obligation is $3,691,746 (the "Maximum Redeveloper Amount"), subject to the terms and conditions of this Section.

(a) If the actual costs of the Initial Superior Boulevard Improvements are less than the amounts estimated by the City as of the date of this Agreement ("Initial Superior Boulevard Improvements Savings"), the Maximum Redeveloper Amount shall not be reduced accordingly (that is, such Initial Superior Boulevard Improvements Savings may be applied to any cost of any other Segment in calculating the Maximum Redeveloper

Amount), provided, however, if the actual costs of the Improvements as a whole are less than the Maximum Redeveloper Amount, such savings shall reduce the Maximum Redeveloper Amount.

(b) The Master Redeveloper, and not the City or Authority, shall be responsible to pay for any Public Infrastructure Improvement costs that are directly attributable to the negligence of the Master Redeveloper or its agents or contractors, or to default by Master Redeveloper of its obligations related to the Public Infrastructure Improvements under this Agreement.

(c) To manage Public Infrastructure Improvement costs, the Master Redeveloper may choose to construct the Public Infrastructure Improvements, pursuant to Section 6.3, or agree to be subject to Special Assessments, pursuant to Section 6.4, all subject to the further terms of Section 6.5.

**Section 6.3 Decision to Construct the Public Infrastructure Improvements.** The Master Redeveloper may opt to construct (i) the Lake Street Improvements or (ii) the Superior Boulevard Improvements, or (iii) both. The Master Redeveloper must notify the City no later than at the time of delivery of a Go-Ahead Letter for the first Block of each Phase if it elects to construct all or a portion of the Remaining Public Infrastructure Improvements. The City will construct the Remaining Public Infrastructure Improvements if the Master Redeveloper elects not to construct them. If the Master Redeveloper chooses to construct the Remaining Public Infrastructure Improvements, the Master Redeveloper does not need to comply with public bidding procedures required in Minnesota Statutes, Section 471.345.

**Section 6.4 Special Assessments**.

(a) Subject to the limitations set forth in Section 6.2 and the Cash Payment option in Section 6.15, the Master Redeveloper may opt to finance all or a portion of the Remaining Public Infrastructure Improvements which the City constructs by agreeing to be subject to Special Assessments consistent with Minnesota Statutes, Chapter 429, for actual costs up to the Maximum Redeveloper Amount, of the Public Infrastructure Improvement costs. The Master Redeveloper must notify the City of its option with regard to how the Public Infrastructure Improvements will be financed no later than the time of delivery of a Go-Ahead Letter for the first Block of each Phase.

(b) If the Master Redeveloper elects to be subject to Special Assessments, the Master Redeveloper must agree to petition for Special Assessments and waive protest rights for all land within the Minimum Improvements Area for Special Assessments. If the Public Infrastructure Improvements are financed with special assessments, then the City will construct the Public Infrastructure Improvements or relevant portion thereof. All terms of the Special Assessments will be consistent with normal City practices and policies.

**Section 6.5 Options for Construction of Public Infrastructure Improvements; Submission and Approval of Evidence of Financing**.

(a) **City Builds; Master Redeveloper Reimburses City.**

(i) If the Master Redeveloper chooses not to construct all or a portion of the Remaining Public Infrastructure Improvements and chooses not to be subject to Special Assessments or the Cash Payment option, then the Master Redeveloper must reimburse the City for actual Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount and meet the security requirements set forth below which are established pursuant to Section 801.33.10 of the PUD Ordinance.

(ii) Before the City will commencement of construction on any Segment of the Public Infrastructure Improvements, the Master Redeveloper must provide evidence satisfactory to the City of a Financing Commitment and provide a Go-Ahead Letter. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority and that the Financing Commitment is adequate to satisfy the Master Redeveloper's maximum financial responsibility for the Public Infrastructure Improvements. The City's attorney shall review the Financing Commitment and determine that it will not impair the rights of the City or the Authority under this Agreement. Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

(iii) If the City is not satisfied with the Financing Commitment, the City may require the Master Redeveloper to provide a letter of credit, or other security specified in Section 801.33.10 of the PUD Ordinance, acceptable to the City or, at the Master Redeveloper's option, the Master Redeveloper may elect to be subject to Special Assessments for up to 100 percent of its portion of the Public Infrastructure Improvement costs as specified in (b) below. If the Master Redeveloper so elects, the City will issue general obligation special assessment bonds consistent with normal City policies if the City, in its sole discretion, determines that the land value of the Minimum Improvements Area is at least equal to the principal value of the Special Assessments and carry costs during the lien enforcement period.

(b) **City Builds; Master Redeveloper Reimburses City via Special Assessments.**

(i) If the Master Redeveloper chooses not to construct the Remaining Public Infrastructure Improvements and not to use the Cash Payment option, then the Master Redeveloper chooses to be subject to Special Assessments and the Master Redeveloper agrees that the land in the Minimum Improvements Area will be subject to additional Special Assessments for actual Remaining Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount.

(ii) Before the City will commence of construction on any Segment of the Public Infrastructure Improvements, the City will issue Special Assessments pursuant to Section 6.4. The City will issue general obligation special assessment bonds consistent with normal City policies if the City determines that the land value in the Minimum Improvements Area is greater than the amount to be specially assessed against the Minimum Improvements Area plus the cost of issuing bonds. If the City determines, in its sole discretion, the value of the land does not exceed the amount to be specially assessed, then the City may require other security as specified in Section 801.33.10 of the PUD Ordinance.

(c) **Master Redeveloper Builds and Finances.**

(i) If the Master Redeveloper chooses to construct the Remaining Public Infrastructure Improvements, then the Master Redeveloper is responsible for financing Remaining Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount as specified in Section 6.2.

(ii) Before the City will permit commencement of construction on any Segment of the Remaining Public Infrastructure Improvements, the Master Redeveloper must provide evidence satisfactory to the City of a Financing Commitment and provide a Go-Ahead Letter. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority and that the Financing Commitment is adequate to satisfy the Master Redeveloper's maximum financial responsibility for the Remaining Public Infrastructure Improvements. The City's attorney shall review the Financing Commitment and determine that it will not impair the rights of the City or the Authority under this Agreement. Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

(iii) If the City is not satisfied with the Financing Commitment, the City may require the Master Redeveloper to provide a letter of credit or other security specified in Section 801.33.10 of the PUD Ordinance acceptable to the City.

**Section 6.6 Design and Plans for Public Infrastructure Improvements.** The Public Infrastructure Improvements Plans will be designed and specified by the City consistent with City standards for similar projects. Design fees incurred by the City, but paid by the Master Redeveloper must comport with the budget in Section 6.8 and the reimbursement procedure in Section 6.9.

**Section 6.7 Construction and Inspection of Public Infrastructure Improvements.** All Public Infrastructure Improvements shall be constructed in substantial conformity with the Public Infrastructure Improvements Plans and in substantial accordance with City engineering and performance requirements. Construction of the Public Infrastructure Improvements shall be supervised and administered by the City and the City Engineer. If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the City may retain a consulting engineer to review and inspect the Remaining Public Infrastructure Improvements to ensure compliance with the Public Infrastructure Improvements Plans and other relevant City requirements. Inspections must occur within the normal course of the construction schedule and the final inspection must occur within a reasonable time after Master Redeveloper completes a Segment to allow issuance of a Certificate of Completion. Inspection fees incurred by the City, but paid by the Master Redeveloper must comport with the budget in Section 6.8 and the reimbursement procedure in Section 6.9. If during any inspection, the City observes that the Remaining Public Infrastructure Improvements are not being constructed in accordance with the Public Infrastructure Improvements Plans, it shall immediately notify the Master Redeveloper; provided that failure to provide such notice shall not result in a waiver of any such deficiency.

**Section 6.8 Budget for Design and Inspection Fees.** The City and the Master Redeveloper will agree upon the scope of required services related to the design and inspection fees which are described in Sections 6.6 and 6.7, prior to Commencement for any Segment. The City may select the vendor to complete the required design and inspection services. The Master Redeveloper will fully reimburse the City for costs incurred for the required services up to $310,000 for design and inspection work that is completed by December 31, 2012 (the "Maximum Amount"). Beginning on January 1, 2013, and occurring on each January 1 until the design and inspection work is complete, the Maximum Amount will adjust upward or downward by an amount equal to the CPI for the December 31 immediately preceding. For purposes of this Section 6.8, "CPI" means the "Consumer Price Index, All Urban Consumers, U.S. City Average, All Items" as determined by the United States Bureau of Labor Statistics. If the CPI is discontinued, comparable statistics on the purchasing power of the consumer dollar as published at the time of said discontinuation by a responsible financial periodical of recognized authority selected by the City, shall be used for making the above computation.

**Section 6.9 Reimbursement for Design and Inspection Fees**. This Section provides the procedure by which the City will be reimbursed by the Master Redeveloper for design and inspection fees described in Sections 6.6 and 6.7. Upon Completion of a Segment, and within 30 days of receiving a request for reimbursement from the City, the Master Redeveloper must reimburse the City for design and inspection fees up to the budgeted amount determined under Section 6.8. Design and inspection fees reimbursed by the Master Redeveloper under this Section are Qualified Redevelopment Costs. No Certificate of Completion will be issued until the City is fully reimbursed for all design and inspection fees then owed.

**Section 6.10 Reimbursement for Construction Costs**.

(a) **Master Redeveloper Reimbursement to the City.** If the City incurs Public Infrastructure Improvements costs which are not financed through the use of Special Assessments in accordance with Section 6.5(a), the Master Redeveloper must reimburse the City as follows. Upon Completion of a Segment by the City, the Master Redeveloper must reimburse the City within 30 days of receiving a written request for reimbursement from the City, and no Certificate of Completion will be issued until the City is fully reimbursed for all construction costs then owed. All reimbursement requests must certify the costs for which reimbursement if sought and must be provided to the reimbursing party pursuant to Section 15.3.

(b) **City Reimbursement to the Master Redeveloper.** If the Master Redeveloper incurs Remaining Public Infrastructure Improvements costs in excess of the Maximum Redeveloper Amount, the City must reimburse the Master Redeveloper as follows. The

City must reimburse the Master Redeveloper for such excess costs within 30 days of receiving a written request for reimbursement from the Master Redeveloper. All reimbursement requests must certify the costs for which reimbursement if sought and must be provided to the reimbursing party pursuant to Section 15.3.

**Section 6.11** **Environmental Remediation.** If the Master Redeveloper opts to construct the Remaining Public Infrastructure Improvements, the Master Redeveloper will, with the assistance of a qualified and experienced environmental consultant:

(a) complete any additional environmental investigation required to delineate the scope and extent of any Hazardous Materials present in the soil, subsoil, or groundwater in the Public Infrastructure Improvements Area with respect to the Remaining Public Infrastructure Improvements, to the satisfaction of the MPCA;

(b) prepare and obtain MPCA approval of a development response action plan and construction contingency plan addressing the presence of Hazardous Materials in the Public Infrastructure Improvements Area with respect to the Remaining Public Infrastructure Improvements;

(c) implement such plans in accordance with all MPCA requirements and applicable Environmental Laws, including requirements for reimbursement of Remediation Costs from the Minnesota Petrofund; and

(d) obtain reimbursement from the Minnesota Petrofund for all eligible Remediation Costs associated with the Remaining Public Infrastructure Improvements.

Any costs incurred by the Master Redeveloper to comply with this Section 6.11 will be shared equally by the City and the Master Redeveloper. When such expenses are due, each party will be responsible for 50% of each invoice.

**Section 6.12** **Additional Responsibilities of the Master Redeveloper.** If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the following provisions apply:

(a) The Master Redeveloper will construct the Remaining Public Infrastructure Improvements in substantial accordance with the terms of this Agreement and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).

(b) The Master Redeveloper will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Remaining Public Infrastructure Improvements may be lawfully constructed. The City agrees to use reasonable efforts to assist the Master Redeveloper in obtaining any permits, licenses and approvals necessary for the construction of the Remaining Public Infrastructure Improvements in accordance with the Final Plans approved by the City.

(c) The Master Redeveloper will comply or assure compliance with all applicable Environmental Laws as they relate to the Public Infrastructure Improvements Area and the Public Infrastructure Improvements.

**Section 6.13 Certificate of Completion.** If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the Master Redeveloper shall notify the City when construction of any Segment thereof has been substantially completed according to the Public Infrastructure Improvement Plans. The City shall promptly inspect the Remaining Public Infrastructure Improvements in order to determine whether it has been constructed in substantial conformity with plans designed and specified by the City. If the City determines that the completed Remaining Public Infrastructure Improvements have not been constructed in substantial conformity with the Public Infrastructure Improvements Plans, the City shall deliver a written statement to the Master Redeveloper indicating in adequate detail the specific respects in which the Remaining Public Infrastructure Improvements have not been constructed in substantial conformity with Public Infrastructure Improvements Plans, and the Master Redeveloper shall promptly remedy such deficiencies. Subject to requirements herein requiring reimbursements and payments by the Master Redeveloper to the City, but otherwise promptly upon determining that a Segment of the Remaining Public Infrastructure Improvements has been constructed in substantial conformity with Public Infrastructure Improvements Plans, the City will furnish to the Master Redeveloper a Certificate of Completion in the form of Exhibit K certifying the completion of that Segment of the Remaining Public Infrastructure Improvements and further providing conclusive acknowledgement that the City has accepted such Remaining Public Infrastructure Improvements. Each Certificate of Completion issued for the Remaining Public Infrastructure Improvements shall conclusively satisfy and terminate the agreements and covenants of the Master Redeveloper in this Agreement to finance and construct the applicable Segment of the Remaining Public Infrastructure Improvements. Upon the request of the Master Redeveloper, the City will undertake the Certificate of Completion inspection for any completed separate part of a Segment of the Remaining Public Infrastructure Improvements so as to expedite the prompt issuance of the Certificate of Completion upon substantial completion of the relevant Segment.

**Section 6.14 Initial Superior Boulevard Improvements Assessment Agreement.** The Initial Superior Boulevard Improvements are described on Exhibit N, attached to the First Amendment as Attachment 1. Pursuant to Section 6.5(b), Master Redeveloper has chosen not to construct the Initial Superior Boulevard Improvements and has elected to be subject to Special Assessments for Initial Superior Boulevard Improvement Costs, as provided in this Section 6.14 (the "Initial Special Assessments"). The City currently estimates that Initial Superior Boulevard Improvements Costs will be $2,732,042.

(a) Authority for Special Assessments. Minnesota Statutes Chapter 429, the City's Charter Sections 52 and 53 and the City's Ordinance Chapter 206 authorize the City to assess the cost of the Initial Superior Boulevard Improvements against the Minimum Improvements Area.

(b) Security. The City, in its sole discretion, will issue general obligation special assessment bonds consistent with normal City policies if the City determines that the land value in the Minimum Improvements Area is greater than the amount of the Initial

Special Assessments plus the cost of issuing bonds. If the City determines, in its sole discretion, the value of the land does not exceed the amount to be specially assessed, then the City may require other security as specified in Section 801.33.10 of the PUD Ordinance.

(c) Consents and Waivers by Master Redeveloper. The Master Redeveloper hereby:

(i) petitions for and consents to an assessment by the City for actual Initial Superior Boulevard Improvement costs up to, but not exceeding, $2,732,042, plus the costs of issuing the bonds, against the Minimum Improvements Area;

(ii) represents and warrants that the Master Redeveloper has obtained the written consent and waivers of all fee title owners and mortgage holders of the Minimum Improvements Area (attached to the Redevelopment Agreement as Exhibit M, and as introduced in Attachment 5 to the First Amendment);

(iii) waives any and all procedural and substantive objections to the Initial Special Assessments, including but not limited to, notice and hearing requirements, claims that the Minimum Improvements Area, or any part thereof, does not receive a benefit from the Initial Superior Boulevard Improvements equal to or greater than the dollar amount of the Initial Special Assessments, claims that the assessment is not uniform up on the same classes of property and claims that the amount of the special assessments allocated to any lot or outlot exceeds the benefit to such lot or outlot; and

(iv) waives any additional appeal rights available under the City Charter, Minnesota statutes or the City Ordinances.

The consents and waivers set forth in this Section 6.14 run with the title to the Minimum Improvements Area and are binding on the Master Redeveloper and its successors and assigns.

(d) Pending Special Assessment Status. The City does not intend to levy the Initial Special Assessments until the City substantially completes the Initial Superior Boulevard Improvements. Until the City levies the Initial Special Assessments, the Initial Special Assessments constitute a pending special assessment.

(e) Allocation of Special Assessments at Final Plat. The Master Redeveloper will pay the installments of Initial Special Assessments certified for payment with annual real estate taxes when and as they become due in the amounts and on the dates shown in Attachment D to the Second Amendment and in accordance with the Agreement for Special Assessment Petition, Consent and Waiver, as amended by the First Amendment to Agreement for Special Assessment Petition, Consent and Waiver substantially shown in Attachment G, which shall be executed by the Master Redeveloper.

(f) Reservation of Right. If the cost of the Initial Superior Boulevard Improvements is greater than anticipated, the City reserves the right to levy an assessment in a greater amount or levy supplemental assessments pursuant to Minnesota Statutes, Section

429.071, provided that any such future assessments would recognize the benefit, pursuant to Minnesota Statutes, Section 429.051, of the Maximum Redeveloper Amount, and provided further that the Master Redeveloper has not hereby consented or agreed to such greater assessment amount or supplemental assessments, nor has Master Redeveloper waived any of its rights to challenge such greater assessment amount or such supplement assessments pursuant to Minnesota Statutes Chapter 429.

(g) Prepayment of Special Assessments. Under Minnesota Statutes Chapter 429, the City may cause the amounts assessed against the Minimum Improvements Area to be payable in a single installment or in equal installments. The City will make the Initial Special Assessments payable in annual installments extending over 20 years in consideration of the Master Redeveloper's agreement to pay the entire, uncertified balance of the Initial Special Assessments against each lot or outlot upon the sale or other transfer (including but not limited to the conveyance of equitable ownership pursuant to a contract for deed) of that lot or outlot; provided that the payment of the balance of such Initial Special Assessments shall not be accelerated in the event of (i) the transfer of fee title, via warranty deed, to Master Redeveloper of the Minimum Improvements Area in order to satisfy its current contract for deed with Superior Lake Street Properties, LLC; or (ii) the sale or other transfer to a person pursuant to the provisions of Sections 13.2 or Sections 13.3(a)(i), (ii) or (iv). All Initial Special Assessment payments will be made semi-annually and payable with property taxes. For the first three (3) years, payment of the Initial Special Assessments will be made based on a modified principal payment schedule as permitted under City Ordinance Section 206.14. Payments under the modified principal payment schedule will begin in 2011. The first year of payments will include two principal payments of $2500 plus interest from the date of the Initial Special Assessments are levied, and will be payable in 2011. The second year of payments will include two $2500 principal payments plus interest and will be payable in 2012. The third year of payments will include two $2500 principal payments plus interest and will be payable in 2013. The remaining payments will be due commencing in 2014, in generally equal semi-annual installments as reasonably determined by the City. If modified principal payment schedule for the Initial Special Assessments is challenged in any manner, the Master Redeveloper shall pay all costs reasonably incurred by the City related to that challenge. Subject to the exceptions identified above, if the Master Redeveloper conveys or otherwise transfers ownership of a lot or outlot subject to Initial Special Assessments before the City levies the Initial Special Assessments, the Master Redeveloper must escrow the portion of the pending Initial Special Assessments attributable to that lot or outlot when the City levies the special assessment, and the purchaser must, in the escrow agreement, acknowledge and agree that it is subject to and bound by the consents and waivers described in this Section 6.14. If the Master Redeveloper elects to escrow the funds with a title insurance company, the City must be a party to the escrow agreement.

**Section 6.15 City Builds, Master Redeveloper Pays Cash**. Notwithstanding anything in this Article VI to the contrary, Master Redeveloper shall have the right, in its sole and absolute discretion, to pay cash ("Cash Payment") to the City for all or a portion of the costs of the Public Infrastructure Improvements in lieu of financing such costs through Special Assessments. In the event Master Redeveloper elects the Cash Payment, Master Redeveloper shall provide written notice ("Cash Notice") to the City exercising such option within 10 days after Master Redeveloper receives written notice from the City specifying the amount of the winning bid for the relevant portion of the Public Infrastructure Improvements (the "Bid"). Along with the Cash Notice to the City, Master Redeveloper shall provide evidence satisfactory to the City the sufficiency and availability of such cash payment in an amount equal to the Bid. Within 10 days after delivery of the Cash Notice to the City, the Master Redeveloper and the City will enter into a disbursing agreement or similar agreement (the "Disbursing Agreement") providing how draws will be made to pay costs related to the Bid. The cash payment will be made by the Master Redeveloper in accordance with the Disbursing Agreement on the date the Disbursing Agreement is entered into.

In lieu of the Cash Payment, the City may in its sole and absolute discretion accept an alternative financing arrangement from the Master Redeveloper.

If Master Redeveloper elects to exercise its rights pursuant to this Section 6.15 or Section 6.4, in no event shall Master Redeveloper's obligations exceed the Maximum Redeveloper Amount. If Master Redeveloper does not, within the time period specified above, (1) provide the written notice exercising such option; or (b) enter into the Disbursing Agreement and make the Cash Payment, then the City may, without further notice to the Master Redeveloper, proceed with Special Assessments for the relevant portion of the Public Infrastructure Improvements.

## ARTICLE VII
## PROJECT DEFAULT DATES; DEADLINE ADJUSTMENTS

**Section 7.1 Commencement and Completion of Minimum Improvements**. Time frames for Commencement and Completion of the Minimum Improvements shall be on the following schedule, subject to Unavoidable Delay or amendment under Section 7.3. Failure to satisfy Commencement or Completion obligations of each Block of the Minimum Improvements by the Default Dates shall be an Event of Default under this Agreement. Subject to City land use approvals and coordination with the City regarding the scheduling of the construction of Public Infrastructure Improvements, the Master Redeveloper may construct the Blocks or Segments earlier than the dates in the Minimum Improvements Timeline. Following Commencement, construction of any given Block must continue in a sequence consistent with normal construction practices.

| Minimum Improvements Timeline | | |
|---|---|---|
| **Block** | **Commencement** | **Completion** |
| **Phase I** | | |
| North Block | June 30, 2012 | December 31, 2014 |
| Superior Block | June 30, 2012 | December 31, 2014 |
| North Linear Park and initial portion of East Linear Park shown on Attachment F | June 30, 2012 | September 30, 2015 |
| West Block | March 31, 2014 | September 30, 2015 |
| **Phase II** | | |

| | | |
|---|---|---|
| Plaza Block | March 31, 2015 | September 30, 2016 |
| Park Plaza | March 31, 2015 | September 30, 2016 |
| East Block | September 30, 2015 | December 31, 2017 |
| East Linear Park (remaining portion) | March 31, 2015 | September 30, 2016 |

For purposes of the East Block, references in Section 7.1 to "Commencement" means "East Block Commencement" and "Completion" means "East Block Completion."

Before December 31, 2014, the Master Redeveloper will provide interim landscape, stormwater and sidewalk improvements as shown on Attachment E to the Second Amendment ("Interim Conditions") and no final certificate of occupancy for the Minimum Improvements on the West Block shall be issued until such time as the Interim Conditions have been completed. These Interim Conditions will remain in place until Completion of the final Block of the Minimum Improvements. Until such Completion, the Master Redeveloper will provide such easements as reasonably requested by the City to ensure public use and availability to the Interim Conditions.

As of the Effective Date, the parties agree and understand that the Master Redeveloper has completed the following portions of the Minimum Improvements:

**Phase I**:

Superior Block

North Block

North Block Linear Park

West Block

**Phase II**:

Plaza Block

Park Plaza

See the table above for the construction deadlines for the uncompleted portions of the Minimum Improvements.

**Section 7.2** **<u>Commencement and Completion of Public Infrastructure Improvements</u>**. Time frames for Commencement and Completion of the Public Infrastructure Improvements shall be on the following schedule, subject to Unavoidable Delay or amendment of the Minimum Improvements Timeline in Section 7.1. Failure to satisfy Commencement or Completion obligations of each Segment of the Public Infrastructure Improvements by the Default Dates shall be an Event of Default under this Agreement. Subject to City land use approvals and coordination with the City regarding the extent of any design, inspection and construction obligations, the Master Redeveloper may construct the Blocks or Segments earlier than the dates in the Public Infrastructure Improvements Timeline. Following Commencement, construction of any given Segment must continue in a sequence consistent with normal construction practices. Regardless of whether the City or the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, each Segment of the Remaining Public Infrastructure Improvements must be commenced and completed in accordance with this Section 7.2.

The parties acknowledge that the following represents the status of the Public Infrastructure Improvements as of the Effective Date: **[Note: City to confirm the following has occurred]**

Lake Street Improvements, which include Segment 4: completed and not currently specially assessed

Initial Superior Boulevard Improvements, which include Segments 1, 2 and the southerly one-third of Segment 3: completed, and specially assessed.

Remaining Superior Boulevard Improvements, which include Segment 6 and the northerly two-thirds of Segment 3: not yet completed.

Sanitary Sewer Improvements: completed and specially assessed.

[The City will commence construction of the Remaining Superior Boulevard Improvements by the earlier of either Completion of the East Block of the Minimum Improvements, or [September 30, 2016]. The City may elect, in its sole discretion, to proceed with the Remaining Superior Boulevard Improvements, at any earlier time, but the Master Redeveloper's obligation to finance or pay for the Remaining Superior Boulevard Improvements occurs upon the earlier to occur of either the Completion of the East Block or [September 30, 2016].]

**Section 7.3 Timing and Sequence of Blocks and Segments.** The Master Redeveloper agrees to construct each Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline, however the City and the Authority agree that if the Master Redeveloper determines that the Default Dates in the Minimum Improvements Timeline become infeasible or otherwise problematic to ensure Completion of all the Minimum Improvements by September 30, 2016, the Master Redeveloper must seek written approval to amend the Minimum Improvements Timeline from the City and the Authority, which approval will not be unreasonably withheld. If the Minimum Improvements Timeline is altered, the Public Infrastructure Improvements Timeline is altered accordingly.

The Master Redeveloper may alter the sequence in which the Blocks are constructed by substituting one Block for another in the Minimum Improvements Timeline, provided that at least two Blocks are completed under Phase I timing and the remaining Blocks are completed under Phase II timing. Provided, further, that the North Linear Park must be constructed simultaneously with the construction of the North Block and the East Linear Park must be constructed simultaneously with the construction of the East Block. The Master Redeveloper must notify the City if it alters the sequence in the Minimum Improvements Timeline, but does not need to seek written approval for a change in the sequence of construction; however, if the City is constructing the Remaining Public Infrastructure Improvements, then the City will decide how the change in sequence contemplated under this paragraph alters the Remaining Public Infrastructure Improvements sequence.

**Section 7.4** **Public Access Security.** The Master Redeveloper will be constructing improvements to the Public Access Areas on Outlots A, C, D and E as shown on the Final Plat in the form and sequence specified by the City consistent with the corresponding approved plans. The Final Plan approval by the City for each Block shall designate the portion of the Public Access Improvements to be completed prior to issuance of a final certificate of completion for the particular Block and such final certificate of completion will not be issued until those Public Access Improvements are completed. In order to ensure construction of those Public Access Improvements, the Master Redeveloper will provide security, in the City's discretion, to the City, in the form of a commercially standard letter of credit or surety bond reasonably acceptable to the City, security in the amount of ~~[$____]~~$1,500,000 ("Public Access Security") by the earlier to occur of issuance of a building permit for the West Block or ~~[______ __, 2016],~~January 2, 2016, which amount represents the cost of the portion of the Public Access Improvements that will remain to be built following construction of the Superior Block and the North Block, and the associated Public Access Improvements approved the by City. If the Master Redeveloper fails to provide the Public Access Security, the City is under no obligation to deliver either a Certificate of Completion or a City certificate of occupancy for either the North Block or the Superior Block until the Public Access Security requirement is satisfied.

The Public Access Security amount shall be reduced on a monthly basis equal to the portion of the Public Access Improvements that have been constructed in the month immediately prior. The City may reasonably require evidence of construction and payment for such Public Access Improvements prior to making respective reductions in the Public Access Security Amount.

## ARTICLE VIII
## MASTER REDEVELOPER REIMBURSEMENT OBLIGATIONS; QUALIFIED REDEVELOPMENT COSTS; PERFORMANCE REVIEW

**Section 8.1** **Master Redeveloper Reimbursement Obligations**.

(a) Through the date of TIF District Certification, the Master Redeveloper is obligated to pay all out of pocket costs of the City and the Authority for the City Consultants in connection with the Project, and all third party consulting costs of the Master Redeveloper, 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 PUD Agreement, architectural and engineering studies for the Project, fiscal analysis, legal fees and all costs and expenses related thereto. The Master Redeveloper must pay such costs monthly upon presentation of invoices and other documentation of such costs, not more than thirty (30) days after the request for payment is delivered to the Master

Redeveloper. All such costs will be Qualified Redevelopment Costs pursuant to the TIF Pro Forma.

(b) After the date of TIF District Certification and prior to delivery of the Certificate of Completion for the final Block or Segment, the Master Redeveloper is obligated to pay all out of pocket costs of the City and the Authority for the ongoing legal and financial advisor responsibilities under this Agreement and for the City's review and inspection of the operations and performance of the Park Improvements and Public Access Area; **provided, however,** the City, the Authority, and the Master Redeveloper will be responsible for their respective legal and financial advisor expenses related to drafting and execution of this Agreement during 2015, from creation of the corresponding term sheet through execution of this Agreement.

(c) This Section expressly supersedes in its entirety the Preliminary Agreement, which served as a reimbursement agreement between the City, the Authority and the Master Redeveloper.

**Section 8.2 Qualified Redevelopment Costs**.

(a) The Master Redeveloper costs eligible for TIF Assistance include costs incurred for Qualified Redevelopment Activities and Public Infrastructure Improvements, which are Qualified Redevelopment Costs and include the following:

(i) demolition of any structures or improvements required for the Project;

(ii) Remediation Costs;

(iii) land acquisition and write down necessary to allow the TIF Project Area to be redeveloped as contemplated herein, including, without limitation, any costs necessary to acquire leasehold interests;

(iv) relocation payments, if any;

(v) Public Infrastructure Improvements paid by Master Redeveloper, including design and inspection fees paid pursuant to Section 6.9;

(vi) site improvements by the Master Redeveloper, including without limitation foundations, parking facilities, grading, excavation, on-site roads, utilities, sidewalks, curb and gutter, street lighting and similar improvements;

(vii) reimbursement of predevelopment costs of the City/Authority paid by the Master Redeveloper for planning, legal, consulting and other similar costs;

(viii) capitalized interest and financing costs for eligible activities; and

(ix) other eligible Qualified Redevelopment Costs authorized in the TIF Plan.

(b) All Qualified Redevelopment Activities and Public Infrastructure Improvements will be undertaken by the Master Redeveloper in the sequence required to allow timely Commencement and Completion of the applicable Minimum Improvements.

**Section 8.3 Master Redeveloper Use of Entry Deposits.** In its sole discretion, the Master Redeveloper may hold cash proceeds from the Entry Deposits in reserve to meet debt coverage obligations required for construction financing, use the Entry Deposits to reduce Project-related debt, or spend the Entry Deposits on capital improvements for the Project. Entry Deposit funds remaining after those obligations are satisfied will be used within the Project. Any such remaining funds will be placed in a discrete account solely for Project purposes and when drawn, the Master Redeveloper will send the Authority a written confirmation that the funds were used in accordance with this Section. Upon request from the Authority, the Master Redeveloper will provide evidence of the current status of Entry Deposits. If the Master Redeveloper uses proceeds from the Entry Deposits for non-Project related uses, then the maximum principal amount of TIF Assistance as shown in Section 9.2 will be reduced in an equal amount. The requirements in this Section will terminate and the City will issue a certificate of release when the Master Redeveloper has spent all Entry Deposits in accordance with this Section.

**Section 8.4 Performance Review and TIF Assistance Adjustment/Debt Coverage Ratio.** The parties acknowledge that as of the Effective Date of this Agreement, the Master Redeveloper submitted and the Authority reviewed a Master Redeveloper TIF Pro Forma, and no adjustment was made to the principal amount of the TIF Note (except as provided in this Agreement), all in accordance with the terms of Section 8.4 of the Original Redevelopment Agreement as amended by the First Amendment thereto.

~~(a) The Master Redeveloper acknowledges that the level of TIF Assistance is based on the Master Redeveloper's anticipated Qualified Redevelopment Costs, the costs of the Minimum Improvements, the value derived from sale of land and improvement entitlements, the terms of capital financing and the projected cash flow as reflected in the TIF Pro Forma. At a date agreed to between the Authority and the Master Redeveloper prior to issuance of the TIF Note (the "Calculation Date"), the Master Redeveloper will submit to the Authority a Project Completion TIF Pro Forma updated to reflect all actual Project costs, land and improvement entitlement sales and cash flow information. The Project Completion TIF Pro Forma will include a calculation of the debt coverage ratio determined in accordance with the formula contained in Exhibit I-1 for the most recent fiscal year of Master Redeveloper (ending September 30) before the Calculation Date, and an estimate of the debt coverage ratio for the following two fiscal years. If the mean debt coverage ratio for those three fiscal years exceeds 1.39, the Authority will calculate the net present value (as of the Calculation Date) of the difference between the Cash Flow After Debt Service (Actual) and the Cash Flow After Debt Service (Implied) as shown in Exhibit J, which difference represents the reduction in cash flow needed to bring the projected debt service coverage ratio to 1.39. Such difference is referred to as "Excess Amount." Notwithstanding the foregoing, the Authority reserves the right to adjust upward the debt service coverage ratio in its sole discretion upon the request of Master Redeveloper, should market or financial conditions warrant such an adjustment.~~

~~(b) If the Authority finds an Excess Amount under paragraph (a) of this Section, then the Excess Amount will be applied to reduce the outstanding principal amount of the TIF Note (as a deemed prepayment) in accordance with the terms of the TIF Note. Such event must be evidenced by delivery by the Authority to the Redeveloper of a written notice stating the Excess Amount. The Excess Amount will be deemed prepaid as of the Calculation Date.~~

## ARTICLE IX
## TIF AND OTHER PUBLIC ASSISTANCE

**Section 9.1 TIF District.**

(a) The Authority (on December 15, 2008), and the City (on December 16, 2008), approved a TIF Plan for the TIF District (designated as Redevelopment TIF District No. 5); and the Authority subsequently filed the TIF District Certification for the TIF District on June 11, 2009. On November 15, 2011, the City and the Authority decertified Redevelopment TIF District No. 5 and subsequently on November 15, 2015 l took all actions necessary to reapprove the TIF District (continued to be designated as Redevelopment TIF District No. 5), after all the hearings and notices required under Section 469.175 of the TIF Act.

(b) The TIF District has a maximum duration of 25 years after the date of first receipt of increment (i.e., 26 years of collection), as permitted under the TIF Act. In the TIF Plan, the Authority elected to defer the first year of receipt from the TIF District for four years after the year of approval, which year is 2015.

**Section 9.2 TIF Assistance; Limitations on Reimbursement of Qualified Redevelopment Costs.** Before the Authority will issue TIF Assistance to the Master Redeveloper, the Master Redeveloper must provide evidence satisfactory to the Authority that its Qualified Redevelopment Costs equal at least [$23,060,000]. In order to obtain the amount of Tax Increment contemplated by this Agreement, the Authority will issue, subject to satisfaction of the conditions in this Agreement, a "pay-as-you-go" TIF Notes to the Master Redeveloper with a maximum original principal amount of [$23,060,000], as shown in Attachment C plus interest on the unpaid principal balance thereof at a rate of 8.75% which shall be payable solely from Available Tax Increment from the Project as may be adjusted under Section 8.4.

The Authority does not represent or warrant the amounts of Available Tax Increment that will be available for payment of the TIF Notes or TIF Bonds. The Authority will not reimburse the Master Redeveloper for the Qualified Redevelopment Costs from Authority revenues, other than Available Tax Increment, nor guaranty the amount of money which the Master Redeveloper will receive as a reimbursement, such amount being payable solely from the Available Tax Increment in accordance with this Section.

**Section 9.3 Tax Increment Eligibility.** Upon any Event of Default under Articles IV, V, VI, and VII of this Agreement, which Default has not been cured, regarding any obligation under this Agreement related to a Block, Tax Increment from the defaulting Block, at the election of the Authority, may be withheld from payment on any TIF Assistance. Tax Increment from any

Block that is not in Default under this Agreement shall remain available for payment of any outstanding TIF Assistance.

**Section 9.4 Preconditions to Issuance of TIF Note**.

(a) The Authority will issue the TIF Note to the Master Redeveloper upon satisfaction of the following conditions:

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

(ii) the Authority has received a sworn construction cost statement showing the total construction costs of Phase I from the Master Redeveloper;

(iii) the Master Redeveloper has provided a Financing Commitment for the Phase I Minimum Improvements in an amount sufficient, together with other funds available, to finance the construction costs of the Phase I Minimum Improvements and make the Tax Increment payment to the Authority during the construction period;

(iv) the City has approved the Final Plans for the Minimum Improvements;

(v) the Master Redeveloper has issued the applicable Go-Ahead Letter;

(vi) if and to the extent required, the Master Redeveloper has executed minimum assessment agreements acceptable to the City and the County; and

(vii) if and to the extent required, the Master Redeveloper principals shall have executed all Master Redeveloper guaranties required by the Note Lender.

(b) Upon satisfaction of the conditions set forth in paragraph (a) above, the Authority will issue the TIF Note to the Master Redeveloper. The principal amount of the TIF Note will be the amounts set forth in Section 9.2.

**Section 9.5 Assignment of Note**. The Note shall not be assignable nor 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 the Notes; and

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

(i) that the 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 Note and the assignee or transferee is able to bear the economic consequences thereof;

(v) that in making its decision to acquire the 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 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 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 Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the 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 Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects;

(ix) that the Note will be characterized as "restricted securities" under the federal securities laws because the 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 Note exists and no market for the Note is intended to be developed.

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

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

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

**Section 9.6** **Duration of TIF Notes**. Consistent with the duration of the TIF District, the TIF Notes shall be payable over 26 years, commencing August 1 of the year of first receipt of increment, and continuing through February 1 of the year following the 26th year of tax increment collection from the TIF District. .

**Section 9.7** **TIF Bonds**. In lieu of TIF Notes, the Master Redeveloper may request the Authority to issue the TIF Bonds in a principal amount that yields net proceeds in the same amount as the original principal amount of TIF Notes described in Section 9.2. Subject to mutual agreement with the Authority regarding underwriting terms, including indemnification of the Authority for any securities law claims and investor representation letters as reasonably specified by the Authority, the Authority will sell TIF Bonds. The Authority will not unreasonably withhold its consent to the underwriting terms[; provided, however, the Authority may require reasonable assurances from the Master Redeveloper that during the term of any TIF Bonds no actions will be taken that would reduce the market value of the Minimum Improvements Area that would result in a reduction of adequate Tax Increment available to pay the TIF Bonds]. The restrictions contained in this Agreement applicable to TIF Notes, other than those in Section 9.5, shall also apply to TIF Bonds. Nothing in this Section 9.7 will be construed to require the Master Redeveloper to enter into an agreement with the Authority or the City that, in the opinion of bond counsel, would render interest on the TIF Bonds for any portion of the Minimum Improvements owned by the Master Redeveloper at the time of issuance subject to federal and state income tax.

**Section 9.8** **Conditions Precedent to Issuance of TIF Bonds; Inability to Issue or Sell Bonds**.

(a) Notwithstanding anything to the contrary contained herein, the Authority shall have no obligation to issue the TIF Bonds under Section 9.7 hereof unless all of the conditions specified in Section 9.4 are satisfied. The Master Redeveloper, by the execution and delivery of this Agreement, authorizes the Authority to issue the Bonds on its behalf to finance the Qualified Redevelopment Costs.

(b) Notwithstanding anything to the contrary contained in this Agreement, if (i) the City or the Authority is unable to obtain an unqualified approving bond counsel opinion of Dorsey & Whitney LLP or other bond counsel acceptable to the City or the Authority as to the validity of the Bonds or (ii) the City or the Authority does not receive a bid for the purchase of the Bonds, then the Authority shall not have any obligation to issue the Bonds.

**Section 9.9 City/Authority Grant Applications**. At the Master Redeveloper's discretion, the City and the Authority will cooperate in efforts to obtain available public grant funding to undertake the Project, including but not limited to the Livable Communities Project Assistance program grants from the Metropolitan Council, Tax Base Revitalization Account grants from the Metropolitan Council for pollution remediation, Minnehaha Creek Watershed District grants, Department of Employment and Economic Development funding for pollution remediation, and any other funding from metropolitan, state, county and federal sources identified by the City, the Authority or the Master Redeveloper as reasonably available. To the extent additional grant funds not reflected in the TIF Pro Forma are obtained, the amount shall first fund any unanticipated costs or revenue shortfalls of the Project then to reduce the principal amount of the TIF Note.

**Section 9.10 Conduit Revenue Bonds**. The City or the Authority will issue revenue bonds to finance one or more qualified portions of the Minimum Improvements or participate in a joint powers agreement under terms reasonably acceptable to the City or the Authority. The City and the Authority will not charge administrative fees in connection with such conduit bonds, other than reimbursement of City or Authority out-of-pocket costs.

## ARTICLE X
## ENCUMBRANCE OF MINIMUM IMPROVEMENTS AREA

**Section 10.1 Encumbrance of the Minimum Improvements Area**.

(a) Until the Completion Date of all Blocks of the Minimum Improvements, neither the Master Redeveloper, nor any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), will engage in any financing or any other transaction creating any mortgage (a "Mortgage") or other encumbrance or lien upon the Minimum Improvements 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 Minimum Improvements Area except for the purpose of obtaining funds only to the extent necessary for 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 portion of the Minimum Improvements, upon delivery of the Certificate of Completion for such portion of the Minimum Improvements. The Master 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 10.2 Copy of Notice of Default to Mortgagee**. If the Authority delivers any notice or demand to the Master Redeveloper, or any successor in interest to the Master Redeveloper, with respect to any Event of 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 the Master Redeveloper, any successor in interest to the Master 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 10.3 Mortgagee's Option to Cure Events of Default**. Upon the occurrence of an Event of Default, the mortgagee under any Mortgage will have the right at its option, to cure or remedy such Event of Default within the cure periods set forth herein. An individual or entity who acquires title to all or a portion of the Minimum Improvements through the foreclosure of a mortgage or deed in lieu of foreclosure on such portion of the Minimum Improvements Area remains subject to each of the restrictions set forth in this Agreement and remains subject to all of the obligations of the Master Redeveloper, or any successor in interest to the Master Redeveloper, under the terms of this Agreement, but the purchaser at a foreclosure sale or grantee under a deed in lieu of foreclosure shall have no personal liability for a breach of such obligations under this Agreement so long as:

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

(b) The party who acquired title through foreclosure or deed in lieu of foreclosure does not undertake or permit any other party to undertake any Minimum Improvements on the portion of the Minimum Improvements Area it owns;

(c) 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 obtaining a deed in lieu of foreclosure) to hold title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, subject to, but without personal liability for the obligations under this Agreement, until it can sell the portion it holds to a third party who will assume the obligations of the Master 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 Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, the foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) or other purchaser at a foreclosure sale desires to sell portions of the Minimum Improvements Area for construction of the Minimum Improvements, the purchaser at the foreclosure sale (or mortgagee obtaining a deed in lieu of foreclosure) must assume and perform each of the obligations of the Master Redeveloper, or the applicable successor to the interest of the Master Redeveloper, under this Agreement. 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 the Master 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, including evaluation of such person as a successor to the rights of the Master Redeveloper hereunder and taking appropriate actions to allow the benefits and rights hereunder to be realized by such person, should the Authority approve such person as a successor in accordance with this Agreement.

**Section 10.4 Defaults Under Mortgage**. The Master Redeveloper, or its successor or assign, will use its best efforts to obtain an agreement from any mortgagee under a Mortgage that in the event the Master Redeveloper is in default under any Mortgage, the mortgagee will use its best efforts, within ten (10) 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. The Master Redeveloper, or its successor or assign, will use its best 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.

**Section 10.5 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 Minimum Improvements Area, except for Special Assessments, upon the occurrence of an Event of Default by the Master Redeveloper.

**Section 10.6 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 XI
## INSURANCE AND CONDEMNATION

**Section 11.1 Insurance**.

(a) The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary 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 the Master Redeveloper must obtain and continuously maintain, provided that the Master 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 one hundred percent

(100%) of the insurable value of the applicable Minimum Improvements Block 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 in responsible insurance companies selected by the Master 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 thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Master 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, the Master 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) The Master Redeveloper, its successor or assign, agrees to notify the Authority promptly in the case of damage exceeding $250,000 in amount to, or destruction of the Minimum Improvements or any portion or Block thereof resulting from fire or other casualty.

**Section 11.2 Condemnation**. In the event that title to or possession of the Minimum Improvements Area or the Minimum Improvements, or both, or any material part thereof, is threatened with a taking through the exercise of the power of eminent domain, the Master Redeveloper, or its successor or assign, will notify the Authority of the threatened taking with reasonable promptness. The Master Redeveloper, or its successor or assign, will cooperate with the Authority if the Authority elects to assert any interests the Authority may have in the Minimum Improvements Area and the Minimum Improvements in any condemnation action undertaken against the Minimum Improvements Area and the Minimum Improvements.

## ARTICLE XII
## MASTER REDEVELOPER COVENANTS

**Section 12.1 Maintenance and Operation of the Minimum Improvements**. The Master Redeveloper, and its successors or assigns (which specifically includes any Secondary Redeveloper), 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 all federal, State and local laws, regulations, rulings and ordinances applicable thereto. The Master 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, the Master 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 the Master Redeveloper, its successors or assigns.

**Section 12.2** **Business Subsidy Agreement**. The City and the Authority have determined that the financial assistance contemplated by this Agreement is not a "business subsidy" with the meaning of the Minnesota Business Subsidy Act, Minnesota Statutes, Sections 116J.993 through 116J.995 based on the exception contained in Minnesota Statutes, Section 116J.993, subdivision 3(17).

**Section 12.3** **Parking and Mobility District.** The Master Redeveloper agrees to support and participate in the Parking and Mobility District. If the City establishes the Parking and Mobility District as a special service district under Minnesota Statutes § 428A.01 to 428A.101, Master Redeveloper shall file a petition with the City in a form acceptable to the City and hereby consents to the establishment of the Parking and Mobility District by the City. Master Redeveloper waives all rights to objection, appeal and veto granted under law or in equity including but not limited to the rights granted under Chapter 428A, including specifically, but not limited to, the right to object under §428A.02, Subd. 4 (1), the right to appeal establishment of the Parking and Mobility District under §428A.02, Subd. 5 and the right to veto under §428A.09, Subd 1, or the right to object to the ordinance establishing the Parking and Mobility District under §428A.09, Subd. 2. Master Redeveloper waives all rights to object to the validity of the Parking and Mobility District, the inclusion of the Minimum Improvements Area within the Parking and Mobility District, or the procedures used by the City in establishing the Parking and Mobility District. Master Redeveloper hereby releases the City, its officers, agents and employees from any and all liability related to or arising out of the establishment of the Parking and Mobility District. Master Redeveloper shall not sell, assign or otherwise transfer all or any portion of the Minimum Improvements Area to a third party unless such third party agrees in writing to be bound by the terms of this Section. If the City determines not to create the Parking and Mobility District, the Master Redeveloper and the City shall negotiate in good faith on alternative financing options regarding parking and mobility needs within the City. Nothing in this Section 12.3 will be construed as a waiver of Master Redeveloper's rights it has or may have under Minnesota Statutes, Sections 428A.01 to 428A.101 with respect to the amount of any annual fee imposed within a Parking and Mobility District.

**Section 12.4 Parking Illumination and Wayfinding**. Prior to the issuance of a certificate of occupancy for any retail or commercial space, following the date of execution of this Agreement, within the Superior Block, the Plaza Block, the West Block, and the East Block, the Master Redevelop will install universal standard blue "P" parking signage on all Master Redeveloper-owned [or Secondary Redeveloper-owned] parking which supports retail or commercial uses within the Superior Block, the Plaza Block, the West Block, and the East Block. Master Redeveloper will install additional wayfinding signage as reasonably required by the City, including but not limited to, real-time signage, as appropriate to direct the public to parking within the Minimum Improvements Area.

**Section 12.5 Construction Work Force Parking**. As of the Effective Date and until issuance of a final certificate of occupancy (inclusive of tenant buildouts) and receipt of a Certificate of Completion for the final Block, the Master Redeveloper shall provide to the City a work force parking and project access plan acceptable to the City. The City is not obligated to issue building permits, certificates of occupancy or Certificates of Completion if such plan, in a form acceptable to the City, is not provided by the Master Redeveloper to the City. Such plan will: (i) be regularly monitored for compliance and updated as required by the City; (ii) minimize the impact of construction parking within the Minimum Improvements Area and surrounding portions of the City; and (iii) include at a minimum (a) monthly estimated work force needed within the Minimum Improvements Area, (b) evidence of sufficient off-site parking locations to accommodate project personnel, (c) copies of notices to contractor and subcontractor personnel outlining the requirements of the plan, (d) consequences for failing to abide with protocols required under the plan, and (e) provide for mandatory fines payable by the Master Redeveloper to the City at the rate of $500 per day for each failure to comply for each of the first five (5) days and at the rate of $1,000 per day for each subsequent failures to comply.

**Section 12.6 Access During Construction of City Ramp**. The City may elect to construct one or more structured parking facilities within the Parking and Mobility District. During such construction and after issuance of a certificate of occupancy for the West Block, Master Redeveloper will allow the City to direct parkers who would otherwise utilize City-controlled parking facilities to parking within the Minimum Improvements Area so long as such parking does not have a materially negative impact on the parking required for the existing retail and commercial uses within the Minimum Improvements Area. During the construction period, the City and the Master Redeveloper will work in good faith to create a permit system which includes enforcement procedures.

## ARTICLE XIII
## TRANSFER LIMITATIONS AND INDEMNIFICATION

**Section 13.1 Representation as to the Minimum Improvements**. The Master Redeveloper represents to the City and the Authority that its purchase of the Minimum Improvements Area, and its other undertakings under this Agreement, are for the purpose of developing the Minimum Improvements and not for the purpose of speculation in land holding. The Master Redeveloper acknowledges that, in view of the importance of the Minimum Improvements to the general welfare of the City and the Authority, and the substantial financing and other public aids that have been made available by the City and the Authority for the purpose of making such Minimum Improvements possible, the qualifications and identity of the Master

Redeveloper are of particular concern to the Authority. The Master Redeveloper further acknowledges that the City and the Authority are willing to enter into this Agreement with the Master Redeveloper because of the qualifications and identity of the Master Redeveloper.

**Section 13.2 Secondary Redevelopers**. The Master Redeveloper may designate a separate entity (each a "Secondary Redeveloper") to undertake any Block of the Minimum Improvements. If the Master Redeveloper seeks to be relieved of all its obligations related to the subject Block, the Master Redeveloper shall obtain the consent of the City and the Authority to the designation of any Secondary Redeveloper prior to the earlier of (i) closing on the transfer of any interest in the relevant Block to the Secondary Redeveloper; or (ii) Commencement of construction of the relevant Block. Consent from the City and the Authority will not be unreasonably withheld. If the Master Redeveloper remains obligated related to the subject Block, no prior Authority consent is required for any assignment to a Secondary Redeveloper.

**Section 13.3 Limitations on Transfer**. Until the issuance of a Certificate of Completion for a Block:

(a) The Master Redeveloper will not sell, assign, convey, lease or transfer in any other mode or manner any of its right, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements for the relevant Block, 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) assignment of its Minimum Improvements rights to any entity controlled by Presbyterian Homes and Services;

(ii) granting of a mortgage or other security interests in the Minimum Improvements as provided in Article X hereof;

(iii) The sale of units within a common interest community; and

(iv) leasing the Minimum Improvements in the normal course of business in a manner consistent with the General Plan Approval, Final Plans, and the PUD Agreement.

(b) As a condition to approval by the City and the Authority of the transfer of any Block to a Secondary Redeveloper (where required), the Master Redeveloper shall satisfy the following conditions, if required by the Authority. The Authority shall be entitled to require, as conditions to approval of any sale, assignment, conveyance, use or transfer of any rights, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements that:

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

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the Authority have expressly assumed all of the obligations of the Master Redeveloper (or such part thereof as is appropriate for one particular Minimum Improvements Block) under this Agreement and agree to be subject to all the conditions and restrictions to which the Master Redeveloper is subject;

(iii) The Master Redeveloper must submit all instruments and other legal documents involved in effecting transfer to the Authority for review and written approval, which shall not be unreasonably withheld;

(iv) The Master Redeveloper and its transferee must comply with such other conditions as the Authority may find desirable in order to achieve and safeguard the purposes of the HRA and TIF Acts, this Agreement, and the Project; and

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

In the absence of specific written agreement by the City and the Authority to the contrary, no such transfer or approval by the City and the Authority thereof shall be deemed to relieve the Master Redeveloper or any other party bound in any way by this Agreement or otherwise with respect to its obligations under this Agreement.

**Section 13.4 Indemnification**.

(a) The Master 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 and Public Infrastructure Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master 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 the Master 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 and Public Infrastructure Improvements constructed by the Master Redeveloper; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Authority in this Agreement, and further provided that Redeveloper's obligation regarding any claim regarding the TIF District brought under Minnesota Statutes, Section 469.1771, is limited to that described in Section 6.2(b) hereof.

**Section 13.5** **Limitation**. All covenants, stipulations, promises, agreements and obligations of the City, the Authority or the Master Redeveloper contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, the Authority and the Master Redeveloper, and not of any governing body member, officer, agent, servant or employee of the City, the Authority or the Master Redeveloper in the individual capacity thereof.

## ARTICLE XIV
## EVENTS OF DEFAULT AND REMEDIES

**Section 14.1** **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 14.2 and 14.3.

**Section 14.2** **Master Redeveloper Events of Default**. The following shall be Events of Default for the Master Redeveloper:

(a) the Master Redeveloper fails to close on the acquisition of the Minimum Improvements Area in accordance with the Minimum Improvements Timeline;

(b) subject to Unavoidable Delays and Cure Rights, the Master Redeveloper fails to achieve Commencement and Completion of any Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline, and such failure is not cured within 30 days after written notice to do so;

(c) subject to Unavoidable Delays and Cure Rights, the Master Redeveloper shall Default in or violate its obligations with respect to the construction of any Block of the Minimum Improvements (including the nature and the date for the completion thereof), or shall abandon or substantially suspend construction work, and any such Default, violation, abandonment or suspension is not cured, ended or remedied within 30 days after written demand by the Authority so to do;

(d) there is, in violation of this Agreement, any conveyance, encumbrance or other transfer of the Minimum Improvements Area or any part thereof, and such violation is not cured within 30 days after written demand by the Authority to the Master Redeveloper;

(e) subject to Cure Rights, failure by the Master 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 thirty (30) days after written notice of such failure from any party hereto;

(f) prior to the delivery of a Certificate of Completion with respect to any Block of the Minimum Improvements owned by the Master Redeveloper, the Master 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 Master

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 ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Master Redeveloper, or of the Minimum Improvements, or part thereof, shall be appointed in any proceeding brought against Master Redeveloper, and shall not be discharged within ninety (90) days after such appointed, or if Master Redeveloper shall consent to or acquiesce in such appointment.

**Section 14.3 City and Authority Events of Default**. Subject to 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 thirty (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 14.4 Cure Rights**. Notwithstanding the foregoing, if the Default reasonably requires more than thirty (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 180 days.

**Section 14.5 Authority Remedies on Master Redeveloper Events of Default**. Whenever any Event of Default occurs by the Master Redeveloper, the Authority may take any one or more of the following actions:

(a) terminate this Agreement, but not the TIF Note, as regards that Block of the Project, except as otherwise provided herein;

(b) exercise its rights under Section 9.3 of this Agreement regarding the Master Redeveloper's TIF eligibility;

(c) suspend performance under this Agreement until it receives assurances from the Master Redeveloper, deemed adequate by the Authority, that the Master Redeveloper will cure the Default and continue its performance under this Agreement, withhold the Certificate of Completion for any Block 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 the Master 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. Any action for specific performance must be commenced within six months of the Event of Default.

**Section 14.6 City Remedies on Master Redeveloper Events of Default**. Whenever any Event of Default occurs by the Master 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 the Master Redeveloper under this Agreement, including an action for specific performance. Any action for specific performance must be commenced within six months of the Event of Default.

**Section 14.7 Master Redeveloper Remedies on City or Authority Events of Default**. Whenever any Event of Default occurs by the City or the Authority, the Master 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. Any action for specific performance must be commenced within six months of the Event of Default.

**Section 14.8 No Remedy Exclusive**. No remedy herein conferred upon or reserved to the City, the Authority or the Master 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 14.9 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 14.10 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.

## ARTICLE XV
## ADDITIONAL PROVISIONS

**Section 15.1 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 Project Area 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 Master Redeveloper or successor or on any obligations under the terms of this Agreement.

**Section 15.2** **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 15.3** **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 the Master Redeveloper, is addressed to or delivered personally to the Master Redeveloper at:

Chief Financial Officer
Presbyterian Homes
2845 Hamline Avenue, North
Roseville, MN 55113

with a copy to:

Office of Corporate Counsel
Presbyterian Homes
2845 Hamline Avenue, North
Roseville, MN 55113

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

Wayzata HRA
Attention: Executive Director
600 Rice Street
Wayzata, MN 55391-1799

with a copy to:

Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

and

Robert Meller
Best & Flanagan
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

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

City of Wayzata
Attention: City Manager
600 Rice Street
Wayzata, MN 55391-1799

with a copy to:

Jay R. Lindgren
Dorsey & Whitney LLP

50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

and Robert Meller
Best & Flanagan
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

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

**Section 15.5 Law Governing**. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

**Section 15.6 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 15.7 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 15.8 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 the Master Redeveloper shall be effective upon action by a duly authorized officer of its general partner.

**Section 15.9 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 15.10 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 15.11 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 Note or TIF Bonds, or (c) date of termination of the TIF District.

**Section 15.12 Provisions Surviving Rescission or Expiration**. Sections 4.10, 5.3, and 13.4 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 15.13 Memorandum of Agreement**. Neither party shall cause this Agreement to be recorded or filed in the real estate records of Hennepin County. However, either party may, at its option, cause a Memorandum of Agreement to be so recorded or filed in the form attached hereto as Exhibit M, and hereby incorporated herein by reference. At the time of execution of this Agreement the parties hereto will also execute and acknowledge the Memorandum of Agreement. The parties hereto acknowledge that as of the date hereof, the Master Redeveloper is not the fee owner of the Minimum Improvements Area. At such time as the Master Redeveloper owns fee title to all or any portion of the Minimum Improvements Area, either party may, at its option, cause the Memorandum to be recorded against the Minimum Improvements Area and shall record such Memorandum of Agreement in the office of the County Recorder and/or Registrar of Titles in and for Hennepin County, Minnesota, as the case may be.

**Section 15.14 Conflicts Between this Agreement and the PUD Agreement**. In the event of any inconsistency or conflict between the requirements of this Agreement and the PUD Agreement, the provisions of the PUD Agreement shall control; provided, however, that for the purposes of Section 9.3 of this Agreement regarding Defaults 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.

**IN WITNESS WHEREOF**, the City, the Authority and the Master 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 WAYZATA, MINNESOTA**

By______________________________
Its Mayor

By______________________________
Its City Manager

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ____ day of ______________, 200_, by ____________ and Heidi Nelson the Mayor and City Manager respectively, of the City of Wayzata, Minnesota, on behalf of the City of Wayzata.

______________________________
Notary Public



~~4849-1338-1925False1False~~

**HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA**

By ____________________________________
Its Chair

By ____________________________________
Its Executive Director

STATE OF MINNESOTA )
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200_, by Thomas Shaver and Heidi Nelson the Chair and Executive Director respectively, of the Housing and Redevelopment Authority of the City of Wayzata, Minnesota, on behalf of said Authority.

____________________________________
Notary Public

WAYZATA BAY REDEVELOPMENT COMPANY, LLC
**a Minnesota limited liability company**

By ___________________________________
Its ___________________________________

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ______, 2008, by ________, the _________________ of Wayzata Bay Redevelopment Company, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

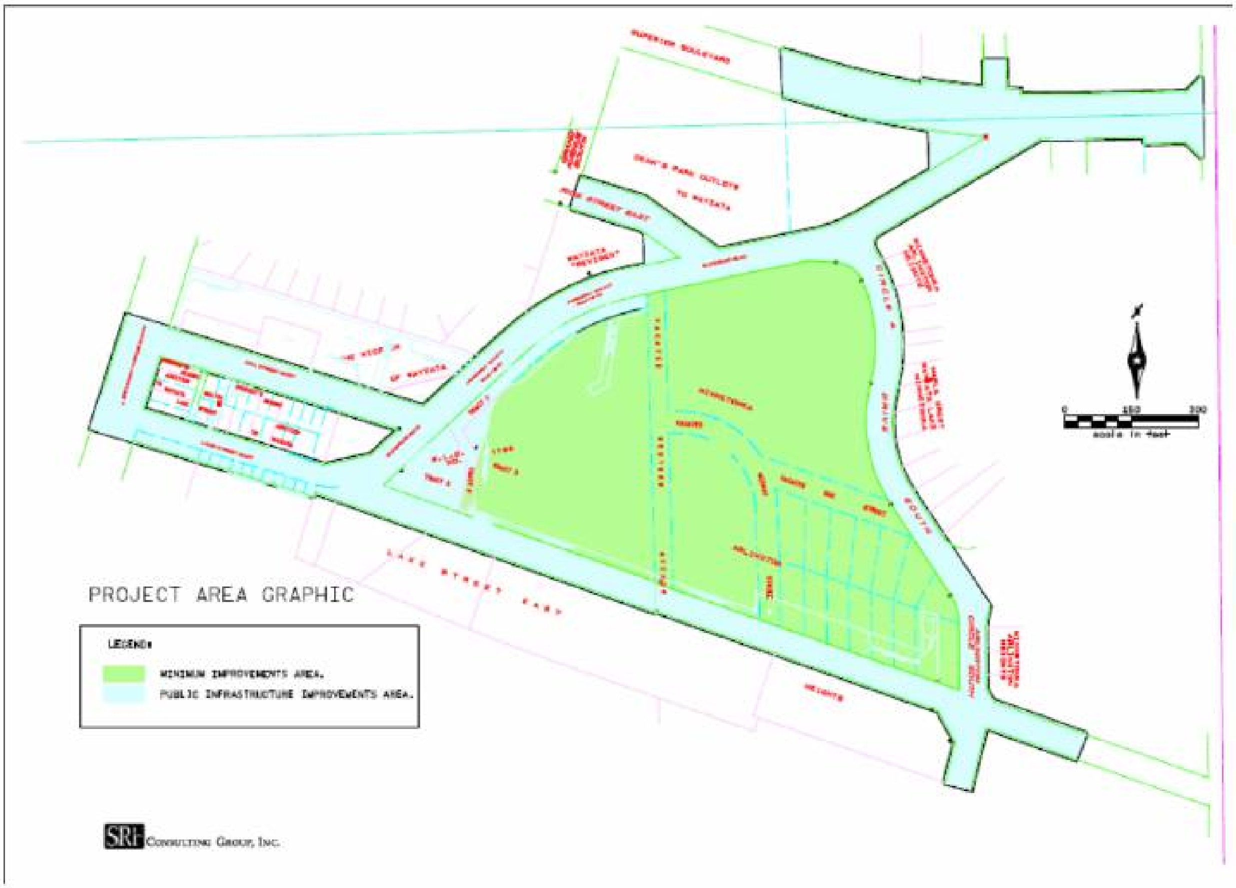
_____________________________________
Notary Public



~~4849-1338-1925False1False~~

# EXHIBIT A

## TIF PROJECT AREA MAP

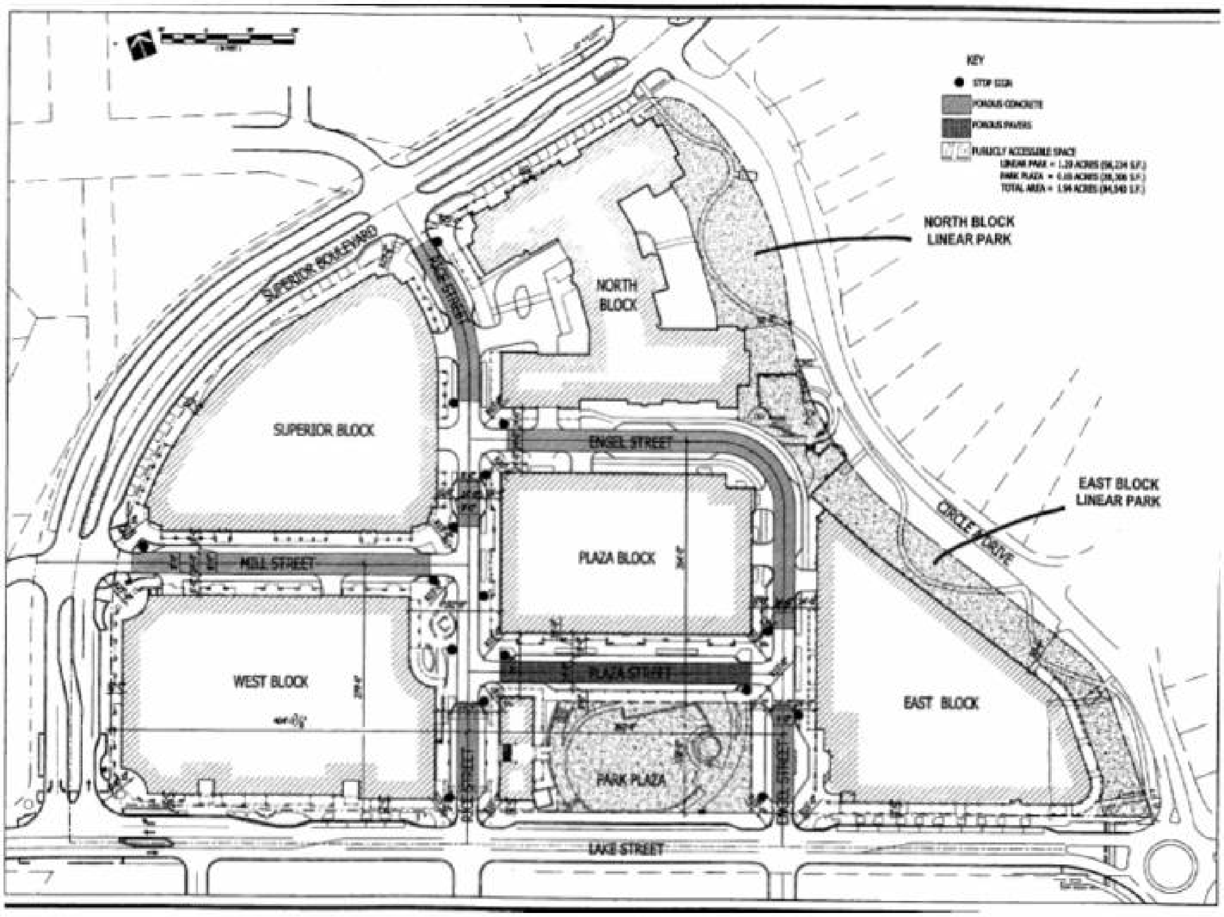





~~4849-1338-1925False1False~~

## EXHIBIT B

## MINIMUM IMPROVEMENTS SITE PLAN






~~4849-1338-1925False1False~~

# EXHIBIT B-1

## LEGAL DESCRIPTION OF MINIMUM IMPROVEMENTS AREA

Par 1: Tracts D and G, Registered Land Survey No. 1168, Hennepin County, Minnesota, except that part of Tract D depicted as the "New Superior Boulevard Parcel" on Exhibit D attached hereto.

Par 2: That part of the tract of land in the plat of Wayzata lying Northwesterly of the Northwesterly line of Registered Land Survey No. 1168, Hennepin County, Minnesota and Southeasterly of the following described line: Commencing at the most Northerly corner of Tract H, said Registered Land Survey No. 1168, thence South 30 degrees 58 minutes West along the Northwesterly line of said Registered Land Survey No. 1168 a distance of 377.58 feet; thence South 59 degrees 02 minutes West along the Northwesterly line of said Registered Land Survey No. 1168 a distance of 157.99 feet to the actual point of beginning of the line being described; thence North 30 degrees 04 minutes 30 seconds East a distance of 177.54 feet; thence along a tangential curve to the right having a radius of 572.96 feet to its intersection with the Northwesterly line of said Registered Land Survey No. 1168 and there ending, except that part lying Northerly and Westerly of the Southeasterly line of Superior Boulevard as relocated, which relocation is contemplated in this Agreement.

Par 3: Block 51;
Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 53, "Minnetonka Arlington Heights";
That part of Midway Circle, now vacated, lying between extensions across it of the North and South lines of said Block 53 and that further part thereof lying South and West of the centerline of said street lying between the extension across it of said North line of said Block 53 and the West line of said plat;
That part of Western Avenue as shown upon said plat lying between the extensions across it of the centerline of said Midway circle and the Northeasterly line of Block 65 said Addition.

Par 4: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block 50;
All of vacated Oak Street lying between a line drawn parallel with and 60 feet Southwesterly from the Southwesterly line of Block 52 and a line drawn parallel with and 50 feet Northeasterly from the Northeasterly line of Block 51;
That part of Midway Circle lying Northeasterly of the center line of Midway Circle and between the Southerly extension across it of the West line of Block 50 and the Westerly extension across it of the Northerly line of Block 53;
That part of Western Avenue lying East of the West line of "Minnetonka Arlington Heights" and between the Westerly extensions across it of the Northerly line of Block 50 and the center line of vacated Midway Circle,

All in "Minnetonka Arlington Heights".

Par 5: Lot 1, Block 53, "Minnetonka Arlington Heights."

Par 6: That part of Tract F, Registered Land Survey No. 1168, Hennepin County, Minnesota, depicted as the “DNR Project Area Parcel” on Exhibit D attached.

~~4849-1338-1925False1False~~

## EXHIBIT C

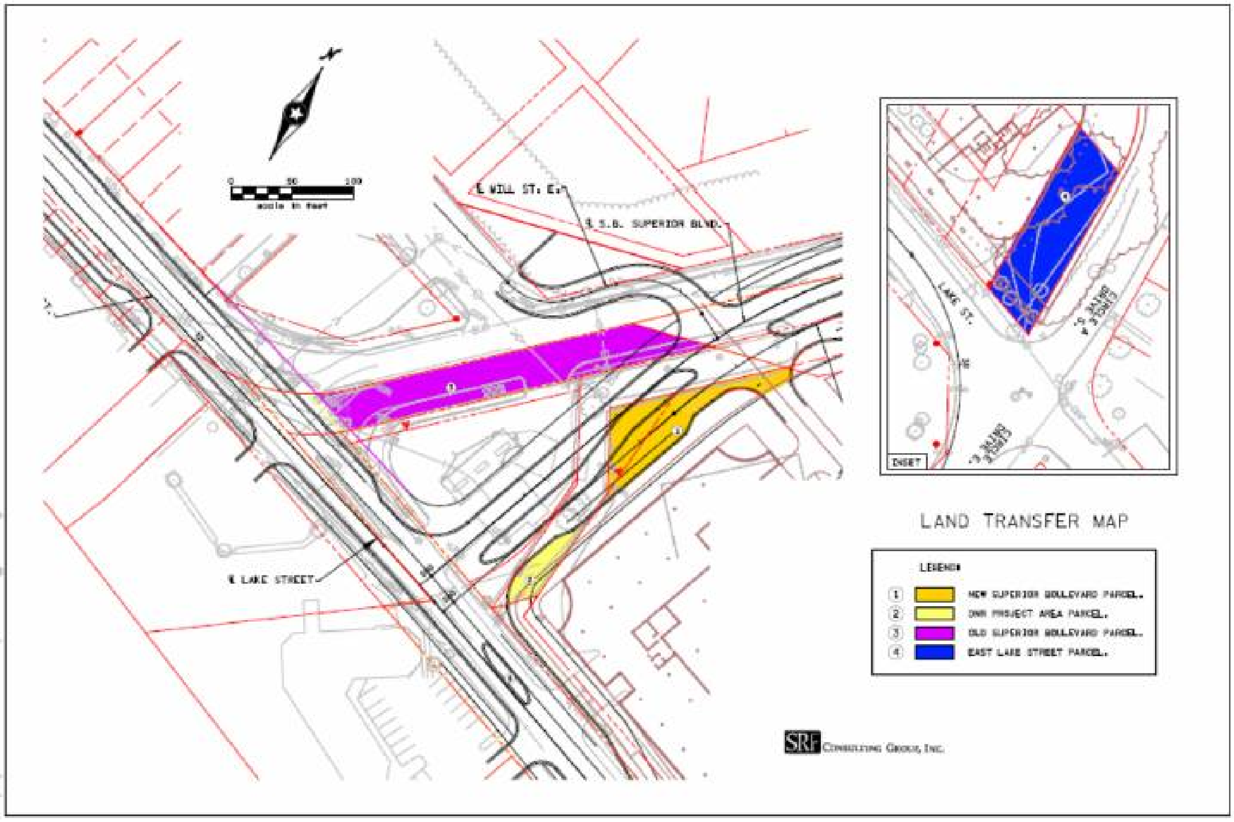
## PUBLIC INFRASTRUCTURE IMPROVEMENTS SITE PLAN




~~4849-1338-1925False1False~~

## EXHIBIT D

## LAND TRANSFER MAP

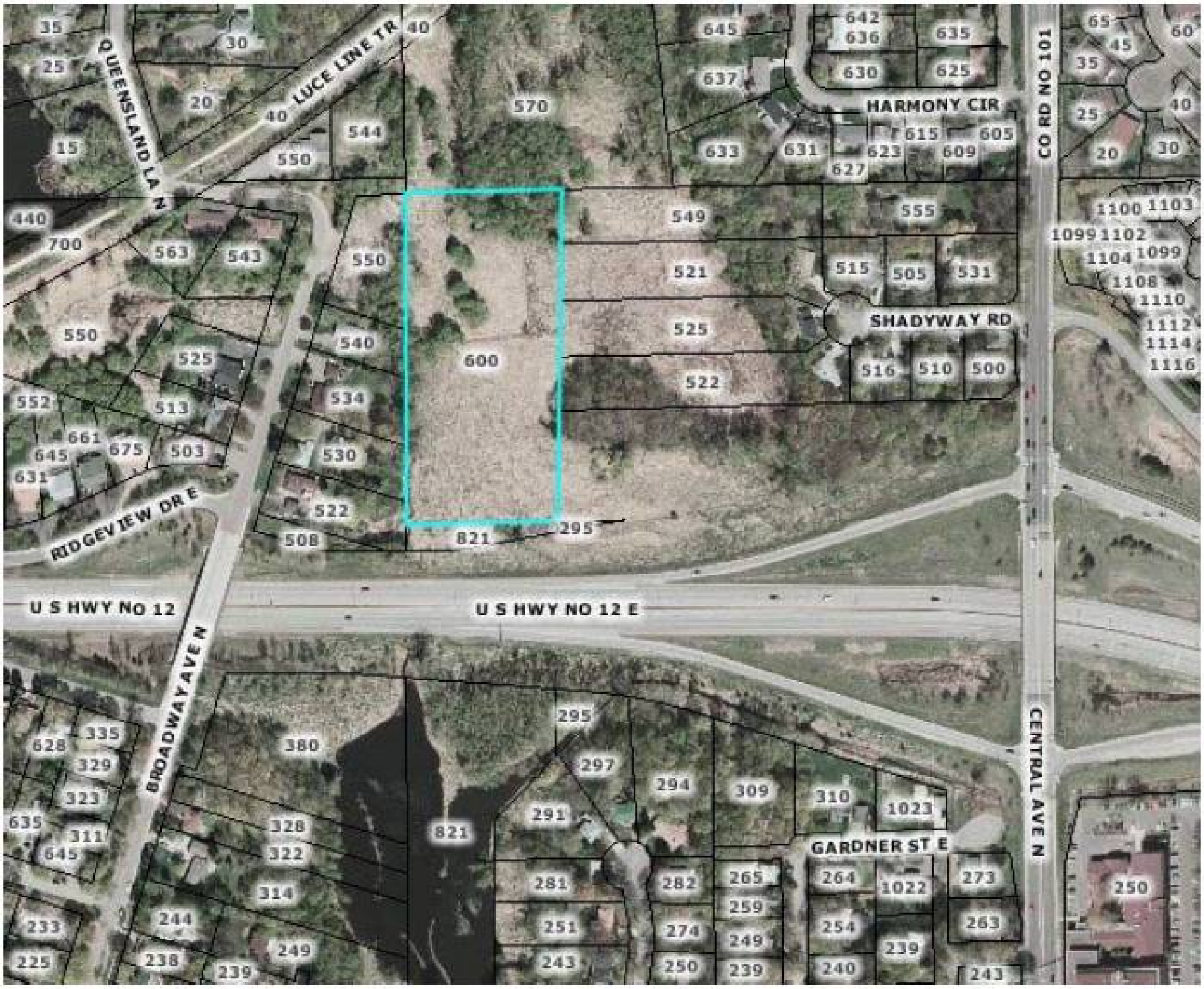



D- 1

~~4849-1338-1925False1False~~

**EXHIBIT E**

**WETLAND MITIGATION PARCEL MAP**






~~4849-1338-1925False1False~~

**EXHIBIT F**

**QUITCLAIM DEED**

Data: ____________, 2008

FOR VALUABLE CONSIDERATION, _____________________________________, a _____________________________________, ("Grantor"), hereby conveys and quitclaims to _____________________________________, a _____________________________________, ("Grantee"), real property in Hennepin County, Minnesota described as follows:

together with all hereditaments and appurtenances belonging thereto, subject to general easements and encumbrances of record.



~~4849-1338-1925False1False~~

Dated:

GRANTOR [______________________________]

By ______________________________

Its [____________]

By ______________________________

Its [_____________]

STATE OF MINNESOTA )
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ___ day of ________, 2008, by ____________ and ____________, the ____________ and ____________, respectively, of ______________________________, a ___________________________, on behalf of Grantor.

______________________________
Notary Public

Check here if all or part of the land is Registered (Torrens) ___

| This Instrument Was Drafted By: | Tax Statements for the real property described in this instrument should be sent to: |
|---|---|
| Dorsey & Whitney LLP (JRL/BTC)<br>Suite 1500<br>50 South Sixth Street<br>Minneapolis, MN 55402 | Wayzata Bay Redevelopment Company, LLC<br>2845 Hamline Avenue, North<br>Roseville, MN 55113 |



~~4849-1338-1925False1False~~

**EXHIBIT G**

**EASEMENT AND MAINTENANCE AGREEMENT**

**between**
**THE CITY OF WAYZATA**
**and**
**WAYZATA BAY REDEVELOPMENT COMPANY, LLC**
**for construction, maintenance and use of**

**PUBLIC ACCESS AREAS**

THIS AGREEMENT, made as of this ____ day of ________, 20__, by and between the CITY OF WAYZATA, a Minnesota municipal corporation (hereinafter the "City") and WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company (hereinafter the "Master Redeveloper").

W I T N E S S E T H:

**WHEREAS**, the Wayzata Housing and Redevelopment Authority (the "Authority), the City, and the Master Redeveloper have entered into a Master Redevelopment Agreement (the "Contract") dated _____________, 2008, a memorandum of which will be recorded in the real estate records of Hennepin County, Minnesota; and

**WHEREAS**, the capitalized terms used, but not defined in the of this Agreement have the meanings given in the Contract; and

**WHEREAS**, the Contract is intended to provide for the construction of the Minimum Improvements by the Master Redeveloper in the Minimum Improvements Area in coordination with the Authority and with the cooperation and assistance of the City; and

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

**WHEREAS**, the Master Redeveloper has agreed under the Contract to build certain Public Access Areas in connection with the Minimum Improvements on land to which an easement will be granted to the City by the Master Redeveloper pursuant to the Contract; and

**WHEREAS**, the Master Redeveloper has agreed to operate, manage, and maintain the Public Access Improvements pursuant to the Contract; and

**WHEREAS**, the City and the Master Redeveloper deem it to be in their vital interest and in the best interest of the City, the Authority and the State of Minnesota and in furtherance of the economic development and redevelopment plan for the Minimum Improvements Area to enter into this Easement and Maintenance Agreement (hereinafter this "Agreement") with the Master Redeveloper with respect to those portions of the Minimum Improvements Area on which the Public Access Improvements will be constructed;

**NOW THEREFORE**, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

## GRANT OF EASEMENT

Section 1.1. Easement Premises - Subject to Section 2.1, the Master Redeveloper hereby grants and conveys to the City a non-exclusive easement (the "Easement") over and across those portions of the real property described on Exhibit A, which are situated in the City of Wayzata, County of Hennepin, State of Minnesota (the "Easement Premises") and which are designed, constructed or otherwise intended and reserved for use as roadways, streets, streetscape improvements, curbs and gutters, sanitary sewer lines, water lines, public and private utility improvements, and related improvements, as further described on the attached Exhibit B ("Public Access Improvements"). The Easement Premises must contain at least __ public parking spaces.

Section 1.2. Easement Purpose - The Easement is granted for the purpose of use and maintenance of Public Access Improvements, together with all appurtenances thereto and means of access from and to public rights of way and easements shown in the Final Plans or constructed by Master Redeveloper; and include, but are not limited to, any and all parking, sidewalks, streets, alleys, or public spaces immediately adjoining or contiguous to the Easement Premises and all easements appurtenant and/or used in connection with the Public Access Improvements. An additional purpose of this Easement will be to allow the City, and its employees and contractors, to inspect the Public Access Improvements, and to the extent provided herein, maintain and repair the Public Access Improvements.

Section 1.3. Releases and Reservations

(a) The Master Redeveloper reserves in, over, under, above, across and upon the Easement Premises the right to use the Easement Premises for any and all uses and purposes provided that such use does not obstruct or materially interfere with the intended purpose of the Easement, including without limitation:

(i) the right of support for the Minimum Improvements;

(ii) the right to build upon the Public Access Improvements;

(iii) the right of access for ingress and egress through the Easement Premises;

(iv) the right to bring utilities, materials, and other facilities through the Easement Premises;

(v) the right to grant easements in, over, under and across the Easement Premises for the purpose of installation, use and operation of utilities;

(vi) the right to perform all construction, maintenance, and repair of the Public Access Improvements.

(vii) the right during special events or festivals to have temporary sales displays, public seating and entertainment stages in the Easement Premises, provided that such special events or festivals may not last more than seventy-two (72) hours (not including reasonably necessary set up and break down time for the events or festivals) and may not occur more than eight (8) times each year, without prior consent of, but with prior notice to, the City.

(b) The Master Redeveloper must repair any damage caused to the Public Access Improvements due to construction of the Minimum Improvements and minimize the extent and duration of any interference with the easements rights granted herein.

(c) Upon request by the Master Redeveloper, the City must execute and deliver instruments to evidence the Master Redeveloper's reservation of rights under section (a), however execution of such instruments is not necessary to effect the reservations in this Section.

(d) All provisions in this Section 1.3 are subject to the terms of the Contract, the Final Plans, the PUD Agreement and the City Code with regard to public rights-of-way, including the requirements to obtain encroachment permits, obstruction permits or other City approvals to do work in or to public rights-of-way.

Section 1.4. Traffic Regulations and Enforcement - All vehicular and pedestrian traffic on the roadways shall be subject to applicable local, state and federal laws. The City shall have the right to regulate and enforce any and all traffic violations on the roadways.

## ARTICLE II

## TERM

Section 2.1. Term – The Easement will become effective upon issuance of a certificate of occupancy for a given Block. The Easement will be perpetual.

## ARTICLE III

## UTILITIES

Section 3.1. Utility Charges - The Master Redeveloper will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, 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 IV

## TAXES AND ASSESSMENTS

Section 4.1. Payment of Taxes and Assessments - The Master Redeveloper must 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 against the Easement Premises. Nothing contained in this Agreement requires the Master Redeveloper 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. The Master Redeveloper has the right and option, at any time but solely at the Master Redeveloper'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 V

## USE OF EASEMENT PREMISES

Section 5.1. Construction of Public Access Improvements - In accordance with the provisions of the Contract and this Agreement, the Master Redeveloper must build, construct, modify, alter, or reconstruct on the Easement Premises, the Public Access Improvements. The size, location, and design of the Public Access Improvements must be approved in the Final Plans. The Master Redeveloper will be the owner of the Public Access Improvements. It is understood that the Master Redeveloper may make such other improvements as it deems appropriate or desirable upon those portions of the underlying real estate described in Exhibit A hereto that are not occupied by Public Access Improvements.

Section 5.2. Liens - The Master Redeveloper will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the Master Redeveloper, provided, however, that the Master Redeveloper may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Master Redeveloper file a bond or deposit cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Easement Premises or with the City to secure the payment of such lien if finally determined to be valid.

Section 5.3. Legal and Regulatory Compliance; Control of Premises - The Master Redeveloper must operate and maintain the Public Access Improvements on the Easement Premises for public access and other related or incidental purposes and in accordance with all applicable governmental laws, ordinances, regulations and orders pertaining to Public Access Improvements generally from time to time. Subject only to the express provisions of this Agreement, the PUD Agreement, the Final Plans and the Contract, the Master Redeveloper will have full authority and control over the management, operation, and use of the Easement Premises.

Section 5.4. No Fees – The Easement Premises must be open to the public without charge or fee without consent of the City; provided that fees or charges may be charged for special events and festivals under Section 1.3(b)(vii) above.

Section 5.5. Contractors - The Master Redeveloper 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. Master Redeveloper may make all decisions and execute all agreements, in its sole discretion, with respect to the Public Access Improvements so long as operation of the Public Access Improvements does not violate any provisions in the Contract.

Section 5.6. No Waste or Damage - Neither the City nor the Master Redeveloper may 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 Public Access Improvements. The Master Redeveloper in its use and occupancy of the Easement Premises, may not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance or interferes with the public use and enjoyment of the Public Access Improvements. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time will not be considered "waste," "nuisance," "damage, "disfigurement," or "injury."

## ARTICLE VI

## INDEMNIFICATION, INSURANCE

Section 6.1. Property Insurance - The Master Redeveloper, at its sole cost and expense, must keep all Public Access Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured 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 buildings and improvements similar in construction, general location, use, and occupancy to the Public Access Improvements. Such policy of insurance will affirmatively include the full replacement cost measure of recovery.

Section 6.2. Personal Property - All property of every kind and character which the Master Redeveloper may keep or store in, at, upon, or about the Easement Premises will be kept and stored at the sole risk, cost, and expense of the Master Redeveloper.

Section 6.3. Indemnification of the City -

(a) The Master Redeveloper releases and covenants and agrees that the City shall not be liable for and agree 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 Public Access

Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master 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 the Master Redeveloper (or if other persons acting on their behalf or under its direction or control) under the Contract or the transactions contemplated thereby or the acquisition, construction, installation, ownership and operation of the Public Access Improvements constructed by the Master Redeveloper.

(c) The City in no way waives its right to statutory liability caps under Minnesota Statutes, Section 466.04, as amended**.** The Master Redeveloper's liability to the City equals, but does not exceed, the City's statutory liability limits under Minnesota Statutes, Section 466.04, as amended.

(d) This provision will survive termination of this Agreement.

Section 6.4. Liability Insurance - The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Public Access Improvements and, from time to time at the request of the Authority, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The Master Redeveloper must procure and maintain continuously in effect (or cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to Public Access Improvements and, to be reviewed from time to time by the parties, such policies must meet the minimum requirements set forth in Minnesota Statutes Section 466.04, as amended, and must further include the following:

(a) 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 condition of the Public Access Improvements. Such insurance must provide that the City is an additional insured.

(b) To the extent reasonably available, insurance coverage with respect to the indemnification expressed in Section 6.3 hereof.

Section 6.5. General Insurance Requirement - All insurance required in this Agreement must be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Master Redeveloper must furnish to the City 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 must contain a provision that the insurer may not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. All policies or certificates of insurance will be approved reasonably as to form and content by the City. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6. No Insurance Obligation of City - At no time and under no circumstances will 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 VII

## ASSIGNMENT, SUBORDINATION

Section 7.1. Assignment by the City - The City may not assign or transfer its interest under this Agreement without the prior written consent of the Master Redeveloper.

Section 7.2. Assignment by Master Redeveloper - The Master Redeveloper may not assign or otherwise transfer its interest under this Agreement, except (i) as provided in the Contract, (ii) to whomever becomes an assignee of the Master Redeveloper under the Contract, (iii) to any lender holding a mortgage on or interest in the Easement Premises, and (iv) assignment of the Master Redeveloper's maintenance obligation to extent permitted in Section 8.2 herein. The City will recognize and accept any successors or assigns of Master Redeveloper.

## ARTICLE VIII

## MAINTENANCE OF THE EASEMENT PREMISES

Section 8.1. Maintenance - The Master Redeveloper, at its cost and expense, must keep and maintain all of the Easement Premises in good condition and repair. It is distinctly understood that the preceding does 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 the Master Redeveloper must 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 Easement Premises or any part thereof, the City recognizing that depreciation and diminution by reason of age, use, and environmental factors is unavoidable and expected. However, notwithstanding anything herein to the contrary, it shall be the obligation of the Master Redeveloper to maintain, repair and operate the Public Access Improvements in a condition which is safe, operational and in accordance with all government agreements.

Section 8.2. Assignment of Maintenance Obligations - The Master Redeveloper may assign its maintenance obligations under Section 8.1 to a third party, including an association of property owners, provided that (i) such third party is determined to have financial resources adequate to fund the Master Redeveloper's obligations under this Agreement, and (ii) such third party and the City have entered into a signed agreement requiring the third party to be bound by the terms of this Agreement, in which event the Master Redeveloper will be released from further liability with respect to such assigned obligations.



~~4849-1338-1925False1False~~

Section 8.3. No Obligation of the City to Repair or Maintain - The City will 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.

Section 8.4. Entry by City -The City may, after notice and opportunity to cure, enter onto the Easement Premises to repair and maintain the Public Access Improvements within the Easement Premises if the City determines, in its sole discretion, that performance of such repairs and maintenance is necessary (i) cure any default hereunder or (ii) to protect public health, welfare, and safety in a manner consistent with standard practices; provided, however, that in case of emergency or failure of Master Redeveloper to maintain the Public Access Improvements sufficiently to protect the public health and safety, the Easement Premises are subject to entry without notice and at any time, by City or its authorized employees and/or agents and/or by any public safety personnel to perform such maintenance or repairs as City may deem necessary in its sole discretion. The City will submit an invoice for the costs incurred for such maintenance or repairs to the Master Redeveloper. If the Master Redeveloper has failed to make payment on the invoice within 60 days, the City will have the right to assess the costs incurred by the City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. By execution of this Agreement, the Master Redeveloper is agreeing to such an assessment for maintenance and repair costs, agreeing that the Minimum Improvements Area assessed for such service charges is benefited thereby, and waiving any rights the Master Redeveloper or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429.

Section 8.5. Destruction - In the event that the Public Access Improvements on the Easement Premises are destroyed by fire or other casualty, and subject to a determination by any lender holding a mortgage on the Easement Premises, the Master Redeveloper will rebuild or reconstruct the Public Access Improvements to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the entire Public Access Improvements, to the extent insurance proceeds combined with any contributions by the Master Redeveloper toward reconstruction are available. If the Master Redeveloper rebuilds or reconstructs the Public Access Improvements, the proceeds from any and all insurance policies covering risks against loss or damage must be used to rebuild or reconstruct.

## ARTICLE IX

## EMINENT DOMAIN

Section 9.1. Condemnation - If the Easement Premises are taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then the Master Redeveloper, at any time within sixty (60) days next after it has actual notice of such proposed acquisition or condemnation, will have the option to (i) cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property, or to (ii) continue this Agreement as to the remaining part of the Easement Premises not so taken or threatened to be taken. The Master Redeveloper may exercise one of the foregoing options by giving the City written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event Master Redeveloper fails or refuses, for any reason, so to furnish the City written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement will continue in full force and effect under option (ii) above.

## ARTICLE X

## DEFAULT AND TERMINATION

Section 10.1. Default by the City - If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default, or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case the Master Redeveloper may declare the termination of this Agreement and re-enter and take possession of the Easement Premises. In such case, or at such time as this Agreement is terminated pursuant to Section 2.1 hereof, the City agrees to execute and deliver to the Master Redeveloper a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota. In addition, the Master Redeveloper may exercise all remedies available to it at law or equity.

Section 10.2. Default by Master Redeveloper - If the Master Redeveloper fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case, the City may cure such default on behalf of the Master Redeveloper and Master Redeveloper consents to pay to the City any and all such sums as are due and owing on account thereof. City will submit a statement to Master Redeveloper evidencing the costs incurred to cure such default. If Master Redeveloper has failed to make payment in accordance with the statement within 60 days after receipt thereof, City will have the right to assess the costs incurred by City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. In addition, the City may exercise all remedies available to it at law or equity.

## ARTICLE XI

## SURRENDER

Section 11.1. Surrender - Upon any termination of this Agreement, the City will surrender the Easement Premises to the Master Redeveloper, including without limitation any and all buildings, improvements, and fixtures then upon the Easement Premises, and all buildings, improvements, structures, fixtures, alterations, and other additions which may be made or installed by or at the instance of either party hereto, in, upon, or about the Easement Premises will become the property of Master Redeveloper upon any such termination and will be surrendered to the Master Redeveloper by the City without any payment therefor.

## 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 does not constitute a waiver of any subsequent breach or default thereof. No provision of this Agreement is waived 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, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement will be binding upon either party unless in writing and signed by both parties. The Master Redeveloper and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Master Redeveloper's lenders; provided, however, that the Master Redeveloper and the City will not be required to enter into such amendments if the amendments do not adequately protect the legitimate interest and security of the Authority or the City with respect to the Project as defined in the Contract.

Section 12.3. Joinder; Permitted Encumbrance - Except for the Consent and Subordinations attached hereto, if any, 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 will constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Master Redeveloper and any construction or permanent lender.

## ARTICLE XIII
## EARLY TERMINATION/RELOCATION OF EASEMENT

Section 13.1. Early Termination. Notwithstanding anything to the contrary in this Agreement, Master Redeveloper and its successors and assigns shall have the right to terminate this Agreement or, at their election, the right to relocate the Easement Premises in the event that (i) the Easement Premises is redeveloped and all necessary approvals are obtained from the City, (ii) there is a change in the use of adjacent Minimum Improvements which change is approved by the City; or (iii) the Public Access Improvements are destroyed by fire or other casualty and it becomes necessary to reconstruct such improvements with a different design which design has been approved by the City. Any and all costs and expenses of terminating the Easement or relocating the Easement Premises shall be paid by Master Redeveloper. In such event, Master Redeveloper and the City shall execute and deliver a recordable amendment to this Agreement to reflect the termination or relocation and the change in the description of the Easement, as applicable.

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

CITY OF WAYZATA, a Minnesota municipal corporation

By: ________________________________
Its: Mayor

By: ________________________________
Its: City Manager

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

WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company

By: ______________________________
Its ______________________________



~~4849-1338-1925False1False~~

STATE OF MINNESOTA )
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by _________________________ and ________________________, the ______________________ and __________________________, respectively, of the CITY OF WAYZATA, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires]



~~4849-1338-1925False1False~~

STATE OF MINNESOTA )
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by ________________, the __________of WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company, on behalf of the company.

_______________________________________
Notary Public

My Commission Expires

**This Instrument was drafted by**
**and when recorded should be returned to:**

Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402



~~4849-1338-1925False1False~~

**EXHIBIT A**

**DESCRIPTION OF EASEMENT PREMISES**

[A legal description of the Easement Premises will be mutually approved by the Parties and added to this exhibit upon completion and review of a survey and title insurance commitment with respect those portions of the Block occupied by Public Access Improvements.]

**EXHIBIT B**

**PUBLIC ACCESS IMPROVEMENTS**

[To be provided once the Final Plans are approved for each Block.]

## CONSENT AND SUBORDINATION

The undersigned, ______________________________, a ___________________________, holder of (i) that certain [Mortgage] (the "Mortgage"); and (2) that certain [Assignment of Leases and Rents] (the "Assignment"), hereby consents to the foregoing *Easement and Maintenance Agreement* (the "Easement Agreement"), and hereby subjects and subordinates the Mortgage and the Assignment and all of its right, title and interest in the Easement Premises to the Easement Agreement.

Nothing in this Consent and Subordination may be construed to impose on the undersigned any obligation created by the Easement Agreement, unless and until the undersigned has acquired fee title to property burdened by the Easement Agreement.

[____________________________________],

a ___________________________________

By:__________________________________

Printed Name:________________________

Title:_______________________________

STATE OF _______________)
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by ________________, the _________________ of ___________________________, a ___________________________, on behalf of the ______________________________.

_____________________________________
(Signature of Person Taking Acknowledgment)

**This Instrument was drafted by**
**and when recorded should be returned to:**
Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

# EXHIBIT H

## EASEMENT AND MAINTENANCE AGREEMENT

**between**
**THE CITY OF WAYZATA**
**and**
**WAYZATA BAY REDEVELOPMENT COMPANY, LLC**
**for construction, maintenance and use of**
**PARK IMPROVEMENTS**

THIS AGREEMENT, made as of this ____ day of ________, 20__, by and between the CITY OF WAYZATA, a Minnesota municipal corporation (hereinafter the "City") and WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company (hereinafter the "Master Redeveloper").

W I T N E S S E T H:

**WHEREAS**, the Wayzata Housing and Redevelopment Authority (the "Authority), the City, and the Master Redeveloper have entered into a Master Redevelopment Agreement (the "Contract") dated _____________, 2008, a memorandum of which will be recorded in the real estate records of Hennepin County, Minnesota; and

**WHEREAS**, the capitalized terms used, but not defined, in this Agreement have the meanings given in the Contract; and

**WHEREAS**, the Contract is intended to provide for the construction of the Minimum Improvements by the Master Redeveloper in the Minimum Improvements Area in coordination with the Authority and with the cooperation and assistance of the City; and

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

**WHEREAS**, the Master Redeveloper has agreed under the Contract and the PUD Agreement to build certain Park Improvements in connection with the Minimum Improvements on land to which an easement will be granted to the City by the Master Redeveloper pursuant to the Contract and the PUD Agreement; and

**WHEREAS**, the Master Redeveloper has agreed to operate, manage, and maintain the Park Improvements pursuant to the Contract; and

**WHEREAS**, the City and the Master Redeveloper deem it to be in their vital interest and in the best interest of the City, the Authority and the State of Minnesota and in furtherance of the economic development and redevelopment plan for the Minimum Improvements Area to enter into this Easement and Maintenance Agreement (hereinafter this "Agreement") with the Master Redeveloper with respect to certain lands included within the Minimum Improvements Area on which the Park Improvements will be constructed;

**NOW THEREFORE**, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

## GRANT OF EASEMENT

Section 1.1. Easement Premises - Subject to Section 2.1, the Master Redeveloper hereby grants and conveys to the City a non-exclusive easement (the "Easement") over and across those portions of the real property described on Exhibit A, which are situated in the City of Wayzata, County of Hennepin, State of Minnesota (the "Easement Premises") and are designed, constructed or otherwise intended or reserved for use as open space or park areas, and further described and depicted on the attached Exhibit B (the "Park Improvements").

Section 1.2. Easement Purpose - The Easement is granted for the purpose of public use of the Park Improvements, together with all appurtenances thereto and means of access from and to public rights of way and easements shown in the Final Plans or constructed by Master Redeveloper; and include, but are not limited to, any and all Parking Facilities, streets, alleys, or public spaces immediately adjoining or contiguous to the Easement Premises and all easements appurtenant and/or used in connection with the Easement Premises.

Section 1.3. Releases and Reservations

(a) The Master Redeveloper reserves in, over, under, above, across and upon the Easement Premises the right to use the Easement Premises for any and all uses and purposes provided that such use does not obstruct or materially interfere with the intended purpose of the Easement, including without limitation:

(i) the right of support for the Minimum Improvements;

(ii) the right of access for ingress and egress through the Easement Premises;

(iii) the right to bring utilities, materials, and other facilities through the Easement Premises;

(iv) the right to grant easements in, over, under and across the Easement Premises for the purpose of installation, use and operation of utilities;

(v) the right to perform all construction, maintenance and repair of the Park Improvements and adjoining improvements; and

(vi) the right during special events or festivals to have temporary sales displays, public seating and entertainment stages in the Easement Premises, provided that such special events or festivals may not last more than seventy two (72) hours (not including reasonably necessary set up and break down time for such special events or festivals) and may not occur more than eight (8) times each year, without prior consent of, but with prior notice to, the City.

(b) The Master Redeveloper must repair any damage to the Park Improvements caused by construction of the Minimum Improvements and minimize the extent and duration of any interference with the easement rights granted herein.

(c) Upon request by the Master Redeveloper, the City must execute and deliver instruments to evidence the Master Redeveloper's reservation of rights under sections (a), however execution of such instruments is not necessary to effect the reservations in this Section.

(d) All provisions in this Section 1.3 are subject to the terms of the Contract, the Final Plans, the PUD Agreement and the City Code with regard to public parks.

## ARTICLE II

## TERM

Section 2.1. Term – This Easement will become effective upon issuance of a certificate of occupancy for a the Block containing the Easement Premises. This Easement will be perpetual.

## ARTICLE III

## UTILITIES

Section 3.1. Utility Charges - The Master Redeveloper will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, 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 IV

## TAXES AND ASSESSMENTS

Section 4.1. Payment of Taxes and Assessments - The Master Redeveloper must 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 against the Easement Premises. Nothing contained in this Agreement requires the Master Redeveloper 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. The Master Redeveloper has the right and option, at any time but solely at the Master Redeveloper'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 V

## USE OF EASEMENT PREMISES

Section 5.1. Construction of Park Improvements - In accordance with the provisions of the Contract, the PUD Agreement and this Agreement, the Master Redeveloper must build, construct, modify, alter, and reconstruct on the Easement Premises, the Park Improvements. The size, location, and design of the Park Improvements must be approved in the Final Plans. The Master Redeveloper will be the owner of the Park Improvements. It is understood that the Master Redeveloper may make such other improvements as it deems appropriate or desirable upon those portions of the underlying real estate described in Exhibit A hereto that are not occupied by Park Improvements, provided that such improvements do not impair the use or operation of, or access to, the Park Improvements.

Section 5.2. Liens - The Master Redeveloper will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the Master Redeveloper, provided, however, that the Master Redeveloper may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Master Redeveloper files a bond or deposits cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Easement Premises or with the City to secure the payment of such lien if finally determined to be valid.

Section 5.3. Legal and Regulatory Compliance; Control of Premises - The Master Redeveloper must operate and maintain the Park Improvements on the Easement Premises for public use in accordance with all applicable governmental laws, ordinances, regulations and orders pertaining to Park Improvements generally from time to time. Subject only to the express provisions of this Agreement, the PUD Agreement, the Final Plans, and the Contract, the Master Redeveloper will have full authority and control over the management, operation, and use of the Easement Premises.

Section 5.4. No Fees – The Easement Premises must be open to the public for public use without charge or fee, except during those special events and festivals permitted in Section 1.3(a)(vii).

Section 5.5. Hours of Operation, Rules and Regulations - The Master Redeveloper must establish reasonable hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate for the safe, efficient, and orderly use of the Parks Improvements subject to prior City approval.

Section 5.6. Contractors - The Master Redeveloper 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. Master Redeveloper may make all decisions and execute all agreements, in its sole discretion, with respect to the Park Improvements so long as such decisions and agreements do not violate any provisions in the Contract, this Agreement or the PUD Agreement.

Section 5.7. No Waste or Damage - Neither the City nor the Master Redeveloper may 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 Park Improvements. The Master Redeveloper in its use and occupancy of the Easement Premises, may not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance or interferes with the public use and enjoyment of the Park Improvements. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time will not be considered “waste,” “nuisance,” “damage, “disfigurement,” or “injury.”

## ARTICLE VI

## INDEMNIFICATION, INSURANCE

Section 6.1. Property Insurance - The Master Redeveloper, at its sole cost and expense, must keep all Park Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured 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 buildings and improvements similar in construction, general location, use, and occupancy to the Park Improvements. Such policy of insurance will affirmatively include the full replacement cost measure of recovery.

Section 6.2. Personal Property - All property of every kind and character which the Master Redeveloper may keep or store in, at, upon, or about the Easement Premises will be kept and stored at the sole risk, cost, and expense of the Master Redeveloper.

Section 6.3. Indemnification of the City -

(a) The Master Redeveloper releases and covenants and agrees that the City shall not be liable for and agree 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 Park Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master 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 the Master 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 and Public Infrastructure Improvements constructed by the Master Redeveloper.

(c) The City in no way waives its right to statutory liability caps under Minnesota Statutes, Section 466.04, as amended. The Master Redeveloper's liability to the City equals, but does not exceed, the City's statutory liability limits under Minnesota Statutes, Section 466.04, as amended.

(d) This provision will survive termination of this Agreement.

Section 6.4. Liability Insurance - The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Park Improvements and, from time to time at the request of the Authority, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The Master Redeveloper must procure and maintain continuously in effect (or cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to Park Improvements and, to be reviewed from time to time by the parties, such policies must meet the minimum requirements set forth in Minnesota Statutes Section 466.04, and must further include the following:

(a) 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 condition of the Park Improvements. Such insurance must provide that the City is an additional insured.

(b) To the extent reasonably available, insurance coverage with respect to the indemnification expressed in Section 6.3 hereof.

Section 6.5. General Insurance Requirement - All insurance required in this Agreement must be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Master Redeveloper must furnish to the City 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 must contain a provision that the insurer may not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. All policies or certificates of insurance will be approved reasonably as to form and content by the City. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6. No Insurance Obligation of City - At no time and under no circumstances will 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 VII

## ASSIGNMENT, SUBORDINATION

Section 7.1. Assignment by the City - The City may not assign or transfer its interest under this Agreement without the prior written consent of the Master Redeveloper.

Section 7.2. Assignment by Master Redeveloper - The Master Redeveloper may not assign or otherwise transfer its interest under this Agreement, except (i) as provided in the Contract, (ii) to whomever becomes an assignee of the Master Redeveloper under the Contract, (iii) to any lender holding a mortgage on or interest in the Easement Premises, and (iv) assignment of the Master Redeveloper's maintenance obligation to extent permitted in Section 8.2 herein. The City will recognize and accept any successors or assigns of Master Redeveloper.

## ARTICLE VIII

## MAINTENANCE OF THE EASEMENT PREMISES

Section 8.1. Maintenance - The Master Redeveloper, at its cost and expense, must keep and maintain all of the Easement Premises in good condition and repair. It is distinctly understood that the preceding does 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 the Master Redeveloper must 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 Easement Premises or any part thereof, the City recognizing that depreciation and diminution by reason of age, use, and environmental factors is unavoidable and expected. However, notwithstanding anything herein to the contrary, it shall be the obligation of the Master Redeveloper to maintain, repair and operate the Park Improvements in a condition which is safe, operation and in accordance with all government agreements.

Section 8.2. Assignment of Maintenance Obligations - The Master Redeveloper may assign its maintenance obligations under Section 8.1 to a third party, including an association of property owners, provided that (1) such third party is determined by the City to have financial resources adequate to fund the Master Redeveloper's obligations under this Agreement and (ii) such third party and the City have entered into a signed agreement requiring the third party to be bound by the terms of this Agreement, in which event the Master Redeveloper will be released from further liability with respect to such assigned obligations.

Section 8.3. No Obligation of the City to Repair or Maintain - The City will 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.

Section 8.4. Entry by City -The City may, after notice and opportunity to cure, enter onto the Easement Premises to repair and maintain the Park Improvements within the Easement Premises if the City determines, in its sole discretion, that performance of such repairs and maintenance is necessary (i) to cure any default hereunder or (ii) to protect public health, welfare



~~4849-1338-1925False1False~~

and safety; provided, however, that in case of emergency or failure of Master Redeveloper to maintain the Park Improvements sufficiently to protect the public health and safety, the Easement Premises are subject to entry without notice and at any time, by City or its authorized employees and/or agents and/or by any public safety personnel to perform such maintenance or repairs as City may deem necessary in its sole discretion. The City will submit an invoice for the costs incurred for such maintenance or repairs to the Master Redeveloper. If the Master Redeveloper has failed to make payment on the invoice within 60 days, the City will have the right to assess the costs incurred by the City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. By execution of this Agreement, the Master Redeveloper is agreeing to such an assessment for maintenance and repair costs, agreeing that the Minimum Improvements Area assessed for such service charges is benefited thereby, and waiving any rights the Master Redeveloper or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429.

Section 8.5. Destruction - In the event that the Park Improvements on the Easement Premises are destroyed by fire or other casualty, and subject to a determination by any lender holding a mortgage on the Easement Premises, the Master Redeveloper will rebuild or reconstruct the Park Improvements to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the entire Park Improvements, to the extent insurance proceeds combined with any contributions by the Master Redeveloper toward reconstruction are available. If the Master Redeveloper rebuilds or reconstructs the Park Improvements, the proceeds from any and all insurance policies covering risks against loss or damage must be used to rebuild or reconstruct.

## ARTICLE IX

## EMINENT DOMAIN

Section 9.1. Condemnation - If the Easement Premises are taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then the Master Redeveloper, at any time within sixty (60) days next after it has actual notice of such proposed acquisition or condemnation, will have the option to (i) cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property, or to (ii) continue this Agreement as to the remaining part of the Easement Premises not so taken or threatened to be taken. The Master Redeveloper may exercise one of the foregoing options by giving the City written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event Master Redeveloper fails or refuses, for any reason, so to furnish the City written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement will continue in full force and effect under option (ii) above.

## ARTICLE X

## DEFAULT AND TERMINATION

Section 10.1. Default by the City - If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default, or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case the Master Redeveloper may declare the termination of this Agreement and re-enter and take possession of the Easement Premises. In such case, or at such time as this Agreement is terminated pursuant to Section 2.1 hereof, the City agrees to execute and deliver to the Master Redeveloper a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota. In addition, the Master Redeveloper may exercise all remedies available to it at law or equity.

Section 10.2. Default by Master Redeveloper - If the Master Redeveloper fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case, the City may cure such default on behalf of the Master Redeveloper and Master Redeveloper consents to pay to the City any and all such sums as are due and owing on account thereof. City will submit a statement to Master Redeveloper evidencing the costs incurred to cure such default. If Master Redeveloper has failed to make payment in accordance with the statement within 60 days after receipt thereof, City will have the right to assess the costs incurred by City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. In addition, the City may exercise all remedies available to it at law or equity.

## ARTICLE XI

## SURRENDER

Section 11.1. Surrender - Upon any termination of this Agreement, the City will surrender the Easement Premises to the Master Redeveloper, including without limitation any and all buildings, improvements, and fixtures then upon the Easement Premises, and all buildings, improvements, structures, fixtures, alterations, and other additions which may be made or installed by or at the instance of either party hereto, in, upon, or about the Easement Premises will become the property of Master Redeveloper upon any termination and will be surrendered to the Master Redeveloper by the City without any payment therefor.

## 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 does not constitute a waiver of any subsequent breach or default thereof. No provision of this Agreement is waived 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, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement will be binding upon either party unless in writing and signed by both parties. The Master Redeveloper and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Master Redeveloper's lenders; provided, however, that the Master Redeveloper and the City will not be required to enter into such amendments if the amendments do not adequately protect the legitimate interest and security of the Authority or the City with respect to the Project as defined in the Contract.

Section 12.3. Joinder; Permitted Encumbrance - Except for the Consent and Subordinations attached hereto, if any, 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 will constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Master Redeveloper and any construction or permanent lender.

## ARTICLE XIII
## EARLY TERMINATION/RELOCATION OF EASEMENT

Section 13.1. Early Termination. Notwithstanding anything to the contrary in this Agreement, Master Redeveloper and its successors and assigns shall have the right to terminate this Agreement or, at their election, the right to relocate the Easement Premises in the event that (i) the Easement Premises is redeveloped and all necessary approvals are obtained from the City, (ii) there is a change in the use of adjacent Minimum Improvements which change is approved by the City; or (iii) the Park Improvements are destroyed by fire or other casualty and it becomes necessary to reconstruct such improvements with a different design which design has been approved by the City. Any and all costs and expenses of terminating the Easement or relocating the Easement Premises shall be paid by Master Redeveloper. In such event, Master Redeveloper and the City shall execute and deliver a recordable amendment to this Agreement to reflect the termination or relocation and the change in the description of the Easement, as applicable.

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

CITY OF WAYZATA, a Minnesota municipal corporation

By: ______________________________

Its: Mayor

By: ______________________________

Its: City Manager

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

WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company

By: ________________________________

Its ________________________________



~~4849-1338-1925False1False~~

STATE OF MINNESOTA )
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by __________________________ and _________________________, the _______________________ and ___________________________, respectively, of the CITY OF WAYZATA, a Minnesota municipal corporation, on behalf of the corporation.

_______________________________________

Notary Public

My Commission Expires]

STATE OF MINNESOTA )
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by _______________, the _________of WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company, on behalf of the company.

---

Notary Public

My Commission Expires

**This Instrument was drafted by**
**and when recorded should be returned to:**

Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402



~~4849-1338-1925False1False~~

**EXHIBIT A**

**DESCRIPTION OF EASEMENT PREMISES**

[A legal description of the Easement Premises will be mutually approved by the Parties and added to this exhibit upon completion and review of a survey and title insurance commitment with respect to the Easement Premises.]

**EXHIBIT B**

**PARK IMPROVEMENTS**

[To be provided once Final Plans are approved for each relevant Block.]



~~4849-1338-1925False1False~~

## CONSENT AND SUBORDINATION

The undersigned, ______________________________, a ___________________________, holder of (i) that certain [Mortgage] (the "Mortgage"); and (2) that certain [Assignment of Leases and Rents] (the "Assignment"), hereby consents to the foregoing *Easement and Maintenance Agreement* (the "Easement Agreement"), and hereby subjects and subordinates the Mortgage and the Assignment and all of its right, title and interest in the Easement Premises to the Easement Agreement.

Nothing in this Consent and Subordination may be construed to impose on the undersigned any obligation created by the Easement Agreement, unless and until the undersigned has acquired fee title to property burdened by the Easement Agreement.

[__________________________________],
a ___________________________________

By:_________________________________

Printed Name:________________________

Title:_______________________________

STATE OF _______________)
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by _________________, the _________________ of ___________________________, a ___________________________, on behalf of the ______________________________.

_____________________________________
(Signature of Person Taking Acknowledgment)

**This Instrument was drafted by**
**and when recorded should be returned to:**
Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402



~~4849-1338-1925False1False~~

# EXHIBIT I

# TIF PRO FORMA



~~4849-1338-1925False1False~~

## Annual Operating Proforma - Baseline

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 |
|---|---|---|---|---|---|---|
| Units Rented | 146 | 240 | 242 | 242 | 242 | 242 |
| Percent Occupancy | 57% | 94% | 95% | 95% | 95% | 95% |
| | 12/31/2012 | 12/31/2013 | 12/31/2014 | 12/31/2015 | 12/31/2016 | 12/31/2017 |
| ****Revenues**** | | | | | | |
| Total Average Skilled | 2,057,688 | 2,868,688 | 2,946,508 | 3,034,903 | 3,125,950 | 3,219,729 |
| Total Average Assisted | 1,478,520 | 2,804,693 | 2,932,565 | 3,020,541 | 3,111,158 | 3,204,492 |
| Total Average Memory Care | 594,320 | 996,360 | 1,026,251 | 1,057,038 | 1,088,749 | 1,121,412 |
| Total Average Independent | 3,132,133 | 5,005,794 | 5,369,279 | 5,365,557 | 5,526,524 | 5,692,320 |
| Garage | 73,424 | 117,347 | 122,117 | 125,780 | 129,554 | 133,440 |
| Staff Meals | 45,071 | 73,852 | 76,788 | 79,091 | 81,464 | 83,908 |
| Other meal income | 150,465 | 244,545 | 256,346 | 264,037 | 271,958 | 280,116 |
| 2nd Occupant monthly income | 35,822 | 58,696 | 61,029 | 62,860 | 64,746 | 66,688 |
| Resident Storage 150 units at $30 per month | 31,014 | 56,819 | 52,839 | 54,424 | 56,057 | 57,739 |
| Misc | 127,593 | 208,921 | 217,227 | 223,744 | 230,456 | 237,370 |
| Interest Income Monthly | 278,157 | 274,157 | 286,502 | 295,097 | 303,950 | 313,069 |
| Guest Rooms 50% occupancy | 30,690 | 51,300 | 52,839 | 54,424 | 56,057 | 57,739 |
| Total Revenue | 8,034,718 | 12,753,169 | 13,240,289 | 13,637,498 | 14,046,623 | 14,468,022 |
| ****Expenses**** | | | | | | |
| Total Community Living | 2,012,371 | 2,046,787 | 2,102,010 | 2,165,070 | 2,230,023 | 2,296,923 |
| Total Dietary | 765,230 | 801,950 | 826,008 | 850,788 | 876,312 | 902,601 |
| Total Engineering | 260,057 | 267,859 | 275,894 | 284,171 | 292,696 | 301,477 |
| Total Utilities | 326,874 | 336,681 | 346,781 | 357,184 | 367,900 | 378,937 |
| Total Housekeeping | 339,479 | 337,542 | 347,668 | 358,098 | 368,841 | 379,906 |
| Total Rehabilitation | 21,333 | 21,973 | 22,632 | 23,311 | 24,010 | 24,731 |
| Total Recreation Therapy | 174,327 | 179,557 | 184,944 | 190,492 | 196,207 | 202,093 |
| Total Volunteers | 562 | 579 | 596 | 614 | 633 | 652 |
| Total Transportation | 5,410 | 5,572 | 5,739 | 5,912 | 6,089 | 6,272 |
| Total Spiritual Care | 3,182 | 3,277 | 3,376 | 3,477 | 3,581 | 3,689 |
| Total Employee Health | 530 | 546 | 562 | 579 | 597 | 614 |
| Total Administration | 1,830,196 | 2,108,972 | 2,177,468 | 2,242,792 | 2,310,075 | 2,379,378 |
| Total Property Taxes | 173,119 | (302,002) | (844,659) | (1,397,965) | (1,418,731) | (1,439,697) |
| **Total Operating Expense** | 5,912,670 | 5,803,292 | 5,449,020 | 5,084,524 | 5,258,233 | 5,437,576 |
| NOI | 2,122,048 | 6,949,878 | 7,791,269 | 8,552,974 | 8,788,390 | 9,030,446 |
| Adjustment for Entrance Deposits (1) | 7,203,483 | 10,707,880 | | | | |
| Adjusted NOI | 9,325,531 | 17,657,758 | 7,791,269 | 8,552,974 | 8,788,390 | 9,030,446 |
| **Debt Service** | | | | | | |
| Senior Loan P&I | 3,399,035 | 3,399,035 | 3,399,035 | 3,809,904 | 3,809,904 | 3,809,904 |
| Secondary Financing P&I | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 |
| City Improvement Financing | 254,822 | 254,822 | 254,822 | 254,822 | 254,822 | 254,822 |
| Entrance Deposit Funding | 950,933 | 950,933 | 950,933 | 950,933 | 950,933 | 950,933 |
| Total Debt Service | 6,412,830 | 6,412,830 | 6,412,830 | 6,823,699 | 6,823,699 | 6,823,699 |
| Cash Flow after Debt Service | 2,912,701 | 11,244,928 | 1,378,439 | 1,729,275 | 1,964,691 | 2,206,747 |
| Assumed Equity | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 |
| Projected Cash on Cash Return | 19.23% | 74.24% | 9.10% | 11.42% | 12.97% | 14.57% |
| Replacement Reserves | - | - | - | 127,500 | 127,500 | 127,500 |
| **Cash Flow after Debt and Reserves** | 2,912,701 | 11,244,928 | 1,378,439 | 1,601,775 | 1,837,191 | 2,079,247 |
| Funded Working Capital | 1,200,000 | - | - | - | - | - |
| **Cumulative Cash Flow** | 4,112,701 | 15,357,629 | 16,736,068 | 18,337,843 | 20,175,035 | 22,254,282 |
| **Debt Coverage Ratio with Ent. Deposits** | 1.45 | 2.75 | 1.21 | 1.25 | 1.29 | 1.32 |
| **Debt Coverage Ratio without Ent. Deposits** | 0.33 | 1.08 | 1.21 | 1.25 | 1.29 | 1.32 |

| | | |
|---|---|---|
| Include Entrance Deposits in cash flow? | | Yes |
| | Projected | |
| **Nine year average cash on cash return - No PV** | 16.72% | |
| **Nine year average cash on cash return - PV to 2008** | 11.48% | |

| | | |
|---|---|---|
| **Reversion** | | Projected |
| Cap Rate | | 10.00% |
| Sale Value | $ | 90,304,455 |
| Less: Sale expense at 5% | | (4,515,223) |
| Add: Entrance Deposit Cash | | 16,000,000 |
| **Net Sale Proceeds** | $ | 101,789,232 |
| Less: Outstanding Principal - Primary Loan | | (51,921,892) |
| Less: Outstanding Principal - Secondary Loan | | (24,481,685) |
| Less: Outstanding Principal - City Improvement | | (3,648,767) |
| Less: Outstanding Principal - Entrance Deposits | | (15,691,784) |
| **Total** | $ | 6,045,105 |
| **Internal Rate of Return** | | 8.34% |

(1) Adjustments for entrance deposits reflect revenues not in pro forma



~~4849-1338-1925False1False~~

## Annual Operating Proforma - Implied Cap

| | Year | Year | Year | Year | Year | Year |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| Units Rented | 146 | 240 | 242 | 242 | 242 | 242 |
| Percent Occupancy | 0% | 60% | 60% | 60% | 60% | 60% |
| | 12/31/2012 | 12/31/2013 | 12/31/2014 | 12/31/2015 | 12/31/2016 | 12/31/2017 |
| ****Revenues**** | | | | | | |
| Total Average Skilled | 2,057,488 | 2,865,488 | 2,946,508 | 3,034,903 | 3,125,950 | 3,219,729 |
| Total Average Assisted | 1,478,520 | 2,804,693 | 2,932,365 | 3,020,341 | 3,111,138 | 3,204,492 |
| Total Average Memory Care | 594,320 | 996,360 | 1,026,251 | 1,057,038 | 1,088,749 | 1,121,412 |
| Total Average Independent | 3,132,183 | 5,005,784 | 5,300,279 | 5,965,557 | 5,526,524 | 5,692,320 |
| Garage | 78,424 | 117,347 | 122,117 | 125,780 | 129,554 | 133,440 |
| Staff Meals | 40,071 | 73,852 | 76,788 | 79,091 | 81,464 | 83,908 |
| Other meal income | 150,463 | 246,345 | 256,348 | 264,037 | 271,958 | 280,116 |
| 2nd Occupant monthly income | 30,822 | 58,696 | 61,029 | 62,860 | 64,746 | 66,688 |
| Resident Storage 150 units at $30 per month | 31,014 | 50,819 | 52,839 | 54,424 | 56,057 | 57,739 |
| Misc | 127,300 | 208,021 | 217,227 | 223,744 | 230,456 | 237,370 |
| Interest Income Monthly | 278,157 | 278,157 | 286,502 | 295,097 | 303,950 | 313,069 |
| Guest Rooms 50% occupancy | 30,600 | 51,300 | 52,839 | 54,424 | 56,057 | 57,739 |
| Total Revenue | 8,034,718 | 12,753,169 | 13,349,289 | 13,637,408 | 14,046,423 | 14,468,022 |
| ****Expenses**** | | | | | | |
| Total Community Living | 2,012,371 | 2,040,787 | 2,102,010 | 2,165,070 | 2,230,023 | 2,296,923 |
| Total Dietary | 765,286 | 801,890 | 826,008 | 850,788 | 876,312 | 902,601 |
| Total Engineering | 200,057 | 267,859 | 275,894 | 284,171 | 292,696 | 301,477 |
| Total Utilities | 326,874 | 336,681 | 346,781 | 357,184 | 367,900 | 378,937 |
| Total Housekeeping | 330,479 | 337,342 | 347,668 | 358,098 | 368,841 | 379,906 |
| Total Rehabilitation | 21,300 | 21,873 | 22,692 | 23,311 | 24,010 | 24,731 |
| Total Recreation Therapy | 174,327 | 178,257 | 184,044 | 190,402 | 196,207 | 202,099 |
| Total Volunteers | 392 | 379 | 590 | 614 | 633 | 652 |
| Total Transportation | 3,410 | 3,572 | 3,739 | 3,912 | 4,089 | 4,272 |
| Total Spiritual Care | 3,182 | 3,277 | 3,376 | 3,477 | 3,581 | 3,689 |
| Total Employee Health | 530 | 546 | 562 | 579 | 597 | 614 |
| Total Administration | 1,830,136 | 2,108,972 | 2,177,468 | 2,242,792 | 2,310,075 | 2,379,378 |
| Total Property Taxes | 173,119 | (302,002) | (844,659) | (1,397,566) | (1,418,731) | (1,459,697) |
| **Total Operating Expense** | 5,912,670 | 5,803,292 | 5,440,020 | 5,084,324 | 5,258,293 | 5,457,576 |
| NOI | 2,122,048 | 6,949,878 | 7,761,269 | 8,552,974 | 8,788,360 | 9,010,446 |
| Adjustment for Entrance Deposits (1) | 7,203,483 | 10,707,880 | | | | |
| Adjusted NOI | 9,325,531 | 17,657,758 | 7,761,269 | 8,552,974 | 8,788,360 | 9,010,446 |
| Implied NOI without Entrance Deposits | 2,013,092 | 7,575,847 | 8,492,483 | 8,822,742 | 9,079,946 | 9,818,196 |
| Percent Increase of Debt Coverage | 0% | 0% | 0% | 0% | 0% | 0% |
| **Debt Service** | | | | | | |
| Senior Loan P&I | 3,399,033 | 3,399,033 | 3,399,033 | 3,809,904 | 3,809,904 | 3,809,904 |
| Secondary Financing P&I | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 |
| City Improvement Financing | 254,822 | 254,822 | 254,822 | 254,822 | 254,822 | 254,822 |
| Entrance Deposit Funding | 950,933 | 950,933 | 950,933 | 950,933 | 950,933 | 950,933 |
| Total Debt Service | 6,412,830 | 6,412,830 | 6,412,830 | 6,823,699 | 6,823,699 | 6,823,699 |
| Cash Flow after Debt Service | 2,912,708 | 11,244,928 | 1,378,439 | 1,729,275 | 1,964,661 | 2,206,747 |
| Cash Flow after Debt Service (Implied) | (4,099,708) | 1,162,537 | 2,079,654 | 2,499,043 | 2,755,646 | 3,010,487 |
| Assumed Equity | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 |
| Projected Cash on Cash Return | 19.23% | 74.24% | 9.10% | 11.42% | 12.97% | 14.57% |
| Projected Cash on Cash Return (Implied) | 20.40% | 78.37% | 13.73% | 16.50% | 18.19% | 19.88% |
| Replacement Reserves | - | - | - | 127,500 | 127,500 | 127,500 |
| **Cash Flow after Debt and Reserves** | 2,912,708 | 11,244,928 | 1,378,439 | 1,601,775 | 1,837,161 | 2,079,247 |
| **Cash Flow after Debt and Reserves (Implied)** | (4,099,708) | 1,162,537 | 2,079,654 | 2,371,543 | 2,628,146 | 2,881,987 |
| Funded Working Capital | 1,200,000 | - | - | - | - | - |
| **Cumulative Cash Flow** | 4,112,708 | 15,357,625 | 16,736,068 | 18,337,843 | 20,175,005 | 22,254,251 |
| **Cumulative Cash Flow (Implied)** | (2,899,708) | (1,737,201) | 342,392 | 2,713,935 | 5,342,081 | 8,224,068 |
| **Debt Coverage Ratio with Ent. Deposits** | 1.45 | 2.75 | 1.21 | 1.25 | 1.29 | 1.32 |
| **Debt Coverage Ratio without Ent. Deposits** | 0.33 | 1.08 | 1.21 | 1.25 | 1.29 | 1.32 |
| **Debt Coverage Ratio with Implied NOI** | 0.34 | 1.18 | 1.32 | 1.37 | 1.40 | 1.44 |

Include Entrance Deposits in cash flow? Yes

| | Baseline | Implied |
|---|---|---|
| Nine year average cash on cash return - No FV | 15.73% | 18.28% |
| Nine year average cash on cash return - FV in 2008 | 10.48% | 12.21% |

| **Reversion** | Baseline | Implied |
|---|---|---|
| Cap Rate | 10.00% | 10.00% |
| Sale Value | $ 90,304,453 | 98,431,876 |
| Less: Sale expenses at 5% | (4,515,223) | (4,921,593) |
| Add: Entrance Deposit Cash | 16,000,000 | 16,000,000 |
| **Net Sale Proceeds** | $ 101,789,232 | $ 109,510,283 |
| Less: Outstanding Principal - Primary Loan | (51,921,892) | (51,921,892) |
| Less: Outstanding Principal - Secondary Loan | (24,481,683) | (24,481,683) |
| Less: Outstanding Principal - City Improvement | (3,648,767) | (3,648,767) |
| Less: Outstanding Principal - Entrance Deposits | (15,691,784) | (15,691,784) |
| **Total** | $ 6,045,107 | $ 13,766,157 |
| **Internal Rate of Return** | 8.30% | 14.27% |

(1) Adjustments for entrance deposits reflect revenue not in pro forma

I- 3

~~4849-1338-1925False1False~~

## Annual Operating Proforma - Actual

| | Year | Year | Year | Year | Year | Year |
|---|---|---|---|---|---|---|
| Units Rented | 140 | 240 | 242 | 242 | 242 | 242 |
| Percent Occupancy | 57% | 94% | 95% | 95% | 95% | 95% |
| | 12/31/2012 | 12/31/2013 | 12/31/2014 | 12/31/2015 | 12/31/2016 | 12/31/2017 |
| ****Revenues**** | | | | | | |
| Total Average Skilled | 2,242,870 | 3,140,031 | 3,234,232 | 3,331,259 | 3,431,197 | 3,534,133 |
| Total Average Assisted | 1,611,587 | 3,062,015 | 3,153,875 | 3,248,492 | 3,345,946 | 3,446,325 |
| Total Average Memory Care | 647,899 | 1,088,519 | 1,120,968 | 1,154,597 | 1,189,235 | 1,224,912 |
| Total Average Independent | 3,414,025 | 5,462,440 | 5,626,314 | 5,795,103 | 5,968,956 | 6,148,025 |
| Garage | 71,424 | 117,347 | 122,117 | 123,780 | 129,554 | 133,440 |
| Staff Meals | 45,071 | 73,852 | 76,788 | 79,091 | 81,464 | 83,908 |
| Other meal income | 150,467 | 248,543 | 256,346 | 264,037 | 271,958 | 280,116 |
| 2nd Occupant monthly income | 35,822 | 58,696 | 61,020 | 62,860 | 64,746 | 66,688 |
| Resident Storage 150 units at $30 per month | 31,014 | 50,819 | 52,859 | 54,424 | 56,057 | 57,739 |
| Misc | 127,503 | 208,921 | 217,217 | 223,744 | 230,456 | 237,370 |
| Interest Income Monthly | 378,157 | 378,157 | 286,503 | 295,097 | 303,950 | 313,069 |
| Guest Rooms 30% occupancy | 30,600 | 51,300 | 52,859 | 54,424 | 56,057 | 57,739 |
| Total Revenue | 8,688,357 | 13,858,441 | 14,201,076 | 14,638,509 | 15,120,576 | 15,583,463 |
| ****Expenses**** | | | | | | |
| Total Community Living | 2,012,371 | 2,040,787 | 2,102,010 | 2,165,070 | 2,230,023 | 2,296,923 |
| Total Dietary | 763,230 | 801,950 | 826,008 | 850,788 | 876,312 | 902,601 |
| Total Engineering | 260,057 | 267,850 | 275,894 | 284,171 | 292,696 | 301,477 |
| Total Utilities | 326,874 | 336,681 | 346,781 | 357,184 | 367,900 | 378,937 |
| Total Housekeeping | 330,470 | 337,542 | 347,668 | 358,098 | 368,841 | 379,906 |
| Total Rehabilitation | 21,333 | 21,973 | 22,632 | 23,311 | 24,010 | 24,731 |
| Total Recreation Therapy | 174,377 | 179,557 | 184,944 | 190,492 | 196,207 | 202,093 |
| Total Volunteers | 562 | 579 | 596 | 614 | 633 | 652 |
| Total Transportation | 5,410 | 5,572 | 5,739 | 5,912 | 6,089 | 6,272 |
| Total Spiritual Care | 3,182 | 3,277 | 3,376 | 3,477 | 3,581 | 3,689 |
| Total Employee Health | 530 | 546 | 562 | 579 | 597 | 614 |
| Total Administration | 1,836,196 | 2,108,975 | 2,177,408 | 2,242,792 | 2,310,075 | 2,379,378 |
| Total Property Taxes | 173,119 | (302,032) | (844,050) | (1,307,965) | (1,418,751) | (1,430,697) |
| **Total Operating Expense** | 5,912,670 | 5,803,292 | 5,449,020 | 5,034,524 | 5,258,233 | 5,437,576 |
| NOI | 2,775,687 | 8,055,149 | 8,812,056 | 9,604,385 | 9,871,343 | 10,145,887 |
| Adjustment for Entrance Deposits (1) | 7,203,483 | 10,707,880 | | | | |
| Adjusted NOI | 9,979,170 | 18,763,030 | 8,812,056 | 9,604,385 | 9,871,343 | 10,145,887 |
| **Debt Service** | | | | | | |
| Senior Loan P&I | 3,399,035 | 3,399,035 | 3,399,035 | 3,809,904 | 3,809,904 | 3,809,904 |
| Secondary Financing P&I | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 |
| City Improvement Financing | 254,822 | 254,822 | 254,822 | 254,822 | 254,822 | 254,822 |
| Entrance Deposit Funding | 950,933 | 950,933 | 950,933 | 950,933 | 950,933 | 950,933 |
| Total Debt Service | 6,412,830 | 6,412,830 | 6,412,830 | 6,823,699 | 6,823,699 | 6,823,699 |
| Cash Flow after Debt Service | 3,566,340 | 12,350,200 | 2,399,226 | 2,780,686 | 3,047,644 | 3,322,188 |
| Assumed Equity | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 |
| Projected Cash on Cash Return | 23.55% | 81.47% | 15.84% | 18.36% | 20.12% | 21.93% |
| Replacement Reserves | - | - | - | 127,500 | 127,500 | 127,500 |
| **Cash Flow after Debt and Reserves** | 3,566,340 | 12,350,200 | 2,399,226 | 2,653,186 | 2,920,144 | 3,194,688 |
| Funded Working Capital | 1,200,000 | - | - | - | - | - |
| **Cumulative Cash Flow** | 4,746,340 | 17,096,540 | 19,495,766 | 22,148,952 | 25,069,096 | 28,263,785 |
| **Debt Coverage Ratio with Ent. Deposits** | 1.56 | 2.92 | 1.37 | 1.41 | 1.45 | 1.49 |
| **Debt Coverage Ratio without Ent. Deposits** | 0.43 | 1.25 | 1.37 | 1.41 | 1.45 | 1.49 |

| | | | |
|---|---|---|---|
| **Perform Look-back Test?** | | Yes | **1.4x** |
| **Adjustment to TIF Note** | $ | 3,465,242 | |
| Include Entrance Deposits in cash flow? | | Yes | |
| | | **Baseline** | **Actual** |
| **Nine year average cash on cash return - No PV** | | 15.75% | 20.13% |
| **Nine year average cash on cash return - PV to 2008** | | 10.40% | 13.21% |
| **Reversion** | | **Baseline** | **Actual** |
| Cap Rate | | 10.00% | 10.00% |
| **Sale Value** | $ | 90,304,455 | $ 101,458,871 |
| Less: Sale expense at 5% | | (4,515,223) | (5,072,944) |
| Add: Entrance Deposit Cash | | 16,000,000 | 16,000,000 |
| **Net Sale Proceeds** | $ | 101,789,232 | $ 112,385,928 |
| Less: Outstanding Principal - Primary Loan | | (51,921,892) | (51,921,892) |
| Less: Outstanding Principal - Secondary Loan | | (24,481,685) | (24,481,685) |
| Less: Outstanding Principal - City Improvement | | (3,648,767) | (3,648,767) |
| Less: Outstanding Principal - Entrance Deposits | | (15,691,784) | (15,691,784) |
| **Total** | $ | 6,045,105 | $ 16,641,800 |
| **Internal Rate of Return** | | 8.36% | 10.05% |

(1) Adjustments for entrance deposits reflect revenues not in pro forma

**EXHIBIT I-1**

**LOOK BACK TEST RENT INCREASE**

**City of Wayzata**
**Wayzata Bay Center**
**Look-back Test**
**Example**
**Assumptions**

| Assumptions | |
|---|---|
| Expense Trend | 3.00% |
| Revenue Trend | 3.00% |
| Percentage Increase to Coverage | 9.00% |
| Debt Service Coverage Test | 1.36x |
| Rent Increase | 9.00% |
| Adjustment to Interest Rates | 0.00% |



~~4849-1338-1925False1False~~

# Look-back Test

## Rent Increase Example

Discount Rate 7.00%

Dated Date 9/1/2008

| | 12/31/2012 | 12/31/2013 | 12/31/2014 | 12/31/2015 | 12/31/2016 | 12/31/2017 | 12/31/2018 | 12/31/2019 | 12/31/2020 | 12/31/2021 | 12/31/2022 | 12/31/2023 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Cash Flow after Debt Service (Actual) | $ (3,637,143) | $ 1,622,319 | $ 2,399,226 | $ 2,780,686 | $ 3,047,644 | $ 3,322,188 | $ 3,604,537 | $ 3,894,915 | $ 4,193,555 | $ 4,500,696 | $ 4,816,584 | $ 5,141,471 |
| Cash Flow after Debt Service (Implied Cap) | (4,099,798) | 1,162,537 | 2,079,654 | 2,499,043 | 2,755,646 | 3,019,487 | 3,290,771 | 3,569,715 | 3,856,536 | 4,151,463 | 4,454,727 | 4,766,570 |
| Difference of Cash Flows | $ 462,655 | $ 459,783 | $ 319,573 | $ 281,643 | $ 291,998 | $ 302,702 | $ 313,766 | $ 325,200 | $ 337,019 | $ 349,233 | $ 361,856 | $ 374,901 |
| PV of Difference of Cash Flows @ 7% | $ 345,086 | $ 320,508 | $ 208,196 | $ 171,482 | $ 166,156 | $ 160,978 | $ 155,945 | $ 151,055 | $ 146,303 | $ 141,688 | $ 137,205 | $ 132,851 |

| | 12/31/2024 | 12/31/2025 | 12/31/2026 | 12/31/2027 | 12/31/2028 | 12/31/2029 | 12/31/2030 | 12/31/2031 | 12/31/2032 | 12/31/2033 | 12/31/2034 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Cash Flow after Debt Service (Actual) | $ 5,475,619 | $ 5,819,295 | $ 6,172,775 | $ 6,536,343 | $ 6,910,292 | $ 7,294,922 | $ 7,690,544 | $ 8,097,475 | $ 8,516,044 | $ 8,946,590 | $ 9,389,458 | $ 116,536,036 |
| Cash Flow after Debt Service (Implied Cap) | 5,087,238 | 5,416,985 | 5,756,073 | 6,104,771 | 6,463,356 | 6,832,114 | 7,211,336 | 7,601,327 | 8,002,396 | 8,414,863 | 8,839,058 | $ 107,235,869 |
| Difference of Cash Flows | $ 388,381 | $ 402,309 | $ 416,702 | $ 431,572 | $ 446,936 | $ 462,809 | $ 479,208 | $ 496,148 | $ 513,649 | $ 531,726 | $ 550,400 | $ 9,300,167 |
| PV of Difference of Cash Flows @ 7% | $ 128,624 | $ 124,521 | $ 120,538 | $ 116,672 | $ 112,921 | $ 109,282 | $ 105,751 | $ 102,327 | $ 99,006 | $ 95,785 | $ 92,663 | $ 3,446,842 |

Sum of PV of Difference of Cash Flows $\boxed{\$\ 3,446,842}$

I-1- 2

~~4849-1338-1925False1False~~

# Wayzata Bay Center
## TIF Calculation

| TIF Assumptions | |
|---|---|
| EMV Growth Rate | 2.00% |
| Increment Growth Rate | 2.00% |
| Discount Rate | 7.00% |
| Term | 25 |
| Dated Date | 9/1/2008 |

Project Present Value $ 22,910,879
City Present Value $ 1,205,836

| Completed | TIF Year | Year Construction Completed | Year Assessed | Year Taxes Payable | EMV | Net Increment | Project TIF @ 95% | City TIF @ 5% | PV of TIF | PV of Project TIF | PV of City TIF |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Existing | | | | 12/31/2009 | $ 17,050,000 | $ - | $ - | $ - | $ - | $ - | $ - |
| East & West (50%) | 1 | 12/31/2010 | 12/31/2011 | 12/31/2012 | 53,542,694 | 510,702 | 485,167 | 25,535 | 436,119 | 414,313 | 21,806 |
| East & West (100%) | 2 | 12/31/2011 | 12/31/2012 | 12/31/2013 | 108,156,241 | 1,031,617 | 980,036 | 51,581 | 823,328 | 782,161 | 41,166 |
| North, Plaza, Superior (50%) | 3 | 12/31/2012 | 12/31/2013 | 12/31/2014 | 188,315,323 | 1,624,246 | 1,543,034 | 81,212 | 1,211,497 | 1,150,922 | 60,575 |
| North, Plaza, Superior (100%) | 4 | 12/31/2013 | 12/31/2014 | 12/31/2015 | 270,077,587 | 2,228,728 | 2,117,292 | 111,436 | 1,553,616 | 1,475,935 | 77,681 |
| Full Buildout | 5 | 12/31/2014 | 12/31/2015 | 12/31/2016 | 275,479,139 | 2,273,303 | 2,159,637 | 113,665 | 1,481,017 | 1,406,966 | 74,051 |
| | 6 | 12/31/2015 | 12/31/2016 | 12/31/2017 | 280,988,722 | 2,318,769 | 2,202,830 | 115,938 | 1,411,810 | 1,341,220 | 70,591 |
| | 7 | 12/31/2016 | 12/31/2017 | 12/31/2018 | 286,608,496 | 2,365,144 | 2,246,887 | 118,257 | 1,345,838 | 1,278,546 | 67,292 |
| | 8 | 12/31/2017 | 12/31/2018 | 12/31/2019 | 292,340,666 | 2,412,447 | 2,291,825 | 120,622 | 1,282,948 | 1,218,801 | 64,147 |
| | 9 | 12/31/2018 | 12/31/2019 | 12/31/2020 | 298,187,479 | 2,460,696 | 2,337,661 | 123,035 | 1,222,997 | 1,161,848 | 61,150 |
| | 10 | 12/31/2019 | 12/31/2020 | 12/31/2021 | 304,151,229 | 2,509,910 | 2,384,414 | 125,495 | 1,165,848 | 1,107,556 | 58,292 |
| | 11 | 12/31/2020 | 12/31/2021 | 12/31/2022 | 310,234,254 | 2,560,108 | 2,432,103 | 128,005 | 1,111,369 | 1,055,801 | 55,568 |
| | 12 | 12/31/2021 | 12/31/2022 | 12/31/2023 | 316,438,939 | 2,611,310 | 2,480,745 | 130,566 | 1,059,436 | 1,006,464 | 52,972 |
| | 13 | 12/31/2022 | 12/31/2023 | 12/31/2024 | 322,767,717 | 2,663,536 | 2,530,359 | 133,177 | 1,009,930 | 959,433 | 50,496 |
| | 14 | 12/31/2023 | 12/31/2024 | 12/31/2025 | 329,223,072 | 2,716,807 | 2,580,967 | 135,840 | 962,737 | 914,600 | 48,137 |
| | 15 | 12/31/2024 | 12/31/2025 | 12/31/2026 | 335,807,533 | 2,771,143 | 2,632,586 | 138,557 | 917,749 | 871,862 | 45,887 |
| | 16 | 12/31/2025 | 12/31/2026 | 12/31/2027 | 342,523,684 | 2,826,566 | 2,685,238 | 141,328 | 874,864 | 831,120 | 43,743 |
| | 17 | 12/31/2026 | 12/31/2027 | 12/31/2028 | 349,374,157 | 2,883,097 | 2,738,942 | 144,155 | 833,982 | 792,283 | 41,699 |
| | 18 | 12/31/2027 | 12/31/2028 | 12/31/2029 | 356,361,641 | 2,940,759 | 2,793,721 | 147,038 | 795,011 | 755,260 | 39,751 |
| | 19 | 12/31/2028 | 12/31/2029 | 12/31/2030 | 363,488,873 | 2,999,574 | 2,849,596 | 149,979 | 757,861 | 719,968 | 37,893 |
| | 20 | 12/31/2029 | 12/31/2030 | 12/31/2031 | 370,758,651 | 3,059,566 | 2,906,588 | 152,978 | 722,447 | 686,324 | 36,122 |
| | 21 | 12/31/2030 | 12/31/2031 | 12/31/2032 | 378,173,824 | 3,120,757 | 2,964,719 | 156,038 | 688,688 | 654,253 | 34,434 |
| | 22 | 12/31/2031 | 12/31/2032 | 12/31/2033 | 385,737,300 | 3,183,172 | 3,024,014 | 159,159 | 656,506 | 623,681 | 32,825 |
| | 23 | 12/31/2032 | 12/31/2033 | 12/31/2034 | 393,452,046 | 3,246,836 | 3,084,494 | 162,342 | 625,828 | 594,537 | 31,291 |
| | 24 | 12/31/2033 | 12/31/2034 | 12/31/2035 | 401,321,087 | 3,311,773 | 3,146,184 | 165,589 | 596,584 | 566,755 | 29,829 |
| | 25 | 12/31/2034 | 12/31/2035 | 12/31/2036 | 409,347,509 | 3,378,008 | 3,209,108 | 168,900 | 568,706 | 540,271 | 28,435 |
| | 26 | 12/31/2035 | 12/31/2036 | 12/31/2037 | 417,534,459 | 3,445,568 | 3,273,290 | 172,278 | 542,131 | 515,024 | 27,107 |
| | 27 | 12/31/2036 | 12/31/2037 | 12/31/2038 | 425,885,148 | 3,514,480 | 3,338,756 | 175,724 | 516,798 | 490,958 | 25,840 |
| | 28 | 12/31/2037 | 12/31/2038 | 12/31/2039 | 434,402,851 | 3,584,769 | 3,405,531 | 179,238 | 492,648 | 468,016 | 24,632 |
| | 29 | 12/31/2038 | 12/31/2039 | 12/31/2040 | 443,090,908 | 3,656,464 | 3,473,641 | 182,823 | 469,627 | 446,146 | 23,481 |
| | | | | | Total Years 1-25 | $ 64,008,574 | $ 60,808,145 | $ 3,200,429 | | | |
| | | | | | Present Value Years 1-25 | $ 24,116,714 | $ 22,910,879 | $ 1,205,836 | | | |

I-1- 3

~~4849-1338-1925False1False~~

# EXHIBIT J

# TAX INCREMENT NOTE

**R-1** **$23,060,000**

**Date of Original Issue:** _______________

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

---

## HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA LIMITED REVENUE TAXABLE TAX INCREMENT NOTE

The **Housing and Redevelopment Authority of the City of Wayzata, Minnesota** (the "HRA") acknowledges itself to be indebted and, for value received, promises to pay to the order of **Wayzata Bay Redevelopment Company, LLC**, or its assigns (the "Developer"), solely from the source, to the extent and in the manner hereinafter provided, up to the principal amount of this Limited Revenue Taxable Tax Increment Note (the "Note"), together with interest thereon accrued on the unpaid principal balance hereof from the date of original issue, at the rate of interest of eight and seventy-five hundredths percent (8.75%) per annum, on the Payment Dates (as hereinafter defined).

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 the Developer and mailed to the Developer at its postal address within the United States which shall be designated from time to time by the Developer.

The Note is a special and limited obligation and not a general obligation of the HRA, which has been issued by the HRA pursuant to an Amended and Restated Redevelopment Agreement dated July___, 2015, between the City of Wayzata, Minnesota, the HRA and the Developer (the "Redevelopment Agreement"), as approved by the Board of the HRA to aid in financing a "project," as defined in Minnesota Statutes, Section 469.174, subdivision 8, of the HRA consisting generally of defraying certain capital and administration costs incurred and to be incurred within and for the benefit of Tax Increment Financing District No._____ (the "TIF District"). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to them in the Redevelopment Agreement.

The maximum principal amount of this Note attributable to Qualified Redevelopment Costs shall not exceed $23,060,000.

Principal of and interest on this Note shall be payable solely from and in the amount of Available Tax Increment, as hereinafter defined, on each August 1 and February 1 commencing August 1, 2015, to and including ~~[August~~February 1, ~~20___]~~2041 (the "Payment Dates"). The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment and 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 hereunder as long as the Authority pays principal and interest hereon to the extent of such pledged revenues. The Authority shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment Date.

All payments made by the HRA on this Note shall be applied first to accrued interest and then to the principal amount of this Note. Interest accruing from the date of original issue through and including the first Payment Date will be compounded semiannually on February 1 and August 1 of each year and 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, (i) during the Initial TIF Period (defined below), ninety-five percent (95%) of the Tax Increment derived from the TIF District and received by the Authority from the County in the six months before each Payment Date~~ (as defined in the TIF Note)~~; and (ii) during the Remaining TIF Period, one hundred percent (100%) of the Tax Increment derived from all tax parcels in the TIF District , *except* the tax parcels that make up the East Block and received by the Authority from the County in the six months before each Payment Date.

"Initial TIF Period" means the period commencing on August 1, 2015 (the first Payment Date on the TIF Note); and ending on the February 1 immediately preceding the commencement of the Remaining TIF Period (defined below).

"Remaining TIF Period" means the period commencing August 1 of the first tax-payable year in which property taxes for the East Bock are based on an estimated market value of at least ~~[$__________________________],~~$21,000,000, which amount represents fifty percent (50%) of the projected valuation of the entire East Block upon completion of all the East Block Improvements.

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

Upon an Event of Default by the Redeveloper under the Redevelopment Agreement, the Authority may exercise the remedies with respect to this Note described in Section 9.3 of the Redevelopment Agreement, the terms of which are incorporated herein by reference.

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.

Upon receipt by Redeveloper of the Authority's written statement of the Excess Amount as defined in Section 8.4 of the Redevelopment Agreement, such Excess Amount will be deemed to constitute, and will be applied to, prepayment of the principal amount of this Note. Such deemed prepayment is effective as of the Calculation Date as defined in Section 8.4 of the Redevelopment Agreement, and will be recorded by the Registrar in its records for the Note. Upon request of the Owner, the Authority will deliver to the Owner a statement of the outstanding principal balance of the Note after application of the deemed prepayment under this paragraph.

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

THE HRA MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE. NO HOLDER OF THIS NOTE SHALL HAVE RIGHTS AGAINST THE HRA EXCEPT FOR DISTRIBUTION OF AVAILABLE TAX INCREMENT.

The Note shall not be assignable or transferable without the prior written consent of the HRA; provided, however, that such consent shall not be unreasonably withheld or delayed if: (a) the assignee or transferee delivers to the HRA a written instrument acknowledging the limited nature of the HRA's payment obligations under the Note, and (b) the assignee or transferee executes and delivers to the HRA a certificate, in form and substance satisfactory to the HRA, pursuant to which, among other things, such assignee or transferee represents (i) that the 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 Note and the assignee or transferee is able to bear the economic consequences thereof, (v) that in making its decision to acquire the 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 HRA, or any of its officers, employees, agents, affiliates or representatives, with respect to the value of the Note, (vi) that the HRA 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 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 HRA and its representatives concerning the terms of the Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the 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 Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects, (ix) that the Note will be characterized as "restricted securities" under the federal securities laws because the 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 the Note is intended to be developed.

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

This Note is issued pursuant to a resolution of the Board of the HRA 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 HRA or the City of Wayzata outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the HRA or the City of Wayzata to exceed any constitutional or statutory limitation thereon.

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

| | |
|---|---|
| ______________________________ | ______________________________ |
| Chair | Executive Director |

## EXHIBIT K

## CERTIFICATE OF COMPLETION

A. WAYZATA BAY REDEVELOPMENT COMPANY, LLC (the "Master Redeveloper"), pursuant to the Redevelopment Agreement with the CITY OF WAYZATA, MINNESOTA (the "City") and the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA (the "Authority"), dated effective as of __________, 2008 (the "Agreement"), has agreed to complete the ______________ [**Block/Segment**], as defined in and in accordance with the Agreement, on that certain real property (the "TIF Project Area") located in Hennepin County, Minnesota, described in Exhibit A attached hereto.

B. The Master Redeveloper has substantially completed construction of the ________________ [**Block/Segment**] as required under the Agreement.

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 ______________ [**Block/Segment**], including, but not limited to, the quality of materials, workmanship or the fitness of the ______________ [**Block/Segment**] for its proposed use.

NOW THEREFORE, this is to certify that all construction and other physical improvements specified to be done and made by the Master Redeveloper with regard to the [______________ **Block of the Minimum Improvements** or the ______________ **Segment of Public Infrastructure Improvements**] have been substantially completed, and the provisions of the Agreement imposing obligations on the Master Redeveloper to construct the [______________ **Block of the Minimum Improvements** or the ______________ **Segment of Public Infrastructure Improvements**] as required under the Agreement, are herby satisfied and terminated, and the County Recorder and Registrar of Titles in and for the County of Hennepin and State of Minnesota are hereby authorized to record this instrument, to be a conclusive determination of the satisfactory termination or said provisions of the Agreement.



~~4849-1338-1925False1False~~

Dated:

CITY: CITY OF WAYZATA, MINNESOTA

By ______________________________

Its Mayor

By ______________________________

Its City Manager

REVIEWED AND APPROVED

By ____________________________________
City Attorney

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ___ day of ________, 20__, by ___________ and ___________, the Mayor and City Manager, respectively, of the CITY OF WAYZATA, MINNESOTA, a Minnesota municipal corporation, on behalf of the City.

______________________________________
Notary Public



~~4849-1338-1925False1False~~

Dated:

AUTHORITY:

HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA

By ______________________________

Its President

By ______________________________

Its Executive Director

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ___ day of ________, 20__, by ___________ and ___________, the President and Executive Director, respectively, of the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA, a public body corporate and politic organized under the laws of the State of Minnesota, on behalf of the Authority.

______________________________
Notary Public



~~4849-1338-1925False1False~~

# EXHIBIT A

Legal Description



~~4849-1338-1925False1False~~

## EXHIBIT L

## MEMORANDUM OF REDEVELOPMENT AGREEMENT

THIS MEMORANDUM OF MASTER REDEVELOPMENT AGREEMENT (this "Memorandum") is entered into as of __________, 2008 by and among the CITY OF WAYZATA, MINNESOTA, a Minnesota municipal corporation ("City"), the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA, a public body corporate and politic organized under the laws of the State of Minnesota ("Authority"), and WAYZATA BAY REDEVELOPMENT COMPANY, LLC, a Minnesota limited liability company ("Master Redeveloper").

RECITALS:

A. City, Authority, and Master Redeveloper (collectively, the "Parties") have entered into a certain Redevelopment Agreement dated as of __________, 2008 (the "Agreement"), whereby the Parties have agreed to various aspects of the redevelopment of certain real property more particularly described in Exhibit A attached hereto and made a part hereof, 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 Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the sum of One and 00/100 Dollar ($1.00) and other 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 Agreement.

3. The Parties have entered into the Agreement 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 Agreement.

5. The terms and conditions of the Agreement 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.

Dated:

CITY: CITY OF WAYZATA, MINNESOTA

By ______________________________

Its Mayor

By ______________________________

Its City Manager

REVIEWED AND APPROVED

By ________________________________
City Attorney

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ___ day of ________, 2008, by ___________ and ___________, the Mayor and City Manager, respectively, of the CITY OF WAYZATA, MINNESOTA, a Minnesota municipal corporation, on behalf of the City.

______________________________
Notary Public



~~4849-1338-1925False1False~~

Dated:

AUTHORITY:

HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA

By ______________________________

Its President

By ______________________________

Its Executive Director

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ___ day of ________, 2008, by ___________ and ___________, the President and Executive Director, respectively, of the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA, a public body corporate and politic organized under the laws of the State of Minnesota, on behalf of the Authority.

______________________________
Notary Public

Dated:

MASTER REDEVELOPER:

WAYZATA BAY REDEVELOPMENT COMPANY, LLC

By ______________________________

Its ____________________

By ______________________________

Its ____________________

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ___ day of ________, 2008, by ____________ and ____________, the President and Executive Director, respectively, of the WAYZATA BAY REDEVELOPMENT COMPANY, LLC, a Minnesota limited liability company, on behalf of the Master Redeveloper.

______________________________
Notary Public



~~4849-1338-1925False1False~~

**EXHIBIT A**

Document comparison by Workshare Compare on Thursday, June 25, 2015 3:02:40 PM

| Input: | |
|---|---|
| Document 1 ID | C:\Users\bjorkman.paula\My Documents\ndeloc\Amended and Restated Wayzata Redevelopment Agreement(1).docx |
| Description | C:\Users\bjorkman.paula\My Documents\ndeloc\Amended and Restated Wayzata Redevelopment Agreement(1).docx |
| Document 2 ID | C:\Users\bjorkman.paula\My Documents\ndeloc\Amended and Restated Wayzata Redevelopment Agreement.docx |
| Description | C:\Users\bjorkman.paula\My Documents\ndeloc\Amended and Restated Wayzata Redevelopment Agreement.docx |
| Rendering set | Standard |

| Legend: | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|---|---|
| | Count |
| Insertions | 54 |
| Deletions | 89 |
| Moved from | 2 |
| Moved to | 2 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 147 |

# AMENDED AND RESTATED

# REDEVELOPMENT AGREEMENT

**by and among**

**THE CITY OF WAYZATA, MINNESOTA,**

**THE HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA,**

**and**

**WAYZATA BAY REDEVELOPMENT COMPANY, LLC**

**Dated as of**
**July [__], 2015**

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

## TABLE OF CONTENTS

**Page**

## LIST OF EXHIBITS

## REDEVELOPMENT AGREEMENT

**THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this __ day of July, 2015 (the "Effective Date"), among the **CITY OF WAYZATA, MINNESOTA,** a Minnesota home rule charter city (the "City"), the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the "Authority") and **WAYZATA BAY REDEVELOPMENT COMPANY, LLC**, a Minnesota limited liability company (the "Master 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**, the City and the Authority have determined that the TIF Project Area, depicted on the TIF Project Area Map, 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

**WHEREAS**, the City and the Authority have determined that redevelopment of the TIF Project Area has been impeded by the difficulty of redevelopment without a consistent overall plan ensuring compatible land uses; and

**WHEREAS**, the City and the Authority have determined that the TIF Project Area also offers the principal opportunity within the City for creation of a unified, mixed use redevelopment, with significant opportunities for new senior housing, other housing, and commercial redevelopment; and

**WHEREAS**, the Master Redeveloper is engaged in developing a redevelopment project covering approximately 14.5 acres in the TIF Project Area on which the Master Redeveloper proposes to demolish and clear existing blighted structures, and construct approximately 327 senior housing units, 88 condominium units, 26 market rate apartments, approximately 108,000 leasable square feet of retail space, and a full-service hotel with up to 100 rooms, in addition to street improvements, public parks, and public parking; and

**WHEREAS**, the City has determined to realign the intersection of Superior Boulevard and Lake Street to achieve the optimal configuration for land use, pedestrian access, safety and engineering, and the realigned streets, including any additional right-of-way or easements obtained with regard thereto, will be acquired for a public purpose and owned by the City for the use, occupation and enjoyment of the general public; and

**WHEREAS,** the Master Redeveloper has agreed to finance a portion of such road realignment and other sanitary sewer improvements within the TIF Project Area (collectively the "Public Infrastructure Improvements"); and

**WHEREAS**, the TIF Project Area includes the Minimum Improvements Area and the Public Infrastructure Improvements Area and the TIF Project Area is the same as the proposed TIF District; and

**WHEREAS**, the Authority has analyzed current land use in the TIF Project Area, including a building-by-building structural analysis, and after appropriate hearings and notices, the City adopted findings to determine that the TIF Project Area is "blighted" within the meaning of the HRA Act and that more than 50% of the buildings in the TIF Project Area are "structurally substandard" within the meaning of the TIF Act; and

**WHEREAS**, the City and the Authority adopted findings that included a determination that "but for" the assistance contemplated in the TIF Plan and provided under this Agreement, the redevelopment as proposed herein would not be expected to occur in the reasonably foreseeable future; and

**WHEREAS**, a major component of the proposed Redevelopment Plan is to redevelop blighted areas, prevent the emergence of blight, and foster an increase in commercial and retail development providing jobs, create new rental housing, particularly senior housing, and create new for sale housing appropriate for various life stages of the City's residents and not currently available in the City; and

**WHEREAS,** in order to achieve the objectives of the Redevelopment Plan, to facilitate completion of the site improvements, including the Public Infrastructure Improvements, and the development and construction of the Minimum Improvements, the City has agreed to convey certain parcels to the Master Redeveloper pursuant to the terms of this Agreement, and the Master Redeveloper has agreed to convey certain parcels to the City; and

**WHEREAS**, the Master Redeveloper may, pursuant to the terms of this Agreement, assign certain Blocks of the Minimum Improvements to Secondary Redevelopers which will then have certain rights and obligations under this Agreement related to the assigned Block, which assignments will be approved by the Authority, and thereafter the Secondary Redevelopers will undertake those Blocks in accordance, in each case, with the provisions of this Agreement and the PUD Agreement; and

**WHEREAS**, under TIF Act, the Authority is authorized to finance certain Qualified Redevelopment Costs of a redevelopment project with tax increment revenues derived from a tax increment financing district established within a redevelopment TIF Project Area; and

**WHEREAS**, consistent with the TIF Act, the City and the Authority has held a public hearing to consider the need and desirability for adoption of a tax increment financing plan and the creation and establishment of the TIF 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 adopted a TIF plan and established a portion of the Central Area Redevelopment District ("CARD") Project Area as a redevelopment TIF district; and

**WHEREAS**, the Authority has certified the TIF District consistent with this Agreement and delayed receipt of the first Tax Increment until 2015; and

**WHEREAS,** the Authority will issue TIF Assistance in accordance with Article IX of this Agreement;

**WHEREAS**, on October 21, 2008, the City, the Authority, and the Master Redeveloper entered into that certain Redevelopment Agreement (the "Original Redevelopment Agreement");

**WHEREAS**, the City, the Authority, and the Master Redeveloper have previously entered into that certain (i) First Amendment to Redevelopment Agreement dated as of December 15, 2009 (the "First Amendment") and (ii) Second Amendment to Redevelopment Agreement dated as of December 7, 2011 (the "Second Amendment"; the First Amendment, Second Amendment, and the Original Redevelopment Agreement are collectively referred to herein as, the "Amended Redevelopment Agreement");

**WHEREAS**, in order to supplement the Amended Redevelopment Agreement, the City, the Authority, and the Master Redeveloper enter into this Agreement to amend and restate the Amended Redevelopment Agreement and, in so doing, (i) the provisions of the First Amendment and Second Amendment will be fully incorporated into this Agreement to be effective from and after December 15, 2009 and December 7, 2001, respectively, (ii) all other provisions that are added to this Agreement other than the First Amendment and Second Amendment provisions shall be effective from and after the Effective Date, and (iii) all of the provisions of the Original Redevelopment Agreement shall be and remain unaffected, except to the extent modified by this Agreement; 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:

"***Agreement***" means this Amended and Restated Redevelopment Agreement.

***"Amended Redevelopment Agreement"*** has the meaning given in the Recitals.

"***Authority***" means the Wayzata Housing and Redevelopment Authority.

"***Authority Representative***" means the Executive Director of the Authority or his or her designee.

"***Available Tax Increment***" means, (i) during the Initial TIF Period, ninety-five percent (95%) of the Tax Increment derived from the TIF District and received by the Authority from the County in the six months before each Payment Date (as defined in the TIF Note); and (ii) during the Remaining TIF Period, one hundred percent (100%) of the Tax Increment derived from all tax parcels in the TIF District, *except* the tax parcels that make up the East Block and received by the Authority from the County in the six months before each Payment Date.

"***Block***" or "***Blocks***" refers to one or more portions of the Minimum Improvements, specifically the West Block, East Block, East Block Linear Park, Plaza Block, Park Plaza, Superior Block, North Block, or North Block Linear Park.

"***Board***" means the Board of Commissioners of the Authority.

"***CARD Amendment***" means an amendment to the City's Central Area Redevelopment District addressing the Project which serves as the Redevelopment Plan.

"***Certificate of Completion***" means the certificates in substantially the form attached as Exhibit K, signed by the Authority Representative certifying completion of various Blocks of the Minimum Improvements, and releasing such Block from obligations to construct the Minimum Improvements under this Agreement, as specified in Section 5.9, or certifying Completion of the Public Infrastructure Improvements, and releasing Master Redeveloper from obligations to finance and construct the Public Infrastructure Improvements under this Agreement, as specified in Section 6.13.

"***City***" means the City of Wayzata.

"***City Consultants***" means the financial, engineering, legal and other similar advisors to the City and the Authority regarding the Project.

"***City Council***" means the Wayzata City Council.

"***City Documents***" has the meaning given in Section 4.9(b).

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

"***Commencement***" means the date on which a building permit application is deemed complete by the City in accordance with Minnesota Statutes, Section 15.99 for a given Block (except for the East Block, which means East Block Commencement) and the corresponding Segment of the Public Infrastructure Improvements.

"***Commencement Date***" means the date of Commencement.

"***Completion***" of a particular Block or Segment means Master Redeveloper receipt of a Certificate of Completion for that Block or Segment (except for the East Block, which means East Block Completion).

"***Completion Date***" means any date a Certificate of Completion with respect to any Block of the Minimum Improvements or any Segment of the Public Infrastructure Improvements is delivered.

"***Contract for Deed***" means the contract for deed provided for by the Sale and Purchase Agreement, pursuant to which the Gas Station Parcel shall be purchased from Wayzata Circle LLC.

"***Costs of Issuance***" means all costs and expenses incurred in connection with the issuance of the TIF Assistance, including, but not limited to fees of the placement agent, fiscal consultant, bond counsel, counsel to the Authority and placement agent, and paying agent.

"***County***" means the County of Hennepin, Minnesota.

"***Cure Rights***" means the rights to cure a Default as specified in Section 14.4.

"***Deed***" means a quit claim deed in the form attached hereto as <u>Exhibit F</u>.

"***Default***" means an act or omission by the City, the Authority or the Master Redeveloper which becomes an Event of Default under this Agreement if it is not cured.

"***Default Date(s)***" means the Commencement and Completion Dates outlined in the Minimum Improvements Timeline in Section 7.1 and the Public Infrastructure Improvements Timeline in Section 7.2.

"***DNR***" means the Minnesota Department of Natural Resources.

"***DNR Parcel***" means the parcel of land described as Tract F, Registered Land Survey No. 1168, as depicted on the Land Transfer Map.

"***DNR Parcel Act***" means 2008 Minnesota Laws, Chapter 368, Article 1, Section 34, as amended by 2009 Minnesota Laws, Chapter 176, Article 3, Section 2.

"***DNR Parcel Closing***" means the date on which the City transfers certain rights in the DNR Parcel to the Master Redeveloper as detailed in Sections 4.5 and 4.9.

"***East Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***East Block Commencement***" means the date on which actual physical improvement commences on the East Block, including grading, excavation, or other physical site preparation work.

"***East Block Completion***" means the date on which the City issues a certificate of occupancy for the East Block.

"***East Block Linear Park***" is defined in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***East Block Plans***" means those plans submitted to the City by the East Block Redeveloper, dated May 21, 2015, which provide for the construction, equipping and parking operations for the East Block.

"***East Block Redeveloper***" means Bohland Development Inc. as Secondary Redeveloper for the East Block.

"***East Lake Street Parcel***" means 1001 East Lake Street, Wayzata, Minnesota, as depicted on the Land Transfer Map.

"***EAW***" means the Environmental Assessment Worksheet.

"***Entry Deposits***" mean those funds deposited by residents of the independent senior housing components of the Minimum Improvements and received by the Master Redeveloper pursuant to an entry deposit agreement.

"***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 the Master Redeveloper described in Article XIV.

"***Final Plans***" means the final design and architectural plans for a given Block of the Minimum Improvements submitted to the City for approval pursuant to the City's ordinances.

"***Final Plat***" means the final plat or replat for any Block of the Minimum Improvements when approved by the City and the County.

"***Financing Commitment***" means a commitment from a mortgage lender, or in the case of a conduit bond, a term sheet from an investment banking firm.

"***First Amendment***" means that certain First Amendment to Redevelopment Agreement dated as of December 15, 2009 among the City, the Authority, and the Master Redeveloper.

"***FOFR Parcel***" means a portion of the Old Superior Boulevard Parcel identified as Parcel 1A on Exhibit D-2 of the Redevelopment Agreement as shown on Attachment 2 to the First Amendment, and the Remnant Parcel identified as Parcel 2A on Exhibit D-2 of the Redevelopment Agreement as shown on Attachment 2 to the First Amendment.

"***Gas Station Parcel***" means the parcel of land located at 800 Superior Boulevard in the City, which is legally described as Tract E, Registered Land Survey No. 1168, Hennepin County, Minnesota and is depicted on the Land Transfer Map.

"***Gas Station Work***" means the Master Redeveloper's obligation to remove the building, foundation and underground tanks, canopy, pumps and piping located on the Gas Station Parcel.

"***General Plan Approval***" means all the land use terms and conditions contained in Resolution No. 25-2008 adopted by the City Council on June 10, 2008, as shown in the minutes for the July 15, 2008 City Council meeting as amended by the City Council on June 2, 2015.

"***General Plans***" means the preliminary design and architectural plans for the Project submitted by the Master Redeveloper to the City and the Authority and approved in the General Plan Approval.

"***Go-Ahead Letter***" means the Master Redeveloper's letters to the City and the Authority demonstrating satisfaction of the Project financing contingency for the relevant Block and indicating the Master Redeveloper is prepared to proceed with the relevant Block.

"***Grantee***" means the party receiving land in each Land Transfer, and includes that party's successors and assigns.

"***Grantor***" means the party granting land in each Land Transfer, and includes that party's successors and assigns.

"***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.

"***HRA Act***" means Minnesota Statutes, Sections 469.001 to 469.047, as amended.

"***Independent Senior Housing***" means that portion of the Minimum Improvements for residents fifty-five years of age or older with limited healthcare needs.

"***Initial Superior Boulevard Improvements***" means those public infrastructure improvements detailed in Exhibit N of the Redevelopment Agreement, and as Attachment 1 to the First Amendment.

"***Initial Superior Boulevard Improvements Costs***" means the sum of total City costs related to construction of the Initial Superior Boulevard Improvements as detailed in Exhibit N of the Redevelopment Agreement, and as Attachment 1 to the First Amendment.

"***Initial TIF Period***" means the period commencing on August 1, 2015 (the first Payment Date on the TIF Note); and ending on the February 1 immediately preceding the commencement of the Remaining TIF Period.

"***Lake Street and Superior Boulevard Realignment***" has the meaning given in Section 6.1 and shown on the Public Infrastructure Improvements Site Plan.

"***Lake Street Improvements***" means that portion of the Public Infrastructure Improvements on Lake Street, which includes Segment 4.

"***Land Transfer(s)***" mean one or more transfers of land between the City and the Master Redeveloper outlined in Article IV.

“***Land Transfer Closing***” means the simultaneous closing on all of the Land Transfers, pursuant to Section 4.9.

“***Land Transfer Closing Date***” means the date on which the Land Transfers occur, with the possible exception of the DNR Parcel, pursuant to Section 4.9, which shall occur on a date determined by the City, to be no earlier than January 15, 2010.

“***Land Transfer Map***” means the revised map shown in Exhibit D of the Redevelopment Agreement, as amended by Attachment 2 to the First Amendment.

“***Linear Park***” means both the East Block Linear Park and the North Block Linear Park.

“***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 Wayzata Bay Redevelopment Company, LLC.

“***Master Redeveloper Documents***” has the meaning given in Section 4.9(c).

“***Maximum Redeveloper Amount***” has the meaning given in Section 6.2.

“***Memorandum of Agreement***” means the document described in Section 15.13 and substantially in the form shown in Exhibit L.

“***Minimum Improvements***” means the Master Redeveloper’s obligations in both Phase I and Phase II as described in Article V subject to the timing and sequence of Blocks and Segments provided in Section 7.3.

“***Minimum Improvements Area***” means the area on which the Master Redeveloper will construct the Minimum Improvements, which is illustrated on the TIF Project Area Map and legally described on Exhibit B-1.

“***Minimum Improvements Site Plan***” is attached as Exhibit B.

“***Minimum Improvements Timeline***” means the Minimum Improvements schedule established in Section 7.1.

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

“***MPCA***” means the Minnesota Pollution Control Agency.

“***New Superior Boulevard Parcel***” is depicted on the Land Transfer Map.

“***North Block***” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***North Block Linear Park***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***Note Lender***" means a financial institution or other lender that loans funds to the Master Redeveloper secured by a pledge of the TIF Note.

"***Old Superior Boulevard Parcel***" is depicted on the Land Transfer Map.

***"Original Redevelopment Agreement"*** has the meaning given in the Recitals.

"***Park Plaza***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***Parking and Mobility District***" means a special service district to be established by the City in accordance with Minnesota Statutes § 428A.01 to 428A.101 to provide parking and related services within the City.

"***Parking Facilities***" means the portion of the Minimum Improvements in the East Block, West Block, Plaza Block and Superior Block, as approved in a Final Plan, available for public parking through the Public Access Areas Easement.

"***Park Improvements***" means the portion of the Minimum Improvements, as approved in a Final Plan, available for public use as a park through a Park Improvements Easement.

"***Park Improvements Easement***" has the meaning given in Section 5.8.

"***Phase(s)***" means one or both phases of the Minimum Improvements described in this Agreement.

"***Phase I***" means the Master Redeveloper's obligation to construct the Superior Block, North Block, North Block Linear Park, West Block, and East Block Linear Park, subject to the sequencing provisions of Section 7.3.

"***Phase II***" means the Master Redeveloper's obligation to construct the East Block, Plaza Block and Park Plaza, subject to the sequencing provisions of Section 7.3.

"***Plaza Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***Preliminary Plat***" means the preliminary plat for any Block of the Minimum Improvements.

"***Project***" means the Minimum Improvements and the Public Infrastructure Improvements under this Agreement.

"***Project Completion TIF Pro Forma***" means a detailed TIF pro forma in substantially the same format as the TIF Pro Forma, or in another format reasonably approved by the

Authority's financial advisor, updated to reflect actual project costs and related cash flow information as of the Effective Date.

"***Public Access Area***" means the portions of the Project covered by the Public Access Area Easement, including, but not limited to, roads, curbs, gutters, and on-street public parking.

"***Public Access Area Easement***" has the meaning given in Section 5.7.

"***Public Access Improvements***" means the portion of the Minimum Improvements, as approved in a Final Plan, available for public use through a Public Access Area Easement.

"***Public Infrastructure Improvements***" mean Sanitary Sewer Improvements and the Lake Street Improvements and Superior Boulevard Improvements to be completed by the City or the Master Redeveloper.

"***Public Infrastructure Improvements Area***" means the area in which the Public Infrastructure Improvements will be constructed which is depicted on the TIF Project Area Map.

"***Public Infrastructure Improvements Plans***" means one or more plans designed and specified by the City for the Public Infrastructure Improvements, which shall include standards for the engineering of the Public Infrastructure Improvements.

"***Public Infrastructure Improvements Site Plan***" means the map depicting the Segments of the Lake Street and Superior Boulevard Realignment and the Sanitary Sewer Improvements, attached as Exhibit C.

"***Public Infrastructure Improvements Timeline***" means the Public Infrastructure Improvements schedule established in Section 7.2.

"***PUD Agreement***" means one or more planned unit development agreements to be negotiated, approved, executed, and recorded against each Block of the Minimum Improvements by the City and the Master Redeveloper, as the same may be amended from time-to-time.

"***PUD Ordinance***" means Section 801.33 of the City's ordinances.

"***Qualified Redevelopment Activities***" mean the Master Redeveloper's Project-related activities eligible for TIF Assistance, as authorized by this Agreement and the TIF Act.

"***Qualified Redevelopment Costs***" means the certain costs and expenses related to Master Redeveloper's Qualified Redevelopment Activities to be paid by the Master Redeveloper from Master Redeveloper sources and in specific cases reimbursed by Available Tax Increment, which costs and expenses as approved herein are set forth in the TIF Pro Forma.

"***Redevelopment Plan***" means the redevelopment plan adopted by the Authority in accordance with Minnesota Statutes, Section 469.027 and approved by the City Council in accordance with Minnesota Statutes, Sections 469.028 and 469.175, subdivision 3, which is the same as the CARD Amendment.

"***Release***" means the spilling, leaking, disposing, discharging, emitting, depositing, ejecting, leaching, escaping or any other release, however defined, whether intentional or unintentional, of any Hazardous Material.

"***Remaining Public Infrastructure Improvements***" means the Remaining Superior Boulevard Improvements described in Section 6.1.

"***Remaining Superior Boulevard Improvements***" has the meaning given in Section 6.1.

"***Remaining TIF Period***" means the period commencing August 1 of the first tax-payable year in which property taxes for the East Bock are based on an estimated market value of at least $21,000,000, which amount represents fifty percent (50%) of the projected valuation of the entire East Block upon completion of all the East Block Improvements.

"***Remediation Costs***" mean any and all costs, expenses and fees incurred to conduct actions required by a governmental entity under Environmental Law to: (i) clean up, remove, treat, or in any other way address any Release of Hazardous Material, (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Materials; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care relating to a Release.

"***Remnant Parcel***" means that portion of the Gas Station Parcel which is not dedicated as a right of way by the City for the realignment of Superior Boulevard as part of the Superior Boulevard Improvements, which is depicted on Land Transfer Map as Parcel 2A.

"***Reverter Closing Date***" means 30 days after the Master Redeveloper's receipt of the City's notice exercising the City's right of reverter for the East Lake Street Parcel.

"***Reverter Deed***" means the quit claim deed through which the Master Redeveloper will convey the East Lake Street parcel and any improvements thereon back to the City upon City's exercise of its right of reverter.

"***Right of First Offer/Refusal***" means the rights provided in Section 4.12 hereof to the Master Redeveloper by the City with respect to the potential purchase of the Remnant Parcel and the New Superior Boulevard Parcel, in substantially the form attached to the First Amendment as Attachment 3 (the "FOFR Agreement").

"***Sanitary Sewer Improvements***" means improvements to the sanitary sewer system within the TIF Project Area, which are part of the Public Infrastructure Improvements as shown on the Public Infrastructure Improvements Site Plan and which are included in the costs described in Attachment 1 to the First Amendment.

"***Secondary Redeveloper***" means any redeveloper other than the Master Redeveloper that has been authorized by the City and the Authority to construct the Minimum Improvements as described in Section 13.2.

"***Second Amendment***" means that certain Second Amendment to Redevelopment Agreement dated as of December 7, 2011 among the City, the Authority, and the Master Redeveloper.

"***Secondary Redevelopment Agreement***" means any redevelopment agreement negotiated and entered into by and among a Secondary Redeveloper, the City and the Authority consistent with this Agreement.

"***Segment***" means refers to one or more portions of the Public Infrastructure Improvements, as described in Section 6.1 and shown on the Public Infrastructure Improvements Site Plan.

"***Senior Community Town Center***" means common areas and amenities for the North Block and Superior Block.

"***Special Assessments***" mean assessments levied against any portion of the Minimum Improvements Area or other benefited property, by the City for purposes of paying for Public Infrastructure Improvements.

"***State***" means the State of Minnesota.

"***Superior Boulevard Improvements***" means that portion of the Public Infrastructure Improvements on Superior Boulevard, which includes Segments 2, 3 (southerly third) and 6, the Initial Superior Boulevard Improvements, and the Sanitary Sewer Improvements.

"***Superior Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

"***Tax Increment***" means the tax increment from the TIF District as calculated in accordance with the TIF Act.

"***Tax Official***" means any City or County assessor; County auditor; City, County, or State board of equalization; the Commissioner of Revenue of the State; or any State or Federal district court, the Tax Court of the State, or the State Supreme Court.

"***TIF***" means tax increment financing.

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

"***TIF Assistance***" means the TIF Notes or the TIF Bonds.

"***TIF Bond(s)***" or "***Bond(s)***" means the TIF revenue bonds which may be issued by the Authority pursuant to Section 9.7.

"***TIF District***" or "***District***" means TIF district 5 which was created by the Authority and the City under the TIF Act on November 15, 2011 and for which TIF District Certification was filed on March 29, 2012.

"***TIF District Certification***" means the Authority's request to the County Auditor to certify the TIF District in accordance with Minnesota Statutes, Section 469.175, subdivision 3, which was filed on March 29, 2012.

"***TIF Note(s)***" or "***Note(s)***" means the TIF revenue note or notes to be issued by the Authority to the Master Redeveloper, in substantially the form attached hereto as Exhibit J to pay or reimburse the Master Redeveloper for the funding of Qualified Redevelopment Costs.

"***TIF Plan***" means the TIF plan adopted by the Authority for the TIF Project Area in accordance with Minnesota Statutes, Section 469.175, as the same may be amended from time-to-time.

"***TIF Pro Forma***" means the detailed TIF pro forma shown in Exhibit I of the Redevelopment Agreement, as amended by Attachment 4 to the First Amendment.

"***TIF Project Area***" consists of the property which includes the Minimum Improvements Area and the Public Infrastructure Improvements Area. The TIF District covers a larger area than the TIF Project Area, but excludes those parcels within the TIF District west of new Superior Boulevard resulting from the Superior Boulevard Improvements, as illustrated on the TIF Project Area Map.

"***TIF Project Area Map***" means the map depicting the TIF Project Area, attached as Exhibit A.

"***Title***" or "***Title Company***" means such title insurance company, reasonably acceptable to the City, the Authority and the Master Redeveloper, which will provide the title insurance and escrow and disbursement services described in this Agreement.

"***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, (f) delays in delivery of materials for the Project, (g) soil conditions on the TIF Project Area, (h) delays caused by market inability to issue conduit revenue bonds at rates and conditions consistent with the TIF Pro Forma, or (i) resolution of leases in force which impact the Master Redeveloper's ability to comport with the Minimum Improvements Timeline.

"***West Block***" has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

## 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 a home rule charter city 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) The City is authorized by law to undertake the Public Infrastructure Improvements and pay for such Public Infrastructure Improvements, in accordance with the provisions of this Agreement.

(c) The City is authorized by law to convey the East Lake Street Parcel to the Master Redeveloper, in accordance with the terms of this Agreement.

(d) The City is authorized by law to enter into the various additional agreements contemplated herein, including, but not limited to, the use and maintenance agreements, all in accordance with the terms of this Agreement, and subject to approval as to form and substance by the City Attorney.

(e) Other than items disclosed by the City to the Master 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.

(f) 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.

(g) The City will reasonably cooperate with the Master 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.

(h) The City will assist and reasonably cooperate with the Master Redeveloper in complying with any Environmental Law or land use regulation or Project review procedure applicable to the TIF Project Area to the extent any federal, state or local law requires the participation of the City; however, this provision does not obligate the City to incur costs, except as otherwise provided in this Agreement or elsewhere, nor to limit, waive or modify any regulatory requirements or standards applicable to the Project.

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

**Section 2.2** **<u>Representations and Warranties of the Authority</u>**. 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) The Authority has approved the TIF Assistance, the TIF District, the TIF Plan and the Redevelopment Plan as required under the TIF Act.

(c) Under the TIF Plan, the Authority will fund fiscal disparities from within the TIF District, in accordance with Minnesota Statutes, Section 469.177, subdivision 3, but otherwise agrees to retain all of the captured net tax capacity of the TIF Project Area to finance the Qualified Redevelopment Costs as provided in this Agreement, and has elected that the duration of the 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 District until the amount paid to the Master Redeveloper from Available Tax Increment reaches the maximum amount specified in Section 9.2.

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

(e) Other than items disclosed by the Authority to the Master 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.

(f) 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.

(g) The Authority will reasonably cooperate with the Master 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.

(h) The Authority will assist and reasonably cooperate with the Master Redeveloper in complying with any Environmental Law or land use regulation or development review procedure applicable to the TIF Project Area; however, this provision does not obligate the Authority to incur costs, except as otherwise provided in this Agreement or elsewhere.

(i) The Authority, as regards the Project, is aware of no facts, the existence of which would cause it to be in violation of Environmental Law or which would give any person a valid claim under the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act.

**Section 2.3** **<u>Representations and Warranties of the Master Redeveloper</u>**. The Master Redeveloper represents and warrants that:

(a) The Master Redeveloper is a limited liability company organized and in good standing under the laws of 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 of the terms or conditions of the Master Redeveloper's organizational documents, any restriction or any agreement or instrument to which the Master Redeveloper is now a party or by which it is bound or to which any property of the Master 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 the Master 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 the Master Redeveloper contrary to the terms of any instrument or agreement to which Master Redeveloper is a party or by which it is bound.

(c) To the best of the Master 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) As of the date of the Original Agreement (except for the East Lake Street Parcel and the DNR Parcel) , the Master Redeveloper had the unconditional right to acquire fee title to the Minimum Improvements Area and the Master Redeveloper will acquire the entire Minimum Improvements Area. As of the date of this Agreement, the Master Redeveloper has fee title to any Block which has not been Completed and will take all actions necessary to file the Final Plat for each Block of the Minimum Improvements prior to Commencement of construction of the applicable Block.

(e) The Master Redeveloper would not acquire the Minimum Improvements Area and 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) The Master Redeveloper will 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 the Master Redeveloper to incur costs, except as otherwise provided in this Agreement or elsewhere.

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

(h) The Master Redeveloper has not received any notice from any local, state or federal official that the activities of the Master Redeveloper or the Authority with respect to the Minimum Improvements Area, New Superior Boulevard Parcel, Old Superior Boulevard Parcel 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. The Master Redeveloper 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 the Master Redeveloper 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) The Master 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 the Master Redeveloper to successfully acquire the Minimum Improvements Area and construct the Minimum Improvements and Public Infrastructure Improvements, as provided herein.

## ARTICLE III
## LAND USE AND DEVELOPMENT CONTROLS

**Section 3.1** **<u>Restrictions on Development</u>**. The Master Redeveloper may not construct or permit construction on any part of the Minimum Improvements Area until the Master Redeveloper satisfies the following conditions:

(a) The Master Redeveloper acquires fee title to all of the property required for the Block proposed to be built, obtains approval of the Final Plans for such Block, executes and records the relevant PUD Agreement and causes any lien holder affecting any of the property to subject its interest as provided herein to this Agreement and the PUD Agreement;

(b) The Master Redeveloper satisfies all of the conditions established by the City in the General Plan Approval;

(c) The Master Redeveloper satisfies all of the conditions in the PUD Agreement and obtains approval of and records the Final Plat; and

(d) With respect to the East Block, the Master Redeveloper applies for an amendment to the existing PUD Agreement and meets all City requirements and obtains all City approvals.

**Section 3.2** **Homeowners' Associations and Restrictive Covenants**. The Master Redeveloper shall submit any deed restrictions, covenants, agreements, architectural controls, homeowners' associations and other means to control the use and to ensure the maintenance of land within the Minimum Improvements Area to the City and the Authority as may be required under the PUD Agreement.

**Section 3.3** **Environmental Review**. The City has prepared an EAW on the Minimum Improvements Area in accordance with the rules of the Minnesota Environmental Quality Board, and made a "negative declaration" in accordance with such rules regarding the need for an Environmental Impact Statement. The time for the appeal of the negative declaration under applicable law has expired.

**Section 3.4** **Zoning and Land Use Approvals**. Nothing in this Agreement shall limit the authority of the City with respect to zoning and land use approvals. Subject to the foregoing, the staff of the City and the Authority shall cooperate with the Master Redeveloper and assist the Master Redeveloper in the processing and obtaining of zoning and land use approvals. The Master Redeveloper shall be responsible for applying for and obtaining all land use and zoning approvals necessary for the Minimum Improvements including, without limitation, the conditions contained in the General Plan Approval and the PUD Agreement. 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 3.5** **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 and Public Infrastructure Improvements. The Master Redeveloper shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits prior to construction.

**Section 3.6** **Demolition Timing**. The Parties acknowledge that as of the Effective Date all demolition required for construction of the Minimum Improvements within the Minimum Improvements Area has occurred.

**Section 3.7** **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
## TIF PROJECT AREA LAND ASSEMBLY

Under the Amended Redevelopment Agreement, the following have or will occur and, specifically, the ongoing rights and obligations provided in Section 4.12 below are as provided in this Agreement:

**Section 4.1** **Minimum Improvements Area Acquisition by the Master Redeveloper**. With the exception of the DNR Parcel, the Master Redeveloper will acquire fee ownership of the Minimum Improvements Area and close on this property consistent with the Minimum Improvements Timeline described in Section 7.1 below. The Master Redeveloper shall provide all related title commitments if requested by the Authority.

**Section 4.2** **Transfer of New Superior Boulevard Parcel to the City**. The Master Redeveloper agrees to transfer fee ownership of the New Superior Boulevard Parcel, depicted as Parcel 4 on the Land Transfer Map included as Exhibit D, to the City for the Lake Street and Superior Boulevard Realignment on the Land Transfer Closing Date, in consideration of the conveyances outlined in this Article IV and the other terms contained in this Agreement.

**Section 4.3** **Transfer of Old Superior Boulevard Parcel to the City**. The Master Redeveloper agrees to transfer fee ownership of the Old Superior Boulevard Parcel, depicted as Parcels 1A and 1B on the Land Transfer Map, to the City on the Land Transfer Closing Date in consideration of the conveyances outlined in this Article IV and the other terms contained in this Agreement. The City agrees to grant the Master Redeveloper a Right of First Offer/Refusal for the FOFR Parcel, pursuant to the terms of Section 4.12 hereof.

**Section 4.4** **Transfer of East Lake Street Parcel to the Master Redeveloper; Reversion**. The City will transfer fee ownership of the East Lake Street Parcel, depicted as Parcel 5 on the Land Transfer Map, to Master Redeveloper on the Land Transfer Closing Date in consideration of the conveyances outlined in this Article IV and on the condition that the Master Redeveloper continue to satisfy its obligations under this Agreement in compliance with the Minimum Improvements Timeline.

(a) If the Master Redeveloper fails to complete the grading required for the Minimum Improvements for the East Block, as specified in the grading permit for the East Block by June 30, 2011, then the City may require the East Lake Street Parcel to revert back to the City. The City may, but shall not be obligated to, cause the Master Redeveloper to reconvey the East Lake Street Parcel and all improvements thereon to the City by giving the Master Redeveloper notice of the City's exercise of its right of reverter pursuant to this Section. Such notice shall be subject to the notice and right to cure provisions in Article XIV. The right of reverter under this section for the East Lake Street Parcel shall terminate and no longer be of any force and effect upon the completion of grading permit conditions. The City agrees to execute a recordable release of its right of reverter, in a form reasonably acceptable to the Master Redeveloper, within thirty (30) days after completion of grading permit conditions. The City will agree to subordinate such reversion rights to one or more lenders if necessary in order to secure financing for land acquisition or construction of the Minimum Improvements, or both.

On the Reverter Closing Date, the Master Redeveloper will convey fee title to the East Lake Street Parcel and all improvements thereon to the City by the Reverter Deed, as follows:

(i) the City will pay the Master Redeveloper $1.00 as consideration for receiving the Reverter Deed;

(ii) the Master Redeveloper will convey the East Lake Street Parcel and any improvements thereon to the City free and clear of all encumbrances, subject only to easements benefiting the City or another public entity, and other encumbrances which the City or the Authority has previously approved in writing;

(iii) the Master Redeveloper shall have no further rights to the East Lake Street Parcel or any improvements thereon;

(iv) On or before the Reverter Closing Date, the Master Redeveloper will execute and deliver to the City a standard "seller's affidavit" stating under oath, *inter alia*, that the Master Redeveloper has paid for all work performed or supplies ordered or delivered with respect to the East Lake Street Parcel; and

(v) the Master Redeveloper shall deliver an updated title insurance commitment to the City evidencing the status of title to the East Lake Street Parcel.

**Section 4.5** **DNR Parcel**. The City has purchased the DNR Parcel and will execute and deliver the DNR Easement or a reasonably equivalent license agreement to the Master Redeveloper at the Land Transfer Closing, subject to DNR approval of the DNR Easement. City staff will cooperate with the Master Redeveloper in a manner consistent with General Plan Approval to address any land use issues related to Master Redeveloper's use of the DNR Parcel for the Project.

**Section 4.6** **Wetland Mitigation Parcel**. The Master Redeveloper has developed a wetland mitigation plan (the "Plan") utilizing a parcel owned by the City within a current wetland delineation area located north of I-394 and east of Broadway Avenue in the City, as shown on Exhibit E (the "Wetland Parcel"). The Plan has been approved by the Minnehaha Creek Watershed District and the City. At such time as the City issues a building permit for the East Block: (i) the City will make available the Wetland Parcel to the Master Redeveloper at the City's expense to mitigate wetland issues created by construction of the Linear Park and the East Block; and (ii) the Master Redeveloper shall pay the City One Hundred Twenty-Nine Thousand Five Hundred Ninety-One and No/100 Dollars ($129,591.00). All costs of implementing the Plan in excess of the $129,591.00 payment by the Master Redeveloper shall be paid by the City. Notwithstanding any provisions in this Section 4.6 to the contrary, Master Redeveloper shall have the right to satisfy its wetland mitigation obligations with regard to the Project on a site other than the Wetland Parcel, pursuant to a plan approved by the City and the Minnehaha Creek Watershed District, at the sole expense of the Master Redeveloper.

**Section 4.7** **Conveyance of Rights-of-Way by the Master Redeveloper**. On the Land Transfer Closing Date, the Master Redeveloper will provide a Deed to the City for all property rights it owns under the existing right-of-way for Superior Boulevard and Lake Street within the TIF Project Area in accordance with standard City requirements and at no cost, but shall not be obligated to acquire additional land beyond the TIF Project Area.

**Section 4.8** **Contingencies to Land Transfer Closing**. The City's and the Master Redeveloper's obligations to close on the Land Transfers outlined in Sections 4.2 to 4.7 and 4.11 are conditioned upon the City and the Authority's approval of the TIF Plan and the PUD Agreement and further conditioned as follows:

(a) City Contingencies. The City's obligation to close on the Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The Master Redeveloper shall have performed all of the obligations required to be performed by the Master Redeveloper under the PUD Agreement and this Agreement as of the Land Transfer Closing Date and shall not be in Default under the PUD Agreement and this Agreement.

(ii) The Master Redeveloper shall have delivered to the City all of the Master Redeveloper Documents described in Section 4.9(c).

(iii) The Contract for Deed shall be unamended, in full force and effect, and without any defaults and the Master Redeveloper shall have the right to assign the Contract for Deed to the City free from any claims and encumbrances against its vendee's interest.

(iv) The City shall have determined that the Master Redeveloper has the title and legal authority to transfer unencumbered fee title to the New Superior Boulevard Parcel, the Old Superior Boulevard Parcel and the vendee interest in the Contract for Deed.

(b) Master Redeveloper Contingencies. The Master Redeveloper's obligation to close on the Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The City shall have performed all of the obligations required to be performed by the City under this Agreement as of the Land Transfer Closing Date and shall not be in Default under this Agreement.

(ii) The City shall have delivered to the Master Redeveloper all of the City Documents described in Section 4.9(b).

(iii) The Master Redeveloper shall have determined that the City has the title and legal authority to transfer unencumbered fee title to the East Lake Street Parcel to the Master Redeveloper

(iv) If the DNR has transferred title for the DNR Parcel to the City, then the Master Redeveloper shall have determined that the City has the title and legal authority to transfer the unencumbered license or easement rights to the DNR Parcel (as described in Section 4.9(a)(ii)) to the Master Redeveloper and the City shall have executed the DNR Easement.

(v) The City shall have executed the FOFR Agreement.

(vi) The City and all relevant governmental authorities shall have consented to any and all subdivisions and or plats that may be required in order to assemble and transfer the Old Superior Boulevard Parcel and the New Superior Boulevard Parcel.

(c) City and Master Redeveloper Options. In the event that any of the foregoing contingencies fail to be satisfied on or before the Land Transfer Closing Date, the Master Redeveloper or the City, as the case may be, may:

(i) terminate this Agreement in the case of the failure to satisfy a contingency under subsection (a) or (b) hereof; or

(ii) waive such failure and proceed to close; or

(iii) cure the unsatisfied contingency and charge related costs to the other party.

**Section 4.9 Land Transfer Closings.** All of the Land Transfers will close as outlined herein:

(a) Time and Place. With the exception of the DNR Parcel, all Land Transfers will close simultaneously at the Land Transfer Closing.

(i) *Land Transfer Closing*. Subject to the terms and conditions of this Agreement, the Land Transfer Closing shall be on the Land Transfer Closing Date at a location determined by the City. The Land Transfer Closing Date shall occur on a date determined by the City, but no earlier than January 15, 2010, provided that the closing may not occur until all contingencies in Section 4.8 and 4.9 are satisfied. Possession for all transferred parcels shall be delivered on the Land Transfer Closing Date.

(ii) *DNR Parcel Transfer Closing*. Pursuant to the DNR Parcel Act, the City cannot obtain the DNR Parcel from the DNR until the City completes its acquisition of the Gas Station parcel. The City agrees to transfer to the Master Redeveloper the interests contemplated in Section 4.5, including the DNR Easement, no later than the DNR Parcel Deadline.

(b) City Documents. At the Land Transfer Closing, the City shall execute, where appropriate, and deliver all of the following (collectively, the "City Documents"):

(i) A Deed properly executed on behalf of the City conveying the East Lake Street Parcel to the Master Redeveloper, together with any other documents reasonably required to be delivered by the City.

(ii) An affidavit of the City indicating on the Land Transfer Closing Date that there are no outstanding unsatisfied judgments, tax liens or bankruptcies against or involving the City or the East Lake Street Parcel; that there has been no skill, labor or material furnished to such property for which payment has not been made or for which mechanic's liens could be filed; and that, to the best of the City's knowledge and belief, there are no other unrecorded interests in such property.

(iii) Any abstracts of title in the City's possession to any portion of the East Lake Street Parcel (if abstract property), and any owner's duplicate certificate of title in the City's possession to any portion thereof (if Torrens). The City has no obligation to update any abstracts.

(iv) Any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the City and not previously delivered to the Master Redeveloper.

(v) An assignment and assumption of the Master Redeveloper's vendee's interest in the Contract for Deed.

(vi) The FOFR Agreement.

(vii) The DNR Easement (if the City has previously acquired title to the DNR Parcel).

(viii) Payment of Fifty Thousand and No/100 Dollars ($50,000.00), in partial consideration of the transfer of the Gas Station Parcel, in the physical condition described in Section 4.9(c)(x).

(c) Master Redeveloper Documents. At the Land Transfer Closing, the Master Redeveloper shall execute, where appropriate, and deliver all of the following (collectively, the "Master Redeveloper Documents"):

(i) A Deed properly executed on behalf of the Master Redeveloper conveying the New Superior Boulevard Parcel to the City, together with any other documents reasonably required to be delivered by the Master Redeveloper.

(ii) A Deed properly executed on behalf of the Master Redeveloper conveying the Old Superior Boulevard Parcel to the City, together with any other documents reasonably required to be delivered by the Master Redeveloper.

(iii) An affidavit of the Master Redeveloper indicating on the Land Transfer Closing Date that there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving the Master Redeveloper or the Old Superior Boulevard Parcel, the New Superior Boulevard Parcel, or the Gas Station Parcel; that there has been no skill, labor or material furnished to such property for which payment has not been made or for which mechanic's liens could be filed; and that, to the best of the Master Redeveloper's knowledge and belief, there are no other unrecorded interests in such property.

(iv) Any abstracts of title, in the Master Redeveloper's possession, to any portion of the Old Superior Boulevard Parcel, the New Superior Boulevard Parcel, and the Gas Station Parcel (if abstract property), and any owner's duplicate certificate of title in the Master Redeveloper's possession to any portion thereof (if Torrens). The Master Redeveloper has no obligation to update any abstracts.

(v) Any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the Master Redeveloper and not previously delivered to the City.

(vi) The FOFR Agreement.

(vii) An assignment and assumption of the vendee's interest in the Contract for Deed.

(viii) Estoppels, in a form reasonably requested by the City, from the Contract For Deed vendor and the holders of mortgages on the Gas Station Parcel.

(ix) As provided for in the Sale and Purchase Agreement, the mortgage maturity date extensions, Lender Agreement, Waivers, and Escrow Agreement, together with assignments of these documents by the Master Redeveloper to the City.

(x) Evidence reasonably satisfactory to the City that the lease for the Gas Station Parcel has been terminated and the tenant has vacated, and that the Gas Station Work has been completed.

(xi) An assignment or alternate arrangement for issuance to the City of an owner's policy of title insurance in the amount of the purchase price for the Gas Station Parcel and with coverage reasonably acceptable to the City.

(xii) Consents, approvals or conveyances by all third parties holding a title or lien interest in any of the properties transferred by the Master Redeveloper to the City, with respect to such transfers.

**Section 4.10 Land Transfer Indemnification**. Except as to the Gas Station Parcel and except as otherwise provided herein and in Section 6.11 below, the City and the Master Redeveloper, acting as both Grantor and Grantee for each Land Transfer outlined in this

Article IV, agree to the following indemnification terms with regard to those Land Transfers. The Grantor in each Land Transfer agrees that the Grantee will bear no responsibility or liability to the Grantor for any Hazardous Material identified on the transferred parcel after the transfer that are determined by a preponderance of evidence to have been Released prior to the transfer, and will indemnify and hold harmless the Grantee against all claims, costs, and liabilities arising out of the presence or Release of any such Hazardous Material to the extent the Grantee may have legal responsibility therefor due to its acquisition of the transferred parcel or is required under Environmental Law or by the MPCA to incur Remediation Costs with respect to such Hazardous Materials in order to construct the Public Infrastructure Improvements.

In the event that a Grantee is named as a defendant in any legal or administrative action alleging liability against the Grantee due to the presence of any Hazardous Material on or about the transferred parcel in violation of any Environmental Law, and such Hazardous Material was Released prior to the transfer date, the Grantor shall indemnify and hold the Grantee harmless from any judgments, damages and liabilities of any kind determined in such legal or administrative action to be due and owing by the Grantee.

If the Grantor fails to defend the Grantee, the Grantee shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter, for the account of and at the risk of the Grantor. In the event that the Grantor fails to defend, all attorneys' fees incurred by the Grantee related to such defense shall be paid for by the Grantor.

Notwithstanding anything to the contrary in this Redevelopment Agreement, however, the parties acknowledge and agree that within the cost budget for the Initial Superior Boulevard Improvements attached hereto as Attachment 1, a total of $194,940.00 (the "RAP Budget") has been allocated for the following costs (the "RAP Costs") related to the construction of the Initial Superior Boulevard Improvements:

(a) complete any additional environmental investigation required to delineate the scope and extent of any Hazardous Materials present in the soil, subsoil, or groundwater in the Public Infrastructure Improvements Area with respect to the Initial Superior Boulevard Improvements to the satisfaction of the MPCA;

(b) prepare and obtain MPCA approval of a development response action plan and construction contingency plan addressing the presence of Hazardous Materials in the Public Infrastructure Improvements Area with respect to the Initial Superior Boulevard Improvements;

(c) implement such plans in accordance with all MPCA requirements and applicable Environmental Laws, including requirements for reimbursement of Remediation Costs from the Minnesota Petrofund; and

(d) obtain reimbursement from the Minnesota Petrofund for all eligible Remediation Costs associated with the Initial Superior Boulevard Improvements.

The City and Master Redeveloper acknowledge and agree that any RAP Costs incurred with regard to the construction of the Initial Superior Boulevard Improvements in excess of the RAP Budget shall be the sole cost and responsibility of the City.

Notwithstanding anything to the contrary in this Redevelopment Agreement, Master Redeveloper and the City acknowledge and agree that they will cooperate with each other and use their best efforts to obtain any and all third-party reimbursements, grants and/or funds that may be available to pay for any Remediation Costs arising with respect to any Public Infrastructure Improvement.

**Section 4.11** **<u>Transfer of the Gas Station Parcel</u>**.

(a) The Master Redeveloper shall assign its interest in the Contract for Deed to the City at the Land Transfer Closing; provided, however, that if the DNR will not allow a transfer of the DNR Parcel to the City simultaneously with the assignment to the City of the vendee's interest in the Contract for Deed, then the Master Redeveloper shall assign its interest in the Contract for Deed ten (10) days prior to the Land Transfer Closing date.

(b) The Master Redeveloper shall remain obligated for timely payment to the City of all obligations of the vendee under the Contract for Deed, notwithstanding the assignment of the vendee's interest in the Contract for Deed by Master Redeveloper to the City, including but not limited to:

(i) The Master Redeveloper shall pay $950,000 for the escrow and down payment and all closing and other costs required of the "Buyer" under the Sale and Purchase Agreement.

(ii) The Master Redeveloper agrees to make interest only monthly payments to the City in the amounts and on the dates required under the Contract for Deed to be made to Wayzata Circle LLC for the interest accruing on the $1,400,000 balance of the purchase price, in full compliance with the terms of the Contract for Deed. The Master Redeveloper shall also pay to the City the remaining $1,400,000 balance plus all interest owed and payable to Wayzata Circle LLC pursuant to the Contract for Deed no later than November 17, 2010. If Wayzata Circle LLC defaults in its payment of the underlying mortgages, Master Redeveloper shall cure such defaults.

(c) The City shall have the right, but not the obligation, to accelerate the Contract for Deed payments, to prepay some or all of the remaining balance owed thereunder and to obtain fee title to the Gas Station Parcel.

(d) If the City elects to prepay amounts due under the Contract for Deed, the Master Redeveloper remains obligated to make timely interest only payments and the final balloon payment in the amounts and on the dates required under the Contract for Deed and as summarized in Section 4.11(b), and such payments shall continue to be made directly to the City; provided that Master Redeveloper may also elect to prepay to the City the final balloon payment and such accrued interest paid by the City to Wayzata Circle LLC, in Master Redeveloper's discretion.

(e) The Master Redeveloper shall have the right, but not the obligation, to accelerate the Contract for Deed payments to the City and to prepay some or all of the remaining balance owed thereunder to the City prior to the City paying off the Contract for Deed. If the Master Redeveloper so elects to prepay the final balloon payment and any accrued interest to the City, the City shall promptly pay such prepayment to the Contract for Deed vendor.

(f) Prior to the Land Transfer Closing, the Master Redeveloper shall terminate the existing lease for the Gas Station Parcel and effect the removal of the tenant at the Master Redeveloper's expense.

**Section 4.12 Right of First Offer/Refusal**.

(a) Introduction. Subject to the transfer by the Master Redeveloper to the City of the Old Superior Boulevard Parcel and to the conveyance to the City of the Gas Station Parcel by Wayzata Circle LLC, the City shall grant to the Master Redeveloper a right of first offer and a right of first refusal for the purchase of the FOFR Parcel, in the form and substance set forth in the FOFR Agreement.

(b) Right of First Offer. At such time, if any, as the City determines that it intends to sell the FOFR Parcel, the City shall notify Master Redeveloper. Thereafter, for a period of sixty (60) days (the "Initial Negotiation Period"), the parties shall negotiate in good faith to attempt to determine mutually agreeable terms for the purchase and sale of the FOFR Parcel. No later than five (5) days before the expiration of the Initial Negotiation Period, the City shall deliver a final offer to the Master Redeveloper indicating a sale price for the FOFR Parcel that would be acceptable to the City (the "Final Offer"). In the absence of a mutually acceptable agreement for the sale and purchase of the FOFR Parcel, at the request of the City, the Master Redeveloper shall certify in writing as to the receipt and terms of the Final Offer, the expiration of the Initial Negotiation Period, and the absence of such an agreement.

(c) Right of First Refusal. Upon expiration of the Initial Negotiation Period, the City shall be free to sell, encumber or otherwise transfer the FOFR Parcel according to such terms and conditions as the City may elect, provided, however, that if the City receives an offer from a third party (the "Offeror") to purchase the FOFR Parcel (the "Offer") which the City determines that it may accept (whether such Offer is communicated in a non-binding letter of intent or a proposed purchase agreement) that is for a proposed purchase price equal to or less than ninety five percent (95%) of the purchase price stated in the Final Offer, then the City shall deliver a purchase agreement to the Master Redeveloper containing the same terms and conditions of such Offer. Master Redeveloper shall then have the right, but not the obligation, to purchase the FOFR Parcel according to the terms of the Offer as detailed in such purchase agreement. To exercise such right, Master Redeveloper shall execute and deliver to the City four (4) duplicate copies of such purchase agreement within fifteen (15) days of its receipt from the City (the "Election Period"). If Master Redeveloper does not elect to so purchase, the City shall have three hundred and sixty-five (365) days after the passing of the Election Period to close the sale of the FOFR Parcel pursuant to such Purchase Offer to the Offeror, an affiliate or subsidiary of Offeror, or to an entity in which the Offeror owns at least twenty percent (20%) equity interest (collectively, the "Offeror Purchaser"). If the City does not close on the sale to an Offeror Purchaser pursuant to the Offer within said three hundred and sixty-five (365) day time period, then all terms and provisions of this right of first refusal shall be reinstated in full force and effect with respect to the FOFR Parcel. Any transfer or attempted transfer of the FOFR Parcel in violation of this right of first refusal shall be void. If the Master Redeveloper declines to exercise its rights hereunder on or before the expiration of the Election Period, it shall execute a written acknowledgement of its decision to decline the Offer upon written request from the City, and a release of all rights in the FOFR Parcel in the event of a closing by the City to an Offeror Purchaser on an Offer declined by the Master Redeveloper.

(d) Expiration. The FOFR Agreement shall expire on the earlier of: (i) the sale of the FOFR Parcel to an Offeror Purchaser pursuant to an Offer that has been declined by Master Redeveloper within the three hundred and sixty-five (365) day time period discussed in Section 14.12(c) above; (ii) the sale of the FOFR Parcel to an Offeror Purchaser pursuant to an Offer for a purchase price that was greater than 95% of the price stated in the Final Offer; or (iii) five (5) years after commencement of the Initial Negotiation Period; or (iv) November 30, 2015. Following expiration of the FOFR Agreement, but prior to termination of this Agreement under Section 15.11, the City shall give notice to the Master Redeveloper if the City determines that it intends to sell the FOFR Parcel. The City shall deliver such notice to the Master Redeveloper at least 60 days before approving a purchase agreement to sell the FOFR Parcel to a third party.

(e) Replatting. At or subsequent to the Land Transfer Closing, the City reserves the right to replat the FOFR Parcel, which may change the boundary between the FOFR Parcel and the adjoining parcel to the west currently owned by Vodegel Properties, L.L.P., provided that any such platting may not materially alter the square footage, dimensions or boundary lines of the FOFR Parcel without first obtaining the prior written consent of Master Redeveloper, which consent shall not be unreasonably withheld.

(f) Transfer to the Authority. The City reserves the right to transfer the FOFR Parcel to the Authority, and such transfer shall not be subject to the Master Redeveloper's right of first offer or refusal as detailed above; provided, however, that the Authority shall thereafter be subject to Master Redeveloper's right of first offer and Master Redeveloper's right of first refusal as provided in subparagraphs (b) and (c) above.

**Section 4.13 Current Status of Land Assembly**. This Agreement cumulatively represents the Original Redevelopment Agreement and the First Amendment and Second Amendment. However, as of the Effective Date, the parties agree and understand that the following obligations of the parties under this Article IV (as identified by Section number below) have been satisfactorily completed: **[Note: City to confirm the following have occurred]**

Section 4.1. Master Redeveloper has acquired all land except the DNR Parcel.

Section 4.2. Master Redeveloper has transferred the New Superior Boulevard Parcel to the City.

Section 4.3. Master Redeveloper has transferred Old Superior Boulevard Parcel to the City, subject to the terms of Section 4.12 with regard to the FOFR Parcel.

Section 4.4 City has transferred the East Lake Street Parcel to Master Redeveloper, and the reverter in favor of the City (described in Section 4.4) has expired.

Section 4.5. The City has purchased the DNR Parcel and has executed and delivered the DNR Easement.

Section 4.7 The Master Redeveloper completed the conveyance to the City described in Section 4.6.

Sections 4.8 and 4.9. All contingencies and requirements to close on the Land Transfers described in Sections 4.8 and 4.9 were satisfied or waived by the parties to this Agreement.

Section 4.10. The parties acknowledge that there are no outstanding RAP Costs described in Section 4.10.

Section 4.11. The Master Redeveloper has acquired fee title to the Gas Station Parcel and otherwise satisfied all terms of Section 4.11.

## ARTICLE V
## CONSTRUCTION OF MINIMUM IMPROVEMENTS

**Section 5.1** **<u>Minimum Improvements</u>**. The project includes Minimum Improvements required to be constructed by the Master Redeveloper in both Phase I and Phase II, as depicted in the Minimum Improvements Site Plan. The Master Redeveloper agrees to construct the following Minimum Improvements:

(a) <u>Phase I Minimum Improvements</u>. Consistent with the General Plan Approval (as revised November 15, 2011), the anticipated Minimum Improvements for Phase I of the Project include construction of the Superior Block, North Block, West Block, the North Block Linear Park and portions of the East Block Linear Park improvements, defined as follows:

(i) "*Superior Block*" includes approximately (i) 32,000 gross square feet ("GSF") of retail space; (ii) 90 independent living senior housing units; and (iii) 270 parking spaces.

(ii) "*North Block*" includes approximately (i) 164 senior housing units, including memory care, skilled care, assisted living and independent living units; and (ii) the Senior Community Town Center.

(iii) "*North Block Linear Park*" is shown on the Minimum Improvements Site Plan.

(iv) "*West Block*" includes approximately (i) 41,000 GSF of retail; (ii) 99 residential units (comprised of 73 senior apartments and 26 non-age restricted apartments); and (iii) 380 parking spaces. The residential units will be no more than 75 percent age-restricted senior housing and the balance of not less than 25 percent conventional rental or for sale housing, to be distributed based on the City's final design review of the West Block and shall satisfy the conditions stipulated in City Council Resolution No. 47-2011.

(v) "*East Block Linear Park*" includes parkland as shown on the Minimum Improvements Site Plan. The portion of the East Block Linear Park shown on Attachment F will be constructed as part of the Minimum Improvements for Phase I and the remainder of the East Block Linear Park Improvements will be constructed as part of the Minimum Improvements for Phase II.

(b) <u>Phase II Minimum Improvements</u>. Consistent with the General Plan Approval (as revised November 15, 2011), the anticipated Minimum Improvements Blocks for Phase II of the Project include construction of the Plaza Block and Park Plaza, defined as follows, and the portion of the East Block Linear Park not constructed in Phase I:

(i) "*East Block*" includes approximately (i) 29 – 31 for sale condominiums, (ii) 80 to 90-unit full service hotel and (iii) 15,000 sq/ft of retail space and related parking, consistent with the East Block Plans.

(ii) "*Plaza Block*" includes approximately (i) 22,000 GSF of retail space; (ii) 59 conventional for-sale residential units; and (iii) 230 parking spaces.

(iii) "*Park Plaza*" includes a plaza and park as shown on the Minimum Improvements Site Plan.

(c) <u>Market Value of Minimum Improvements</u>. It is anticipated that upon completion, the Minimum Improvements will have a Market Value of approximately $233 Million, with approximate Market Values for the components as follows:

- Senior housing units, $95.4 Million
- Retail, $38.7 Million
- Hotel, $6.97 Million
- Condominiums, $84.55 Million
- Non-age restricted housing, $7.6 Million

The minimum values described above are intended to represent current expectations, and the parties do not anticipate entering into assessment agreements within the meaning of the TIF Act, unless requested by the Master Redeveloper.

(d) <u>Minimum Improvements Timeline</u>. The Master Redeveloper must achieve Commencement and Completion for each Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline set forth below in Section 7.1.

(e) <u>Liquor Store</u>. The City acknowledges the Master Redeveloper has met its obligations regarding the municipal liquor store.

The Master Redeveloper hereby covenants and agrees, on behalf of itself and its successors and assigns, that age-restricted senior housing within the Minimum Improvements will be contained only within the North Block, the Superior Block and the West Block in a manner consistent with the General Plan Approval (as revised November 15, 2011).

(f) East Lake Street Landscaping. Developer will incur $149,121 in Qualified Redevelopment Costs for landscaping at the end of East Lake Street consistent with the Circle A - Lake Street East roundabout landscape plan, dated February 6, 2015.

(g) East Buffer Landscaping. Master Redeveloper shall complete landscaping of the East Block Linear Park in accordance with the Final Plans for the East Block. Master Redeveloper shall complete the specified landscaping in the East Block Linear Park within the 2015 planting season, except for landscaping that could be damaged because of East Block construction, which will be completed by issuance of a certificate of completion for the East Block. Master Redeveloper shall provide the City with a lump sum payment of $25,000 to be held by the City in escrow for additional landscaping, restoration or mitigation of the East Block Linear Park at the City's discretion following the issuance of such certificate of completion for the East Block. The amounts of landscaping, restoration or mitigation required by the City shall be released from escrow at the City's discretion. Within three years following the issuance of a certificate of completion for the East Block, the City will have expended all necessary funds and any remaining funds will be released from escrow and returned to the Master Redeveloper.

**Section 5.2 Submission and Approval of Evidence of Financing**. Concurrent with submission to the City of building permit applications for each Block, the Master Redeveloper shall provide evidence of a Financing Commitment for the Block and Public Access Improvements for which permits are sought and provide a Go-Ahead Letter for that Block and Public Access Improvements. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority, and that the Financing Commitment is adequate to achieve Completion of the proposed Block and Public Access Improvements. The City attorney shall review the Financing Commitment to determine that the Financing Commitment will not impair the rights of the City or the Authority under this Agreement or the PUD Agreement. The City must complete its review of the Financing Commitment and render a decision regarding its adequacy to the Master Redeveloper within 21 days of receipt of the Financing Commitment, and if the City fails to render a decision to the Master Redeveloper within this time frame, the Finance Commitment will be deemed approved.

Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

**Section 5.3 Relocation Indemnification**. The Master Redeveloper agrees that the City Parties will bear no responsibility or liability for any relocation obligations and will indemnify and hold harmless the City Parties against all claims, costs, and liabilities arising out of the Master Redeveloper's relocation efforts. In the event that the City Parties are named as a defendant in any legal or administrative action alleging liability against the City Parties due to relocation benefits, the Master Redeveloper shall indemnify and hold the City Parties harmless from any judgments, damages and liabilities of any kind determined in any legal or administrative action.

**Section 5.4 Construction and Inspection of Minimum Improvements.** The Minimum Improvements will be constructed by the Master Redeveloper on the Minimum Improvements Area in substantial conformity with the Final Plans approved by the City and pursuant to this Agreement, the General Plan Approval and the PUD Agreement. Prior to delivery of the Certificate of Completion to the Master Redeveloper, upon the request of the Authority, the Master Redeveloper will provide the Authority and the City with reasonable access to the Minimum Improvements Area. If during any inspection, the Authority observes that the Minimum Improvements are not being constructed in accordance with the Final Plans, it shall immediately notify the Master Redeveloper; provided that failure to provide such notice shall not result in a waiver of any such deficiency. “Reasonable access” means at least two site inspections per month during regular business hours. During the construction, marketing and rental of the Minimum Improvements, the Master Redeveloper will deliver progress reports to the Authority upon request from the Authority.

**Section 5.5 Effect of Delay.** The Master Redeveloper acknowledges that if construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, this could affect the amount of Available Tax Increment and thus the total amount which may be available to pay the TIF Note or TIF Bonds. The Master Redeveloper acknowledges that if the Completion of the construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, there will be no compensation to the Master Redeveloper or any other party for any reduction in the amount available to pay or refund the TIF Note or TIF Bonds.

**Section 5.6 Additional Responsibilities of the Master Redeveloper.**

(a) The Master Redeveloper will ensure each Block of the Minimum Improvements is constructed, operated and maintained in substantial accordance with the terms of this Agreement, the General Plan Approval, the Redevelopment Plan, the Final Plans, the PUD Agreement, and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).

(b) The Master Redeveloper will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Authority agrees to use reasonable efforts to assist the Master Redeveloper in obtaining any permits, licenses and approvals necessary for the construction of the Minimum Improvements, at no cost to the Authority.

(c) The Master Redeveloper will not construct any building or other structures on, over, or within the boundary lines of any public utility easement unless such construction is provided for in such easement or has been approved by the utility involved.

(d) The Master Redeveloper will comply or assure compliance with all applicable Environmental Law as they relate to the Minimum Improvements Area and the Minimum Improvements.

**Section 5.7 <u>Easement for the Use and Maintenance of Public Access Areas; Ensuring Other Public Access</u>.** After Final Plans for the Minimum Improvements on any Block have been approved by the City, and prior to Commencement of construction on that Block of the Minimum Improvements, the Master Redeveloper shall deliver to the City an easement for the installation, use and maintenance of roadways, on-street public parking, curbs and gutters, sanitary sewer lines, all public and private utilities, water lines and related site work to be constructed (the "Public Access Areas Easement") on outlots to be shown in Final Plans and as specified in the PUD Agreement. Each Public Access Areas Easement shall be in the form attached as Exhibit G and must be recorded by the Master Redeveloper within seven (7) days after the Public Access Areas Easement is delivered to the City in accordance with this Section. The Master Redeveloper shall require that the documents identified in Section 3.2 ensure public access to areas within the Minimum Improvements Area which are not covered by the Public Access Area Easement, such as the sidewalks and will submit such relevant portions of such instruments to the City for review and approval as to public access. The Public Access Areas Easements must include a total of at least fifty (50) public parking spaces.

**Section 5.8 <u>Easement for the Use and Maintenance of Park Improvements</u>.** After Final Plans for the Minimum Improvements on any Block have been approved by the City, and prior to Commencement of construction of Park Improvements on that Block of the Minimum Improvements, the Master Redeveloper shall deliver to the City an easement for the installation, use and maintenance of the Park Improvements to be constructed (the "Park Improvements Easement") located on each Block. Each Park Improvements Easement shall be in the form attached as Exhibit H and must be recorded by the Master Redeveloper within seven (7) days after the Park Improvements Easement is delivered to the City in accordance with this Section. The reservation contained in Section 1.3(a)(vii) of the form attached as Exhibit H regarding special events or festivals shall only apply to the Park Improvements Easement including the Plaza Block. No such reservation will be included in the Park Improvements Easement including the Linear Park.

**Section 5.9 <u>Certificate of Completion</u>.** The Master Redeveloper shall notify the Authority when the final certificate of occupancy (exclusive of tenant build-outs) is received for each Block. Upon receipt of the final certificate of occupancy for a Block, the Authority will furnish to the Master Redeveloper a recordable Certificate of Completion in the form of <u>Exhibit K</u>, certifying the completion of the Minimum Improvements for that Block. The Certificate of Completion shall conclusively satisfy and terminate the agreements and covenants of the Master Redeveloper in this Agreement to construct Minimum Improvements on the Block covered by the Certificate of Completion, including without limitation terminating the restrictions related to encumbering the Minimum Improvements described in Article X.

## ARTICLE VI
## CONSTRUCTION AND FINANCING OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

**Section 6.1 Public Infrastructure Improvements.** The Project includes Public Infrastructure Improvements to be constructed in coordination with both Phase I and Phase II of the Minimum Improvements. The City and the Master Redeveloper agree to cooperate in constructing the following Public Infrastructure Improvements:

(a) Lake Street and Superior Boulevard Realignment. Consistent with the City's decision to realign the intersection of Superior Boulevard and Lake Street in order to achieve the optimal configuration for land use, pedestrian access and engineering, the Project includes reconstruction of Superior Boulevard and Lake Street and which includes the following components further described in Exhibit N to the First Amendment:

(i) Lake Street Improvements, which include Segment 4;

(ii) Initial Superior Boulevard Improvements, which include Segments 1, 2, and southerly one-third of Segment 3;

(iii) Remaining Superior Boulevard Improvements, which include Segment 6 and the northerly two-thirds of Segment 3; and

(iv) Sanitary Sewer Improvements.

The Lake Street and Superior Boulevard Realignment Area will be acquired by the City and the FOFR Parcel will be subject to the FOFR Agreement.

(b) Public Infrastructure Improvements Timeline. The Public Infrastructure Improvements must be constructed in accordance with the Public Infrastructure Improvements Timeline in Section 7.2.

**Section 6.2 Financing the Public Infrastructure Improvements.** The Master Redeveloper has agreed with the City on a method to finance the Public Infrastructure Improvements as further described in this Section 6.2 and in the balance of this Article. The Master Redeveloper is responsible for Public Infrastructure Improvements costs up to $9,839,500, however the transfer of and payment for the Gas Station Parcel by the Master Redeveloper pursuant to Section 4.11, payment of the City's wetland mitigation fees pursuant to Section 4.6 and payment of the City's Initial Superior Boulevard Improvements through the Initial Special Assessments pursuant to Section 6.14, offset a portion of these costs and, therefore, the Master Redeveloper's maximum remaining obligation is $3,691,746 (the "Maximum Redeveloper Amount"), subject to the terms and conditions of this Section.

(a) If the actual costs of the Initial Superior Boulevard Improvements are less than the amounts estimated by the City as of the date of this Agreement ("Initial Superior Boulevard Improvements Savings"), the Maximum Redeveloper Amount shall not be reduced accordingly (that is, such Initial Superior Boulevard Improvements Savings may be applied to any cost of any other Segment in calculating the Maximum Redeveloper Amount), provided, however, if the actual costs of the Improvements as a whole are less than the Maximum Redeveloper Amount, such savings shall reduce the Maximum Redeveloper Amount.

(b) The Master Redeveloper, and not the City or Authority, shall be responsible to pay for any Public Infrastructure Improvement costs that are directly attributable to the negligence of the Master Redeveloper or its agents or contractors, or to default by Master Redeveloper of its obligations related to the Public Infrastructure Improvements under this Agreement.

(c) To manage Public Infrastructure Improvement costs, the Master Redeveloper may choose to construct the Public Infrastructure Improvements, pursuant to Section 6.3, or agree to be subject to Special Assessments, pursuant to Section 6.4, all subject to the further terms of Section 6.5.

**Section 6.3 Decision to Construct the Public Infrastructure Improvements.** The Master Redeveloper may opt to construct (i) the Lake Street Improvements or (ii) the Superior Boulevard Improvements, or (iii) both. The Master Redeveloper must notify the City no later than at the time of delivery of a Go-Ahead Letter for the first Block of each Phase if it elects to construct all or a portion of the Remaining Public Infrastructure Improvements. The City will construct the Remaining Public Infrastructure Improvements if the Master Redeveloper elects not to construct them. If the Master Redeveloper chooses to construct the Remaining Public Infrastructure Improvements, the Master Redeveloper does not need to comply with public bidding procedures required in Minnesota Statutes, Section 471.345.

**Section 6.4 Special Assessments**.

(a) Subject to the limitations set forth in Section 6.2 and the Cash Payment option in Section 6.15, the Master Redeveloper may opt to finance all or a portion of the Remaining Public Infrastructure Improvements which the City constructs by agreeing to be subject to Special Assessments consistent with Minnesota Statutes, Chapter 429, for actual costs up to the Maximum Redeveloper Amount, of the Public Infrastructure Improvement costs. The Master Redeveloper must notify the City of its option with regard to how the Public Infrastructure Improvements will be financed no later than the time of delivery of a Go-Ahead Letter for the first Block of each Phase.

(b) If the Master Redeveloper elects to be subject to Special Assessments, the Master Redeveloper must agree to petition for Special Assessments and waive protest rights for all land within the Minimum Improvements Area for Special Assessments. If the Public Infrastructure Improvements are financed with special assessments, then the City will construct the Public Infrastructure Improvements or relevant portion thereof. All terms of the Special Assessments will be consistent with normal City practices and policies.

**Section 6.5 Options for Construction of Public Infrastructure Improvements; Submission and Approval of Evidence of Financing**.

(a) **City Builds; Master Redeveloper Reimburses City.**

(i) If the Master Redeveloper chooses not to construct all or a portion of the Remaining Public Infrastructure Improvements and chooses not to be subject to Special Assessments or the Cash Payment option, then the Master Redeveloper must reimburse the City for actual Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount and meet the security requirements set forth below which are established pursuant to Section 801.33.10 of the PUD Ordinance.

(ii) Before the City will commencement of construction on any Segment of the Public Infrastructure Improvements, the Master Redeveloper must provide evidence satisfactory to the City of a Financing Commitment and provide a Go-Ahead Letter. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority and that the Financing Commitment is adequate to satisfy the Master Redeveloper's maximum financial responsibility for the Public Infrastructure Improvements. The City's attorney shall review the Financing Commitment and determine that it will not impair the rights of the City or the Authority under this Agreement. Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

(iii) If the City is not satisfied with the Financing Commitment, the City may require the Master Redeveloper to provide a letter of credit, or other security specified in Section 801.33.10 of the PUD Ordinance, acceptable to the City or, at the Master Redeveloper's option, the Master Redeveloper may elect to be subject to Special Assessments for up to 100 percent of its portion of the Public Infrastructure Improvement costs as specified in (b) below. If the Master Redeveloper so elects, the City will issue general obligation special assessment bonds consistent with normal City policies if the City, in its sole discretion, determines that the land value of the Minimum Improvements Area is at least equal to the principal value of the Special Assessments and carry costs during the lien enforcement period.

(b) **City Builds; Master Redeveloper Reimburses City via Special Assessments.**

(i) If the Master Redeveloper chooses not to construct the Remaining Public Infrastructure Improvements and not to use the Cash Payment option, then the Master Redeveloper chooses to be subject to Special Assessments and the Master Redeveloper agrees that the land in the Minimum Improvements Area will be subject to additional Special Assessments for actual Remaining Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount.

(ii) Before the City will commence of construction on any Segment of the Public Infrastructure Improvements, the City will issue Special Assessments pursuant to Section 6.4. The City will issue general obligation special assessment bonds consistent with normal City policies if the City determines that the land value in the Minimum Improvements Area is greater than the amount to be specially assessed against the Minimum Improvements Area plus the cost of issuing bonds. If the City determines, in its sole discretion, the value of the land does not exceed the amount to be specially assessed, then the City may require other security as specified in Section 801.33.10 of the PUD Ordinance.

(c) **Master Redeveloper Builds and Finances.**

(i) If the Master Redeveloper chooses to construct the Remaining Public Infrastructure Improvements, then the Master Redeveloper is responsible for financing Remaining Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount as specified in Section 6.2.

(ii) Before the City will permit commencement of construction on any Segment of the Remaining Public Infrastructure Improvements, the Master Redeveloper must provide evidence satisfactory to the City of a Financing Commitment and provide a Go-Ahead Letter. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority and that the Financing Commitment is adequate to satisfy the Master Redeveloper's maximum financial responsibility for the Remaining Public Infrastructure Improvements. The City's attorney shall review the Financing Commitment and determine that it will not impair the rights of the City or the Authority under this Agreement. Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

(iii) If the City is not satisfied with the Financing Commitment, the City may require the Master Redeveloper to provide a letter of credit or other security specified in Section 801.33.10 of the PUD Ordinance acceptable to the City.

**Section 6.6 Design and Plans for Public Infrastructure Improvements.** The Public Infrastructure Improvements Plans will be designed and specified by the City consistent with City standards for similar projects. Design fees incurred by the City, but paid by the Master Redeveloper must comport with the budget in Section 6.8 and the reimbursement procedure in Section 6.9.

**Section 6.7 Construction and Inspection of Public Infrastructure Improvements.** All Public Infrastructure Improvements shall be constructed in substantial conformity with the Public Infrastructure Improvements Plans and in substantial accordance with City engineering and performance requirements. Construction of the Public Infrastructure Improvements shall be supervised and administered by the City and the City Engineer. If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the City may retain a consulting engineer to review and inspect the Remaining Public Infrastructure Improvements to ensure compliance with the Public Infrastructure Improvements Plans and other relevant City requirements. Inspections must occur within the normal course of the construction schedule and the final inspection must occur within a reasonable time after Master Redeveloper completes a Segment to allow issuance of a Certificate of Completion. Inspection fees incurred by the City, but paid by the Master Redeveloper must comport with the budget in Section 6.8 and the reimbursement procedure in Section 6.9. If during any inspection, the City observes that the Remaining Public Infrastructure Improvements are not being constructed in accordance with the Public Infrastructure Improvements Plans, it shall immediately notify the Master Redeveloper; provided that failure to provide such notice shall not result in a waiver of any such deficiency.

**Section 6.8 Budget for Design and Inspection Fees.** The City and the Master Redeveloper will agree upon the scope of required services related to the design and inspection fees which are described in Sections 6.6 and 6.7, prior to Commencement for any Segment. The City may select the vendor to complete the required design and inspection services. The Master Redeveloper will fully reimburse the City for costs incurred for the required services up to $310,000 for design and inspection work that is completed by December 31, 2012 (the "Maximum Amount"). Beginning on January 1, 2013, and occurring on each January 1 until the design and inspection work is complete, the Maximum Amount will adjust upward or downward by an amount equal to the CPI for the December 31 immediately preceding. For purposes of this Section 6.8, "CPI" means the "Consumer Price Index, All Urban Consumers, U.S. City Average, All Items" as determined by the United States Bureau of Labor Statistics. If the CPI is discontinued, comparable statistics on the purchasing power of the consumer dollar as published at the time of said discontinuation by a responsible financial periodical of recognized authority selected by the City, shall be used for making the above computation.

**Section 6.9 Reimbursement for Design and Inspection Fees**. This Section provides the procedure by which the City will be reimbursed by the Master Redeveloper for design and inspection fees described in Sections 6.6 and 6.7. Upon Completion of a Segment, and within 30 days of receiving a request for reimbursement from the City, the Master Redeveloper must reimburse the City for design and inspection fees up to the budgeted amount determined under Section 6.8. Design and inspection fees reimbursed by the Master Redeveloper under this Section are Qualified Redevelopment Costs. No Certificate of Completion will be issued until the City is fully reimbursed for all design and inspection fees then owed.

**Section 6.10 Reimbursement for Construction Costs**.

(a) **Master Redeveloper Reimbursement to the City.** If the City incurs Public Infrastructure Improvements costs which are not financed through the use of Special Assessments in accordance with Section 6.5(a), the Master Redeveloper must reimburse the City as follows. Upon Completion of a Segment by the City, the Master Redeveloper must reimburse the City within 30 days of receiving a written request for reimbursement from the City, and no Certificate of Completion will be issued until the City is fully reimbursed for all construction costs then owed. All reimbursement requests must certify the costs for which reimbursement if sought and must be provided to the reimbursing party pursuant to Section 15.3.

(b) **City Reimbursement to the Master Redeveloper.** If the Master Redeveloper incurs Remaining Public Infrastructure Improvements costs in excess of the Maximum

Redeveloper Amount, the City must reimburse the Master Redeveloper as follows. The City must reimburse the Master Redeveloper for such excess costs within 30 days of receiving a written request for reimbursement from the Master Redeveloper. All reimbursement requests must certify the costs for which reimbursement if sought and must be provided to the reimbursing party pursuant to Section 15.3.

**Section 6.11** **Environmental Remediation.** If the Master Redeveloper opts to construct the Remaining Public Infrastructure Improvements, the Master Redeveloper will, with the assistance of a qualified and experienced environmental consultant:

(a) complete any additional environmental investigation required to delineate the scope and extent of any Hazardous Materials present in the soil, subsoil, or groundwater in the Public Infrastructure Improvements Area with respect to the Remaining Public Infrastructure Improvements, to the satisfaction of the MPCA;

(b) prepare and obtain MPCA approval of a development response action plan and construction contingency plan addressing the presence of Hazardous Materials in the Public Infrastructure Improvements Area with respect to the Remaining Public Infrastructure Improvements;

(c) implement such plans in accordance with all MPCA requirements and applicable Environmental Laws, including requirements for reimbursement of Remediation Costs from the Minnesota Petrofund; and

(d) obtain reimbursement from the Minnesota Petrofund for all eligible Remediation Costs associated with the Remaining Public Infrastructure Improvements.

Any costs incurred by the Master Redeveloper to comply with this Section 6.11 will be shared equally by the City and the Master Redeveloper. When such expenses are due, each party will be responsible for 50% of each invoice.

**Section 6.12** **Additional Responsibilities of the Master Redeveloper.** If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the following provisions apply:

(a) The Master Redeveloper will construct the Remaining Public Infrastructure Improvements in substantial accordance with the terms of this Agreement and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).

(b) The Master Redeveloper will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Remaining Public Infrastructure Improvements may be lawfully constructed. The City agrees to use reasonable efforts to assist the Master Redeveloper in obtaining any permits, licenses and approvals necessary for the construction of the Remaining Public Infrastructure Improvements in accordance with the Final Plans approved by the City.

(c) The Master Redeveloper will comply or assure compliance with all applicable Environmental Laws as they relate to the Public Infrastructure Improvements Area and the Public Infrastructure Improvements.

**Section 6.13 Certificate of Completion.** If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the Master Redeveloper shall notify the City when construction of any Segment thereof has been substantially completed according to the Public Infrastructure Improvement Plans. The City shall promptly inspect the Remaining Public Infrastructure Improvements in order to determine whether it has been constructed in substantial conformity with plans designed and specified by the City. If the City determines that the completed Remaining Public Infrastructure Improvements have not been constructed in substantial conformity with the Public Infrastructure Improvements Plans, the City shall deliver a written statement to the Master Redeveloper indicating in adequate detail the specific respects in which the Remaining Public Infrastructure Improvements have not been constructed in substantial conformity with Public Infrastructure Improvements Plans, and the Master Redeveloper shall promptly remedy such deficiencies. Subject to requirements herein requiring reimbursements and payments by the Master Redeveloper to the City, but otherwise promptly upon determining that a Segment of the Remaining Public Infrastructure Improvements has been constructed in substantial conformity with Public Infrastructure Improvements Plans, the City will furnish to the Master Redeveloper a Certificate of Completion in the form of Exhibit K certifying the completion of that Segment of the Remaining Public Infrastructure Improvements and further providing conclusive acknowledgement that the City has accepted such Remaining Public Infrastructure Improvements. Each Certificate of Completion issued for the Remaining Public Infrastructure Improvements shall conclusively satisfy and terminate the agreements and covenants of the Master Redeveloper in this Agreement to finance and construct the applicable Segment of the Remaining Public Infrastructure Improvements. Upon the request of the Master Redeveloper, the City will undertake the Certificate of Completion inspection for any completed separate part of a Segment of the Remaining Public Infrastructure Improvements so as to expedite the prompt issuance of the Certificate of Completion upon substantial completion of the relevant Segment.

**Section 6.14 Initial Superior Boulevard Improvements Assessment Agreement.** The Initial Superior Boulevard Improvements are described on Exhibit N, attached to the First Amendment as Attachment 1. Pursuant to Section 6.5(b), Master Redeveloper has chosen not to construct the Initial Superior Boulevard Improvements and has elected to be subject to Special Assessments for Initial Superior Boulevard Improvement Costs, as provided in this Section 6.14 (the "Initial Special Assessments"). The City currently estimates that Initial Superior Boulevard Improvements Costs will be $2,732,042.

(a) Authority for Special Assessments. Minnesota Statutes Chapter 429, the City's Charter Sections 52 and 53 and the City's Ordinance Chapter 206 authorize the City to assess the cost of the Initial Superior Boulevard Improvements against the Minimum Improvements Area.

(b) Security. The City, in its sole discretion, will issue general obligation special assessment bonds consistent with normal City policies if the City determines that the land value in the Minimum Improvements Area is greater than the amount of the Initial

Special Assessments plus the cost of issuing bonds. If the City determines, in its sole discretion, the value of the land does not exceed the amount to be specially assessed, then the City may require other security as specified in Section 801.33.10 of the PUD Ordinance.

(c) Consents and Waivers by Master Redeveloper. The Master Redeveloper hereby:

(i) petitions for and consents to an assessment by the City for actual Initial Superior Boulevard Improvement costs up to, but not exceeding, $2,732,042, plus the costs of issuing the bonds, against the Minimum Improvements Area;

(ii) represents and warrants that the Master Redeveloper has obtained the written consent and waivers of all fee title owners and mortgage holders of the Minimum Improvements Area (attached to the Redevelopment Agreement as Exhibit M, and as introduced in Attachment 5 to the First Amendment);

(iii) waives any and all procedural and substantive objections to the Initial Special Assessments, including but not limited to, notice and hearing requirements, claims that the Minimum Improvements Area, or any part thereof, does not receive a benefit from the Initial Superior Boulevard Improvements equal to or greater than the dollar amount of the Initial Special Assessments, claims that the assessment is not uniform up on the same classes of property and claims that the amount of the special assessments allocated to any lot or outlot exceeds the benefit to such lot or outlot; and

(iv) waives any additional appeal rights available under the City Charter, Minnesota statutes or the City Ordinances.

The consents and waivers set forth in this Section 6.14 run with the title to the Minimum Improvements Area and are binding on the Master Redeveloper and its successors and assigns.

(d) Pending Special Assessment Status. The City does not intend to levy the Initial Special Assessments until the City substantially completes the Initial Superior Boulevard Improvements. Until the City levies the Initial Special Assessments, the Initial Special Assessments constitute a pending special assessment.

(e) Allocation of Special Assessments at Final Plat. The Master Redeveloper will pay the installments of Initial Special Assessments certified for payment with annual real estate taxes when and as they become due in the amounts and on the dates shown in Attachment D to the Second Amendment and in accordance with the Agreement for Special Assessment Petition, Consent and Waiver, as amended by the First Amendment to Agreement for Special Assessment Petition, Consent and Waiver substantially shown in Attachment G, which shall be executed by the Master Redeveloper.

(f) Reservation of Right. If the cost of the Initial Superior Boulevard Improvements is greater than anticipated, the City reserves the right to levy an assessment in a greater amount or levy supplemental assessments pursuant to Minnesota Statutes, Section

429.071, provided that any such future assessments would recognize the benefit, pursuant to Minnesota Statutes, Section 429.051, of the Maximum Redeveloper Amount, and provided further that the Master Redeveloper has not hereby consented or agreed to such greater assessment amount or supplemental assessments, nor has Master Redeveloper waived any of its rights to challenge such greater assessment amount or such supplement assessments pursuant to Minnesota Statutes Chapter 429.

(g) Prepayment of Special Assessments. Under Minnesota Statutes Chapter 429, the City may cause the amounts assessed against the Minimum Improvements Area to be payable in a single installment or in equal installments. The City will make the Initial Special Assessments payable in annual installments extending over 20 years in consideration of the Master Redeveloper's agreement to pay the entire, uncertified balance of the Initial Special Assessments against each lot or outlot upon the sale or other transfer (including but not limited to the conveyance of equitable ownership pursuant to a contract for deed) of that lot or outlot; provided that the payment of the balance of such Initial Special Assessments shall not be accelerated in the event of (i) the transfer of fee title, via warranty deed, to Master Redeveloper of the Minimum Improvements Area in order to satisfy its current contract for deed with Superior Lake Street Properties, LLC; or (ii) the sale or other transfer to a person pursuant to the provisions of Sections 13.2 or Sections 13.3(a)(i), (ii) or (iv). All Initial Special Assessment payments will be made semi-annually and payable with property taxes. For the first three (3) years, payment of the Initial Special Assessments will be made based on a modified principal payment schedule as permitted under City Ordinance Section 206.14. Payments under the modified principal payment schedule will begin in 2011. The first year of payments will include two principal payments of $2500 plus interest from the date of the Initial Special Assessments are levied, and will be payable in 2011. The second year of payments will include two $2500 principal payments plus interest and will be payable in 2012. The third year of payments will include two $2500 principal payments plus interest and will be payable in 2013. The remaining payments will be due commencing in 2014, in generally equal semi-annual installments as reasonably determined by the City. If modified principal payment schedule for the Initial Special Assessments is challenged in any manner, the Master Redeveloper shall pay all costs reasonably incurred by the City related to that challenge. Subject to the exceptions identified above, if the Master Redeveloper conveys or otherwise transfers ownership of a lot or outlot subject to Initial Special Assessments before the City levies the Initial Special Assessments, the Master Redeveloper must escrow the portion of the pending Initial Special Assessments attributable to that lot or outlot when the City levies the special assessment, and the purchaser must, in the escrow agreement, acknowledge and agree that it is subject to and bound by the consents and waivers described in this Section 6.14. If the Master Redeveloper elects to escrow the funds with a title insurance company, the City must be a party to the escrow agreement.

**Section 6.15 City Builds, Master Redeveloper Pays Cash**. Notwithstanding anything in this Article VI to the contrary, Master Redeveloper shall have the right, in its sole and absolute discretion, to pay cash ("Cash Payment") to the City for all or a portion of the costs of the Public Infrastructure Improvements in lieu of financing such costs through Special Assessments. In the event Master Redeveloper elects the Cash Payment, Master Redeveloper shall provide written notice ("Cash Notice") to the City exercising such option within 10 days after Master Redeveloper receives written notice from the City specifying the amount of the winning bid for the relevant portion of the Public Infrastructure Improvements (the "Bid"). Along with the Cash Notice to the City, Master Redeveloper shall provide evidence satisfactory to the City the sufficiency and availability of such cash payment in an amount equal to the Bid. Within 10 days after delivery of the Cash Notice to the City, the Master Redeveloper and the City will enter into a disbursing agreement or similar agreement (the "Disbursing Agreement") providing how draws will be made to pay costs related to the Bid. The cash payment will be made by the Master Redeveloper in accordance with the Disbursing Agreement on the date the Disbursing Agreement is entered into.

In lieu of the Cash Payment, the City may in its sole and absolute discretion accept an alternative financing arrangement from the Master Redeveloper.

If Master Redeveloper elects to exercise its rights pursuant to this Section 6.15 or Section 6.4, in no event shall Master Redeveloper's obligations exceed the Maximum Redeveloper Amount. If Master Redeveloper does not, within the time period specified above, (1) provide the written notice exercising such option; or (b) enter into the Disbursing Agreement and make the Cash Payment, then the City may, without further notice to the Master Redeveloper, proceed with Special Assessments for the relevant portion of the Public Infrastructure Improvements.

## ARTICLE VII
## PROJECT DEFAULT DATES; DEADLINE ADJUSTMENTS

**Section 7.1 <u>Commencement and Completion of Minimum Improvements</u>**. Time frames for Commencement and Completion of the Minimum Improvements shall be on the following schedule, subject to Unavoidable Delay or amendment under Section 7.3. Failure to satisfy Commencement or Completion obligations of each Block of the Minimum Improvements by the Default Dates shall be an Event of Default under this Agreement. Subject to City land use approvals and coordination with the City regarding the scheduling of the construction of Public Infrastructure Improvements, the Master Redeveloper may construct the Blocks or Segments earlier than the dates in the Minimum Improvements Timeline. Following Commencement, construction of any given Block must continue in a sequence consistent with normal construction practices.

| **Minimum Improvements Timeline** | | |
|---|---|---|
| **Block** | **Commencement** | **Completion** |
| **Phase I** | | |
| North Block | June 30, 2012 | December 31, 2014 |
| Superior Block | June 30, 2012 | December 31, 2014 |
| North Linear Park and initial portion of East Linear Park shown on Attachment F | June 30, 2012 | September 30, 2015 |
| West Block | March 31, 2014 | September 30, 2015 |

| Phase II | | |
|---|---|---|
| Plaza Block | March 31, 2015 | September 30, 2016 |
| Park Plaza | March 31, 2015 | September 30, 2016 |
| East Block | September 30, 2015 | December 31, 2017 |
| East Linear Park (remaining portion) | March 31, 2015 | September 30, 2016 |

For purposes of the East Block, references in Section 7.1 to "Commencement" means "East Block Commencement" and "Completion" means "East Block Completion."

Before December 31, 2014, the Master Redeveloper will provide interim landscape, stormwater and sidewalk improvements as shown on Attachment E to the Second Amendment ("Interim Conditions") and no final certificate of occupancy for the Minimum Improvements on the West Block shall be issued until such time as the Interim Conditions have been completed. These Interim Conditions will remain in place until Completion of the final Block of the Minimum Improvements. Until such Completion, the Master Redeveloper will provide such easements as reasonably requested by the City to ensure public use and availability to the Interim Conditions.

As of the Effective Date, the parties agree and understand that the Master Redeveloper has completed the following portions of the Minimum Improvements:

**Phase I**:

Superior Block

North Block

North Block Linear Park

West Block

**Phase II**:

Plaza Block

Park Plaza

See the table above for the construction deadlines for the uncompleted portions of the Minimum Improvements.

**Section 7.2** **<u>Commencement and Completion of Public Infrastructure Improvements</u>**. Time frames for Commencement and Completion of the Public Infrastructure Improvements shall be on the following schedule, subject to Unavoidable Delay or amendment of the Minimum Improvements Timeline in Section 7.1. Failure to satisfy Commencement or Completion obligations of each Segment of the Public Infrastructure Improvements by the Default Dates shall be an Event of Default under this Agreement. Subject to City land use approvals and coordination with the City regarding the extent of any design, inspection and construction obligations, the Master Redeveloper may construct the Blocks or Segments earlier than the dates in the Public Infrastructure Improvements Timeline. Following Commencement, construction of any given Segment must continue in a sequence consistent with normal construction practices. Regardless of whether the City or the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, each Segment of the Remaining Public Infrastructure Improvements must be commenced and completed in accordance with this Section 7.2.

The parties acknowledge that the following represents the status of the Public Infrastructure Improvements as of the Effective Date: **[Note: City to confirm the following has occurred]**

Lake Street Improvements, which include Segment 4: completed and not currently specially assessed

Initial Superior Boulevard Improvements, which include Segments 1, 2 and the southerly one-third of Segment 3: completed, and specially assessed.

Remaining Superior Boulevard Improvements, which include Segment 6 and the northerly two-thirds of Segment 3: not yet completed.

Sanitary Sewer Improvements: completed and specially assessed.

[The City will commence construction of the Remaining Superior Boulevard Improvements by the earlier of either Completion of the East Block of the Minimum Improvements, or [September 30, 2016]. The City may elect, in its sole discretion, to proceed with the Remaining Superior Boulevard Improvements, at any earlier time, but the Master Redeveloper's obligation to finance or pay for the Remaining Superior Boulevard Improvements occurs upon the earlier to occur of either the Completion of the East Block or [September 30, 2016].]

**Section 7.3 <u>Timing and Sequence of Blocks and Segments</u>.** The Master Redeveloper agrees to construct each Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline, however the City and the Authority agree that if the Master Redeveloper determines that the Default Dates in the Minimum Improvements Timeline become infeasible or otherwise problematic to ensure Completion of all the Minimum Improvements by September 30, 2016, the Master Redeveloper must seek written approval to amend the Minimum Improvements Timeline from the City and the Authority, which approval will not be unreasonably withheld. If the Minimum Improvements Timeline is altered, the Public Infrastructure Improvements Timeline is altered accordingly.

The Master Redeveloper may alter the sequence in which the Blocks are constructed by substituting one Block for another in the Minimum Improvements Timeline, provided that at least two Blocks are completed under Phase I timing and the remaining Blocks are completed under Phase II timing. Provided, further, that the North Linear Park must be constructed simultaneously with the construction of the North Block and the East Linear Park must be constructed simultaneously with the construction of the East Block. The Master Redeveloper must notify the City if it alters the sequence in the Minimum Improvements Timeline, but does not need to seek written approval for a change in the sequence of construction; however, if the City is constructing the Remaining Public Infrastructure Improvements, then the City will decide how the change in sequence contemplated under this paragraph alters the Remaining Public Infrastructure Improvements sequence.

**Section 7.4 Public Access Security.** The Master Redeveloper will be constructing improvements to the Public Access Areas on Outlots A, C, D and E as shown on the Final Plat in the form and sequence specified by the City consistent with the corresponding approved plans. The Final Plan approval by the City for each Block shall designate the portion of the Public Access Improvements to be completed prior to issuance of a final certificate of completion for the particular Block and such final certificate of completion will not be issued until those Public Access Improvements are completed. In order to ensure construction of those Public Access Improvements, the Master Redeveloper will provide security, in the City's discretion, to the City, in the form of a commercially standard letter of credit or surety bond reasonably acceptable to the City, security in the amount of $1,500,000 ("Public Access Security") by the earlier to occur of issuance of a building permit for the West Block or January 2, 2016, which amount represents the cost of the portion of the Public Access Improvements that will remain to be built following construction of the Superior Block and the North Block, and the associated Public Access Improvements approved the by City. If the Master Redeveloper fails to provide the Public Access Security, the City is under no obligation to deliver either a Certificate of Completion or a City certificate of occupancy for either the North Block or the Superior Block until the Public Access Security requirement is satisfied.

The Public Access Security amount shall be reduced on a monthly basis equal to the portion of the Public Access Improvements that have been constructed in the month immediately prior. The City may reasonably require evidence of construction and payment for such Public Access Improvements prior to making respective reductions in the Public Access Security Amount.

## ARTICLE VIII
## MASTER REDEVELOPER REIMBURSEMENT OBLIGATIONS; QUALIFIED REDEVELOPMENT COSTS; PERFORMANCE REVIEW

**Section 8.1 Master Redeveloper Reimbursement Obligations**.

(a) Through the date of TIF District Certification, the Master Redeveloper is obligated to pay all out of pocket costs of the City and the Authority for the City Consultants in connection with the Project, and all third party consulting costs of the Master Redeveloper, 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 PUD Agreement, architectural and engineering studies for the Project, fiscal analysis, legal fees and all costs and expenses related thereto. The Master Redeveloper must pay such costs monthly upon presentation of invoices and other documentation of such costs, not more than thirty (30) days after the request for payment is delivered to the Master

Redeveloper. All such costs will be Qualified Redevelopment Costs pursuant to the TIF Pro Forma.

(b) After the date of TIF District Certification and prior to delivery of the Certificate of Completion for the final Block or Segment, the Master Redeveloper is obligated to pay all out of pocket costs of the City and the Authority for the ongoing legal and financial advisor responsibilities under this Agreement and for the City's review and inspection of the operations and performance of the Park Improvements and Public Access Area; **provided, however,** the City, the Authority, and the Master Redeveloper will be responsible for their respective legal and financial advisor expenses related to drafting and execution of this Agreement during 2015, from creation of the corresponding term sheet through execution of this Agreement.

(c) This Section expressly supersedes in its entirety the Preliminary Agreement, which served as a reimbursement agreement between the City, the Authority and the Master Redeveloper.

**Section 8.2 Qualified Redevelopment Costs**.

(a) The Master Redeveloper costs eligible for TIF Assistance include costs incurred for Qualified Redevelopment Activities and Public Infrastructure Improvements, which are Qualified Redevelopment Costs and include the following:

(i) demolition of any structures or improvements required for the Project;

(ii) Remediation Costs;

(iii) land acquisition and write down necessary to allow the TIF Project Area to be redeveloped as contemplated herein, including, without limitation, any costs necessary to acquire leasehold interests;

(iv) relocation payments, if any;

(v) Public Infrastructure Improvements paid by Master Redeveloper, including design and inspection fees paid pursuant to Section 6.9;

(vi) site improvements by the Master Redeveloper, including without limitation foundations, parking facilities, grading, excavation, on-site roads, utilities, sidewalks, curb and gutter, street lighting and similar improvements;

(vii) reimbursement of predevelopment costs of the City/Authority paid by the Master Redeveloper for planning, legal, consulting and other similar costs;

(viii) capitalized interest and financing costs for eligible activities; and

(ix) other eligible Qualified Redevelopment Costs authorized in the TIF Plan.

(b) All Qualified Redevelopment Activities and Public Infrastructure Improvements will be undertaken by the Master Redeveloper in the sequence required to allow timely Commencement and Completion of the applicable Minimum Improvements.

**Section 8.3 Master Redeveloper Use of Entry Deposits.** In its sole discretion, the Master Redeveloper may hold cash proceeds from the Entry Deposits in reserve to meet debt coverage obligations required for construction financing, use the Entry Deposits to reduce Project-related debt, or spend the Entry Deposits on capital improvements for the Project. Entry Deposit funds remaining after those obligations are satisfied will be used within the Project. Any such remaining funds will be placed in a discrete account solely for Project purposes and when drawn, the Master Redeveloper will send the Authority a written confirmation that the funds were used in accordance with this Section. Upon request from the Authority, the Master Redeveloper will provide evidence of the current status of Entry Deposits. If the Master Redeveloper uses proceeds from the Entry Deposits for non-Project related uses, then the maximum principal amount of TIF Assistance as shown in Section 9.2 will be reduced in an equal amount. The requirements in this Section will terminate and the City will issue a certificate of release when the Master Redeveloper has spent all Entry Deposits in accordance with this Section.

**Section 8.4 Performance Review and TIF Assistance Adjustment/Debt Coverage Ratio**. The parties acknowledge that as of the Effective Date of this Agreement, the Master Redeveloper submitted and the Authority reviewed a Master Redeveloper TIF Pro Forma, and no adjustment was made to the principal amount of the TIF Note (except as provided in this Agreement), all in accordance with the terms of Section 8.4 of the Original Redevelopment Agreement as amended by the First Amendment thereto.

## ARTICLE IX
## TIF AND OTHER PUBLIC ASSISTANCE

**Section 9.1 TIF District**.

(a) The Authority (on December 15, 2008), and the City (on December 16, 2008), approved a TIF Plan for the TIF District (designated as Redevelopment TIF District No. 5); and the Authority subsequently filed the TIF District Certification for the TIF District on June 11, 2009. On November 15, 2011, the City and the Authority decertified Redevelopment TIF District No. 5 and subsequently on November 15, 2015 l took all actions necessary to reapprove the TIF District (continued to be designated as Redevelopment TIF District No. 5), after all the hearings and notices required under Section 469.175 of the TIF Act.

(b) The TIF District has a maximum duration of 25 years after the date of first receipt of increment (i.e., 26 years of collection), as permitted under the TIF Act. In the TIF Plan, the Authority elected to defer the first year of receipt from the TIF District for four years after the year of approval, which year is 2015.

**Section 9.2 TIF Assistance; Limitations on Reimbursement of Qualified Redevelopment Costs**. Before the Authority will issue TIF Assistance to the Master

Redeveloper, the Master Redeveloper must provide evidence satisfactory to the Authority that its Qualified Redevelopment Costs equal at least [$23,060,000]. In order to obtain the amount of Tax Increment contemplated by this Agreement, the Authority will issue, subject to satisfaction of the conditions in this Agreement, a "pay-as-you-go" TIF Notes to the Master Redeveloper with a maximum original principal amount of [$23,060,000], as shown in Attachment C plus interest on the unpaid principal balance thereof at a rate of 8.75% which shall be payable solely from Available Tax Increment from the Project as may be adjusted under Section 8.4.

The Authority does not represent or warrant the amounts of Available Tax Increment that will be available for payment of the TIF Notes or TIF Bonds. The Authority will not reimburse the Master Redeveloper for the Qualified Redevelopment Costs from Authority revenues, other than Available Tax Increment, nor guaranty the amount of money which the Master Redeveloper will receive as a reimbursement, such amount being payable solely from the Available Tax Increment in accordance with this Section.

**Section 9.3** **Tax Increment Eligibility**. Upon any Event of Default under Articles IV, V, VI, and VII of this Agreement, which Default has not been cured, regarding any obligation under this Agreement related to a Block, Tax Increment from the defaulting Block, at the election of the Authority, may be withheld from payment on any TIF Assistance. Tax Increment from any Block that is not in Default under this Agreement shall remain available for payment of any outstanding TIF Assistance.

**Section 9.4** **Preconditions to Issuance of TIF Note**.

(a) The Authority will issue the TIF Note to the Master Redeveloper upon satisfaction of the following conditions:

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

(ii) the Authority has received a sworn construction cost statement showing the total construction costs of Phase I from the Master Redeveloper;

(iii) the Master Redeveloper has provided a Financing Commitment for the Phase I Minimum Improvements in an amount sufficient, together with other funds available, to finance the construction costs of the Phase I Minimum Improvements and make the Tax Increment payment to the Authority during the construction period;

(iv) the City has approved the Final Plans for the Minimum Improvements;

(v) the Master Redeveloper has issued the applicable Go-Ahead Letter;

(vi) if and to the extent required, the Master Redeveloper has executed minimum assessment agreements acceptable to the City and the County; and

(vii) if and to the extent required, the Master Redeveloper principals shall have executed all Master Redeveloper guaranties required by the Note Lender.

(b) Upon satisfaction of the conditions set forth in paragraph (a) above, the Authority will issue the TIF Note to the Master Redeveloper. The principal amount of the TIF Note will be the amounts set forth in Section 9.2.

**Section 9.5** **Assignment of Note**. The Note shall not be assignable nor 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 the Notes; and

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

(i) that the 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 Note and the assignee or transferee is able to bear the economic consequences thereof;

(v) that in making its decision to acquire the 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 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 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

Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the 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 Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects;

(ix) that the Note will be characterized as "restricted securities" under the federal securities laws because the 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 Note exists and no market for the Note is intended to be developed.

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

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

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

**Section 9.6** **Duration of TIF Notes**. Consistent with the duration of the TIF District, the TIF Notes shall be payable over 26 years, commencing August 1 of the year of first receipt of increment, and continuing through February 1 of the year following the $26^{th}$ year of tax increment collection from the TIF District. .

**Section 9.7** **TIF Bonds**. In lieu of TIF Notes, the Master Redeveloper may request the Authority to issue the TIF Bonds in a principal amount that yields net proceeds in the same amount as the original principal amount of TIF Notes described in Section 9.2. Subject to mutual agreement with the Authority regarding underwriting terms, including indemnification of the Authority for any securities law claims and investor representation letters as reasonably specified by the Authority, the Authority will sell TIF Bonds. The Authority will not unreasonably withhold its consent to the underwriting terms; provided, however, the Authority may require reasonable assurances from the Master Redeveloper that during the term of any TIF Bonds no actions will be taken that would reduce the market value of the Minimum Improvements Area that would result in a reduction of adequate Tax Increment available to pay the TIF Bonds. The restrictions contained in this Agreement applicable to TIF Notes, other than those in Section 9.5, shall also apply to TIF Bonds. Nothing in this Section 9.7 will be construed to require the Master Redeveloper to enter into an agreement with the Authority or the City that, in the opinion of bond counsel, would render interest on the TIF Bonds for any portion of the

Minimum Improvements owned by the Master Redeveloper at the time of issuance subject to federal and state income tax.

**Section 9.8 <u>Conditions Precedent to Issuance of TIF Bonds; Inability to Issue or Sell Bonds</u>**.

(a) Notwithstanding anything to the contrary contained herein, the Authority shall have no obligation to issue the TIF Bonds under Section 9.7 hereof unless all of the conditions specified in Section 9.4 are satisfied. The Master Redeveloper, by the execution and delivery of this Agreement, authorizes the Authority to issue the Bonds on its behalf to finance the Qualified Redevelopment Costs.

(b) Notwithstanding anything to the contrary contained in this Agreement, if (i) the City or the Authority is unable to obtain an unqualified approving bond counsel opinion of Dorsey & Whitney LLP or other bond counsel acceptable to the City or the Authority as to the validity of the Bonds or (ii) the City or the Authority does not receive a bid for the purchase of the Bonds, then the Authority shall not have any obligation to issue the Bonds.

**Section 9.9 <u>City/Authority Grant Applications</u>**. At the Master Redeveloper's discretion, the City and the Authority will cooperate in efforts to obtain available public grant funding to undertake the Project, including but not limited to the Livable Communities Project Assistance program grants from the Metropolitan Council, Tax Base Revitalization Account grants from the Metropolitan Council for pollution remediation, Minnehaha Creek Watershed District grants, Department of Employment and Economic Development funding for pollution remediation, and any other funding from metropolitan, state, county and federal sources identified by the City, the Authority or the Master Redeveloper as reasonably available. To the extent additional grant funds not reflected in the TIF Pro Forma are obtained, the amount shall first fund any unanticipated costs or revenue shortfalls of the Project then to reduce the principal amount of the TIF Note.

**Section 9.10 <u>Conduit Revenue Bonds</u>**. The City or the Authority will issue revenue bonds to finance one or more qualified portions of the Minimum Improvements or participate in a joint powers agreement under terms reasonably acceptable to the City or the Authority. The City and the Authority will not charge administrative fees in connection with such conduit bonds, other than reimbursement of City or Authority out-of-pocket costs.

## ARTICLE X
## ENCUMBRANCE OF MINIMUM IMPROVEMENTS AREA

**Section 10.1 <u>Encumbrance of the Minimum Improvements Area</u>**.

(a) Until the Completion Date of all Blocks of the Minimum Improvements, neither the Master Redeveloper, nor any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), will engage in any financing or any other transaction creating any mortgage (a "Mortgage") or other encumbrance or lien upon the Minimum Improvements 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 Minimum Improvements Area except for the purpose of obtaining funds only to the extent necessary for 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 portion of the Minimum Improvements, upon delivery of the Certificate of Completion for such portion of the Minimum Improvements. The Master 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 10.2 Copy of Notice of Default to Mortgagee**. If the Authority delivers any notice or demand to the Master Redeveloper, or any successor in interest to the Master Redeveloper, with respect to any Event of 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 the Master Redeveloper, any successor in interest to the Master 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 10.3 Mortgagee's Option to Cure Events of Default**. Upon the occurrence of an Event of Default, the mortgagee under any Mortgage will have the right at its option, to cure or remedy such Event of Default within the cure periods set forth herein. An individual or entity who acquires title to all or a portion of the Minimum Improvements through the foreclosure of a mortgage or deed in lieu of foreclosure on such portion of the Minimum Improvements Area remains subject to each of the restrictions set forth in this Agreement and remains subject to all of the obligations of the Master Redeveloper, or any successor in interest to the Master Redeveloper, under the terms of this Agreement, but the purchaser at a foreclosure sale or grantee under a deed in lieu of foreclosure shall have no personal liability for a breach of such obligations under this Agreement so long as:

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

(b) The party who acquired title through foreclosure or deed in lieu of foreclosure does not undertake or permit any other party to undertake any Minimum Improvements on the portion of the Minimum Improvements Area it owns;

(c) 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 obtaining a deed in lieu of foreclosure) to hold title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, subject to, but without personal liability for the obligations under this Agreement, until it can sell the portion it holds to a third party who will assume the obligations of the Master 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 Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, the foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) or other purchaser at a foreclosure sale desires to sell portions of the Minimum Improvements Area for construction of the Minimum Improvements, the purchaser at the foreclosure sale (or mortgagee obtaining a deed in lieu of foreclosure) must assume and perform each of the obligations of the Master Redeveloper, or the applicable successor to the interest of the Master Redeveloper, under this Agreement. 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 the Master 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, including evaluation of such person as a successor to the rights of the Master Redeveloper hereunder and taking appropriate actions to allow the benefits and rights hereunder to be realized by such person, should the Authority approve such person as a successor in accordance with this Agreement.

**Section 10.4 Defaults Under Mortgage**. The Master Redeveloper, or its successor or assign, will use its best efforts to obtain an agreement from any mortgagee under a Mortgage that in the event the Master Redeveloper is in default under any Mortgage, the mortgagee will use its best efforts, within ten (10) 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. The Master Redeveloper, or its successor or assign, will use its best 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.

**Section 10.5 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 Minimum Improvements Area, except for Special Assessments, upon the occurrence of an Event of Default by the Master Redeveloper.

**Section 10.6 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 XI
## INSURANCE AND CONDEMNATION

**Section 11.1 <u>Insurance</u>.**

(a) The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary 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 the Master Redeveloper must obtain and continuously maintain, provided that the Master 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 one hundred percent (100%) of the insurable value of the applicable Minimum Improvements Block 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 in responsible insurance companies selected by the Master 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 thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Master 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, the Master 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) The Master Redeveloper, its successor or assign, agrees to notify the Authority promptly in the case of damage exceeding $250,000 in amount to, or destruction of the

Minimum Improvements or any portion or Block thereof resulting from fire or other casualty.

**Section 11.2 Condemnation**. In the event that title to or possession of the Minimum Improvements Area or the Minimum Improvements, or both, or any material part thereof, is threatened with a taking through the exercise of the power of eminent domain, the Master Redeveloper, or its successor or assign, will notify the Authority of the threatened taking with reasonable promptness. The Master Redeveloper, or its successor or assign, will cooperate with the Authority if the Authority elects to assert any interests the Authority may have in the Minimum Improvements Area and the Minimum Improvements in any condemnation action undertaken against the Minimum Improvements Area and the Minimum Improvements.

## ARTICLE XII
## MASTER REDEVELOPER COVENANTS

**Section 12.1 Maintenance and Operation of the Minimum Improvements**. The Master Redeveloper, and its successors or assigns (which specifically includes any Secondary Redeveloper), 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 all federal, State and local laws, regulations, rulings and ordinances applicable thereto. The Master 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, the Master 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 the Master Redeveloper, its successors or assigns.

**Section 12.2 Business Subsidy Agreement**. The City and the Authority have determined that the financial assistance contemplated by this Agreement is not a "business subsidy" with the meaning of the Minnesota Business Subsidy Act, Minnesota Statutes, Sections 116J.993 through 116J.995 based on the exception contained in Minnesota Statutes, Section 116J.993, subdivision 3(17).

**Section 12.3 Parking and Mobility District.** The Master Redeveloper agrees to support and participate in the Parking and Mobility District. If the City establishes the Parking and Mobility District as a special service district under Minnesota Statutes § 428A.01 to 428A.101, Master Redeveloper shall file a petition with the City in a form acceptable to the City and hereby consents to the establishment of the Parking and Mobility District by the City. Master

Redeveloper waives all rights to objection, appeal and veto granted under law or in equity including but not limited to the rights granted under Chapter 428A, including specifically, but not limited to, the right to object under §428A.02, Subd. 4 (1), the right to appeal establishment of the Parking and Mobility District under §428A.02, Subd. 5 and the right to veto under §428A.09, Subd 1, or the right to object to the ordinance establishing the Parking and Mobility District under §428A.09, Subd. 2. Master Redeveloper waives all rights to object to the validity of the Parking and Mobility District, the inclusion of the Minimum Improvements Area within the Parking and Mobility District, or the procedures used by the City in establishing the Parking and Mobility District. Master Redeveloper hereby releases the City, its officers, agents and employees from any and all liability related to or arising out of the establishment of the Parking and Mobility District. Master Redeveloper shall not sell, assign or otherwise transfer all or any portion of the Minimum Improvements Area to a third party unless such third party agrees in writing to be bound by the terms of this Section. If the City determines not to create the Parking and Mobility District, the Master Redeveloper and the City shall negotiate in good faith on alternative financing options regarding parking and mobility needs within the City. Nothing in this Section 12.3 will be construed as a waiver of Master Redeveloper's rights it has or may have under Minnesota Statutes, Sections 428A.01 to 428A.101 with respect to the amount of any annual fee imposed within a Parking and Mobility District.

**Section 12.4 Parking Illumination and Wayfinding**. Prior to the issuance of a certificate of occupancy for any retail or commercial space, following the date of execution of this Agreement, within the Superior Block, the Plaza Block, the West Block, and the East Block, the Master Redevelop will install universal standard blue "P" parking signage on all Master Redeveloper-owned [or Secondary Redeveloper-owned] parking which supports retail or commercial uses within the Superior Block, the Plaza Block, the West Block, and the East Block. Master Redeveloper will install additional wayfinding signage as reasonably required by the City, including but not limited to, real-time signage, as appropriate to direct the public to parking within the Minimum Improvements Area.

**Section 12.5 Construction Work Force Parking**. As of the Effective Date and until issuance of a final certificate of occupancy (inclusive of tenant buildouts) and receipt of a Certificate of Completion for the final Block, the Master Redeveloper shall provide to the City a work force parking and project access plan acceptable to the City. The City is not obligated to issue building permits, certificates of occupancy or Certificates of Completion if such plan, in a form acceptable to the City, is not provided by the Master Redeveloper to the City. Such plan will: (i) be regularly monitored for compliance and updated as required by the City; (ii) minimize the impact of construction parking within the Minimum Improvements Area and surrounding portions of the City; and (iii) include at a minimum (a) monthly estimated work force needed within the Minimum Improvements Area, (b) evidence of sufficient off-site parking locations to accommodate project personnel, (c) copies of notices to contractor and subcontractor personnel outlining the requirements of the plan, (d) consequences for failing to abide with protocols required under the plan, and (e) provide for mandatory fines payable by the Master Redeveloper to the City at the rate of $500 per day for each failure to comply for each of the first five (5) days and at the rate of $1,000 per day for each subsequent failures to comply.

**Section 12.6 Access During Construction of City Ramp**. The City may elect to construct one or more structured parking facilities within the Parking and Mobility District.

During such construction and after issuance of a certificate of occupancy for the West Block, Master Redeveloper will allow the City to direct parkers who would otherwise utilize City-controlled parking facilities to parking within the Minimum Improvements Area so long as such parking does not have a materially negative impact on the parking required for the existing retail and commercial uses within the Minimum Improvements Area. During the construction period, the City and the Master Redeveloper will work in good faith to create a permit system which includes enforcement procedures.

## ARTICLE XIII
## TRANSFER LIMITATIONS AND INDEMNIFICATION

**Section 13.1** **Representation as to the Minimum Improvements**. The Master Redeveloper represents to the City and the Authority that its purchase of the Minimum Improvements Area, and its other undertakings under this Agreement, are for the purpose of developing the Minimum Improvements and not for the purpose of speculation in land holding. The Master Redeveloper acknowledges that, in view of the importance of the Minimum Improvements to the general welfare of the City and the Authority, and the substantial financing and other public aids that have been made available by the City and the Authority for the purpose of making such Minimum Improvements possible, the qualifications and identity of the Master Redeveloper are of particular concern to the Authority. The Master Redeveloper further acknowledges that the City and the Authority are willing to enter into this Agreement with the Master Redeveloper because of the qualifications and identity of the Master Redeveloper.

**Section 13.2** **Secondary Redevelopers**. The Master Redeveloper may designate a separate entity (each a "Secondary Redeveloper") to undertake any Block of the Minimum Improvements. If the Master Redeveloper seeks to be relieved of all its obligations related to the subject Block, the Master Redeveloper shall obtain the consent of the City and the Authority to the designation of any Secondary Redeveloper prior to the earlier of (i) closing on the transfer of any interest in the relevant Block to the Secondary Redeveloper; or (ii) Commencement of construction of the relevant Block. Consent from the City and the Authority will not be unreasonably withheld. If the Master Redeveloper remains obligated related to the subject Block, no prior Authority consent is required for any assignment to a Secondary Redeveloper.

**Section 13.3** **Limitations on Transfer**. Until the issuance of a Certificate of Completion for a Block:

(a) The Master Redeveloper will not sell, assign, convey, lease or transfer in any other mode or manner any of its right, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements for the relevant Block, 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) assignment of its Minimum Improvements rights to any entity controlled by Presbyterian Homes and Services;

(ii) granting of a mortgage or other security interests in the Minimum Improvements as provided in Article X hereof;

(iii) The sale of units within a common interest community; and

(iv) leasing the Minimum Improvements in the normal course of business in a manner consistent with the General Plan Approval, Final Plans, and the PUD Agreement.

(b) As a condition to approval by the City and the Authority of the transfer of any Block to a Secondary Redeveloper (where required), the Master Redeveloper shall satisfy the following conditions, if required by the Authority. The Authority shall be entitled to require, as conditions to approval of any sale, assignment, conveyance, use or transfer of any rights, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements that:

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

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the Authority have expressly assumed all of the obligations of the Master Redeveloper (or such part thereof as is appropriate for one particular Minimum Improvements Block) under this Agreement and agree to be subject to all the conditions and restrictions to which the Master Redeveloper is subject;

(iii) The Master Redeveloper must submit all instruments and other legal documents involved in effecting transfer to the Authority for review and written approval, which shall not be unreasonably withheld;

(iv) The Master Redeveloper and its transferee must comply with such other conditions as the Authority may find desirable in order to achieve and safeguard the purposes of the HRA and TIF Acts, this Agreement, and the Project; and

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

In the absence of specific written agreement by the City and the Authority to the contrary, no such transfer or approval by the City and the Authority thereof shall be deemed to relieve the Master Redeveloper or any other party bound in any way by this Agreement or otherwise with respect to its obligations under this Agreement.

**Section 13.4 Indemnification**.

(a) The Master 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 and Public Infrastructure Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master 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 the Master 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 and Public Infrastructure Improvements constructed by the Master Redeveloper; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Authority in this Agreement, and further provided that Redeveloper's obligation regarding any claim regarding the TIF District brought under Minnesota Statutes, Section 469.1771, is limited to that described in Section 6.2(b) hereof.

**Section 13.5 <u>Limitation</u>**. All covenants, stipulations, promises, agreements and obligations of the City, the Authority or the Master Redeveloper contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, the Authority and the Master Redeveloper, and not of any governing body member, officer, agent, servant or employee of the City, the Authority or the Master Redeveloper in the individual capacity thereof.

## ARTICLE XIV
## EVENTS OF DEFAULT AND REMEDIES

**Section 14.1 <u>Events of Default Defined</u>**. Subject to applicable cure periods, "Events of Default" under this Agreement include any one or more of the events listed in Sections 14.2 and 14.3.

**Section 14.2 <u>Master Redeveloper Events of Default</u>**. The following shall be Events of Default for the Master Redeveloper:

(a) the Master Redeveloper fails to close on the acquisition of the Minimum Improvements Area in accordance with the Minimum Improvements Timeline;

(b) subject to Unavoidable Delays and Cure Rights, the Master Redeveloper fails to achieve Commencement and Completion of any Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline, and such failure is not cured within 30 days after written notice to do so;

(c) subject to Unavoidable Delays and Cure Rights, the Master Redeveloper shall Default in or violate its obligations with respect to the construction of any Block of the Minimum Improvements (including the nature and the date for the completion thereof), or shall abandon or substantially suspend construction work, and any such Default, violation, abandonment or suspension is not cured, ended or remedied within 30 days after written demand by the Authority so to do;

(d) there is, in violation of this Agreement, any conveyance, encumbrance or other transfer of the Minimum Improvements Area or any part thereof, and such violation is not cured within 30 days after written demand by the Authority to the Master Redeveloper;

(e) subject to Cure Rights, failure by the Master 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 thirty (30) days after written notice of such failure from any party hereto;

(f) prior to the delivery of a Certificate of Completion with respect to any Block of the Minimum Improvements owned by the Master Redeveloper, the Master 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 Master 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 ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Master Redeveloper, or of the Minimum Improvements, or part thereof, shall be appointed in any proceeding brought against Master Redeveloper, and shall not be discharged within ninety (90) days after such appointed, or if Master Redeveloper shall consent to or acquiesce in such appointment.

**Section 14.3 City and Authority Events of Default**. Subject to 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 thirty (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 14.4 Cure Rights**. Notwithstanding the foregoing, if the Default reasonably requires more than thirty (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 180 days.

**Section 14.5 Authority Remedies on Master Redeveloper Events of Default**. Whenever any Event of Default occurs by the Master Redeveloper, the Authority may take any one or more of the following actions:

(a) terminate this Agreement, but not the TIF Note, as regards that Block of the Project, except as otherwise provided herein;

(b) exercise its rights under Section 9.3 of this Agreement regarding the Master Redeveloper's TIF eligibility;

(c) suspend performance under this Agreement until it receives assurances from the Master Redeveloper, deemed adequate by the Authority, that the Master Redeveloper will cure the Default and continue its performance under this Agreement, withhold the Certificate of Completion for any Block 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 the Master 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. Any action for specific performance must be commenced within six months of the Event of Default.

**Section 14.6 City Remedies on Master Redeveloper Events of Default**. Whenever any Event of Default occurs by the Master 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 the Master Redeveloper under this Agreement, including an action for specific performance. Any action for specific performance must be commenced within six months of the Event of Default.

**Section 14.7 Master Redeveloper Remedies on City or Authority Events of Default**. Whenever any Event of Default occurs by the City or the Authority, the Master 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. Any action for specific performance must be commenced within six months of the Event of Default.

**Section 14.8 No Remedy Exclusive**. No remedy herein conferred upon or reserved to the City, the Authority or the Master 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 14.9 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 14.10** **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.

## ARTICLE XV
## ADDITIONAL PROVISIONS

**Section 15.1** **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 Project Area 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 Master Redeveloper or successor or on any obligations under the terms of this Agreement.

**Section 15.2** **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 15.3** **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 the Master Redeveloper, is addressed to or delivered personally to the Master Redeveloper at:

Chief Financial Officer
Presbyterian Homes
2845 Hamline Avenue, North
Roseville, MN 55113

with a copy to:

Office of Corporate Counsel
Presbyterian Homes
2845 Hamline Avenue, North
Roseville, MN 55113

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

Wayzata HRA
Attention: Executive Director
600 Rice Street
Wayzata, MN 55391-1799

with a copy to:

Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

and Robert Meller
Best & Flanagan
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

In the case of the City, is addressed to or delivered personally to the City at:
City of Wayzata
Attention: City Manager
600 Rice Street
Wayzata, MN 55391-1799

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

and Robert Meller
Best & Flanagan
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

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

**Section 15.5 Law Governing**. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

**Section 15.6 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 15.7 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 15.8 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 the Master Redeveloper shall be effective upon action by a duly authorized officer of its general partner.

**Section 15.9 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 15.10 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 15.11 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 Note or TIF Bonds, or (c) date of termination of the TIF District.

**Section 15.12 Provisions Surviving Rescission or Expiration**. Sections 4.10, 5.3, and 13.4 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 15.13 Memorandum of Agreement**. Neither party shall cause this Agreement to be recorded or filed in the real estate records of Hennepin County. However, either party may, at its option, cause a Memorandum of Agreement to be so recorded or filed in the form attached hereto as Exhibit M, and hereby incorporated herein by reference. At the time of execution of this Agreement the parties hereto will also execute and acknowledge the Memorandum of Agreement. The parties hereto acknowledge that as of the date hereof, the Master Redeveloper is not the fee owner of the Minimum Improvements Area. At such time as the Master Redeveloper owns fee title to all or any portion of the Minimum Improvements Area, either party may, at its option, cause the Memorandum to be recorded against the Minimum Improvements Area and shall record such Memorandum of Agreement in the office of the County Recorder and/or Registrar of Titles in and for Hennepin County, Minnesota, as the case may be.

**Section 15.14 Conflicts Between this Agreement and the PUD Agreement**. In the event of any inconsistency or conflict between the requirements of this Agreement and the PUD Agreement, the provisions of the PUD Agreement shall control; provided, however, that for the purposes of Section 9.3 of this Agreement regarding Defaults 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.

**IN WITNESS WHEREOF**, the City, the Authority and the Master 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 WAYZATA, MINNESOTA**

By_________________________________
Its Mayor

By_________________________________
Its City Manager

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200_, by ___________ and Heidi Nelson the Mayor and City Manager respectively, of the City of Wayzata, Minnesota, on behalf of the City of Wayzata.

_________________________________
Notary Public

**HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA**

By ___________________________________
Its Chair

By ___________________________________
Its Executive Director

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200_, by Thomas Shaver and Heidi Nelson the Chair and Executive Director respectively, of the Housing and Redevelopment Authority of the City of Wayzata, Minnesota, on behalf of said Authority.

______________________________________
Notary Public

WAYZATA BAY REDEVELOPMENT COMPANY, LLC
**a Minnesota limited liability company**

By ___________________________________
Its ___________________________________

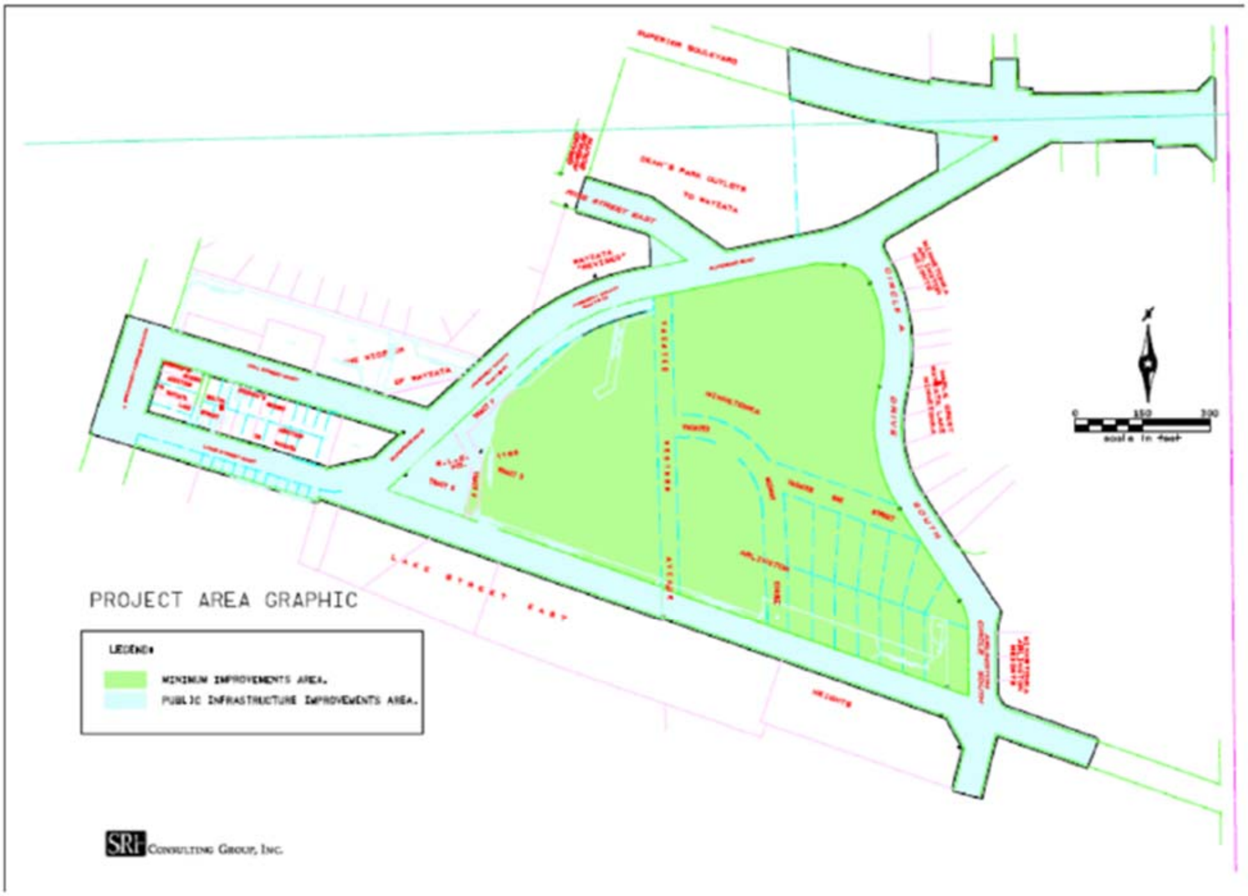
STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ______, 2008, by ________, the _________________ of Wayzata Bay Redevelopment Company, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

_____________________________________
Notary Public

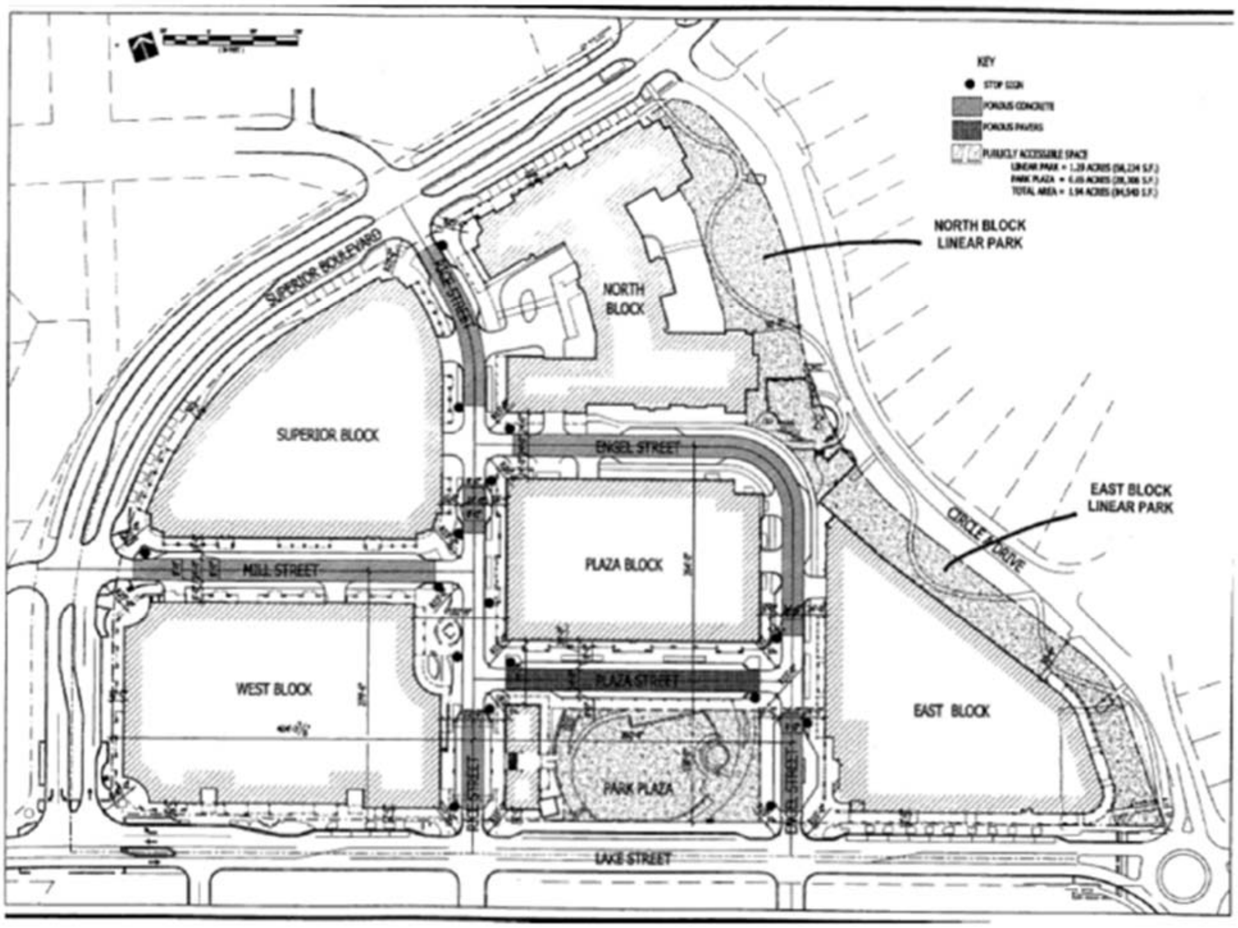
# EXHIBIT A

## TIF PROJECT AREA MAP



# EXHIBIT B

## MINIMUM IMPROVEMENTS SITE PLAN



## EXHIBIT B-1

## LEGAL DESCRIPTION OF MINIMUM IMPROVEMENTS AREA

Par 1: Tracts D and G, Registered Land Survey No. 1168, Hennepin County, Minnesota, except that part of Tract D depicted as the "New Superior Boulevard Parcel" on Exhibit D attached hereto.

Par 2: That part of the tract of land in the plat of Wayzata lying Northwesterly of the Northwesterly line of Registered Land Survey No. 1168, Hennepin County, Minnesota and Southeasterly of the following described line: Commencing at the most Northerly corner of Tract H, said Registered Land Survey No. 1168, thence South 30 degrees 58 minutes West along the Northwesterly line of said Registered Land Survey No. 1168 a distance of 377.58 feet; thence South 59 degrees 02 minutes West along the Northwesterly line of said Registered Land Survey No. 1168 a distance of 157.99 feet to the actual point of beginning of the line being described; thence North 30 degrees 04 minutes 30 seconds East a distance of 177.54 feet; thence along a tangential curve to the right having a radius of 572.96 feet to its intersection with the Northwesterly line of said Registered Land Survey No. 1168 and there ending, except that part lying Northerly and Westerly of the Southeasterly line of Superior Boulevard as relocated, which relocation is contemplated in this Agreement.

Par 3: Block 51;
Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 53, "Minnetonka Arlington Heights";
That part of Midway Circle, now vacated, lying between extensions across it of the North and South lines of said Block 53 and that further part thereof lying South and West of the centerline of said street lying between the extension across it of said North line of said Block 53 and the West line of said plat;
That part of Western Avenue as shown upon said plat lying between the extensions across it of the centerline of said Midway circle and the Northeasterly line of Block 65 said Addition.

Par 4: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block 50;
All of vacated Oak Street lying between a line drawn parallel with and 60 feet Southwesterly from the Southwesterly line of Block 52 and a line drawn parallel with and 50 feet Northeasterly from the Northeasterly line of Block 51;
That part of Midway Circle lying Northeasterly of the center line of Midway Circle and between the Southerly extension across it of the West line of Block 50 and the Westerly extension across it of the Northerly line of Block 53;
That part of Western Avenue lying East of the West line of "Minnetonka Arlington Heights" and between the Westerly extensions across it of the Northerly line of Block 50 and the center line of vacated Midway Circle,

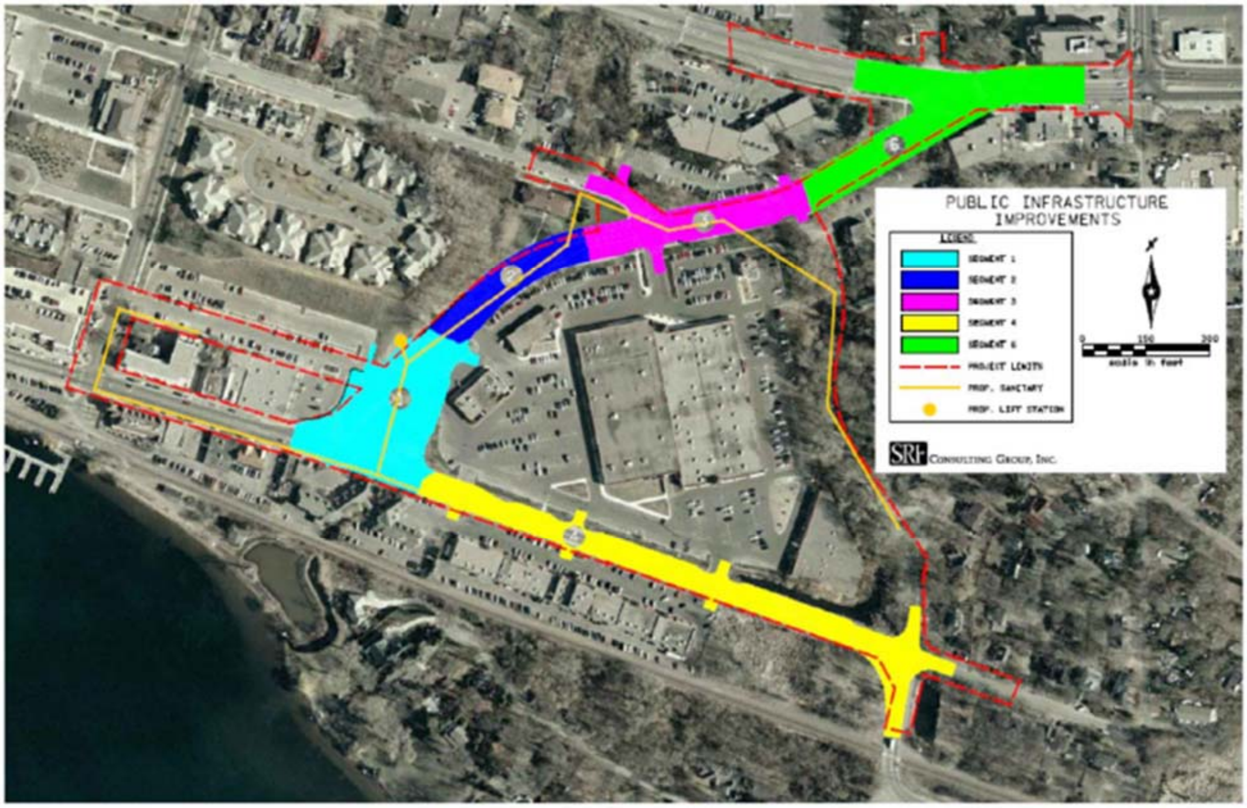
All in "Minnetonka Arlington Heights".

Par 5: Lot 1, Block 53, "Minnetonka Arlington Heights."

Par 6: That part of Tract F, Registered Land Survey No. 1168, Hennepin County, Minnesota, depicted as the "DNR Project Area Parcel" on Exhibit D attached.

## EXHIBIT C

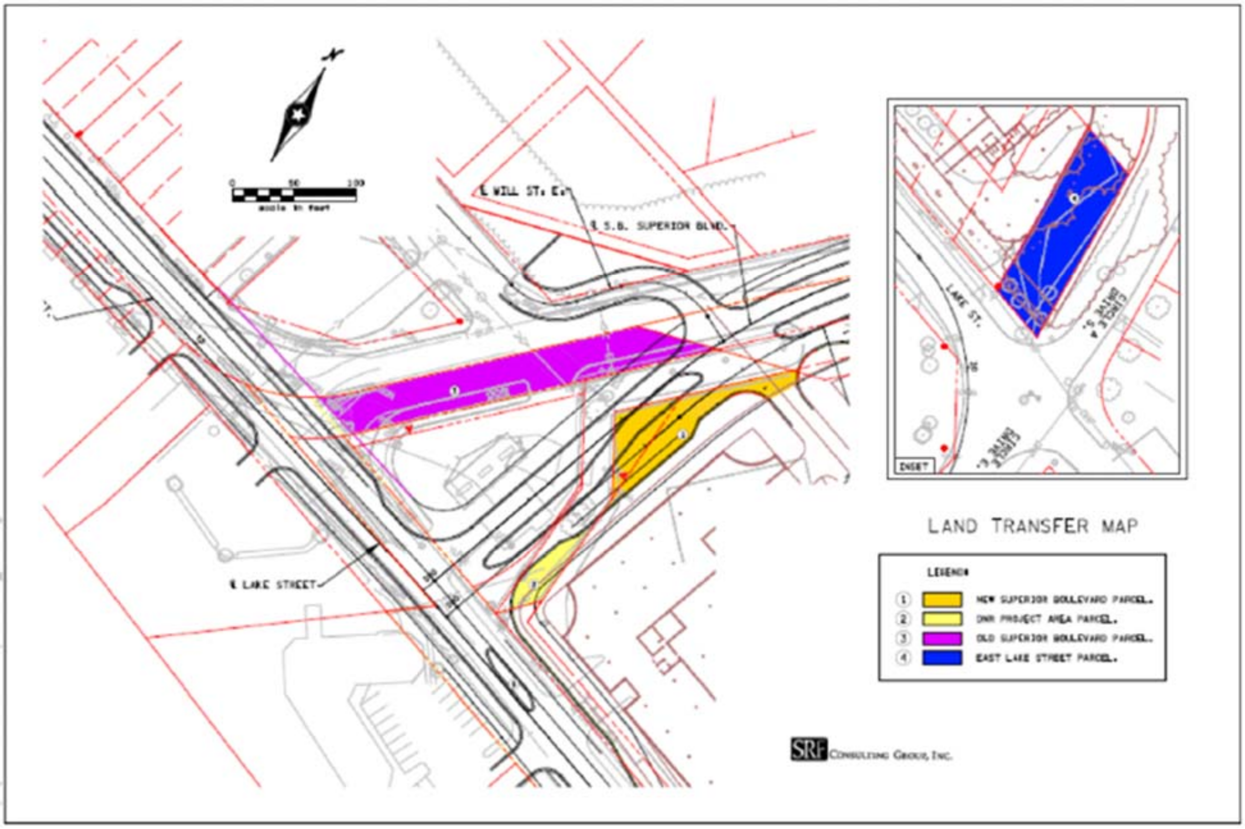
## PUBLIC INFRASTRUCTURE IMPROVEMENTS SITE PLAN




C-1

## EXHIBIT D

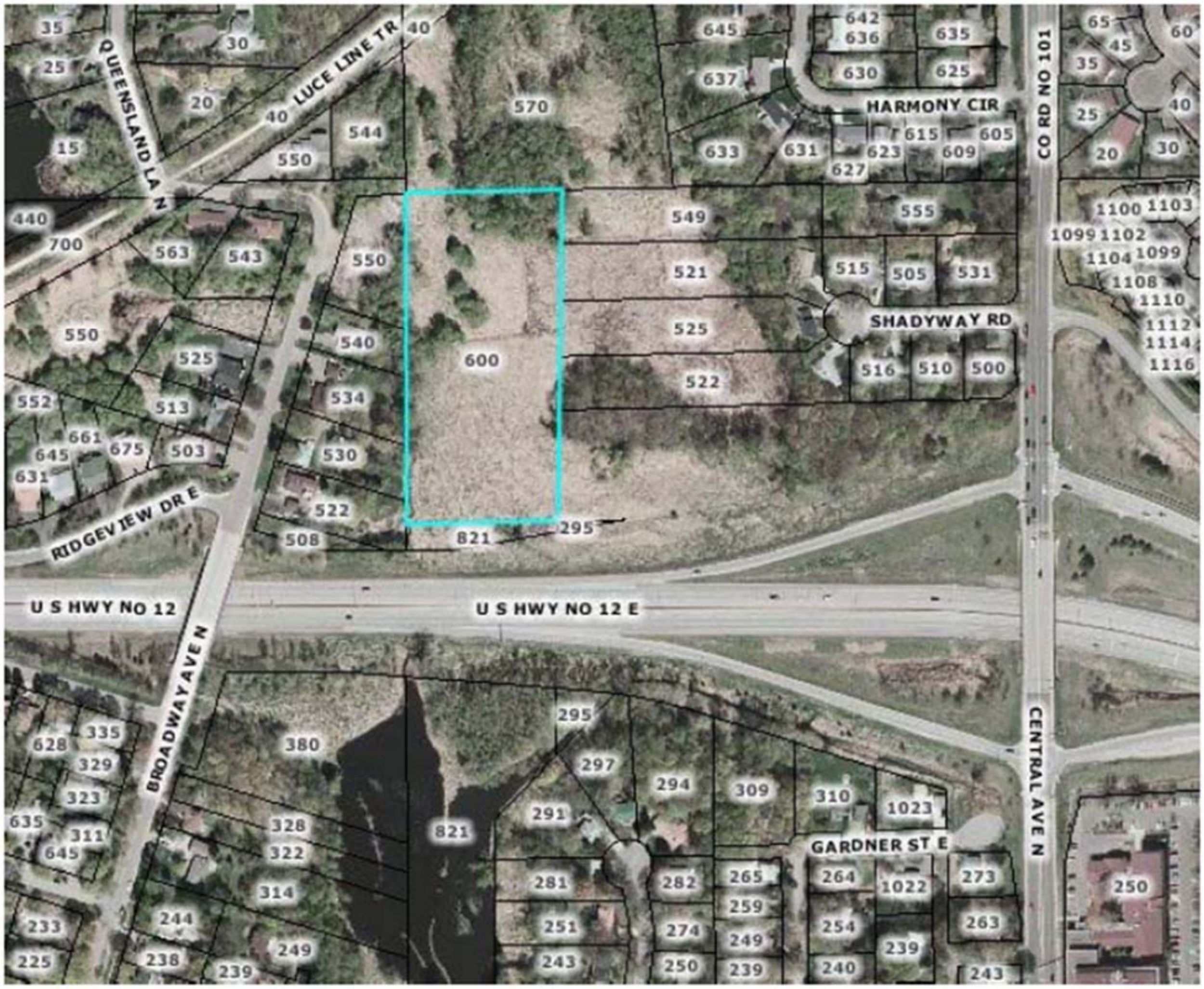
## LAND TRANSFER MAP




D-1

**EXHIBIT E**

**WETLAND MITIGATION PARCEL MAP**



## EXHIBIT F

## QUITCLAIM DEED

Data: ____________, 2008

FOR VALUABLE CONSIDERATION, ______________________________________, a ______________________________________, ("Grantor"), hereby conveys and quitclaims to _______________________________________, a _______________________________________, ("Grantee"), real property in Hennepin County, Minnesota described as follows:

together with all hereditaments and appurtenances belonging thereto, subject to general easements and encumbrances of record.

Dated:

GRANTOR [______________________________]

By ____________________________

Its [____________]

By ____________________________

Its [_____________]

STATE OF MINNESOTA )<br>
) ss.<br>
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ___ day of ________, 2008, by ____________ and ____________, the ____________ and ____________, respectively, of ______________________________, a ___________________________, on behalf of Grantor.

______________________________
Notary Public

Check here if all or part of the land is Registered (Torrens) ___

| | |
|---|---|
| This Instrument Was Drafted By:<br><br>Dorsey & Whitney LLP (JRL/BTC)<br>Suite 1500<br>50 South Sixth Street<br>Minneapolis, MN 55402 | Tax Statements for the real property described in this instrument should be sent to:<br><br>Wayzata Bay Redevelopment Company, LLC<br>2845 Hamline Avenue, North<br>Roseville, MN 55113 |

## EXHIBIT G

## EASEMENT AND MAINTENANCE AGREEMENT

**between**
**THE CITY OF WAYZATA**
**and**
**WAYZATA BAY REDEVELOPMENT COMPANY, LLC**
**for construction, maintenance and use of**

## PUBLIC ACCESS AREAS

THIS AGREEMENT, made as of this ____ day of ________, 20__, by and between the CITY OF WAYZATA, a Minnesota municipal corporation (hereinafter the "City") and WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company (hereinafter the "Master Redeveloper").

W I T N E S S E T H:

**WHEREAS**, the Wayzata Housing and Redevelopment Authority (the "Authority), the City, and the Master Redeveloper have entered into a Master Redevelopment Agreement (the "Contract") dated _____________, 2008, a memorandum of which will be recorded in the real estate records of Hennepin County, Minnesota; and

**WHEREAS**, the capitalized terms used, but not defined in the of this Agreement have the meanings given in the Contract; and

**WHEREAS**, the Contract is intended to provide for the construction of the Minimum Improvements by the Master Redeveloper in the Minimum Improvements Area in coordination with the Authority and with the cooperation and assistance of the City; and

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

**WHEREAS**, the Master Redeveloper has agreed under the Contract to build certain Public Access Areas in connection with the Minimum Improvements on land to which an easement will be granted to the City by the Master Redeveloper pursuant to the Contract; and

**WHEREAS**, the Master Redeveloper has agreed to operate, manage, and maintain the Public Access Improvements pursuant to the Contract; and

**WHEREAS**, the City and the Master Redeveloper deem it to be in their vital interest and in the best interest of the City, the Authority and the State of Minnesota and in furtherance of the economic development and redevelopment plan for the Minimum Improvements Area to enter into this Easement and Maintenance Agreement (hereinafter this “Agreement”) with the Master Redeveloper with respect to those portions of the Minimum Improvements Area on which the Public Access Improvements will be constructed;

**NOW THEREFORE**, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

## GRANT OF EASEMENT

Section 1.1. Easement Premises - Subject to Section 2.1, the Master Redeveloper hereby grants and conveys to the City a non-exclusive easement (the “Easement”) over and across those portions of the real property described on Exhibit A, which are situated in the City of Wayzata, County of Hennepin, State of Minnesota (the “Easement Premises”) and which are designed, constructed or otherwise intended and reserved for use as roadways, streets, streetscape improvements, curbs and gutters, sanitary sewer lines, water lines, public and private utility improvements, and related improvements, as further described on the attached Exhibit B (“Public Access Improvements”). The Easement Premises must contain at least __ public parking spaces.

Section 1.2. Easement Purpose - The Easement is granted for the purpose of use and maintenance of Public Access Improvements, together with all appurtenances thereto and means of access from and to public rights of way and easements shown in the Final Plans or constructed by Master Redeveloper; and include, but are not limited to, any and all parking, sidewalks, streets, alleys, or public spaces immediately adjoining or contiguous to the Easement Premises and all easements appurtenant and/or used in connection with the Public Access Improvements. An additional purpose of this Easement will be to allow the City, and its employees and contractors, to inspect the Public Access Improvements, and to the extent provided herein, maintain and repair the Public Access Improvements.

Section 1.3. Releases and Reservations

(a) The Master Redeveloper reserves in, over, under, above, across and upon the Easement Premises the right to use the Easement Premises for any and all uses and purposes provided that such use does not obstruct or materially interfere with the intended purpose of the Easement, including without limitation:

(i) the right of support for the Minimum Improvements;

(ii) the right to build upon the Public Access Improvements;

(iii) the right of access for ingress and egress through the Easement Premises;

(iv) the right to bring utilities, materials, and other facilities through the Easement Premises;

(v) the right to grant easements in, over, under and across the Easement Premises for the purpose of installation, use and operation of utilities;

(vi) the right to perform all construction, maintenance, and repair of the Public Access Improvements.

(vii) the right during special events or festivals to have temporary sales displays, public seating and entertainment stages in the Easement Premises, provided that such special events or festivals may not last more than seventy-two (72) hours (not including reasonably necessary set up and break down time for the events or festivals) and may not occur more than eight (8) times each year, without prior consent of, but with prior notice to, the City.

(b) The Master Redeveloper must repair any damage caused to the Public Access Improvements due to construction of the Minimum Improvements and minimize the extent and duration of any interference with the easements rights granted herein.

(c) Upon request by the Master Redeveloper, the City must execute and deliver instruments to evidence the Master Redeveloper's reservation of rights under section (a), however execution of such instruments is not necessary to effect the reservations in this Section.

(d) All provisions in this Section 1.3 are subject to the terms of the Contract, the Final Plans, the PUD Agreement and the City Code with regard to public rights-of-way, including the requirements to obtain encroachment permits, obstruction permits or other City approvals to do work in or to public rights-of-way.

Section 1.4. Traffic Regulations and Enforcement - All vehicular and pedestrian traffic on the roadways shall be subject to applicable local, state and federal laws. The City shall have the right to regulate and enforce any and all traffic violations on the roadways.

## ARTICLE II

## TERM

Section 2.1. Term – The Easement will become effective upon issuance of a certificate of occupancy for a given Block. The Easement will be perpetual.

## ARTICLE III

## UTILITIES

Section 3.1. Utility Charges - The Master Redeveloper will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, 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 IV

## TAXES AND ASSESSMENTS

Section 4.1. Payment of Taxes and Assessments - The Master Redeveloper must 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 against the Easement Premises. Nothing contained in this Agreement requires the Master Redeveloper 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. The Master Redeveloper has the right and option, at any time but solely at the Master Redeveloper'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 V

## USE OF EASEMENT PREMISES

Section 5.1. Construction of Public Access Improvements - In accordance with the provisions of the Contract and this Agreement, the Master Redeveloper must build, construct, modify, alter, or reconstruct on the Easement Premises, the Public Access Improvements. The size, location, and design of the Public Access Improvements must be approved in the Final Plans. The Master Redeveloper will be the owner of the Public Access Improvements. It is understood that the Master Redeveloper may make such other improvements as it deems appropriate or desirable upon those portions of the underlying real estate described in Exhibit A hereto that are not occupied by Public Access Improvements.

Section 5.2. Liens - The Master Redeveloper will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the Master Redeveloper, provided, however, that the Master Redeveloper may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Master Redeveloper file a bond or deposit cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Easement Premises or with the City to secure the payment of such lien if finally determined to be valid.

Section 5.3. Legal and Regulatory Compliance; Control of Premises - The Master Redeveloper must operate and maintain the Public Access Improvements on the Easement Premises for public access and other related or incidental purposes and in accordance with all applicable governmental laws, ordinances, regulations and orders pertaining to Public Access Improvements generally from time to time. Subject only to the express provisions of this Agreement, the PUD Agreement, the Final Plans and the Contract, the Master Redeveloper will have full authority and control over the management, operation, and use of the Easement Premises.

Section 5.4. No Fees – The Easement Premises must be open to the public without charge or fee without consent of the City; provided that fees or charges may be charged for special events and festivals under Section 1.3(b)(vii) above.

Section 5.5. Contractors - The Master Redeveloper 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. Master Redeveloper may make all decisions and execute all agreements, in its sole discretion, with respect to the Public Access Improvements so long as operation of the Public Access Improvements does not violate any provisions in the Contract.

Section 5.6. No Waste or Damage - Neither the City nor the Master Redeveloper may 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 Public Access Improvements. The Master Redeveloper in its use and occupancy of the Easement Premises, may not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance or interferes with the public use and enjoyment of the Public Access Improvements. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time will not be considered “waste,” “nuisance,” “damage, “disfigurement,” or “injury.”

## ARTICLE VI

## INDEMNIFICATION, INSURANCE

Section 6.1. Property Insurance - The Master Redeveloper, at its sole cost and expense, must keep all Public Access Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured 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 buildings and improvements similar in construction, general location, use, and occupancy to the Public Access Improvements. Such policy of insurance will affirmatively include the full replacement cost measure of recovery.

Section 6.2. Personal Property - All property of every kind and character which the Master Redeveloper may keep or store in, at, upon, or about the Easement Premises will be kept and stored at the sole risk, cost, and expense of the Master Redeveloper.

Section 6.3. Indemnification of the City -

(a) The Master Redeveloper releases and covenants and agrees that the City shall not be liable for and agree 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 Public Access

Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master 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 the Master Redeveloper (or if other persons acting on their behalf or under its direction or control) under the Contract or the transactions contemplated thereby or the acquisition, construction, installation, ownership and operation of the Public Access Improvements constructed by the Master Redeveloper.

(c) The City in no way waives its right to statutory liability caps under Minnesota Statutes, Section 466.04, as amended**.** The Master Redeveloper's liability to the City equals, but does not exceed, the City's statutory liability limits under Minnesota Statutes, Section 466.04, as amended.

(d) This provision will survive termination of this Agreement.

Section 6.4. Liability Insurance - The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Public Access Improvements and, from time to time at the request of the Authority, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The Master Redeveloper must procure and maintain continuously in effect (or cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to Public Access Improvements and, to be reviewed from time to time by the parties, such policies must meet the minimum requirements set forth in Minnesota Statutes Section 466.04, as amended, and must further include the following:

(a) 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 condition of the Public Access Improvements. Such insurance must provide that the City is an additional insured.

(b) To the extent reasonably available, insurance coverage with respect to the indemnification expressed in Section 6.3 hereof.

Section 6.5. General Insurance Requirement - All insurance required in this Agreement must be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Master Redeveloper must furnish to the City 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 must contain a provision that the insurer may not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. All policies or certificates of insurance will be approved reasonably as to form and content by the City. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6. No Insurance Obligation of City - At no time and under no circumstances will 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 VII

## ASSIGNMENT, SUBORDINATION

Section 7.1. Assignment by the City - The City may not assign or transfer its interest under this Agreement without the prior written consent of the Master Redeveloper.

Section 7.2. Assignment by Master Redeveloper - The Master Redeveloper may not assign or otherwise transfer its interest under this Agreement, except (i) as provided in the Contract, (ii) to whomever becomes an assignee of the Master Redeveloper under the Contract, (iii) to any lender holding a mortgage on or interest in the Easement Premises, and (iv) assignment of the Master Redeveloper's maintenance obligation to extent permitted in Section 8.2 herein. The City will recognize and accept any successors or assigns of Master Redeveloper.

## ARTICLE VIII

## MAINTENANCE OF THE EASEMENT PREMISES

Section 8.1. Maintenance - The Master Redeveloper, at its cost and expense, must keep and maintain all of the Easement Premises in good condition and repair. It is distinctly understood that the preceding does 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 the Master Redeveloper must 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 Easement Premises or any part thereof, the City recognizing that depreciation and diminution by reason of age, use, and environmental factors is unavoidable and expected. However, notwithstanding anything herein to the contrary, it shall be the obligation of the Master Redeveloper to maintain, repair and operate the Public Access Improvements in a condition which is safe, operational and in accordance with all government agreements.

Section 8.2. Assignment of Maintenance Obligations - The Master Redeveloper may assign its maintenance obligations under Section 8.1 to a third party, including an association of property owners, provided that (i) such third party is determined to have financial resources adequate to fund the Master Redeveloper's obligations under this Agreement, and (ii) such third party and the City have entered into a signed agreement requiring the third party to be bound by the terms of this Agreement, in which event the Master Redeveloper will be released from further liability with respect to such assigned obligations.

Section 8.3. No Obligation of the City to Repair or Maintain - The City will 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.

Section 8.4. Entry by City -The City may, after notice and opportunity to cure, enter onto the Easement Premises to repair and maintain the Public Access Improvements within the Easement Premises if the City determines, in its sole discretion, that performance of such repairs and maintenance is necessary (i) cure any default hereunder or (ii) to protect public health, welfare, and safety in a manner consistent with standard practices; provided, however, that in case of emergency or failure of Master Redeveloper to maintain the Public Access Improvements sufficiently to protect the public health and safety, the Easement Premises are subject to entry without notice and at any time, by City or its authorized employees and/or agents and/or by any public safety personnel to perform such maintenance or repairs as City may deem necessary in its sole discretion. The City will submit an invoice for the costs incurred for such maintenance or repairs to the Master Redeveloper. If the Master Redeveloper has failed to make payment on the invoice within 60 days, the City will have the right to assess the costs incurred by the City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. By execution of this Agreement, the Master Redeveloper is agreeing to such an assessment for maintenance and repair costs, agreeing that the Minimum Improvements Area assessed for such service charges is benefited thereby, and waiving any rights the Master Redeveloper or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429.

Section 8.5. Destruction - In the event that the Public Access Improvements on the Easement Premises are destroyed by fire or other casualty, and subject to a determination by any lender holding a mortgage on the Easement Premises, the Master Redeveloper will rebuild or reconstruct the Public Access Improvements to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the entire Public Access Improvements, to the extent insurance proceeds combined with any contributions by the Master Redeveloper toward reconstruction are available. If the Master Redeveloper rebuilds or reconstructs the Public Access Improvements, the proceeds from any and all insurance policies covering risks against loss or damage must be used to rebuild or reconstruct.

## ARTICLE IX

## EMINENT DOMAIN

Section 9.1. Condemnation - If the Easement Premises are taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then the Master Redeveloper, at any time within sixty (60) days next after it has actual notice of such proposed acquisition or condemnation, will have the option to (i) cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property, or to (ii) continue this Agreement as to the remaining part of the Easement Premises not so taken or threatened to be taken. The Master Redeveloper may exercise one of the foregoing options by giving the City written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event Master Redeveloper fails or refuses, for any reason, so to furnish the City written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement will continue in full force and effect under option (ii) above.

## ARTICLE X

## DEFAULT AND TERMINATION

Section 10.1. Default by the City - If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default, or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case the Master Redeveloper may declare the termination of this Agreement and re-enter and take possession of the Easement Premises. In such case, or at such time as this Agreement is terminated pursuant to Section 2.1 hereof, the City agrees to execute and deliver to the Master Redeveloper a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota. In addition, the Master Redeveloper may exercise all remedies available to it at law or equity.

Section 10.2. Default by Master Redeveloper - If the Master Redeveloper fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case, the City may cure such default on behalf of the Master Redeveloper and Master Redeveloper consents to pay to the City any and all such sums as are due and owing on account thereof. City will submit a statement to Master Redeveloper evidencing the costs incurred to cure such default. If Master Redeveloper has failed to make payment in accordance with the statement within 60 days after receipt thereof, City will have the right to assess the costs incurred by City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. In addition, the City may exercise all remedies available to it at law or equity.

## ARTICLE XI

## SURRENDER

Section 11.1. Surrender - Upon any termination of this Agreement, the City will surrender the Easement Premises to the Master Redeveloper, including without limitation any and all buildings, improvements, and fixtures then upon the Easement Premises, and all buildings, improvements, structures, fixtures, alterations, and other additions which may be made or installed by or at the instance of either party hereto, in, upon, or about the Easement Premises will become the property of Master Redeveloper upon any such termination and will be surrendered to the Master Redeveloper by the City without any payment therefor.

## 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 does not constitute a waiver of any subsequent breach or default thereof. No provision of this Agreement is waived 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, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement will be binding upon either party unless in writing and signed by both parties. The Master Redeveloper and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Master Redeveloper's lenders; provided, however, that the Master Redeveloper and the City will not be required to enter into such amendments if the amendments do not adequately protect the legitimate interest and security of the Authority or the City with respect to the Project as defined in the Contract.

Section 12.3. Joinder; Permitted Encumbrance - Except for the Consent and Subordinations attached hereto, if any, 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 will constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Master Redeveloper and any construction or permanent lender.

## ARTICLE XIII
## EARLY TERMINATION/RELOCATION OF EASEMENT

Section 13.1. Early Termination. Notwithstanding anything to the contrary in this Agreement, Master Redeveloper and its successors and assigns shall have the right to terminate this Agreement or, at their election, the right to relocate the Easement Premises in the event that (i) the Easement Premises is redeveloped and all necessary approvals are obtained from the City, (ii) there is a change in the use of adjacent Minimum Improvements which change is approved by the City; or (iii) the Public Access Improvements are destroyed by fire or other casualty and it becomes necessary to reconstruct such improvements with a different design which design has been approved by the City. Any and all costs and expenses of terminating the Easement or relocating the Easement Premises shall be paid by Master Redeveloper. In such event, Master Redeveloper and the City shall execute and deliver a recordable amendment to this Agreement to reflect the termination or relocation and the change in the description of the Easement, as applicable.

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

CITY OF WAYZATA, a Minnesota municipal corporation

By: ________________________________
Its: Mayor

By: ________________________________
Its: City Manager

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

WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company

By: ______________________________
Its ______________________________

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by _________________________ and ________________________, the ______________________ and __________________________, respectively, of the CITY OF WAYZATA, a Minnesota municipal corporation, on behalf of the corporation.

_____________________________________
Notary Public

My Commission Expires]

STATE OF MINNESOTA )
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by _______________, the _________of WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company, on behalf of the company.

_____________________________________
Notary Public

My Commission Expires

**This Instrument was drafted by**
**and when recorded should be returned to:**

Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

## EXHIBIT A

## DESCRIPTION OF EASEMENT PREMISES

[A legal description of the Easement Premises will be mutually approved by the Parties and added to this exhibit upon completion and review of a survey and title insurance commitment with respect those portions of the Block occupied by Public Access Improvements.]

## EXHIBIT B

## PUBLIC ACCESS IMPROVEMENTS

[To be provided once the Final Plans are approved for each Block.]

## CONSENT AND SUBORDINATION

The undersigned, ______________________________, a ___________________________, holder of (i) that certain [Mortgage] (the "Mortgage"); and (2) that certain [Assignment of Leases and Rents] (the "Assignment"), hereby consents to the foregoing *Easement and Maintenance Agreement* (the "Easement Agreement"), and hereby subjects and subordinates the Mortgage and the Assignment and all of its right, title and interest in the Easement Premises to the Easement Agreement.

Nothing in this Consent and Subordination may be construed to impose on the undersigned any obligation created by the Easement Agreement, unless and until the undersigned has acquired fee title to property burdened by the Easement Agreement.

[____________________________________
],

a ___________________________________

By:_________________________________

Printed Name:_________________________

Title:_______________________________

STATE OF ______________)
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by ________________, the _________________ of ___________________________, a ___________________________, on behalf of the ______________________________.

__________________________________________
(Signature of Person Taking Acknowledgment)

**<u>This Instrument was drafted by</u>**
**<u>and when recorded should be returned to:</u>**
Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

## EXHIBIT H

## EASEMENT AND MAINTENANCE AGREEMENT

**between**
**THE CITY OF WAYZATA**
**and**
**WAYZATA BAY REDEVELOPMENT COMPANY, LLC**
**for construction, maintenance and use of**
**PARK IMPROVEMENTS**

THIS AGREEMENT, made as of this ____ day of ________, 20__, by and between the CITY OF WAYZATA, a Minnesota municipal corporation (hereinafter the “City”) and WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company (hereinafter the “Master Redeveloper”).

W I T N E S S E T H:

**WHEREAS**, the Wayzata Housing and Redevelopment Authority (the “Authority), the City, and the Master Redeveloper have entered into a Master Redevelopment Agreement (the “Contract”) dated _____________, 2008, a memorandum of which will be recorded in the real estate records of Hennepin County, Minnesota; and

**WHEREAS**, the capitalized terms used, but not defined, in this Agreement have the meanings given in the Contract; and

**WHEREAS**, the Contract is intended to provide for the construction of the Minimum Improvements by the Master Redeveloper in the Minimum Improvements Area in coordination with the Authority and with the cooperation and assistance of the City; and

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

**WHEREAS**, the Master Redeveloper has agreed under the Contract and the PUD Agreement to build certain Park Improvements in connection with the Minimum Improvements on land to which an easement will be granted to the City by the Master Redeveloper pursuant to the Contract and the PUD Agreement; and

**WHEREAS**, the Master Redeveloper has agreed to operate, manage, and maintain the Park Improvements pursuant to the Contract; and

**WHEREAS**, the City and the Master Redeveloper deem it to be in their vital interest and in the best interest of the City, the Authority and the State of Minnesota and in furtherance of the economic development and redevelopment plan for the Minimum Improvements Area to enter into this Easement and Maintenance Agreement (hereinafter this "Agreement") with the Master Redeveloper with respect to certain lands included within the Minimum Improvements Area on which the Park Improvements will be constructed;

**NOW THEREFORE**, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

## GRANT OF EASEMENT

Section 1.1. Easement Premises - Subject to Section 2.1, the Master Redeveloper hereby grants and conveys to the City a non-exclusive easement (the "Easement") over and across those portions of the real property described on Exhibit A, which are situated in the City of Wayzata, County of Hennepin, State of Minnesota (the "Easement Premises") and are designed, constructed or otherwise intended or reserved for use as open space or park areas, and further described and depicted on the attached Exhibit B (the "Park Improvements").

Section 1.2. Easement Purpose - The Easement is granted for the purpose of public use of the Park Improvements, together with all appurtenances thereto and means of access from and to public rights of way and easements shown in the Final Plans or constructed by Master Redeveloper; and include, but are not limited to, any and all Parking Facilities, streets, alleys, or public spaces immediately adjoining or contiguous to the Easement Premises and all easements appurtenant and/or used in connection with the Easement Premises.

Section 1.3. Releases and Reservations

(a) The Master Redeveloper reserves in, over, under, above, across and upon the Easement Premises the right to use the Easement Premises for any and all uses and purposes provided that such use does not obstruct or materially interfere with the intended purpose of the Easement, including without limitation:

(i) the right of support for the Minimum Improvements;

(ii) the right of access for ingress and egress through the Easement Premises;

(iii) the right to bring utilities, materials, and other facilities through the Easement Premises;

(iv) the right to grant easements in, over, under and across the Easement Premises for the purpose of installation, use and operation of utilities;

(v) the right to perform all construction, maintenance and repair of the Park Improvements and adjoining improvements; and

(vi) the right during special events or festivals to have temporary sales displays, public seating and entertainment stages in the Easement Premises, provided that such special events or festivals may not last more than seventy two (72) hours (not including reasonably necessary set up and break down time for such special events or festivals) and may not occur more than eight (8) times each year, without prior consent of, but with prior notice to, the City.

(b) The Master Redeveloper must repair any damage to the Park Improvements caused by construction of the Minimum Improvements and minimize the extent and duration of any interference with the easement rights granted herein.

(c) Upon request by the Master Redeveloper, the City must execute and deliver instruments to evidence the Master Redeveloper's reservation of rights under sections (a), however execution of such instruments is not necessary to effect the reservations in this Section.

(d) All provisions in this Section 1.3 are subject to the terms of the Contract, the Final Plans, the PUD Agreement and the City Code with regard to public parks.

## ARTICLE II

## TERM

Section 2.1. Term – This Easement will become effective upon issuance of a certificate of occupancy for a the Block containing the Easement Premises. This Easement will be perpetual.

## ARTICLE III

## UTILITIES

Section 3.1. Utility Charges - The Master Redeveloper will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, 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 IV

## TAXES AND ASSESSMENTS

Section 4.1. Payment of Taxes and Assessments - The Master Redeveloper must 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 against the Easement Premises. Nothing contained in this Agreement requires the Master Redeveloper 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. The Master Redeveloper has the right and option, at any time but solely at the Master Redeveloper'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 V

## USE OF EASEMENT PREMISES

Section 5.1. Construction of Park Improvements - In accordance with the provisions of the Contract, the PUD Agreement and this Agreement, the Master Redeveloper must build, construct, modify, alter, and reconstruct on the Easement Premises, the Park Improvements. The size, location, and design of the Park Improvements must be approved in the Final Plans. The Master Redeveloper will be the owner of the Park Improvements. It is understood that the Master Redeveloper may make such other improvements as it deems appropriate or desirable upon those portions of the underlying real estate described in Exhibit A hereto that are not occupied by Park Improvements, provided that such improvements do not impair the use or operation of, or access to, the Park Improvements.

Section 5.2. Liens - The Master Redeveloper will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the Master Redeveloper, provided, however, that the Master Redeveloper may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Master Redeveloper files a bond or deposits cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Easement Premises or with the City to secure the payment of such lien if finally determined to be valid.

Section 5.3. Legal and Regulatory Compliance; Control of Premises - The Master Redeveloper must operate and maintain the Park Improvements on the Easement Premises for public use in accordance with all applicable governmental laws, ordinances, regulations and orders pertaining to Park Improvements generally from time to time. Subject only to the express provisions of this Agreement, the PUD Agreement, the Final Plans, and the Contract, the Master Redeveloper will have full authority and control over the management, operation, and use of the Easement Premises.

Section 5.4. No Fees – The Easement Premises must be open to the public for public use without charge or fee, except during those special events and festivals permitted in Section 1.3(a)(vii).

Section 5.5. Hours of Operation, Rules and Regulations - The Master Redeveloper must establish reasonable hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate for the safe, efficient, and orderly use of the Parks Improvements subject to prior City approval.

Section 5.6. Contractors - The Master Redeveloper 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. Master Redeveloper may make all decisions and execute all agreements, in its sole discretion, with respect to the Park Improvements so long as such decisions and agreements do not violate any provisions in the Contract, this Agreement or the PUD Agreement.

Section 5.7. No Waste or Damage - Neither the City nor the Master Redeveloper may 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 Park Improvements. The Master Redeveloper in its use and occupancy of the Easement Premises, may not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance or interferes with the public use and enjoyment of the Park Improvements. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time will not be considered "waste," "nuisance," "damage, "disfigurement," or "injury."

## ARTICLE VI

## INDEMNIFICATION, INSURANCE

Section 6.1. Property Insurance - The Master Redeveloper, at its sole cost and expense, must keep all Park Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured 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 buildings and improvements similar in construction, general location, use, and occupancy to the Park Improvements. Such policy of insurance will affirmatively include the full replacement cost measure of recovery.

Section 6.2. Personal Property - All property of every kind and character which the Master Redeveloper may keep or store in, at, upon, or about the Easement Premises will be kept and stored at the sole risk, cost, and expense of the Master Redeveloper.

Section 6.3. Indemnification of the City -

(a) The Master Redeveloper releases and covenants and agrees that the City shall not be liable for and agree 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 Park Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master 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 the Master 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 and Public Infrastructure Improvements constructed by the Master Redeveloper.

(c) The City in no way waives its right to statutory liability caps under Minnesota Statutes, Section 466.04, as amended. The Master Redeveloper's liability to the City equals, but does not exceed, the City's statutory liability limits under Minnesota Statutes, Section 466.04, as amended.

(d) This provision will survive termination of this Agreement.

Section 6.4. Liability Insurance - The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Park Improvements and, from time to time at the request of the Authority, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The Master Redeveloper must procure and maintain continuously in effect (or cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to Park Improvements and, to be reviewed from time to time by the parties, such policies must meet the minimum requirements set forth in Minnesota Statutes Section 466.04, and must further include the following:

(a) 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 condition of the Park Improvements. Such insurance must provide that the City is an additional insured.

(b) To the extent reasonably available, insurance coverage with respect to the indemnification expressed in Section 6.3 hereof.

Section 6.5. General Insurance Requirement - All insurance required in this Agreement must be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Master Redeveloper must furnish to the City 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 must contain a provision that the insurer may not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. All policies or certificates of insurance will be approved reasonably as to form and content by the City. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6. No Insurance Obligation of City - At no time and under no circumstances will 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 VII

## ASSIGNMENT, SUBORDINATION

Section 7.1. Assignment by the City - The City may not assign or transfer its interest under this Agreement without the prior written consent of the Master Redeveloper.

Section 7.2. Assignment by Master Redeveloper - The Master Redeveloper may not assign or otherwise transfer its interest under this Agreement, except (i) as provided in the Contract, (ii) to whomever becomes an assignee of the Master Redeveloper under the Contract, (iii) to any lender holding a mortgage on or interest in the Easement Premises, and (iv) assignment of the Master Redeveloper's maintenance obligation to extent permitted in Section 8.2 herein. The City will recognize and accept any successors or assigns of Master Redeveloper.

## ARTICLE VIII

## MAINTENANCE OF THE EASEMENT PREMISES

Section 8.1. Maintenance - The Master Redeveloper, at its cost and expense, must keep and maintain all of the Easement Premises in good condition and repair. It is distinctly understood that the preceding does 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 the Master Redeveloper must 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 Easement Premises or any part thereof, the City recognizing that depreciation and diminution by reason of age, use, and environmental factors is unavoidable and expected. However, notwithstanding anything herein to the contrary, it shall be the obligation of the Master Redeveloper to maintain, repair and operate the Park Improvements in a condition which is safe, operation and in accordance with all government agreements.

Section 8.2. Assignment of Maintenance Obligations - The Master Redeveloper may assign its maintenance obligations under Section 8.1 to a third party, including an association of property owners, provided that (1) such third party is determined by the City to have financial resources adequate to fund the Master Redeveloper's obligations under this Agreement and (ii) such third party and the City have entered into a signed agreement requiring the third party to be bound by the terms of this Agreement, in which event the Master Redeveloper will be released from further liability with respect to such assigned obligations.

Section 8.3. No Obligation of the City to Repair or Maintain - The City will 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.

Section 8.4. Entry by City -The City may, after notice and opportunity to cure, enter onto the Easement Premises to repair and maintain the Park Improvements within the Easement Premises if the City determines, in its sole discretion, that performance of such repairs and maintenance is necessary (i) to cure any default hereunder or (ii) to protect public health, welfare and safety; provided, however, that in case of emergency or failure of Master Redeveloper to maintain the Park Improvements sufficiently to protect the public health and safety, the Easement Premises are subject to entry without notice and at any time, by City or its authorized employees and/or agents and/or by any public safety personnel to perform such maintenance or repairs as City may deem necessary in its sole discretion. The City will submit an invoice for the costs incurred for such maintenance or repairs to the Master Redeveloper. If the Master Redeveloper has failed to make payment on the invoice within 60 days, the City will have the right to assess the costs incurred by the City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. By execution of this Agreement, the Master Redeveloper is agreeing to such an assessment for maintenance and repair costs, agreeing that the Minimum Improvements Area assessed for such service charges is benefited thereby, and waiving any rights the Master Redeveloper or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429.

Section 8.5. Destruction - In the event that the Park Improvements on the Easement Premises are destroyed by fire or other casualty, and subject to a determination by any lender holding a mortgage on the Easement Premises, the Master Redeveloper will rebuild or reconstruct the Park Improvements to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the entire Park Improvements, to the extent insurance proceeds combined with any contributions by the Master Redeveloper toward reconstruction are available. If the Master Redeveloper rebuilds or reconstructs the Park Improvements, the proceeds from any and all insurance policies covering risks against loss or damage must be used to rebuild or reconstruct.

## ARTICLE IX

## EMINENT DOMAIN

Section 9.1. Condemnation - If the Easement Premises are taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then the Master Redeveloper, at any time within sixty (60) days next after it has actual notice of such proposed acquisition or condemnation, will have the option to (i) cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property, or to (ii) continue this Agreement as to the remaining part of the Easement Premises not so taken or threatened to be taken. The Master Redeveloper may exercise one of the foregoing options by giving the City written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event Master Redeveloper fails or refuses, for any reason, so to furnish the City written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement will continue in full force and effect under option (ii) above.

## ARTICLE X

## DEFAULT AND TERMINATION

Section 10.1. Default by the City - If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default, or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case the Master Redeveloper may declare the termination of this Agreement and re-enter and take possession of the Easement Premises. In such case, or at such time as this Agreement is terminated pursuant to Section 2.1 hereof, the City agrees to execute and deliver to the Master Redeveloper a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota. In addition, the Master Redeveloper may exercise all remedies available to it at law or equity.

Section 10.2. Default by Master Redeveloper - If the Master Redeveloper fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case, the City may cure such default on behalf of the Master Redeveloper and Master Redeveloper consents to pay to the City any and all such sums as are due and owing on account thereof. City will submit a statement to Master Redeveloper evidencing the costs incurred to cure such default. If Master Redeveloper has failed to make payment in accordance with the statement within 60 days after receipt thereof, City will have the right to assess the costs incurred by City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. In addition, the City may exercise all remedies available to it at law or equity.

## ARTICLE XI

## SURRENDER

Section 11.1. Surrender - Upon any termination of this Agreement, the City will surrender the Easement Premises to the Master Redeveloper, including without limitation any and all buildings, improvements, and fixtures then upon the Easement Premises, and all buildings, improvements, structures, fixtures, alterations, and other additions which may be made or installed by or at the instance of either party hereto, in, upon, or about the Easement Premises will become the property of Master Redeveloper upon any termination and will be surrendered to the Master Redeveloper by the City without any payment therefor.

## 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 does not constitute a waiver of any subsequent breach or default thereof. No provision of this Agreement is waived 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, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement will be binding upon either party unless in writing and signed by both parties. The Master Redeveloper and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Master Redeveloper's lenders; provided, however, that the Master Redeveloper and the City will not be required to enter into such amendments if the amendments do not adequately protect the legitimate interest and security of the Authority or the City with respect to the Project as defined in the Contract.

Section 12.3. Joinder; Permitted Encumbrance - Except for the Consent and Subordinations attached hereto, if any, 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 will constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Master Redeveloper and any construction or permanent lender.

## ARTICLE XIII
## EARLY TERMINATION/RELOCATION OF EASEMENT

Section 13.1. Early Termination. Notwithstanding anything to the contrary in this Agreement, Master Redeveloper and its successors and assigns shall have the right to terminate this Agreement or, at their election, the right to relocate the Easement Premises in the event that (i) the Easement Premises is redeveloped and all necessary approvals are obtained from the City, (ii) there is a change in the use of adjacent Minimum Improvements which change is approved by the City; or (iii) the Park Improvements are destroyed by fire or other casualty and it becomes necessary to reconstruct such improvements with a different design which design has been approved by the City. Any and all costs and expenses of terminating the Easement or relocating the Easement Premises shall be paid by Master Redeveloper. In such event, Master Redeveloper and the City shall execute and deliver a recordable amendment to this Agreement to reflect the termination or relocation and the change in the description of the Easement, as applicable.

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

CITY OF WAYZATA, a Minnesota municipal corporation

By: ________________________________

Its: Mayor

By: ________________________________
Its: City Manager

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

WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company

By: ________________________________

Its ________________________________

STATE OF MINNESOTA )
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ____ day of ______________, 200__, by __________________________ and _________________________, the ______________________ and ___________________________, respectively, of the CITY OF WAYZATA, a Minnesota municipal corporation, on behalf of the corporation.

_______________________________________

Notary Public

My Commission Expires]

STATE OF MINNESOTA )<br>) ss.<br>COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by _______________, the _________of WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company, on behalf of the company.

_____________________________________

Notary Public

My Commission Expires

**<u>This Instrument was drafted by</u>**
**<u>and when recorded should be returned to:</u>**

Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

## EXHIBIT A

## DESCRIPTION OF EASEMENT PREMISES

[A legal description of the Easement Premises will be mutually approved by the Parties and added to this exhibit upon completion and review of a survey and title insurance commitment with respect to the Easement Premises.]

**EXHIBIT B**

**PARK IMPROVEMENTS**

[To be provided once Final Plans are approved for each relevant Block.]

## CONSENT AND SUBORDINATION

The undersigned, ______________________________, a ___________________________, holder of (i) that certain [Mortgage] (the “Mortgage”); and (2) that certain [Assignment of Leases and Rents] (the “Assignment”), hereby consents to the foregoing *Easement and Maintenance Agreement* (the “Easement Agreement”), and hereby subjects and subordinates the Mortgage and the Assignment and all of its right, title and interest in the Easement Premises to the Easement Agreement.

Nothing in this Consent and Subordination may be construed to impose on the undersigned any obligation created by the Easement Agreement, unless and until the undersigned has acquired fee title to property burdened by the Easement Agreement.

[___________________________________],
a ___________________________________

By:_________________________________

Printed Name:________________________

Title:_______________________________

STATE OF ______________)
) ss.
COUNTY OF ____________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 200__, by _________________, the _________________ of _____________________________, a ___________________________, on behalf of the _______________________________.

_____________________________________________
(Signature of Person Taking Acknowledgment)

**This Instrument was drafted by**
**and when recorded should be returned to:**
Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

# EXHIBIT I

# TIF PRO FORMA

## Annual Operating Proforma - Baseline

| | Year | Year | Year | Year | Year | Year |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| Units Rented | 146 | 240 | 242 | 242 | 242 | 242 |
| Percent Occupancy | 57% | 94% | 95% | 95% | 95% | 95% |
| | 12/31/2012 | 12/31/2013 | 12/31/2014 | 12/31/2015 | 12/31/2016 | 12/31/2017 |
| ****Revenues**** | | | | | | |
| Total Average Skilled | 2,057,688 | 2,866,688 | 2,946,508 | 3,034,903 | 3,125,950 | 3,219,729 |
| Total Average Assisted | 1,478,520 | 2,804,693 | 2,932,565 | 3,020,541 | 3,111,158 | 3,204,492 |
| Total Average Memory Care | 594,320 | 996,360 | 1,026,251 | 1,057,038 | 1,088,749 | 1,121,412 |
| Total Average Independent | 3,132,133 | 5,005,794 | 5,209,279 | 5,365,557 | 5,526,524 | 5,692,320 |
| Garage | 73,424 | 117,347 | 122,117 | 125,780 | 129,554 | 133,440 |
| Staff Meals | 45,071 | 73,852 | 76,788 | 79,091 | 81,464 | 83,908 |
| Other meal income | 150,465 | 246,545 | 256,346 | 264,037 | 271,958 | 280,116 |
| 2nd Occupant monthly income | 35,822 | 58,696 | 61,029 | 62,860 | 64,746 | 66,688 |
| Resident Storage 150 units at $30 per month | 31,614 | 56,819 | 52,839 | 54,424 | 56,057 | 57,739 |
| Misc | 127,503 | 208,921 | 217,227 | 223,744 | 230,456 | 237,370 |
| Interest Income Monthly | 278,157 | 278,157 | 286,502 | 295,097 | 303,950 | 313,069 |
| Guest Rooms 50% occupancy | 30,630 | 51,300 | 52,839 | 54,424 | 56,057 | 57,739 |
| Total Revenue | 8,034,718 | 12,753,169 | 13,240,289 | 13,637,498 | 14,046,623 | 14,468,022 |
| ****Expenses**** | | | | | | |
| Total Community Living | 2,012,371 | 2,040,787 | 2,102,010 | 2,165,070 | 2,230,023 | 2,296,923 |
| Total Dietary | 765,230 | 801,950 | 826,008 | 850,788 | 876,312 | 902,601 |
| Total Engineering | 260,057 | 267,859 | 275,894 | 284,171 | 292,696 | 301,477 |
| Total Utilities | 326,874 | 336,681 | 346,781 | 357,184 | 367,900 | 378,937 |
| Total Housekeeping | 339,479 | 337,542 | 347,668 | 358,098 | 368,841 | 379,906 |
| Total Rehabilitation | 21,333 | 21,973 | 22,632 | 23,311 | 24,010 | 24,731 |
| Total Recreation Therapy | 174,327 | 179,557 | 184,944 | 190,492 | 196,207 | 202,093 |
| Total Volunteers | 562 | 579 | 596 | 614 | 633 | 652 |
| Total Transportation | 5,410 | 5,572 | 5,739 | 5,912 | 6,089 | 6,272 |
| Total Spiritual Care | 3,182 | 3,277 | 3,376 | 3,477 | 3,581 | 3,689 |
| Total Employee Health | 530 | 546 | 562 | 579 | 597 | 614 |
| Total Administration | 1,830,196 | 2,108,972 | 2,177,468 | 2,242,792 | 2,310,075 | 2,379,378 |
| Total Property Taxes | 173,119 | (302,002) | (844,659) | (1,397,965) | (1,418,731) | (1,439,697) |
| **Total Operating Expense** | 5,912,670 | 5,803,292 | 5,449,020 | 5,084,524 | 5,258,233 | 5,437,576 |
| NOI | 2,122,048 | 6,949,878 | 7,791,269 | 8,552,974 | 8,788,390 | 9,030,446 |
| Adjustment for Entrance Deposits (1) | 7,203,483 | 10,707,880 | | | | |
| Adjusted NOI | 9,325,531 | 17,657,758 | 7,791,269 | 8,552,974 | 8,788,390 | 9,030,446 |
| **Debt Service** | | | | | | |
| Senior Loan P&I | 3,399,035 | 3,399,035 | 3,399,035 | 3,809,904 | 3,809,904 | 3,809,904 |
| Secondary Financing P&I | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 | 1,808,040 |
| City Improvement Financing | 254,822 | 254,822 | 254,822 | 254,822 | 254,822 | 254,822 |
| Entrance Deposit Funding | 950,933 | 950,933 | 950,933 | 950,933 | 950,933 | 950,933 |
| Total Debt Service | 6,412,830 | 6,412,830 | 6,412,830 | 6,823,699 | 6,823,699 | 6,823,699 |
| Cash Flow after Debt Service | 2,912,701 | 11,244,928 | 1,378,439 | 1,729,275 | 1,964,691 | 2,206,747 |
| Assumed Equity | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 | 15,145,800 |
| Projected Cash on Cash Return | 19.23% | 74.24% | 9.10% | 11.42% | 12.97% | 14.57% |
| Replacement Reserves | - | - | - | 127,500 | 127,500 | 127,500 |
| **Cash Flow after Debt and Reserves** | 2,912,701 | 11,244,928 | 1,378,439 | 1,601,775 | 1,837,191 | 2,079,247 |
| Funded Working Capital | 1,200,000 | - | - | - | - | - |
| **Cumulative Cash Flow** | 4,112,701 | 15,357,629 | 16,736,068 | 18,337,843 | 20,175,035 | 22,254,281 |
| **Debt Coverage Ratio with Ent. Deposits** | 1.45 | 2.75 | 1.21 | 1.25 | 1.29 | 1.32 |
| **Debt Coverage Ratio without Ent. Deposits** | 0.33 | 1.08 | 1.21 | 1.25 | 1.29 | 1.32 |

| | | |
|---|---|---|
| Include Entrance Deposits in cash flow? | | Yes |
| | | **Projected** |
| **Nine year average cash on cash return - No PV** | | 15.72% |
| **Nine year average cash on cash return - PV to 2008** | | 11.46% |
| **Reversion** | | **Projected** |
| Cap Rate | | 10.00% |
| Sale Value | $ | 90,304,455 |
| Less: Sale expense at 5% | | (4,515,223) |
| Add: Entrance Deposit Cash | | 16,000,000 |
| **Net Sale Proceeds** | $ | 101,789,232 |
| Less: Outstanding Principal - Primary Loan | | (51,921,892) |
| Less: Outstanding Principal - Secondary Loan | | (24,481,685) |
| Less: Outstanding Principal - City Improvement | | (3,648,767) |
| Less: Outstanding Principal - Entrance Deposits | | (15,691,784) |
| **Total** | $ | 6,045,105 |
| **Internal Rate of Return** | | 9.30% |

(1) Adjustments for entrance deposits reflect revenues not in pro forma

SENIOR HOUSING PARTNERS

# Memorandum

To: Heidi Nelson, City of Wayzata

From: John Mehrkens, VP Development

Date: June 9, 2015

Subject: Wayzata Remnant Parcel Development Concept

---

The purpose of this memorandum is to provide a brief history of how the Remnant Parcel was created and an outline of its development potential should Wayzata Bay Redevelopment Company develop the site. This letter is also intended to fulfill the first requirement as outlined in the Term Sheet for amendment of the Redevelopment Contract, item #10, adopted by Wayzata City Council at their meeting of June 2, 2015.

The Remnant Parcel was created when the re-routing of Superior Boulevard took place creating a traditional 90º intersection at Lake Street. As a result of the road reconfiguration a triangular parcel was created. Since that time, a land swap occurred with the neighboring parcel to create a square, more developable lot. Based upon that land swap, a parcel of approximately 128' x 124' or 15,000 square feet or .36 acres is now available for potential redevelopment.

In conjunction with the redevelopment of the Bay Center, the Remnant Parcel originally owned by Wayzata Bay was transferred to the City. The City has since developed the Municipal Bar and Liquor Store and have utilized that parcel for parking. As part of the Redevelopment Agreement, Wayzata Bay Redevelopment Company retained a Right of First Negotiation to re-acquire the site should the City wish to sell it.

It is our understanding that the potential creation of a Municipal Parking Ramp may make the Remnant Parcel available for development. Further, it is assumed the City is looking at the sale of the Remnant Parcel as a potential source of capital and could be, to the extent it qualifies, an ongoing source of tax increment to support the new ramp.

Per the current Term Sheet for Amendment to the Redevelopment Contract, Wayzata Bay Redevelopment is to submit a conceptual development plan for the site by September 1, 2015. However, due to the necessity of City planning of the ramp it has been requested that we provide an outline of the development potential and its parking impacts in advance.

The development of the property could take a number of forms based upon the planning direction adopted. If it was presumed that the City wished to maximize its value for the property, the site would be developed to its outer limits. As such, we have provided an outline that maximizes the leasable square footage in order to capitalize on land value. However, should the City wish to reduce the leasable square footage in order to meet other planning goals, such as reducing the visual impact of the property, a smaller foot print and building could be developed. We have provided alternatives for a smaller development plan as well. It is understood that whichever development plan is adopted, the land value will be directly dependent upon the leasable square footage achieved. Under any circumstance, it is assumed that any development of the Remnant Parcel will not allow for any on site or below grade parking and thus would require off-site parking, presumably in the new ramp.

**Maximized Development Option:**

Based upon the above range of assumptions, the maximized development would include a two-story building that would house retail/restaurant on the first floor and office above.

Building Site Placement Assumptions:

- South elevation to be placed at the back of the Lake Street sidewalk, similar to other properties within the block.
- East elevation would be set back 20' from the back of the curb to match the Muni.
- West elevation would be at the property line.
- North elevation would be at the property line.

This would yield a first floor gross square footage of approximately 12,500. Removing utility space, trash, elevator lobby for second floor, etc., the net leasable would be approximately 11,300 square feet.

Assuming the project would require a step back design for the second floor, as I believe current ordinances requires, the south and east elevations would be stepped back 5'. The north and west elevations would remain on the same plain as the first floor. This would yield a second floor gross square footage of approximately 11,400 with an approximate 10,800 square foot net leasable for a single tenant or approximately 9,000 for a multi-tenant design.

This represents the maximum two story net leasable of:

| | |
|---|---|
| 1st Floor Retail / Restaurant | 11,300 SF |
| 2nd Floor Office | 10,800 SF |
| Combined Total | 22,100 SF |

The following table outlines three potential scenarios that follow the square footage noted above. The first scenario is a restaurant only plan which is unlikely. Very few restaurants users could utilize the full square footage. The second is an equal split between restaurant and general retail. The third assumes no restaurant. In all three scenarios, the office is shown at its largest capacity.

| Use | | Scenario 1 | | Scenario 2 | | Scenario 3 | |
|---|---|---|---|---|---|---|---|
| | Parking Ratio | Square Footage | Parking Demand | Square Footage | Parking Demand | Square Footage | Parking Demand |
| **Restaurant** | 15.2 | 11300 | 172 | 5650 | 86 | 0 | 0 |
| **General Retail** | 3.9 | 0 | 0 | 5650 | 22 | 11300 | 44 |
| **Office** | 3.7 | 10800 | 40 | 10800 | 40 | 10800 | 40 |
| | | | **212** | | **148** | | **84** |

**Reduced Development Option:**

Under a reduced development plan, the building could have increased first floor setbacks and either a larger second floor setback or no second floor at all. The building would then be a one or two story option with similar uses as indicated above.

Building Site Placement Assumptions:

- South elevation to be placed at the back of the Lake Street sidewalk, similar to other properties within the block.
- East elevation would be set back 20' from the back of the curb to match the Muni.
- West elevation would have a 10' setback from the property line.
- North elevation would have a 10'setback from the property line.

This would yield a first floor gross square footage of approximately 9,900. Removing utility space, trash, elevator lobby for second floor, etc., the net leasable would be approximately 8,700 square feet.

Increasing the upper level setback on the Lake and Superior elevations from 5' to 10' would reduce the second floor to 9,200 gross. The north and west elevations would remain on the same plain as the first floor. This would yield a second floor net 8,000 square foot leasable for a single tenant.

This represents the following reduced one and two story net leasable of:

| | Two Story | One Story |
|---|---|---|
| 1st Floor Retail / Restaurant | 8,700 SF | 8,700 SF |
| 2nd Floor Office | 8,000 SF | 0 SF |
| **Combined Total** | **16,700 SF** | **8,700 SF** |

The following table outlines three potential scenarios that follow the square footage noted above. The first scenario is a restaurant only plan which is unlikely. Very few restaurants users could utilize the full square footage. The second is an equal split between restaurant and general retail. The third assumes no restaurant. In all three scenarios, the office is shown at its largest capacity.

**Two Story**

| | | Scenario 1 | | Scenario 2 | | Scenario 3 | |
|---|---|---|---|---|---|---|---|
| **Use** | Parking Ratio | Square Footage | Parking Demand | Square Footage | Parking Demand | Square Footage | Parking Demand |
| **Restaurant** | 15.2 | 8700 | 132 | 4850 | 73 | 0 | 0 |
| **General Retail** | 3.9 | 0 | 0 | 4850 | 19 | 8700 | 34 |
| **Office** | 3.7 | 8000 | 30 | 8000 | 30 | 8000 | 30 |
| | | | **162** | | **122** | | **64** |

**One Story**

| | | Scenario 1 | | Scenario 2 | | Scenario 3 | |
|---|---|---|---|---|---|---|---|
| **Use** | Parking Ratio | Square Footage | Parking Demand | Square Footage | Parking Demand | Square Footage | Parking Demand |
| **Restaurant** | 15.2 | 8700 | 132 | 4850 | 73 | 0 | 0 |
| **General Retail** | 3.9 | 0 | 0 | 4850 | 19 | 8700 | 34 |
| | | | **132** | | **92** | | **34** |

While the above provides a range of options, there are many more iterations that could be considered. We hope this information will be helpful in planning for the potential development of the Remnant Parcel, as well as the various potential demands on a parking structure.

We are pleased to working with the City of development of this important parcel and look forward to continued discussion. Please let me know if I can provide any additional information or if you have any questions.

**End of Memorandum**

With regard to the parking agreement and easement with the Boatworks, Mr. Schelzel stated that easement burdens one of the three properties and will need to be honored unless the two property owners negotiate something different.

Brad Hoyt, 253 East Lake Street, stated Ehlers' analysis did not include office, apartments, and retail, which he thinks will generate closer to $4.8 million to $4.9 million in increment. Mr. Hoyt clarified they are not proposing a development with TIF assistance but for the City to issue General Obligation Bonds to build a ramp and own it. Mr. Hoyt felt the parking ramp would have to be a City initiative, offered to put in whatever resources staff needs to create a plan, and indicated support to expand the district to include other properties that would benefit. Mr. Hoyt asked for an indication from the Council that they support buying into that process so he can decide whether to hold the property.

Pat Hughes, 235 and 239 East Lake Street, stated he does not think Ehlers included all of the property in the analysis. He agreed with Mr. Hoyt that parking is needed on the west side, there is an opportunity to develop, but without parking it will be a significant challenge. Mr. Hughes stated he is ready and able to redevelop his two small lots and does not want to lose the opportunity. He asked for a collective indication from the Council whether they support moving quickly toward something that works for the three property owners and the City.

In response to Council's question, Mr. Aarsvold stated Ehlers' analysis did not calculate parking needs based on proposed uses or what the source of revenue would be used for (public parking ramp). The analysis included the addresses of 253, 239 and 259 Lake Street. 235 Lake Street was not considered and may or may not provide more increment if included. Mr. Aarsvold stated Ehlers has been before the Council previously about the City issuing General Obligation Bonds for a parking structure but that was for a parking ramp that was purely public. The question in this case would be use of publicly funded parking purely to support a developer's gap.

The Council acknowledged that if the TIF district expanded to Ferndale Road or included different parcels and uses, the TIF analysis would be different. It was noted the question was whether the Council supported using TIF and other partnership dollars to facilitate a partnering stance for redevelopment on the west end of Wayzata. It would not be just for the benefit of these three properties but, rather, provide parking for the public as well as an entire development area on the west side as defined in a Parking District. The Council noted the Three Rivers Park trailhead has also created a parking need.

A poll of the Council acknowledged this is a unique opportunity and supported moving forward to further explore the project, gather more information, follow the successful 'playbook' being used on Mill Street, consider public benefit of investing in a parking capacity for the entire district to avoid having to react to parking needs on a parcel-by-parcel basis, and to look for parking solutions for the entire west end of Wayzata.

**c. Discussion of Mill Street Parking Ramp Site Planning**

Ms. Nelson stated at the June 2, 2015, Workshop the Council discussed the Mill Street parking ramp and the intent of this agenda item is to provide an update and gain the Council's direction on policy.

Jim Lasher, SRF Consulting, provided an update on activity since the Council's June 2 discussion, noting two-hour parking enforcement and valet service have begun. He recommended updating the 2007 traffic projections and suggested a scope of work that should be included to understand the measurement and functionality of intersections today and determine whether additional traffic can be accommodated. If approved, the study will also address traffic patterns, points of access into the parking ramp, and project potential traffic based on future development within the corridor as a result of the ramp.

The Council asked what would be done differently with the updated traffic projections that show an increase in traffic, noting this is an additional budget item. Mr. Lasher explained how the projections will determine impacts of circulation from the ramp that may result in a decision to place the ramp exit onto a different roadway to avoid creating additional congestion during peak times.

The Council reviewed the aerial photographs, noting that depending on the location of the entrances and exits of the parking ramp, the preliminary design allowed for traffic on the east side of Mill Street where there is considerable foot traffic to the Muni.

The Council discussed whether the traffic projections needed to be updated, noting that in the next two years there will be a dramatic change in traffic levels so a study conducted today would be ephemeral. However, such a study would gather data on potential future uses, address pedestrian traffic east of Mill Street, and increased traffic projections as a result of the ramp.

Mr. Lasher stated the analysis included the new restaurant across the street from the Muni, the new intersection at Superior and Wayzata Boulevards, revisions to the Presbyterian Homes plan, and proposed development. He stated with regard to conflicting pedestrian use of the space, if there is not a ramp entrance on Superior Boulevard, it will impact the location of ramp signage within and outside the core area. Mr. Lasher stated he understands the comments of the Council but felt the traffic analysis would gather the data needed to make a wise choice about how to unload and load a 450 car parking structure.

Mr. Lasher stated this small site has a significant change in soil qualities so he recommended a geotechnical investigation to drill four borings at a cost of $9,000. The results of those borings will get directly at the type and cost of construction for the parking structure. Depending on the boring results, another set of soil borings may be required to determine the type of foundation needed.

Mr. Lasher described the option to repurpose Mill Street as a Woonerf, a livable and useable street and asked the Council if this is a reasonable approach. Following discussion, the majority of the Council indicated it generally favored exploring this concept as Mill Street is a historic roadway and to consider the parking structure front more as a storefront/street image, subject to better understanding those options. Mr. Tyacke questioned whether creating a Woonerf would be worthwhile as lost parking spaces would have to be replaced with higher cost ramp spaces, it may appear as a 'dark canyon,' and may negatively impact Mill Street businesses.

Mr. Lasher next addressed the creation of a green roof, stating they met with the Minnehaha Creek Watershed District, which has $750,000 per year to fund stormwater management concepts in their District. He asked the Council whether creating a green roof has merit for continued exploration.

Mrs. Anderson supported exploration of other grant opportunities as it will benefit the viewshed for residents above. Mr. Tyacke stated while he would not object to further exploration, leans more towards consideration of a solar application that would have cost benefit implications. Mr. Mullin preferred to use the resources instead to address engineering of the parking structure into the hill. Mrs. McCarthy stated overall, she favors any opportunity to soften or integrate the structure as much as possible. She asked if there are opportunities to recreate the hill to better camouflage the structure. Mr. Lasher reviewed diagrams depicting ramp locations and described the view from above depending on how the structure is sited. Mr. Willcox supported making the view as acceptable as possible from above but did not support a green roof, as they are expensive to construct and maintain. He suggested planting short trees or shrubs along the upper slope that would not impact the lake view but still shield the view of the parking structure. A poll of the Council revealed three in support of continued consideration of a green roof.

Mr. Tyacke stated his belief there is a good business case for considering a solar roof so he would like to have that discussion with staff. Mr. Lasher clarified that the solar panels will be positioned to not create reflectivity to the north.

Mr. Lasher reported on potential future developments including Beltz constructing a 20,000 square foot building addition, which will have an impact on the parking ramp and could include a bridge archway entrance to the Woonerf on Mill Street.

The Council indicated such an expansion could require 212 parking stalls so the cost would have to be included in the ramp, which may cost more than the property. With the Wayzata Bay development sale, the Council preferred an open green space that is modified for pedestrian use.

Mr. Lasher presented additional parking structure concepts, points of access, building footprint, and resulting impact on commercial development. Mr. Lasher stated the parking analysis planned two expansions (70’ x 100’ Beltz expansion and an additional 15,000 to 20,000 square foot use) in the parking ratio. However, it does not allow adding a structure needing an additional 212 parking spaces. He asked whether the Council supported consideration of a retail or commercial building on the Broadway side.

The Council discussed the option of locating a commercial building along the west edge of the parking structure. Mr. Tyacke supported considering the concept for the Beltz building to bridge over depending on the mass and scale, as long as the parking capacity is incorporated.

Mr. Lasher stated he understands the area is zoned for two stories so Beltz would need a CUP for a three-story structure. He stated the proposal is for some kind of bridge (one-story or two-story) but the grade may force it to be only a one-story bridge to keep down the building mass. He stated they will bring back drawings to show that concept.

Mrs. Anderson expressed concern with the mass and scale of such a concept and stated she is not comfortable considering it at this point as it is premature without additional information from the traffic study to determine the best scenario for entrances. Mr. Mullin stated he remained open to the concept of development, noting this parking structure will not fully resolve the City’s parking need. He stated why he supported modest development and a modest high-quality ramp and reconfiguring the asphalt on the Muni side to improve aesthetics and functionality. Mrs. McCarthy agreed it is premature to make some of these determinations. She supported commercial and retail but does not yet know whether it is the best option to have a commercial building on the west corner. If the Beltz building is not constructed, Mrs. McCarthy stated she is willing to give up the concept of mixed use and focus on quality and aesthetics and assuring it has a sense of place and purpose within Wayzata. Mr. Willcox stated he will need to be convinced about a commercial building on the corner, noting it started as a parking structure and now mixed use is being considered. He noted that would intensify the need for parking so less of the parking need will be resolved. Mr. Willcox noted with the parking lot area in front of the Muni, it was understood that it would be developed but as Presbyterian Homes has been constructed, he now prefers preserving the parking in that area and leaving it as green open space.

A poll of the Council indicated support to reconsider the Superior site by the Muni, to scrape it, and create a different layout with additional green space.

Mr. Lasher presented schedule options, noting the tremendous number of decisions that need to be reached in option one (accelerated schedule) to construct in 2016, open the first level by the peak parking season, and complete the structure by August. The Council discussed the schedule options and consensus was reached that option two, extending the schedule by six months, was more realistic.

Mr. Lasher requested authorization to engage a geotech engineer to conduct soil borings. Mr. Willcox indicated the Council had already indicated a consensus to conduct that work. Ms. Nelson stated those expenses will be paid as incurred and all costs are being tracked as a project so if, in the future, a bond is issued those costs can be wrapped in.

The Council again considered whether the traffic projection needed to be updated. A poll of the Council indicated three did not support updating the traffic projections.

Paul Webster, 726 Widsten Circle and an 85-year resident, suggested the consultant consider whether parking should be at 90 degrees versus 45 degrees. He stated the issues relating to the parking ramp are aesthetics, accessibility, financial stability, and the long-range objectives are to increase parking, tax base, and value of Wayzata real estate. Mr. Webster stated he lives at Widsten, noting those residents contribute $525,000 in property taxes and when you include

Harrington House and the four townhouses the total is well over $800,000 in property taxes. Those property owners will have to look at the parking ramp. Mr. Webster stated why he does not think the Muni parking lot is being used only by those customers. He stated his concern that aesthetically, some of the residential properties may be damaged if the parking ramp is not tastefully addressed, particularly those towards Walker if another retail building is considered.

Ms. Nelson stated staff will follow the Council's direction to push this forward and return on July 7, 2015, with another update.

**d. Council Designation of Council Representatives for Key Initiatives: Parking, Cell Tower Site & Bushaway Road**

Ms. Nelson explained that during the 2015 Strategic Planning Session the Council indicated interest in becoming more involved with key initiatives. She reported that former Councilmember Jack Amdal has volunteered to serve on the Bushaway Road initiatives, but not as the Chair. She requested direction on which key initiatives Members wish to serve as the Council's representative.

The Council discussed the key initiatives and consensus was reached on the following assignments: Cell Tower Site – Mrs. McCarthy; Downtown Parking – Mr. Tyacke; and, Bushaway Road Landscape Committee – Mrs. Anderson as Chair and Mrs. McCarthy as backup.

**e. Council Selection of Lake Effect Selection Committee Appointments**

Mr. Gadow advised of the three design professionals that have expressed interest in serving on the Lake Effect Selection Committee. In addition, membership will include representatives of the Three Rivers Park District, Lake Minnetonka Conservation District, Minnehaha Creek Watershed Board, Hennepin County representative, Planning Commission, Heritage Preservation Board, and the Park and Trails Board. The Railroad has been contacted and Ms. Mary deLaittre of Groundworks LLC will contact the Chamber of Commerce regarding representatives from the business community.

Council Members Mullin, Anderson, and Willcox each explained why they were interested in serving on the Lake Effect Selection Committee.

Mrs. McCarthy made a motion, seconded by Mr. Tyacke, that the Lake Effect Selection Committee be represented by two Council Members. The motion carried 5/0.

The Council Members cast two paper ballots that both resulted in a deadlock with three votes each. Mrs. Anderson clarified she is only interested in serving with the design selection element, not further phases of the Lake Effect. The Council cast a third paper ballot, which Mr. Gadow counted, and announced that Mr. Willcox and Mr. Mullin received the majority of votes.

**f. Consider Cooperative Agreement with Hennepin County for Bushaway/LaSalle Lighting**

Mr. Tyacke asked that consideration of the two Agreements be separated so he is able to recuse himself from action on the Excel Energy Agreement as he and his law firm have represented Excel Energy.

Mr. Schelzel advised the Agreements can be considered separately. He stated they noticed some language inconsistencies in the County Agreement relating to indemnification and insurance requirements and recommended consideration subject to necessary revision.

Mr. Tyacke made a motion, seconded by Mr. Mullin, to approve the Hennepin County Cooperative Agreement, subject to revision to the extent necessary in the view of the City Attorney to be consistent with the terms of the Excel contract. The motion carried 5/0.

Mr. Mullin made a motion, seconded by Mrs. McCarthy, to approve the Excel Energy Cooperative Agreement. The motion carried 4/0/1 (Tyacke).

**g. Approval of Workshop Minutes of June 2, 2015 and Minutes of June 2, 2015**