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Document No.
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County Recorder

EXECUTION COPY

CONTRACT

FOR

PRIVATE DEVELOPMENT
(INCLUDING SALE OF REAL ESTATE)

By and Between

THE CITY OF VICTORIA, MINNESOTA,

and

VICTORIA CITY CENTER LLC

Dated as of: November 13, 2008

This document was drafted by:
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CONTRACT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT, made on or as of the 13th day of November, 2008, by and between **THE CITY OF VICTORIA, MINNESOTA**, a public body corporate (the "City"), and **VICTORIA CITY CENTER, LLC**, a Minnesota limited liability company, (the "Developer").

WITNESSETH:

WHEREAS, the City has undertaken a program to promote economic development and job opportunities and to promote the development of land which is underutilized within the City, including redevelopment of the City's central business district, and in this connection created a development project known as the Municipal Development District No. 1 (hereinafter referred to as the "Project") pursuant to Minnesota Statutes, Sections 469.124 to 469.134, as amended, the City Development District Act (the "Act") and Tax Increment Financing District No. 1-4 (the "TIF District") within the Project Area, all pursuant to the Act and Minnesota Statutes, Sections 469.174 to 469.1799, as amended (the "TIF Act"); and

WHEREAS, pursuant to the Act and the TIF Act, the City is authorized to undertake certain activities to prepare real property in the Project Area for development by private enterprise and to provide impetus for commercial development ; and

WHEREAS, in order to achieve the objectives of the Project the City is prepared to subsidize a portion of the Developer's development costs in order for the Developer to create a 28,050 square foot grocery store/drug store with associated public parking (the "Minimum Improvements") and bring about development in accordance with the Development Plan for the Project and this Agreement; and

WHEREAS, the City believes that the development of the Project Area pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City in order to bring into the City the proposed new development consisting of the Minimum Improvements on a scale which is not presently available in the City which will assist the City to promote the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Project has been undertaken and is being assisted.

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 other as follows:

ARTICLE I

Definitions

Section 1.1. Definitions In this Agreement, unless a different meaning clearly appears from the context:

"Act" means the City Development District Act, Minnesota Statutes, Sections 469.124 to 469.134, as amended.

"Agreement" means this Agreement, as the same may be from time to time modified, amended, or supplemented.

"Authorizing Resolution" means the resolution of the City, substantially in the form of attached Exhibit D to be adopted by the City to approve this agreement and authorize the issuance of the Note.

"Available Tax Increment" means on any Payment Date under the Note and Refunding Notes (if any shall be issued), 90 percent of the Tax Increments generated by the Fresh Seasons Market Project on the Development Property and received by the City from the County pursuant to the TIF Act in the six-month period before such payment date, except that with respect to the first Payment Date of August 1, 2011, Available Tax Increment shall mean 90% of the Tax Increment relating to the Minimum Improvements received by the City from the County from and after the date of this Agreement.

"Business Subsidy Act" means the Business Subsidy Act, Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

"Certificate of Completion" means the certification provided to the Developer pursuant to Section 4.4 of this Agreement in the form attached as Exhibit B.

"City" means the City of Victoria, Minnesota, a statutory city and a body corporate and politic under the laws of the State of Minnesota.

"City Parcels" initially means the real property located at 7956, 7970 and 7984 Quamoclit Street. A portion of one of the City Parcels, 7956 Quamoclit Street, will be detached from that parcel and will be used for right-of-way for the construction of Tower Boulevard. The remainder of 7956, and all of 7970 and 7984 Quamoclit Street will be conveyed to the Developer pursuant to Article III of this Agreement, and thereupon shall become the City Parcels as conveyed.

"City Public Improvements" means the re-construction by the City of Quamoclit Street, the construction of Tower Boulevard and installation of associated public utilities to serve in part the Development Property.

"City Representative" means the Administrator of the City or any person designated in writing by the City to act as the City Representative for the purposes of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Construction Plans" means the plans, specifications, drawings and related documents on the construction work to be performed on the Development Property for construction of the Minimum Improvements, which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following: (1) site plan; (2) landscape plan; and (3) such other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

"County" means the County of Carver, Minnesota.

"DEED" means the Minnesota Department of Employment and Economic Development.

"DEED Grant" means the redevelopment grant approved by DEED to be provided to the City in the maximum amount of $164,503, which requires a City match for the amount received. The DEED Grant is to be applied to the costs of the City Public Improvements, the Developer's Grant Eligible Costs as provided in Article III, and Developer's portion of the assessed costs for the construction of the City Public Improvements as provided in Article III (the "Developer's Assessment").

"Developer" means Victoria City Center LLC, a Minnesota limited liability company, or its permitted successors and assigns.

"Developer's Assessment" means the amount of the final assessment approved by the City for the Developer's share of the costs for the construction of the City Public Improvements described in Section 4.4 of this Agreement.

"Developer Parcels" means the real property located at 1742 Arboretum Boulevard (the "C.H. Carpenter Site"), and 7998 Quamoclit Street which are being purchased by the Developer and which are a part of the Development Property.

"Developer Public Improvements" means installation by the Developer at its sole expense and consistent with the approved Construction Plans, all utilities, public parking lots, lighting, signage and landscaping internally on the Development Property, and all Public Connections, serving the Development Property.

"Development Property" means the real property described as such in Exhibit A of this Agreement commonly known as 1742 Arboretum Boulevard (the "C.H Carpenter Site"), and 7956, 7970, 7984 and 7998 Quamoclit Street as described in Article III of this Agreement. After

construction of the Minimum Improvements, the term means the Development Property as improved, and thereafter, is also synonymous with the term, the "Fresh Seasons Market Project".

"Event of Default" means an action by any party listed in Article IX of this Agreement.

"Fresh Seasons Market Project" means the Minimum Improvements as constructed on the Development Property pursuant to the Construction Plans and this Agreement.

"Holder" means the owner of a Mortgage.

"Material Change" means a change in construction plans (excluding buyer options and upgrades) that adversely affects generation of Tax Increment.

"Maturity Date" means the date that the Note and any Refunding Note(s) have all been paid in full, redeemed or prepaid, or defeased in accordance with their terms.

"Minimum Improvements" means construction of an approximately 28,050 square foot grocery store/drug store and associated public parking.

"Mortgage" means any mortgage made by the Developer which is secured, in whole or in part, with the Development Property and which is a permitted encumbrance pursuant to the provisions of Article VII of this Agreement.

"Note" means a Tax Increment Revenue Note, substantially in the form contained in the Authorizing Resolution attached as Exhibit D, to be delivered by the City to the Developer in accordance with Section 7.3 hereof.

"Project" means the City's Development Program for Development District No. 1.

"Project Area" means the real property located within the boundaries of Development District No. 1.

"Public Connections" means all curb and gutter, all connections to City streets and public utilities, street signs, landscaping and sidewalk, and street lights in or connected to the public right of way, and removal of any public utility lines such as sewer or water located on the Development Property. The Public Connections comprise a sub-set of the Developer Public Improvements.

"Public Development Costs" has the meaning provided in Section 3.6 hereof.

"Refunding Notes" has the meaning provided in Section 7.4 hereof.

"State" means the State of Minnesota.

"Tax Increment" means that portion of the real property taxes which is paid with respect to the Development Property and which is remitted to the City as tax increment pursuant to the Tax Increment Act. The term "Tax Increment" does not include any amounts retained by or payable to the State auditor under Section 469.177, subd. 11 of the Tax Increment Act, or any amounts described in Section 469.174, subd. 25, clauses (2) through (6) of the Tax Increment Act.

"Tax Increment Act" means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 to 469.1799, as amended.

"Tax Increment District" or "TIF District" means the City's Tax Increment Financing District No. 1-4.

"Tax Increment Plan" or "TIF Plan" means the City's Tax Increment Financing Plan for Tax Increment Financing District No. 1-4 as approved September 25, 2008, and as it may be further amended.

"Tax Official" means any County or City assessor, County auditor, 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.

"Termination Date" means the date the City receives the last installment of Tax Increment from the County.

"TIF Offset" means the reduction to the $400,000 principal of the TIF Note based on a dollar for dollar reduction to the extent of Deed Grant funds received by the City and allocated to the Developer for Developer's Grant Eligible Costs, and the allocated portion of the Developer's Assessment as determined in Section 3.6 (b) (i), not to exceed a total offset of $164,503.

"Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused as a result thereof, including but not limited to, strikes, terrorist activities, other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the City in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer's obtaining of permits or governmental approvals (except for approvals by the City or the City) necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 of this Agreement.

(Remainder of this page is intentionally left blank.)

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertaking on its part herein contained:

(a) The City is a statutory city duly organized and existing under the authority of Minnesota Statutes Chapter 412. The City has the power to enter into this Agreement and carry out its obligations hereunder. The activities of the City are undertaken for the purpose of fostering the development of certain real property which for a variety of reasons is presently unutilized and underutilized, and for the purpose of promoting economic development and the creation of employment opportunities in the Central Business District of the City.

(b) The City is authorized to undertake economic development activities pursuant to Minnesota Statutes sections 469.124 to 469.134, as amended, the City Development District Act (the "Act") and to exercise the authority in Minnesota Statutes, Sections 469.174 to 469.1799, as amended (the "Tax Increment Financing Act" or "TIF Act). Under the provisions of the Act and the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(c) The City has taken all action necessary to create the Project, the Project Area and the Tax Increment District, and to approve this Agreement and to authorize the execution and delivery of this Agreement, the Note and any other documents or instruments required to be executed and delivered by the City pursuant to this Agreement.

(d) The City has received no notice or communication from any local, state, or federal official that the activities of the Developer, the City in the Project Area may be or will be in violation of any environmental law or regulation. The City is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state, or federal environmental law, regulation or review procedure.

(e) The execution, delivery and performance of this Agreement, and any other documents or instruments required 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 (i) indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which the City or any of its property is or may be bound, or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the City or its officers or its resolutions.

(f) 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 City 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 enforcement of this agreement.

(g) The City will reasonably cooperate with the Developer with respect to any litigation commenced by third parties with respect to the Fresh Seasons Market Project and in securing necessary governmental permits and approvals.

(h) The City will assist and reasonably cooperate with the Developer in complying with any environmental law, environmental or land use regulation or development review procedure applicable to the Development Property.

Section 2.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited liability company, which is duly organized and in good standing under the laws of the State; the Developer is not in violation of any provisions of its certificate of organization or its operating agreement; the Developer is duly authorized to transact business within 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 respective members.

(b) Subject to Unavoidable Delays, Developer will cause the Minimum Improvements to be commenced by commencing construction on or before November 1, 2008, and complete the Minimum Improvements by June 1, 2009. The Developer will cause to be constructed, operated, and maintained the Minimum Improvements in accordance with the terms of this Agreement, and all local, state, and federal laws and regulations (including, but not limited to, environmental, zoning, building code, energy-conservation laws or regulations and public health laws and regulations).

(c) The Developer has received no notice or communication from any local, state, or federal official that the activities of the Developer, or the City in the Project Area may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state, or federal environmental law, regulation or review procedure.

(d) The Developer will obtain or cause to be obtained, 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.

(e) The execution, delivery and performance of this Agreement, and any other documents or instruments required pursuant to this Agreement by the Developer 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 Developer a breach of, or default under, any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Developer is a party or by which the Developer or any of its property is or may be bound.

(f) There is not pending, nor to the best of the Developer's knowledge is there threatened, any suit, action or proceeding against the Developer 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 Developer to perform its obligations hereunder, or as contemplated hereby or thereby, or the validity or enforcement of this agreement.

(g) The Developer will reasonably cooperate with the City with respect to any litigation commenced by third parties with respect to the Fresh Seasons Market Project.

(h) The proposed development by the Developer hereunder would not occur but for the tax increment financing assistance, DEED Grant and land value write-down being provided by the City hereunder.

(Remainder of this page is intentionally left blank.)

ARTICLE III

Property Conditions, Acquisition, Conveyance and Financing

Section 3.1. Condition, Acquisition and Conveyance of the Developer Parcels and City Parcels; the Development Property. (a) As of the date of this Agreement, the City owns the City Parcels which will be conveyed to the Developer pursuant to this Article III. A portion of one of the City Parcels, commonly known as 7956 Quamoclit Street, will be dedicated by the Developer on the Final Plat to the City as right-of-way for the construction of Tower Boulevard. The Developer owns or will acquire the Developer Parcels by purchase agreements in full force and effect, or by means of a "Section 1031" transaction. The City Parcels and the Developer Parcels comprise the Development Property. The City has determined that the buildings located on the Developer Parcels and City Parcels are functionally obsolete and substandard as defined in the Act and blighted as defined in the Tax Increment Act. The Developer will demolish these buildings and conduct substantial site improvements to address these substandard conditions in order to redevelop the Development Property. In order to assist the Developer in making development of the Minimum Improvements economically feasible, the City will convey title to and possession of the City Parcels to the Developer at a reduced cost, and provide grant funds, if available, and certain Tax Increment to address conditions on the Development Property subject to the conditions of this Agreement.

(b) The City obligates itself to undertake and complete by Closing the following actions:

(i) Convey the City Parcels to the Developer, as provided hereafter;

(ii) Administer the DEED Grant, with a portion of the proceeds being made available to the Developer by the City as provided hereafter.

(c) The Developer obligates itself to undertake and complete by Closing the following actions:

(i) Acquire the Developer Parcels at its sole cost and expense.

(ii) Execute the Planning Contract.

Section 3.2. Conditions of Conveyance; Purchase Price; Contingencies. (a) The City shall convey title to and possession of the City Parcels to the Developer by a quit claim deed in the form contained in Exhibit I.

(b) *City's Contingencies.* The City's obligation to convey the City Parcels to the Developer is subject to satisfaction of the following terms and conditions ("City Contingencies") being satisfied or waived before Closing (as hereinafter defined):

(i) the Developer having submitted and the City having approved evidence of financing, such as a commitment letter, term sheet or other evidence of financing reasonably acceptable to the City, as required under Article VII;

(ii) the Developer having submitted and the City having approved Construction Plans for the Minimum Improvements as required by Article IV;

(iii) the City and Developer having entered into the Planning Contract as defined hereafter and agreed therein on a schedule for the consideration of all Developer required land use and plat approvals (the "Land Use Approvals" as described in the Planning Contract);

(iv) the Developer not being in default under this Agreement beyond any applicable grace, notice and cure period.

The aforementioned contingencies are for the City's sole benefit. Whether or not they have been satisfied shall be determined by the City in its sole and exclusive discretion. In the event that any of the contingencies are not satisfied, or that satisfaction of one or more contingencies is not otherwise waived by the City before Closing, the City may, at its option, terminate the Agreement by giving written notice to Developer. If the City terminates the Agreement based on one or more of the City Contingencies provided neither party shall have any further rights or obligations under the Agreement.

(c) *Developer's Contingencies.* Developer's obligation to close under this Agreement is expressly contingent upon all of the following contingencies (the "Developer's Contingencies") being satisfied or having been waived on or before Closing, (as hereinafter defined), as the same may be extended:

(i) the Developer having reviewed and approved title to the City Parcels as set forth in Section 3.4;

(ii) Developer or its assigns having obtained approval of its financing for the Minimum Improvements on terms acceptable to Developer in its sole discretion;

(iii) The Developer shall have been provided all reports available to the City relating to the condition of the City Parcels, including receipt and approval of any soils conditions reports desired by Developer, and shall have determined to accept the Development Property in an "AS IS", "WITH ALL FAULTS" condition.

(iv) The Developer having completed the examination and approval of title regarding the acquisition of the Developer Parcels and having acquired those parcels.

The aforementioned contingencies are for Developer's sole benefit. Whether or not the foregoing Developer Contingencies have been satisfied shall be determined by Developer in its sole and exclusive discretion, and in such event, if satisfaction of one or more remaining contingencies is not otherwise waived by Developer, Developer may, at its option, terminate the Agreement by giving written notice to the City. Thereafter, this Agreement shall be terminated and shall have

no further provision or effect, except for the requirements in section 8.3 relating to indemnification and section 3.8 relating to payment of administrative costs.

(d) *Closing.* The closing on conveyance of the City Parcels within the Development Property from the City to the Developer shall occur on or before November 14, 2008 (the "Closing"), or such other date as the City and Developer agree in writing.

(e) *Purchase Price.* The purchase price of the City Parcels shall be as follows:

Purchase Price	Market Value
7956 Quamoclit-$1.00	$68,468
7970 Quamoclit-$1.00	$195,000
7984 Quamoclit-$1.00	$200,000

The respective purchase prices represent a write-down of their fair market value in recognition of the Developer's costs of assembly of the Development Property and Public Development Costs as described in Section 3.7. The original market value of 7956 Quamoclit, $221,170 has been reduced sixty per cent (60%) by the City to reflect the dedication by the Developer in the Final Plat of that portion of the property for public right of way.

(f) *Planning Contract.* The Developer shall prepare and obtain City approval of a plat of the Development Property at Developer's cost and subject to all City ordinances and procedures. The plat must be consistent with the Concept Plan and Construction Plans as described in Section 4.2, provided that nothing in this Agreement is intended to limit the City's authority in reviewing the preliminary plat, or to preclude revisions requested or required by the City. In the Plat, the Developer must dedicate to the City all public rights of way and utility easements, including the identified portion (approximately 60%) of 7956 Quamoclit Street as right-of-way for the construction of Tower Boulevard. In connection with the Plat, the parties agree and understand that the Developer and City will enter into a subsequent planning document (the "Planning Contract") that addresses planning and land use requirements, engineering requirements, necessary security for construction of public improvements, and is consistent with the covenants regarding the Minimum Improvements and Public Improvements described in Article IV hereto. The Developer must also meet all applicable requirements of the State and its agencies, the County and the Minnehaha Creek Watershed District.

Section 3.3. Place of Document Execution, Delivery and Recording. (a) Unless otherwise mutually agreed by the City and the Developer, the execution and delivery of all deeds, documents and the payment of any purchase price shall be made at the offices of the City.

(b) The Deeds shall be in recordable form and shall be promptly recorded in the proper office for the recordation of deeds and other instruments pertaining to the City Parcels. At closing, the Developer shall pay: all recording costs, excluding state deed tax, in connection with the conveyance of the City Parcels; costs of recording any instruments used to clear title encumbrances and title insurance commitment; the cost of any title company closing fees, the

cost of a title insurance policy or policies for the City Parcels; any costs relating to title and closing on the Developer Parcels.

The City shall pay any outstanding levied or pending special assessments levied against the City Parcels or other charges for public improvements, however characterized, installed or authorized prior to Closing. The parties agree and understand that the of the City Parcels, 7956 and 7970 Quamoclit are exempt from real property taxes payable in 2008; 7984 Quamoclit is taxable property, and the City has paid all property taxes and special assessments levied or pending as to that parcel as of the date of Closing.

Section 3.4. Title. (a) Developer shall at its cost and expense obtain a commitment for the issuance of a policy or policies of title insurance for the City Parcels and deliver the same to the Developer. The Developer shall review the state of title to the City Parcels and provide the City with a list of written objections to such title. The City shall proceed in good faith and with all due diligence to attempt to cure the objections made by the Developer. In the event the Developer shall have provided the City with a list of written objections, within ten (10) days after the date that all such objections have been cured to the reasonable satisfaction of the Developer, the City and Developer shall proceed with the conveyance of the City Parcels pursuant to Sections 3.1, 3.2 and 3.3 of this Agreement. In the event that the City has failed to cure objections within sixty (60) days after its receipt of the Developer's list of such objections, either the Developer or the City may by the giving of written notice to the other, terminate this Agreement, upon the receipt of which this Agreement shall be null and void and neither party shall have any liability hereunder. The City shall have no obligation to take any action to clear defects in the title to the City Parcels, other than the good faith efforts described above.

(b) The City shall take no actions to encumber title to the City Parcels between the date of this Agreement and the time which the Deeds are delivered to the Developer.

Section 3.5. Environmental Conditions. (a) The Developer acknowledges that the City makes no representations or warranties as to the condition of the soils on the City Parcels or the Developer Parcels, or the fitness for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property. The Developer further acknowledges that the assistance provided to the Developer under this Agreement neither implies any responsibility by the City for any contamination of the City Parcels or Developer Parcels, nor imposes any obligation on the City to participate in any cleanup of such property, if required, by state or federal agencies. The City has provided all reports (the "Reports") in its possession concerning the City Parcels to the Developer, if any, and represents that that it knows of no other conditions relating to the City Parcels, except as disclosed in the Reports.

(b) The Developer acknowledges that the City has made no representations or warranties as to the condition of the soils on the Development Property or its fitness for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property. The Developer acknowledges that it is receiving and accepting the Development Property from the City in an "AS IS," "WITH ALL FAULTS" condition. Without limiting its obligations under Article VIII of this Agreement the Developer further agrees that it

will indemnify, defend, and hold harmless the City and its governing body members, officers, and employees (collectively, the "Indemnitees"), from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants existing on or in the City Parcels, or the Developer Parcels, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the Indemnitees. Nothing in this section will be construed to limit or affect any limitations on liability of the City under State or federal law, including without limitation Minnesota Statutes Sections 466.04 and 604.02.

(c) Any time and from time to time prior to the date of closing, Developer, and person or persons selected by Developer shall be permitted access to the City Parcels for the purpose of conducting such studies and investigations of the City Parcels as Developer deems appropriate, which studies and investigations shall be conducted at Developer's sole expense and pursuant to any other terms and conditions of this Agreement. Developer agrees to indemnify the City against any liability, cost or expense incurred by the City as a result of Developer's actions, including but not limited to fines, court costs, reasonable attorneys' fees and remedial costs. Such studies may include without limitation, physically inspecting the City Parcels and reviewing the City's records concerning the City Parcels which records shall be made reasonably available to Developer.

(d) The City discloses that there is not an individual sewage treatment system on or serving the City Parcels.

(e) The City does not know of any wells on the City Parcels, and will so certify in the deeds conveying the City Parcels to the Developer.

Section 3.6. Public Development Costs; Grants; TIF Funds; Disbursement. (a) The Developer shall acquire all parcels comprising the Development Property, demolish all existing buildings on the Development Property and undertake all soil corrections, utility relocation, and grading and excavation needed to construct the Minimum Improvements (such activities are collectively referred to as the "Public Development Costs"), consistent with applicable State and Federal requirements and deliver proof of approval of compliance with such requirements, and the Planning Contract. Public Development Costs includes the City's *Storm and Surface Water Area Connection Charge* of $46,545 which shall be paid at the time of closing on Developer's mortgage financing. The term Public Development Costs also includes any other City costs paid by the Developer under this Section 3.6, and relocation costs, if any, paid by Developer under Section 3.11 hereof.

(b) In order to assist the Developer with acquisition of the Development Property and construction of the Minimum Improvements, the City will provide the following assistance:

(i) Up to the maximum amount of the DEED Grant received by the City, $164,503, to reimburse the Developer for construction of the Public Connections and any other expenses of the Developer determined eligible by the City and approved by DEED as an eligible

expense, for reimbursement under the DEED Grant ("Developer's Grant Eligible Costs"). In the event the Developer's Grant Eligible Costs do not meet or exceed the maximum amount of the DEED Grant, the City will pay a portion of the assessed costs allocated by the City to the Development Property for the construction of the City Public Improvements described in Section 4.4 (anticipated to total approximately $100,000) as shown on the adopted assessment roll (the "Developer's Assessment"), from the remaining proceeds of the DEED Grant. The total amount of Developer's Grant Eligible Costs and the portion of the Developer's Assessment to be reimbursed from the DEED Grant shall not exceed $164,503. The allocated portion of the Developer's Assessment so determined shall be paid by the City within thirty (30) days of the adoption of the assessment roll;

(ii) Up to $400,000 by delivery of the City's Tax Increment Note to be payable as provided in Section 7.3 solely from Available Tax Increment attributed to the Development Property from TIF District 1-4 for Public Development Costs. Such amount shall be reduced by the TIF Offset;

(iii) $463,465 in land value write-downs.

The maximum assistance from the Grant, TIF Funds and write-down assistance is estimated to be $863,465.

(c) Notwithstanding anything to the contrary herein, if Public Development Costs exceed the amount to be reimbursed under this Section, such excess costs shall be the sole responsibility of the Developer. The City will pay the proceeds of the DEED Grant and pay the Developer's Assessment as provided in Section 3.6 (b) (i), provide the Note and provide land value write-down assistance to the Developer from the sources described in Section 3.6 of this Agreement, subject to the condition precedent that on the date of such payment:

(i) No Event of Default under this Agreement or event which would constitute such an Event of Default but for the requirement that notice be given or that a period of grace or time elapse, shall have occurred and be continuing;

(ii) In connection with providing Grant proceeds to the Developer, the City has received a written statement from the Developer's authorized representative certifying that items of the Developer's Eligible Costs have been paid in an amount not to exceed the maximum amount of the DEED Grant received by the City, $164,503, and such costs have been approved by DEED;

(iii) In connection with providing the Note to the Developer, the City has received a written statement from the Developer's authorized representative certifying that items of the Public Development Costs have been paid in an amount at least equal to the face value of the Note.

(d) If the Developer has performed all of its agreements and complied with all requirements theretofore to be performed or complied with hereunder, including satisfaction of

all applicable conditions precedent contained in Article III hereof, and upon receipt of requested funds, the City shall make a disbursement to the Developer in the amount of the requested disbursement. Each disbursement shall be paid as follows: Within thirty (30) business days of receipt of a request for disbursement, the City shall disburse the approved amount of the requested disbursement to the Developer.

(e) The making of the final disbursement by the City under this Section shall be subject to the condition precedent that the Developer shall be in compliance with all conditions set forth in this Section, and further, that the City shall have received a lien waiver from each contractor for all work done and for all materials furnished by it for the Public Development Costs.

(f) The City may, in its sole discretion, without notice to or consent from any other party, waive any or all conditions for disbursement set forth in this Article. However, the making of any disbursement prior to fulfillment of any condition therefor shall not be construed as a waiver of such condition, and the City shall have the right to require fulfillment of any and all such conditions prior to authorizing any subsequent disbursement.

(g) Notwithstanding anything to the contrary in this Agreement, if Developer should default by failing to complete the Minimum Improvements by the dates specified in Section 4.3(a), the Developer shall promptly repay to the City the amounts disbursed to Developer under this Section 3.6.

Section 3.7. No Business Subsidy. The parties understand that the City is transferring the City Parcels to the Developer by means of a write-down of the fair-market value of the City Parcels from $ 616,170 to $3.00, a total write-down of $616,167. The City in addition will provide up to $400,000 by delivery of the City's Tax Increment Note to be payable solely from Available Tax Increment from TIF District 1-4, for Public Development Costs, to be reduced dollar for dollar to the extent of Deed Grant funds received by the City and allocated to the Developer for the maximum amount of the Developer's Assessment. The maximum amount of the subsidy is $1,016,167, which does not constitute a business subsidy because the Developer's investment in site acquisition and preparation is at least $828,500, which is 70 percent or more of the assessor's current year's estimated market value of $797,600 for the Development Property. Therefore, no business subsidy is being provided to the Developer pursuant to Minnesota Statutes, Section 116J.993 to 116J.995, as amended.

Section 3.8. Payment of Administrative Costs. The Developer is responsible for the City's "Administrative Costs," which means out-of-pocket costs incurred by the City attributable to or incurred in connection with the negotiation and preparation of this Agreement, the Planning Contract, and other documents and agreements in connection with this Agreement. In order to secure partial payment of the Administrative Costs, the Developer has delivered to the City $5,000. The City will utilize such funds to pay or reimburse itself for Administrative Costs. If at any one or more times during the term of this Agreement, the City determines that Administrative Costs will exceed $5,000 and that additional security is required, the City shall notify the Developer of the amount of such additional security. Within ten calendar days of

receipt of such notice, the Developer shall deliver to the City the required additional security. Failure of the Developer to deliver the requested additional security will result in the City suspending its obligations under this Agreement until the security is provided.

Section 3.9. Records. The City or its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Minimum Improvements.

Section 3.10. Relocation. (a) The Parties believe that as a result of assembling the Development Property there are no persons eligible for relocation benefits pursuant to Minnesota Statutes § 117.52.

(b) If it is later determined that a person or persons is/are eligible to make a claim for relocation benefits, then the Developer shall provide to the City written agreements, in a form approved by the City, from each owner and occupant of the Developer Parcels on the Development Property, under which such owners and occupants agree to be relocated from the Development Property on terms contained in the agreements. In addition, the Developer shall furnish to the City a written certification from its attorney that waivers of relocation benefits contained in such agreements were explained to each owner and occupant in accordance with the terms of the agreement. In the alternative, the Developer shall consult with a relocation consultant approved by the City, regarding the relocation benefits and payments to be provided to them in exchange for their relocation from the Development Property. Such amounts shall be paid by the Developer and are reimbursable as Public Development Costs under this Agreement, limited to those costs approved by the relocation consultant. In the event of any such payments, the amount thereof shall be certified to the City and, if determined to have been properly paid by the City, the amount of the payment shall be added to the maximum amount of the Tax Increment Note under Section 3.6(b) (ii) and paid from Available Tax Increment.

(c) Without limiting the Developer's obligations under Section 8.3 hereof, the Developer will indemnify, defend and hold harmless the City, the City, and their governing body members, employees, agents and contractors from any and all claims for benefits or payments arising out of the relocation or displacement of any person from the Development Property as a result of the implementation of this Agreement.

Section 3.11 Assessment of Stormwater Fee. The City will consider a subsequent request from the Developer that the *Storm and Surface Water Area Connection Charge* of $46,545 be treated as a 0% interest loan (the "Stormwater Loan") from the City to the Developer to be reimbursed by the City out of bond proceeds not later than December 31, 2009. The Developer shall pay the City's cost of issuance. The Stormwater Loan shall be financed by means of an assessment by the City against the Development Property which shall be paid as a special assessment under Minn. Stat. Chapter 429, but which shall not be reimbursable under the DEED Grant. The City's approval of the loan and the assessment shall not be unreasonably with held. The Developer shall execute an assessment agreement in a form satisfactory to the City Attorney.

ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will cause to be constructed the Minimum Improvements on the Development Property in accordance with the approved Construction Plans and the requirements of the Planning Contract, and future council resolutions approving required land use approvals identified in the Planning Contract, which resolution(s) shall be incorporated by reference into this Agreement. The Developer acknowledges that any such resolution does not operate as approval for any other elements of the Minimum Improvements not considered and approved by the City in such resolution, and that additional approvals for future uses related to such as yet undeveloped elements of the Minimum Improvements are subject to review and approval in the City's discretion pursuant to its Zoning Code at the time such approval is requested by the Developer. Developer shall at all times prior to the Termination Date operate and maintain, preserve, and keep the Minimum Improvements or cause the Minimum Improvements to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

Section 4.2. Construction Plans. (a) Before beginning construction of the Minimum Improvements, the Developer shall submit to the City the Construction Plans, provided that the Developer shall not be required to submit to the City any plans that have otherwise been submitted to and approved by the City. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in conformity with this Agreement, and all applicable State laws, and local laws and regulations, including but not limited to the City's Zoning Code, including regulations concerning parking, landscaping, signs and the City's Downtown Design Standards. The City will promptly approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Development Plan; (iii) the Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations and resolutions; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer for construction of the Minimum Improvements; and (vi) no Event of Default has occurred. No approval by the City shall relieve the Developer of the obligation to comply with the terms of this Agreement or of the Development Plan, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the City shall constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, such Construction Plans shall be deemed approved unless rejected in writing by the City, in whole or in part. Such rejections shall set forth in detail the reasons therefore, and shall be made within 30 days after the date of their receipt by the City. If the City rejects any Construction Plans in whole or in part, the Developer shall submit new or corrected Construction Plans within 30 days after written notification to the

Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the City. The approval of the City shall not be unreasonably withheld. Said approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the City's satisfaction with the provisions of this Agreement relating thereto.

(b) If the Developer desires to make any material change in the Construction Plans after their approval by the City which do not require or depend on zoning approval by the City, the Developer shall submit the proposed change to the City for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to such previously approved Construction Plans, the City shall approve the proposed change and notify the Developer in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the City unless rejected, in whole or in part, by written notice by the City to the Developer, setting forth in detail the reasons therefor. Such rejection shall be made within ten (10) days after receipt of the notice of such change. If any material change requires zoning approval by the City, then the time required for that process shall be in addition to the time periods permitted by this Section 4.2, subject to the requirements of Minnesota Statutes section 15.99, as amended. The approval of any such changes in the Construction Plans will not be unreasonably withheld by the City or the City.

Section 4.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer shall commence construction of the Minimum Improvements by November 1, 2008, and complete that construction by June 1, 2009. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in conformity with the Construction Plans as submitted by the Developer and approved by the City.

The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall, subject to Unavoidable Delays, promptly and diligently prosecute to completion the development of the Development Property through the construction of the Minimum Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.3. Until construction of the Minimum Improvements has been completed, the Developer shall make reports, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of the Developer with respect to such construction.

Section 4.4. City Public Improvements. (a) The City will undertake the work necessary for the re-construction of Quamoclit Street, the construction of Tower Boulevard and associated public utilities to serve in part the Development Property (the "City Public Improvements"), in accordance with the overall plan prepared by the City Engineer and as disclosed on Exhibit G. The City shall construct the City Public Improvements in accordance with all City policies and procedures for such improvements. Subject to Unavoidable Delays, the City agrees to substantially complete construction of the City Public Improvements by October 15, 2009.

(b) The City is responsible for the cost of all City Public Improvements. The City shall assess property benefitted by City Public Improvements pursuant to Minnesota Statutes Chapter 429 and the City's adopted Assessment Policy. The Development Property shall be specially assessed for its proportionate costs of the construction of the City Public Improvements. The Developer shall execute an agreement waiving its right to contest such assessments in a document to be prepared by the City Attorney. Nothing in this Agreement precludes future special assessments for reconstruction or alteration of City Public Improvements or additional improvements serving the Development Property.

(c) The Developer is responsible for installation of the Developer Public Improvements at its sole expense, consistent with the approved Construction Plans.

Section 4.5. Certificate of Completion. (a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements (including the dates for beginning and completion thereof), the City will furnish the Developer with the Certificate shown as Exhibit B. Such certification by the City shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) If the City shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.5 of this Agreement, the City shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such certification.

(c) The construction of the Minimum Improvements shall be deemed to be substantially completed when the Developer shall have the legal right to receive an occupying permit from the City. In its discretion, the City may agree to issue a temporary occupancy certificate subject to the Developer completing identified items of the Minimum Improvements, such as landscaping.

Section 4.6 Parking Deficiency. (a) If the City, in its reasonable discretion, determines that parking in the Central Business District (the "CBD") is inadequate and the observed usage of the Developer's parking lot subsequent to issuance of an occupancy permit is at or near capacity on a regular basis, the City will notify Developer in writing of its concern.

(b) The City may require the Developer and other property owners in the CBD to meet and provide input to the City as to whether additional collective steps should be taken to address the parking deficiency, including assisting the City to initiate a parking study or to develop a written plan indicating necessary steps to be taken to remedy the parking deficiency ("Parking Plan"). Such Parking Plan may include, but not be limited to, parking management techniques, valet parking, and construction of temporary or permanent on-site or off-site parking. The Developer agrees to cooperate in the preparation of the Parking Plan.

(c) If after a reasonable time period, subsequent to implementation of any Parking Plan, the City, in its reasonable discretion, determines that the parking deficiency was not remedied to the extent necessary, the City shall reconvene the group of CBD parking users and consider further collective actions to remedy the parking deficiency. The Developer agrees to cooperate in such efforts.

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ARTICLE V

Insurance and Subordination

Section 5.1. Insurance. (a) The Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the City, furnish the City with proof of payment of premiums on policies covering the following:

(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 Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City;

(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 with limits against bodily injury and property damage of not less than $1,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), and shall be endorsed to show the City as an additional insured until the Certificate of Completion is issued; and

(iii) Workers' compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Termination Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the City shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses;

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of $1,000,000, and shall be endorsed to show the City as an additional insured until the Certificate of Completion is issued; and

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure;

provided that the Developer may, if permitted by law, be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the City policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement, each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the City at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer agrees to notify the City immediately in the case of damage exceeding $100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Developer either will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer will apply the Net Proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any Net Proceeds remaining after completion of such repairs, construction and restoration shall be the property of the Developer.

(e) The Developer and the City agree that all of the insurance provisions set forth in this Article V shall terminate upon the Termination Date.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the City with respect to the receipt and application of any proceeds of insurance shall, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII of this Agreement.

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ARTICLE VI

Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the City is providing substantial aid and assistance in furtherance of the development. The Developer understands that the Tax Increment collected by the City is derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements until the Developer transfers ownership of any portion of the same as permitted by Article VIII of this Agreement. The Developer acknowledges that this obligation creates a contractual right on behalf of the City to sue the Developer or its successors and assigns to collect delinquent real estate taxes owed by the Developer and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In any such suit, the City shall also be entitled to recover its costs, expenses and reasonable attorney fees.

Section 6.2. Reduction of Taxes. (a) The Developer agrees that prior to the Termination Date: (1) it will not seek administrative review or judicial review of the applicability of any tax statute determined by any Tax Official to be applicable to the Minimum Improvements or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; (2) it will not seek administrative review or judicial review of the constitutionality of any tax statute determined by any Tax Official to be applicable to the Minimum Improvements or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; (3) it will not (A) cause willful destruction of the Minimum Improvements or any part thereof; (B) willfully refuse to reconstruct damaged or destroyed property pursuant to Section 5.1 of this Agreement; (C) apply to the Commissioner of Revenue of the State requesting an abatement of real property taxes pursuant to Minnesota Statutes, Chapter 270; (D) engage in any other proceedings, whether administrative, legal or equitable, with any administrative body within the County or the State or with any court of the State or the federal government to reduce the amount of real estate or other taxes assessed against the Development Property and the Minimum Improvements; or (E) transfer the Development Property or Minimum Improvements, or any part thereof, to an entity exempt from the payment of real property taxes under State law.

(b) Not with standing subsection 6.1 (D) above, the Developer shall have the right to object to the valuation of the Development Property if the Developer reasonably believes the assessed value of the Development Property is inaccurate or unreasonable. In such event, if the assessed value is reduced, the Developer agrees that the City has no obligation to make up any reduction in the projected Available Tax Increment, and the Developer shall then be eligible to receive thereafter only the then Available Tax Increment as computed in light of the new assessed value as of the effective date of the determination thereof. In such event, the City shall

be entitled to reduce any future TIF payments to recapture any payments made prior to such reduction.

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ARTICLE VII

Financing

Section 7.1. Mortgage Financing. (a) Before commencement of construction of the Public Parking component of the Minimum Improvements, the City may require the Developer to provide evidence of one or more commitments for mortgage financing which, together with committed equity for such construction, is sufficient for the acquisition of the Development Property and construction of the Minimum Improvements. Such commitments may be submitted as short term financing, long term mortgage financing, a bridge loan with a long term take-out financing commitment, or any combination of the foregoing. Such commitment or commitments for short term or long term mortgage financing shall be subject only to such conditions as are normal and customary in the mortgage banking industry.

(b) If the City requests the evidence set forth in Section 7.1(a) and finds that the mortgage financing is sufficiently committed and adequate in amount to provide for the construction of the Minimum Improvements, even if the Developer has not yet closed on such financing prior to the commencement of construction of the Minimum Improvements, then the City shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within thirty (30) days from the date when the City is provided the evidence of mortgage financing. A failure by the City to either request the evidence or to respond to such evidence of mortgage financing shall be deemed to constitute an approval hereunder. If the City rejects the evidence of mortgage financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of mortgage financing within thirty (30) days after such rejection.

(c) In the event that there occurs a default under any Mortgage, the Developer shall cause the City to receive copies of any notice of default received by the Developer from the holder of such Mortgage. Developer will include in any Mortgage documents a provision giving the City the right, but not the obligation, to cure any such default on behalf of the Developer within such cure periods as are available to the Developer under the Mortgage documents. In the event there is an event of default under this Agreement, the City will transmit to the Holder of any Mortgage a copy of any notice of default given by the City pursuant to Article IX of this Agreement.

Section 7.2. Subordination. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the City agrees to subordinate its rights under this Agreement to the Holder of any Mortgage, provided that (i) such subordination shall be subject to such reasonable terms and conditions as the City and Holder of a Mortgage mutually agree in writing; and (ii) any subordination agreement must include the provision described in Section 7.1(c). Such subordination agreement shall be substantially in the form of Exhibit E.

Section 7.3. City Financing; Issuance of Note. (a) *Generally.* In order to make development of the Minimum Improvements financially feasible, the City will reimburse the Developer for Public Development Costs incurred by the Developer, as set forth in Exhibit C, through issuance of a Tax Increment Note in accordance with the terms of this Section. The City will issue the Note, secured solely by the Available Tax Increment from the Minimum Improvements constructed thereon, and not as a general obligation of the City. At Developer's option, the Note will be issued to Developer under paragraph (b) of this Section, or issued to third parties under paragraph (d) of this Section.

(b) *Issuance to Developer.* (i) The Note issued to Developer will be issued in the maximum aggregate principal amount not to exceed $400,000, in substantially the form set forth in the Authorizing Resolution attached as Exhibit D. Such amount shall be reduced dollar by the TIF Offset. To the extent the delivery of the City's Tax Increment Note precedes determination of the amount of the TIF Offset, the parties agree that any such Note shall be replaced with a new Note in the proper amount upon such determination. The obligation to deliver the Note is conditioned in addition on the following:

(1) the Developer having submitted and the City having approved Construction Plans for the Minimum Improvements;

(2) the Developer having executed the Planning Contract and made application for all approvals necessary as identified therein by November 1, 2008;

(3) the Developer having provided evidence satisfactory to the City of the estimated total of Public Development Costs;

(4) the Developer making timely payment in full of all property tax, special assessment and public utility payments;

(5) there being no uncured Event of Default by Developer under this Agreement; and

(6) the Developer having delivered to the City an investment letter for the Note in a form reasonably satisfactory to the City.

(ii) The Note will bear interest at a rate of seven percent (7%), and principal and interest will be paid in semi-annual installments on each February 1 and August 1, commencing August 1, 2011, and concluding no later than August 1, 2036. Payments under the Note are conditioned in addition on the following:

(1) the Developer having completed construction of the Minimum Improvements and having been issued an occupancy certificate therefor; and

(2) the Developer having provided evidence satisfactory to the City of documentation of the total cost of Public Development Costs; and

(3) there being no default causing the Note to terminate under Section 9.2(c).

(c) *Termination of Right to Note.* Notwithstanding anything to the contrary in this Agreement, if the conditions for delivery of the Note are not met by June 1, 2009, subject to Unavoidable Delays, the City may terminate the Note and this Agreement by ten days written notice to the Developer. Thereafter neither party shall have any obligations or liability to the other hereunder, except that any obligations of the Developer under Sections 3.9 and 8.3 of this Agreement survive such termination.

(d) *Issuance to Third Parties.* (i) If the Developer chooses to sell the Note to third parties, the Developer shall be solely responsible for securing a purchaser or purchasers of the Note through private placement, and the City shall have no obligation to obtain a purchaser or otherwise issue the Note except to a purchaser secured by the Developer. Interest on the Note shall be in accordance with the terms of the Third Party, provided, notwithstanding anything to the contrary herein, the City shall be entitled to review and approve all underwriting criteria with respect to the Note (including the interest rate), provided that approval will not be unreasonably withheld. Without limiting its obligations under Section 8.3 of the Contract, the Developer agrees to indemnify, defend and hold harmless the City, its officers, employees and agents from any claim or action whatsoever arising in connection with issuance of the Note.

(ii) The Note will be issued and delivered upon satisfaction of the following conditions:

(1) the Developer has secured a purchaser (or purchasers) of the Note on terms acceptable to the City;

(2) any purchaser of the Note has provided an investment letter to the City in a form acceptable to the City; and

(3) all conditions for the issuance of the Note to the Developer have been satisfied.

(e) *Qualifications.* The Developer understands and acknowledges that the City makes no representations or warranties regarding the amount of Available Tax Increment, or that revenues pledged to the Note will be sufficient to pay the principal and interest on the Note. Developer expressly acknowledges that estimates of Tax Increment prepared by the City or its financial advisors in connection with the TIF District or this Agreement are for the benefit of the City, and are not intended as representations on which the Developer may rely. If the Public Development Costs exceed the net proceeds of the Note, such excess is the sole responsibility of Developer.

Section 7.4. Issuance of Refunding Notes. (a) *Generally.* Upon the Developer's request, and with the City's approval, which approval shall not be unreasonably withheld, the City will refinance part or all of the outstanding principal amount of the Note by issuing one or more tax-

exempt tax increment revenue notes or bonds (the "Refunding Notes") to one or more third parties, subject to the terms and conditions contained herein. The Refunding Notes may be issued in one or more series, or in series over time. The Refunding Notes will be secured solely by Available Tax Increment. The Developer and the City will reasonably and timely cooperate with the refinancing efforts, including providing requested information and attorney opinions and executing documents necessary to complete such transaction. Developer shall be solely responsible for securing buyer(s) for the Refunding Notes.

(b) *Principal Amount, Terms.* Issuance of any Refunding Note is subject to the following terms and conditions:

(1) The revenue stream for Refunding Notes will be based on estimates of Available Tax Increment available solely from the Minimum Improvements for the duration of the TIF District based on the estimated market value of the Minimum Improvements at the time of issuance of the Refunding Notes, as determined by written notice from the Carver County Assessor.

(2) Estimates of Available Tax Increment (reviewed and approved by the City) must provide at least one hundred twenty-five percent (125%) debt service coverage on the Refunding Notes, subject to adjustment if market conditions permit less and the City approves. In this event, the approval of the City shall not be unreasonably with held, provided, however, that any such coverage unused for payment of principal and interest on the Refunding Notes shall be the property of the Developer, but only to the extent that there remains unpaid Public Development Costs which have not then been reimbursed, and which shall not exceed the approved reimbursement amount of $400,000.

(3) The City must approve the underwriter for the Refunding Notes and all underwriting terms and assumptions, provided that the City's consent will not be unreasonably withheld;

(4) The Refunding Notes will not be issued later than 18 months after the *later* of (i) the date the expenditures for Public Development Costs allocated to the Note were paid, or (ii) the date the facilities financed by the Note are placed in service but no later than 3 years after the date of the original expenditure of the Public Development Costs related to the Note. However, if a Refunding Note is eligible for the small-issuer rebate exception under Section 148(f)(4)(D) of the Code, the "18 month" limitation above is changed to "3 years" and the "3-year" maximum period in clause (ii) is disregarded. This paragraph does not apply if (1) the Refunding Note is issued on a taxable basis, or (2) the City's bond counsel determines that the Refunding Note represents refunding of an "obligation" as defined in Treasury Regulations 1.150-1(b).

(5) Issuance of the Refunding Notes is subject to market, legal and timing constraints described in paragraph (c) below.

(c) *Timing.* Notwithstanding the foregoing, the City shall have the option to delay issuance of any Refunding Note temporarily or for as long as the following conditions exist:

(1) The City is prohibited from issuing the Refunding Notes pursuant to changes in federal law enacted after the date of this Agreement;

(2) Substantial adverse changes in the market conditions have occurred that make it infeasible to refinance the Note on a reasonable basis, as confirmed by a bond underwriter to the Developer and City in writing; or

(3) Delay is necessary to ensure that the City, and any City related entities, considered as part of the City for these purposes, will issue no more than $10,000,000 of "qualified exempt obligations" (as defined in Section 265(b)(3) of the Code) in the year of issuance of the Refunding Notes.

(d) *Developer Responsibility Upon Refunding.* If the City determines that the net proceeds of any Refunding Notes, or of a series thereof, will be insufficient to prepay the entire principal amount of the outstanding Note, in order to allow the Refunding Notes to be issued, the Developer shall do one of the following:

(1) if the Note was issued to the Developer, upon issuance of the Refunding Notes and application of proceeds to pay the outstanding balance of the Note to the extent possible, return the Note to the City along with an unconditional release from the Developer and any assignee owner of the Note, which terminates the City's obligations with respect to the unpaid principal of and accrued interest on the Note. In such event, the City will issue the subordinate tax increment revenue note as provided below in subsection (2) for the amount of any shortfall, upon receipt of the unconditional release, subject to Available Tax Increment;

(2) if the Note was issued to a Third Party, provide written assurances to the City, deemed acceptable to the City, that the Developer will deliver to the City on or before the date of issuance of the Refunding Notes an amount which, along with the net proceeds of the Refunding Notes, will be sufficient to prepay the outstanding Note (the "Cash Requirement"); and deliver the Cash Requirement to the City, in immediately available funds, no later than fifteen (15) days prior to the issuance of the Refunding Notes, in which event the City will issue and the Developer will accept a subordinate tax increment revenue note in the amount of the Cash Requirement, secured by Available Tax Increment subordinate to the Refunding Notes; or

(3) provide a written notice to the City that Developer waives its right to request issuance of the Refunding Notes, in which event the Note will not be prepaid but will remain in full force and effect.

(e) *Developer Representations.* The Developer makes the following representations to the City with respect to the Refunding Notes:

(1) The Developer will take no action, and will not fail to take an action within its control, the effect of which will be to cause any Refunding Note to be determined to be a "private activity bond" (as such term is defined in Section 141 of the Internal Revenue Code of 1986, as amended (the "Code") and in applicable Treasury Regulations promulgated pursuant to applicable provisions of the Code (the "Regulations").

(2) The Developer will knowingly take no action, and will not fail to take an action within its control, the effect of which will be to cause the "private security or payment test" (as such term is defined in Section 141 of the Code and in applicable Regulations) or the "private loan financing test (as such term is defined in Section 141 of the Code and in applicable Regulations to be satisfied with respect to the Refunding Notes.

(3) The Developer will knowingly take no action, and will not fail to take an action within its control, the effect of which will be to cause any Refunding Note to be determined to be an "arbitrage bond"(as such term is defined in Section 148 of the Code and in applicable Regulations).

(4) The Developer will knowingly take no action, and will not fail to take an action within its control, the effect of which will be to cause interest on any Refunding Note to be includable in gross income for federal income tax purposes.

(5) The Developer shall deposit with the City $5,000 to defray the reasonable costs of financial consultants and attorneys retained by the City in connection with the provision of the Refunding Notes and the negotiation and preparation of any notes and other incidental agreements and documents related to the Refunding Notes transaction contemplated hereunder. Such deposit shall be made initially not later than the date of the formal request by the Developer for such refunding Thereafter, the Developer agrees that it will pay, within 15 days after written notice from the City, the reasonable costs of financial consultants and attorneys in excess of the sums previously deposited. The $5,000 deposited by the Developer upon requesting the refunding of the Note will be credited to the Developer's obligation under this Section. The City will provide written reports describing the costs accrued under this Section upon request from the Developer, but not more often than intervals of 30 days. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this Section for costs incurred through the effective date of termination.

(f) *Other Qualifications.* Notwithstanding anything to the contrary in this Agreement, from and after the date of issuance of any Refunding Note, the City shall have no right to enforce, and the Developer shall have no obligations under Sections 6.1, 6.2, and 8.3 of this Agreement, unless and to the extent that the City shall have received an opinion of a nationally-recognized bond counsel selected by the City to the effect that the receipt by the City

of such payment will not cause the interest on the Refunding Notes to become includable in gross income of the holder thereof for purposes of federal income taxation.

(Remainder of this page is intentionally left blank.)

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development. The Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of development of the Development Property and not for speculation in land.

Section 8.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to constructing the Minimum Improvements, and any other purpose authorized by this Agreement, including leases executed in the ordinary course of business to tenants occupying any portion of the Development Property and purchase agreements that will close subsequent to issuance of the Certificate of Completion, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, except for any part or portion of the Development Property for which the Developer has received a Certificate of Completion, without the prior written approval of the City unless the Developer remains liable and bound by this Agreement in which event the City's approval is not required. Any such transfer shall be subject to the provisions of this Agreement.

(b) In the event the Developer, upon transfer or assignment of the Development Property or any portion thereof, seeks to be released from its obligations under this Agreement as to the portion of the Development Property that is transferred or assigned, the City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer as to the portion of the Development Property to be transferred.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement as to the portion of the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Developer is subject as to such portion; provided, however, that the fact that

any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII, shall be in a form reasonably satisfactory to the City.

In the event the foregoing conditions are satisfied then the Developer shall be released from its obligations then remaining under this Agreement, as to the portion of the Development Property that is transferred, assigned or otherwise conveyed.

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign the part or portion of the Development Property for which the Certificate of Completion has been issued without the prior written consent of the City, provided that the transferee or assignee is bound by all the Developer's remaining obligations hereunder. The Developer shall submit to the City written evidence of any such transfer or assignment, including the transferee or assignee's express assumption of the Developer's obligations under this Agreement. If the Developer fails to provide such evidence of transfer and assumption, the Developer shall remain bound by all its obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants. (a) The Developer releases from and covenants and agrees that the City and the governing body members, officers, agents, servants, and employees thereof shall not be liable for, and agrees to defend, indemnify and hold harmless the City and the governing body members, officers, agents, servants, and employees thereof 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 or the Development Property, except for any willful misrepresentations or willful or wanton misconduct of such persons.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to protect and defend the City and the governing body members, officers, agents, servants, and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements and the Development Property.

(c) The City and the governing body members, officers, agents, servants, and employees thereof shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or the Minimum Improvements, due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity thereof.

(Remainder of this page is intentionally left blank.)

ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any failure by any party to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder, or under the terms of this Agreement.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty days written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty days or, if the Event of Default is by its nature incurable within thirty days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) Suspend its performance under the Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under the Agreement.

(b) Upon an Event of Default by the Developer relating to non-compliance with Section 4.3 of this Agreement, the City may withhold payments under the Note in accordance with its terms, which withheld amount is payable, without interest thereon, on the first payment date after the default is cured.

(c) Upon an Event of Default by Developer, cancel and rescind or terminate this Agreement, provided that the City may not terminate the Note or Refunding Notes except in the case of an Event of Default under Section 6.1 or 6.2.

(d) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. Revesting Title in City Upon Happening of Event Subsequent to Conveyance to Developer. In the event that subsequent to conveyance of the City Parcels to the Developer and prior to receipt by the Developer of the Certificate of Completion for the Minimum Improvements required to be constructed on that parcel:

(a) the Developer, subject to Unavoidable Delays, shall fail to begin construction of the Minimum Improvements in conformity with this Agreement and such failure to begin construction is not cured within 90 days after written notice from the City to the Developer to do so; or

(b) subject to Unavoidable Delays, the Developer after commencement of the construction of the Minimum Improvements, fails to carry out its obligations with respect to the construction of such improvements (including the nature and the date for the completion thereof), or abandons or substantially suspends construction work, and any such failure, abandonment, or suspension shall not be cured, ended, or remedied within 90 days after written demand from the City to the Developer to do so; or

(c) the Developer after commencement of the construction of the Minimum Improvements but prior to the issuance of a Certificate of Completion therefore, fails to pay real estate taxes or assessments on the Development Property or any part thereof when due, or creates, suffers, assumes, or agrees to any encumbrance or lien on the Development Property (except to the extent permitted by this Agreement), or shall suffer any levy or attachment to be made, or any material men's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within thirty (30) days after written demand by the City to do so; provided, that if the Developer first notifies the City of its intention to do so, it may in good faith contest any mechanics' or other lien filed or established and in such event the City shall permit such mechanics' or other lien to remain undischarged and unsatisfied during the period of such contest and any appeal and during the course of such contest the Developer shall keep the City informed respecting the status of such defense; or

(d) after commencement of the construction of the Minimum Improvements but prior to the issuance of a Certificate of Completion therefor, there is, in violation of the Agreement, any transfer of the Development Property parcel or any part thereof, and such violation is not cured within sixty (60) days after written demand by the City to the Developer, or if the event is by its nature not reasonably susceptible of being cured within 60 days, the Developer does not, within such 60-day period, provide assurances reasonably satisfactory to the City that the event will be cured as soon as reasonably possible; or

(e) after commencement of the construction of the Minimum Improvements but prior to the issuance of a Certificate of Completion therefor, the Developer fails to comply with any of its other covenants under this Agreement, related to the Minimum Improvements and fails to cure any such noncompliance or breach within thirty (30) days after written demand from the City to the Developer to do so, or if the event is by its nature incurable within 30 days, the Developer does not, within such 30-day period, provide assurances reasonably satisfactory to the City that the event will be cured as soon as reasonably possible; or

Then the City shall have the right to re-enter and take possession of the City Parcels and to terminate (and revest in the City) the estate conveyed by the Deed to the Developer, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the parcel to the Developer shall be made upon, and that the Deed shall contain a condition subsequent to the effect that in the event of any default on the part of the Developer described in this Section 9.3 and failure on the part of the Developer to remedy, end, or abrogate such default within the period and in the manner stated in such Section, the City at its option may declare a termination in favor of

the City of the title, and of all the rights and interests in and to the parcel conveyed to the Developer, and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in the parcel, shall revert to the City, but only if the events stated in Section 9.3(a)-(e) have not been cured within the time periods provided above.

Section 9.4. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the City of title to and/or possession of the City Parcels or any part thereof as provided in Section 9.3, the City shall, pursuant to its responsibilities under law, use its best efforts to sell the Development Property or part thereof as soon and in such manner as the City shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Minimum Improvements or such other improvements in their stead as shall be satisfactory to the City in accordance with the uses specified for such Development Property or part thereof in the Redevelopment Plan. Upon resale of the parcel, the proceeds thereof shall be applied:

(a) First, to reimburse the City for all costs and expenses incurred by them, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the parcel (but less any income derived by the City from the property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the parcel or part thereof (or, in the event the parcel is exempt from taxation or assessment or such charge during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the City assessing official) as would have been payable if the parcel were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the parcel or part thereof at the time of revesting of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the subject improvements or any part thereof on the parcel or part thereof; and any amounts otherwise owing the City by the Developer and its successor or transferee; and

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to (1) the purchase price paid by Developer under Section 3.2; plus (2) the amount actually invested by it in making any of the subject improvements on the parcel or part thereof.

Any balance remaining after such reimbursements shall be retained by the City as its property.

Section 9.5. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or Developer is intended to be exclusive of any other available remedy or remedies, 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

City 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 IX.

Section 9.6. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other 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 9.7. Attorney Fees. Whenever any Event of Default occurs and if the City or Developer shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer or City under this Agreement, the non-prevailing party in any such action agrees that it shall, within 10 days of written demand by the prevailing party, pay to the prevailing party the reasonable fees of such attorneys and such other reasonable expenses so incurred.

(Remainder of this page is intentionally left blank.)

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; City Representatives Not Individually Liable. The City and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, state, and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. Until the Termination Date, the Developer agrees that the Developer, and its successors and assigns (a) shall devote the Development Property and the operation of the Minimum Improvements to uses as available under the City's zoning code, as amended, and (b) shall not discriminate upon the basis of race, color, creed, sex, or national origin in the sale, lease, or rental, or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the 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

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at Victoria City Center LLC, 28120 Boulder Bridge Drive, Shorewood, MN 55331, with a copy to Norm Bjornnes, 401 Groveland Ave., Minneapolis, MN 55403, and John H. Herman, Faegre & Benson, 90 South 7th St., Suite 2200, Minneapolis, MN 55402; and

(b) in the case of the City, is addressed to or delivered personally to the City at City Hall, 7951 Rose Street, PO Box 36, Victoria, MN 55386. Attn: City Administrator; or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The City may record this Agreement and any amendments thereto with the Carver County Recorder. The Developer shall pay all costs for recording.

(Remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf, the City has caused this Agreement to be duly executed in its name and behalf, and the Developer has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

THE CITY OF VICTORIA, MINNESOTA

By _____
Mary Hershberger Thun
Its Mayor

By _____
Jennifer Kretsch
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF CARVER)

The foregoing instrument was acknowledged before me this 13 day of November, 2008 by Mary Hershberger Thun and Jennifer Kretsch, the Mayor and City Clerk of the City of Victoria, Minnesota, on behalf of the City.

Nola J. Dickhausen
Notary Public
Minnesota
My Commission Expires January 31, 2012.

_____
Notary Public

VICTORIA CITY CENTER LLC

By _____
Wendy B. Ethen
Its Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 22nd day of December 2008, by Wendy B. Ethen, Chief Manager, Victoria City Center LLC, a Minnesota limited liability company, on behalf of the limited liability company.

_____
Notary Public

CARRIE ANNE HENTGES
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2009

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

Lot 1, Block 1, Victoria City Center, Carver County, Minnesota

EXHIBIT B

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Victoria City Center LLC (the "Developer") has fully complied with its obligations under Articles III and IV of that document titled "Contract for Private Development" dated November __, 2008, by and between the City of Victoria and the Developer, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that the Developer is released and forever discharged from its obligations to construct the Minimum Improvements under Articles III and IV.

THE CITY OF VICTORIA, MINNESOTA

By _____

STATE OF MINNESOTA)
) ss.
COUNTY OF CARVER)

The foregoing instrument was acknowledged before me this __day of _____, 2008 by_____ the _____ of the City of Victoria, Minnesota, on behalf of the City.

_____
Notary Public

This document was drafted by:
KENNEDY & GRAVEN, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 337-9300

EXHIBIT C

SCHEDULE OF PUBLIC DEVELOPMENT COSTS

Eligible Public Development Costs

Demolition Expenses	$28,500
Grading and Soil Correction	$186,600
Utility Relocation and Removals	$36,800
Street, Sidewalk,Curb Lighting and General Landscaping	$168,600
Total	**$420,500***

*** Note: Total of eligible expenditures exceed maximum TIF reimbursement limit of $400,000.**

SCHEDULE D

AUTHORIZING RESOLUTION

Authorizing Resolution

CITY OF VICTORIA

RESOLUTION NO. 08-XX

RESOLUTION AWARDING THE SALE OF, AND PROVIDING THE FORM, TERMS, COVENANTS AND DIRECTIONS FOR THE ISSUANCE OF ITS $400,000 TAX INCREMENT REVENUE NOTE, SERIES 200_.

BE IT RESOLVED BY the City Council ("Council") of the City of Victoria, Minnesota (the "City") as follows:

Section 1. Authorization; Award of Sale.

1.01. Authorization. The City has heretofore approved the establishment of its Downtown Tax Increment Financing District No. 1-4 (the "TIF District") within Development Project No. 1 ("Project"), and has adopted a tax increment financing plan for the purpose of financing certain improvements within the Project.

Pursuant to Minnesota Statutes, Section 469.178, the City is authorized to issue and sell its bonds for the purpose of financing a portion of the Public Development Costs of the Development District. Such bonds are payable from all or any portion of revenues derived from the TIF District and pledged to the payment of the bonds. The City hereby finds and determines that it is in the best interests of the City that it issue and sell its $400,000 Tax Increment Revenue Note, Series 2008 (the "Note") to the Developer for the purpose of financing certain public costs of the Project.

1.02. Issuance, Sale, and Terms of the Note. The City approves the Contract for Private Development (the "Agreement") between the City and Victoria City Center LLC, (the "Developer") and authorizes respectively the Mayor and City Clerk of the City to execute such Agreement in substantially the form on file with the City, subject to modifications that do not substantially alter the substance of the transaction and are approved by such officials, provided that execution of the Agreement by such officials is conclusive evidence of their approval. The City hereby delegates to the Finance Director the determination of the date on which the Note is to be delivered, in accordance with the Agreement. The Note shall be sold to Victoria City Center LLC (the "Owner") and cannot be transferred or assigned without the written consent of the City. The Note shall be dated the date of delivery thereof, and shall bear interest at the rate of 7% per annum from the first date of certified Public Development Costs to the earlier of

maturity or prepayment. The initial principal amount of the Note, $400,000, shall be reduced dollar for dollar to the extent of the TIF Offset as defined in the Agreement. To the extent the delivery of the City's Tax Increment Note precedes determination of the amount of the TIF Offset, the parties agree that any such Note shall be replaced with a new Note in the proper amount upon such determination.

Section 2. Form of Note. The Note shall be in substantially the following form, with the blanks to be properly filled in and the principal amount and payment schedule adjusted as of the date of issue or re-issue:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF CARVER
CITY OF VICTORIA, MINNESOTA

No. R-1 $400,000

TAX INCREMENT REVENUE NOTE
SERIES 2008A

Rate	Date of Original Issue
7.0%	November , 2008

The City of Victoria, Minnesota (the "City") for value received, certifies that it is indebted and hereby promises to pay to Victoria City Center LLC or registered assigns (the "Owner"), the principal sum of $400,000 and to pay interest thereon at the rate of 7% per annum, as and to the extent set forth herein.

1. Payments. Payments of principal and interest ("Payments") shall be paid on August 1, 2011, and each February 1 and August 1 thereafter to and including February 1, 2036 ("Payment Dates") in the amounts and from the sources set forth in Section 3 herein. Payments shall be applied to unpaid principal.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon 30 days written notice to the City. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Interest shall accrue on the unpaid principal at the rate of 7 % per annum from and after each expenditure of certified and approved Public Development Costs, which said accrued interest shall be added to principal from the first Payment Date of August 1, 2011.

3. Available Tax Increment. (a) Payments on this Note are payable on each Payment Date solely from and in the amount of "Available Tax Increment," which shall mean,

on each Payment Date, 90% of the Tax Increment attributable to the construction of the Minimum Improvements on the Development Property and paid to the City by Carver County in the six months preceding the Payment Date (except the first Payment Date of August 1, 2011, which shall include 90% of all Tax Increment relating to the Minimum Improvements collected from and after the date of execution of the Agreement as defined below), all as such terms are defined in the Contract for Private Development between the City and Victoria City Center LLC ("Developer") dated as of November __, 2008 (the "Agreement"), not to exceed the principal sum of $400,000 as provided herein. To the extent the initial delivery of the City's Tax Increment Note precedes the final determination of the TIF Offset against the Note as provided in Section 3.6 (b) (i) of the Agreement, any such Note shall be replaced with a new Note in the proper amount, upon such determination by the City.

(b) The City shall have no obligation to pay principal or interest on this Note on each Payment Date from any source other than Available Tax Increment and the failure of the City 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 City pays principal and interest to the extent of Available Tax Increment. The City shall have no obligation to pay the unpaid balance of principal that may remain after the Final Payment due on or before February 1, 2036.

4. Default. If on any Payment Date there has occurred and is continuing any Event of Default under Article IX of the Agreement, the City may withhold from payment hereunder all Available Tax Increment. If the Event of Default is thereafter cured in accordance with Article IX of the Agreement, the Available Tax Increment withheld under this Section shall be deferred and paid, without interest thereon, on the next Payment Date after the Event of Default is cured as provided in the applicable section of Article IX. If the Event of Default is not cured in a timely manner, the City may terminate this Note by written notice to the Owner in accordance with the Agreement.

5. Prepayment. The principal sum payable under this Note is prepayable in whole or in part at any time by the City 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.

6. Nature of Obligation. This Note is one of an issue in the total principal amount of $400,000 issued to aid in financing certain Public Development Costs and administrative costs of a Project undertaken by the City pursuant to Minnesota Statutes, Sections 469.124 through 469.134, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the City on November 13, 2008, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.124 to 469.134 as amended. This Note is a limited obligation of the City which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution, and not as a general obligation of the City. This Note shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the City or the City of Victoria. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of this Note or other costs incident hereto except out of

Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of this Note or other costs incident hereto.

7. Registration and Transfer. This Note is issuable only as a fully registered note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the City kept for that purpose at the principal office of the City Finance Director, by the Owner hereof in person or by such Owner's attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the City, duly executed by the Owner. Upon such transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the City with respect to such transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount, subject to the requirements of Section 7.3 (b)(i) of the Agreement regarding reissuance in a different principal amount, and bearing seven per cent (7%) interest and maturing on the same dates.

Except as otherwise provided in Sections 7.3(b) (i), 7.3 (d) and 8.2 of the Agreement, this Note shall not be transferred to any person or entity, unless the City has provided written consent to such transfer and the City has been provided with an opinion of counsel or a certificate of the transferor, in a form satisfactory to the City, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws.

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 exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the City according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the City of Victoria, Minnesota, has caused this Note to be executed with the manual signatures of its Mayor and City Clerk as of the Date of Original Issue specified above.

THE CITY OF VICTORIA, MINNESOTA

By _____

Its Mayor

By _____

Its City Clerk

STATE OF MINNESOTA)
) SS.
COUNTY OF CARVER)

The foregoing instrument was acknowledged before me this __day of November, 2008 by Mary Hershberger Thun and Jennifer Kretsch, the Mayor and City Clerk of the City of Victoria, Minnesota, on behalf of the City.

_____
Notary Public

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the City Finance Director, in the name of the person last listed below.

Date of Registration	Signature of Registered Owner	City Finance Director

Victoria City Center LLC
Federal Tax I.D. No. 411881307

Section 3. Terms, Execution and Delivery.

3.01. Denomination, Payment. The Note shall be issued as a single typewritten note numbered R-1.

The Note shall be issuable only in fully registered form. Principal of and interest on the Note shall be payable by check or draft issued by the Registrar described herein.

3.02. Payment Dates. Principal on the Note shall be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date, whether or not such day is a business day.

3.03. Registration. The City hereby appoints the City Finance Director to perform the functions of registrar, transfer agent and paying agent (the "Registrar"). The effect of

registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep at its office a bond register in which the Registrar shall provide for the registration of ownership of the Note and the registration of transfers and exchanges of the Note.

(b) Transfer of Note. Upon surrender for transfer of the Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of a like aggregate principal amount and maturity, as requested by the transferor. Notwithstanding the foregoing, the Note shall not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the City has been provided with an opinion of counsel or a certificate of the transferor, in a form satisfactory to the City, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

(c) Cancellation. The Note surrendered upon any transfer shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the City.

(d) Improper or Unauthorized Transfer. When the Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(e) Persons Deemed Owners. The City and the Registrar may treat the person in whose name the Note is at any time registered in the bond register as the absolute owner of the Note, whether the Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Note to the extent of the sum or sums so paid.

(f) Taxes, Fees and Charges. For every transfer or exchange of the Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.

(g) Mutilated, Lost, Stolen or Destroyed Note. In case any Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated

Note or in lieu of and in substitution for such Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. The Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen, or destroyed Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Note prior to payment.

3.04. Preparation and Delivery. The Note shall be prepared under the direction of the Finance Director and shall be executed on behalf of the City by the signatures of its Mayor and City Clerk. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the Note has been so executed, it shall be delivered by the Finance Director to the Owner thereof in accordance with the Agreement.

Section 4. Security Provisions.

4.01. Pledge. The City hereby pledges to the payment of the principal of the Note and interest thereon, all Available Tax Increment as defined in the Note.

Available Tax Increment shall be applied to payment of the principal of the Note in accordance with the terms of the form of Note set forth in Section 2 of this resolution.

4.02. Bond Fund. Until the date the Note is no longer outstanding and no principal thereof (to the extent required to be paid pursuant to this resolution) remains unpaid, the City shall maintain a separate and special "Bond Fund" to be used for no purpose other than the payment of the principal of the Note. The City irrevocably agrees to appropriate to the Bond Fund in each year Available Tax Increment. Any Available Tax Increment remaining in the Bond Fund shall be transferred to the City's account for the TIF District upon the payment of all principal and interest to be paid with respect to the Note.

Section 5. Certification of Proceedings. The officers of the City are hereby authorized and directed to prepare and furnish to the Owner of the Note certified copies of all proceedings and records of the City, and such other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the City as to the facts recited therein.

Section 6. Effective Date. This resolution shall be effective upon full execution of the Agreement.

Adopted this 13th day of November, 2008.

THE CITY OF VICTORIA, MINNESOTA

By _____
Mary Hershberger Thun
Its Mayor

By _____
Jennifer Kretsch
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF CARVER)

The foregoing instrument was acknowledged before me this __day of November, 2008 by Mary Hershberger Thun and Jennifer Kretsch, the Mayor and City Clerk of the City of Victoria, Minnesota, on behalf of the City.

_____
Notary Public

SCHEDULE E

Form of Subordination Agreement

ASSIGNMENT AND SUBORDINATION OF DEVELOPMENT AGREEMENT AND PLANNING CONTRACT

THIS ASSIGNMENT AND SUBORDINATION OF DEVELOPMENT AGREEMENT AND PLANNING CONTRACT (this "**Agreement**"), is made and entered into as of _____, 2008, by and among the City of Victoria, Minnesota, a statutory city and a body corporate and politic under the laws of Minnesota (the "**City**"), Victoria City Center LLC, a Minnesota limited liability company (the "**Developer**"), and Beacon Bank, a Minnesota banking corporation (the "**Lender**").

RECITALS:

A. The City and the Developer have entered into that certain unrecorded Contract for Private Development (Including Sale of Real Estate) dated as of November 13, 2008 (the "**Development Agreement**").

B. The City and the Developer have entered into that certain unrecorded Development Planning Contract (the "**Planning Contract**") dated as of _____, 2008 by and between the Developer and the City.

C. The City and the Lender have agreed to certain terms and conditions herein related to the interest, rights, and obligations of the City and the Lender with respect to the Land and the Improvements, including the agreement that the Land will remain subject to the provisions of Section 10.3 of the Development Agreement even in the event of transfer to the Lender.

D. The Development Agreement pertains to the development by the Developer of an approximately 28,050 square foot retail grocery store/drug store with associated public parking (the "**Improvements**") on property legally described on Exhibit A attached hereto and hereby made a part hereof (the "**Land**").

E. Fee title to a portion of the Land has been conveyed to the Developer pursuant to that certain Quit Claim Deed dated _____, 2008 (the "**Deed**"), and filed of record in the office of the County Recorder of Carver County, Minnesota as Document Number _____.

F. The Lender has extended a loan (the "**Loan**") to the Developer in connection with the construction of the Minimum Improvements, as defined in the Development Agreement, on the terms and conditions set forth in that certain Construction Loan Agreement of even date herewith (together with any amendment thereto, the "**Loan Agreement**"), by and between the Developer and the Lender.

G. The obligation of the Developer to repay the Loan is evidenced by that certain Promissory Note of even date herewith (together with any amendment thereto, the "**Note**"), executed by the Developer and payable to the Lender in the original principal amount of Three Million Thirty-Seven Thousand Five Hundred and No/100 Dollars ($3,037,500.00).

H. The Note is secured by that certain Combination Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement of even date herewith (together with any amendment thereto, the "**Mortgage**"), executed by the Developer in favor of the Lender and encumbering the Land and the Improvements.

I. The Mortgage has been filed of record in the office of the County Recorder of Carver County, Minnesota as Document Number _____.

J. Pursuant to the Development Agreement, the City has issued, or will issue, that certain Tax Increment Revenue Note in favor of the Developer as provided in Section 7.3 of the Development Contract (the "**TIF Note**").

K. The Lender has required as an express condition to the making of the Loan that (a) the Developer assign all of its rights under the Development Agreement (except the rights of Developer with respect to payments under the TIF Note) and the Planning Contract to the Lender to secure the obligations of the Developer to the Lender; (b) the rights of the City under the Development Agreement, the Planning Contract, and the Deed be subordinated to the Mortgage; and (c) the City agree to certain other matters, all as more fully set forth herein.

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

1. Assignment. The Developer assigns to the Lender, and grants to the Lender a security interest in, all of its right, title and interest in, to and under the Development Agreement (with the exception of the TIF Note and payments thereunder which are specifically reserved by the Developer) and the Planning Contract to secure the obligations of the Developer under the Loan Agreement, the Note, the Mortgage and any other documents securing the Note (collectively the "**Loan Documents**"). Notwithstanding this assignment, the Developer shall remain liable for payment and performance of all of its obligations under the Development Agreement and the Planning Contract.

2. Developer Representations and Warranties. The Developer represents and warrants to the Lender: (i) that there have been no prior assignments of the Development Agreement or the Planning Contract; (ii) that the Development Agreement and the Planning Contract are valid and enforceable agreements; and (iii) that neither the Developer, nor to the Developer's knowledge the City, is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. The Developer agrees that, other than the assignment or transfer of the TIF Note and payments thereunder, which the Lender specifically allows, the Developer shall not sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development

Agreement or the Planning Contract as long as this Agreement is in effect, without the Lender's prior written consent. Subject to Section 3 below, the Developer hereby irrevocably constitutes and appoints the Lender as its attorney-in-fact to demand, receive and enforce the Developer's rights with respect to the Development Agreement and/or the Planning Contract for and on behalf of and in the name of the Developer or, at the option of the Lender, in the name of the Lender, with the same force and effect as the Developer could do if this Agreement had not been made.

3. Lender's Rights. This Agreement shall constitute a perfected, absolute and present assignment, provided that the Lender shall have no right under this Agreement to enforce the provisions of the Development Agreement or the Planning Contract or exercise any rights or remedies under this Agreement unless and until an Event of Default (as defined in the Loan Agreement) shall occur and be continuing.

4. Remedies of Lender. Upon the occurrence of an Event of Default, the Lender may, without affecting any of its rights or remedies against the Developer under any other instrument, document or agreement, exercise its rights under this Agreement as the Developer's attorney-in-fact in any manner permitted by law.

5. Consent. The City acknowledges that the Lender is making the Loan to the Developer and consents to the same. The City also consents to and approves the collateral assignment of the Development Agreement and the Planning Contract by the Developer to the Lender as collateral for the Loan; provided, however, that this consent shall not deprive the City of or otherwise limit any of the City's rights or remedies against the Developer individually under the Development Agreement or the Planning Contract, and shall not relieve the Developer individually of any of its obligations under the Development Agreement or the Planning Contract.

6. No Assumption. The City acknowledges that the Lender is not a party to the Development Agreement or the Planning Contract, and by executing this Agreement does not become a party to the Development Agreement or the Planning Contract, and specifically does not assume and shall not be bound by any obligations of the Developer to the City under the Development Agreement or the Planning Contract, and that the Lender shall incur no obligations whatsoever to the City except as expressly provided herein. The City covenants with the Lender that the Lender may elect to perform the obligations of the Developer under the Development Agreement and the Planning Contract in the Lender's sole discretion.

7. Notice to Lender from the City. The City hereby acknowledges and agrees that it has received notice of the identity of the Lender and agrees to provide the Lender with: (i) copies of all notices of any default or Event of Default sent to the Developer pursuant to the terms of either or both the Development Agreement and the Planning Contract; and (ii) the right to cure any default by the Developer thereunder upon the same terms as are applicable to the Developer.

8. Subordination. In accordance with the applicable terms and conditions of the Development Agreement and the Planning Contract, the City hereby acknowledges and agrees that all of its right, title and interest under the Development Agreement, the Planning Contract,

and the Deed, including, without limitation, the rights of the City with respect to the receipt and application of any insurance or condemnation awards and any right to revest title contained in the Development Agreement, the Planning Contract, or the Deed (such right is hereinafter referred to as the "**Right to Revest**"), shall be subject and subordinate to the rights of the Lender under the Mortgage and the other Loan Documents in all respects. The City further acknowledges and agrees that the Right to Revest will be extinguished without further action upon: (i) the foreclosure of the Mortgage and the expiration of any applicable redemption period; or (ii) transfer of title to the Land to the Lender, or any of the Lender's successors or assigns, pursuant to a deed in lieu of foreclosure.

9. Surviving Covenants. Notwithstanding the subordination of the Development Agreement, the Planning Contract, and the Deed, the Lender agrees that upon transfer of title to the Land to the Lender, or any of the Lender's successors or assigns, pursuant to a foreclosure or a deed in lieu of foreclosure, the Lender, and its successors and assigns, covenant and agree to comply with the provisions of Section 10.3 of the Development Agreement; provided, however, the City's remedies for default thereunder shall be limited to injunctive relief enjoining any specific violation, together with attorneys fees as provided in Section 9.7 of the Development Agreement, and applicable remedies available at law or in equity thereafter in the event of the failure of the Lender, or its successors or assigns, to perform as enjoined. Notwithstanding the foregoing, in no event shall the City be entitled to the remedies available in Sections 9.2(c), 9.3 or 9.4 of the Development Agreement.

10. Estoppel. The City represents to the Lender as follows:

(a) As required under Section 4.2 of the Development Agreement, the City has approved the Construction Plans for the Minimum Improvements (as those terms are defined in the Development Agreement).

(b) As required under Section 3.8 of the Development Agreement, the Developer has paid to the City the Administrative Costs (as that term is defined in the Development Agreement).

(c) The terms and conditions of the Loan Documents, including, but not limited to, the Loan Agreement, are hereby approved by the City. In the event of a conflict between the terms of the Loan Documents and the terms of the Development Agreement, the terms of the Loan Documents shall control.

(d) No default or Event of Default by Developer exists under the terms of the Development Agreement or the Planning Contract as of the date hereof.

11. Notice to City. The Lender agrees to provide copies of all notices of any default or Event of Default sent to the Developer under the Loan Documents, in accordance with Section 7.1 of the Development Agreement. The Lender shall not be bound by the other requirements in Section 7.1 of the Development Agreement.

12. Statutory Exception. Nothing in this Agreement shall alter, remove or affect the Lender's obligation under Minnesota Statutes, § 469.029 to use the Land in conformance with Section 10.3 of the Development Agreement.

13. Amendments. The City hereby represents and warrants to the Lender for the purpose of inducing the Lender to make advances to the Developer under the Loan Documents that the City will not agree to any amendment or modification to the Development Agreement or the Planning Contract that affects the Property without the Lender's written consent, which consent shall not be unreasonably withheld provided the Developer is not then in default under the Loan Documents.

14. Waiver. This Agreement can be waived, modified, terminated or discharged only explicitly in a writing signed by the parties hereto. A waiver by the Lender shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and shall be exercised singularly or concurrently, at the Lender's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

15. Notice. Any notices and other communications permitted or required by the provisions of this Agreement shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage, or delivery by reputable private carrier and addresses as set forth below:

If to the City:	City of Victoria, Minnesota City Hall 7951 Rose Street P.O. Box 36 Victoria, MN 55386 Attention: City Administrator
With a copy to:	Michael T. Norton, Esq. Kennedy & Graven, Chartered 200 South Sixth Street, Suite 470 Minneapolis, MN 55402
If to the Developer:	Victoria City Center LLC 28120 Boulder Bridge Drive Excelsior, MN 55331 Attention: Thomas B. Wartman
With a copy to:	Mulligan & Bjornnes 401 Groveland Avenue Minneapolis, MN 55403 Attention: Norman Bjornnes, Esq.

If to Lender:	Beacon Bank 19765 Highway 7 Shorewood, MN 55331 Attention: Colette B. Ingle
with copy to:	Morrison Fenske & Sund, P.A. 5125 County Road 101, Suite 202 Minnetonka, MN 55345 Attention: James F. Morrison, Esq.

16. Governing Law. This Agreement is made in and shall be construed in accordance with the laws of the State of Minnesota.

17. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.

18. Successors. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any person who acquires title to the Property through the Lender of a foreclosure of the Mortgage.

19. Severability. The unenforceability or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement as of the day and year first above written.

THE CITY OF VICTORIA, MINNESOTA

By _____
Mary Hershberger Thun
Its Mayor

By _____
Jennifer Kretsch
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF CARVER)

The foregoing instrument was acknowledged before me this __day of _____, 2008 by Mary Hershberger Thun and Jennifer Kretsch, the Mayor and the City Clerk of the City of Victoria, Minnesota, on behalf of the City.

_____
Notary Public

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement as of the day and year first above written.

Victoria City Center LLC

By:_____
Its:_____

STATE OF MINNESOTA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, the _____ of Victoria City Center LLC, a Minnesota limited liability company, for and on behalf of the limited liability company.

_____
Notary Public

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement as of the day and year first above written.

BEACON BANK,
a Minnesota banking corporation

By:_____
Its: _____

STATE OF MINNESOTA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, the _____ of Beacon Bank, a Minnesota banking corporation, for and on behalf of the corporation.

_____
Notary Public

THIS INSTRUMENT DRAFTED BY:

Morrison Fenske & Sund, P.A.
5125 County Road 101, Suite 202
Minnetonka, Minnesota 55345

EXHIBIT A

LEGAL DESCRIPTION

Lot 1, Block 1, Victoria City Center, Carver County, Minnesota

EXHIBIT F

Pro Forma

Victoria City Center LLC
Projected Statement of Sources and Requirements
Of Project Funds

Sources

Mortgage Loan Proceeds	$3,037,500
Capital Contribution of Thomas Wartman	900,000
Capital Contribution of Developer TIF	400,000
Totals	$4,337,500

Requirements

Land		875,000
Building Construction		3,150,000
		$4,025,000
Other Costs and Expenses		
Architectural Fees	65,000	
Survey/Civil Fees	50,000	
Demolition/Site Clean up		
		$ 115,000
Financing Costs/Other		
Legal/Accounting	$ 10,500	
Title/Recording/MRT	10,750	
Construction Loan Interest	36,000	
Origination Fee	22,780	
Appraisal/Phase I Fees/TBW	6,500	
Legal/Lender	7,500	
Contingency	103,470	
		$ 197,500
Total Development Costs		$4,337,500

EXHIBIT G

City Public Improvements

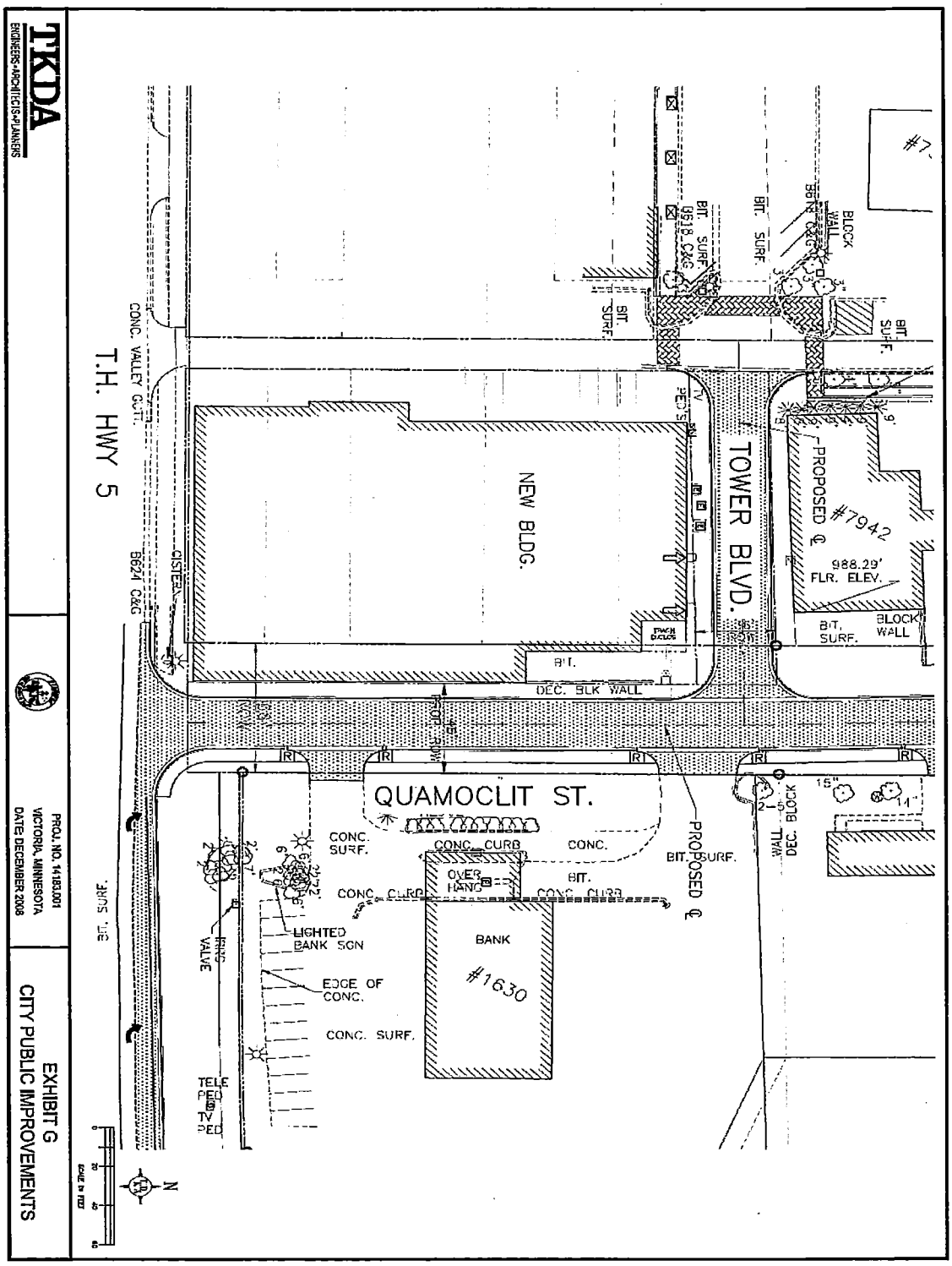

EXHIBIT H

Form of Quit Claim Deed

State Deed Tax Due Hereon: $_____

QUIT CLAIM DEED

THIS INDENTURE, between the City of Victoria, a public body corporate and politic (the "Grantor"), and Victoria City Center LLC, a Minnesota limited liability company (the "Grantee").

WITNESSETH, that Grantor, in consideration of the sum of $1.00 and other good and valuable consideration the receipt whereof is hereby acknowledged, does hereby grant, bargain, quitclaim and convey to the Grantee, its successors and assigns forever, all the tract or parcel of land lying and being in the County of Carver and State of Minnesota described on "Exhibit A" attached hereto, to-wit (such tract or parcel of land is hereinafter referred to as the "Property"):

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging, subject to: See attached "Exhibit B"

SECTION 1.

It is understood and agreed that this Deed is subject to the covenants, conditions, restrictions and provisions of an agreement recorded herewith entered into between the Grantor and Grantee on the _____ day of _____, 2008, identified as "Contract for Private Development," as it may be amended (hereafter referred to as the "Agreement"), that the Grantee shall not convey this Property, or any part thereof, except as permitted by the Agreement until a certificate of completion releasing the Grantee from certain obligations of said Agreement as to this Property or such part thereof then to be conveyed, has been placed of record. This provision, however, shall in no way prevent the Grantee from mortgaging this Property in order to obtain funds for the purchase of the Property hereby conveyed or for erecting the Minimum Improvements thereon (as defined in the Agreement) in conformity with the Agreement, any applicable development program and applicable provisions of the zoning ordinance of the City of Victoria, Minnesota, or for the refinancing of the same.

It is specifically agreed that the Grantee shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Minimum Improvements thereon, as provided in the Agreement.

Promptly after completion of the Minimum Improvements in accordance with the provisions of the Agreement, the Grantor will furnish the Grantee with an appropriate instrument so certifying. Such certification by the Grantor shall be (and it shall be so provided in the

certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligation of the Grantee, and its successors and assigns, to construct the Minimum Improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Grantee to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the purchase of the Property hereby conveyed or the Minimum Improvements, or any part thereof.

All certifications provided for herein shall be in such form as will enable them to be recorded with the County Recorder, or Registrar of Titles, Anoka County, Minnesota. If the Grantor shall refuse or fail to provide any such certification in accordance with the provisions of the Agreement and this Deed, the Grantor shall, within thirty (30) days after written request by the Grantee, provide the Grantee with a written statement indicating in adequate detail in what respects the Grantee has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Grantor, for the Grantee to take or perform in order to obtain such certification.

SECTION 2.

The Grantee's rights and interest in the Property are subject to the terms and conditions of Section 9.3 of the Agreement relating to the Grantor's right to re-enter and revest in Grantor title to the Property under conditions specified therein, including but not limited to termination of such right upon issuance of a Certificate of Completion as defined in the Agreement.

SECTION 3.

The Grantee agrees for itself and its successors and assigns to or of the Property or any part thereof, hereinbefore described, that the Grantee and such successors and assigns shall comply with all provisions of the Agreement that relate to the Property or use thereof for the periods specified in the Agreement.

It is intended and agreed that the above and foregoing agreements and covenants shall be covenants running with the land for the term of the Agreement, and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be binding, to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Grantor against the Grantee, its successors and assigns, and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the Grantor shall be deemed a beneficiary of the agreements and covenants provided herein, both for and in its own right, and also for the purposes of protecting the interest of the community and the other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Grantor without regard to whether the Grantor has at any time

been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Grantor shall have the right, in the event of any breach of any such agreement or covenant to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled; provided that Grantor shall not have any right to re-enter the Property or revest in the Grantor the estate conveyed by this Deed on grounds of Grantee's failure to comply with its obligations under this Section 3.

SECTION 4.

This Deed is also given subject to provision of the ordinances, building and zoning laws of the City of Victoria, and state and federal laws and regulations in so far as they affect this real estate.

Grantor certifies that it does not know of any wells on the Property.

IN WITNESS WHEREOF, the Grantor has caused this Deed to be duly executed in its behalf by its Mayor and City Clerk and has caused its corporate seal to be hereunto affixed this _____ day of _____, 2008.

CITY OF VICTORIA

_____
By Mary Hershberger Thun
Its Mayor

_____
By Jennifer Kretsch
Its City Clerk

STATE OF MINNESOTA)
) ss
COUNTY OF CARVER)

The foregoing was acknowledged before me this ____ day of December, 2008, by Mary Hershberger Thun and Jennifer Kretsch, the Mayor and city Clerk, respectively, of the City of Victoria, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the public body corporate and politic.

_____
Notary Public

This instrument was drafted by:

Kennedy & Graven, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402

Tax Statements should be sent to:

Victoria City Center LLC