

EASEMENT AND MAINTENANCE AGREEMENT
(Market Street Plaza and Public Access)

THIS EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into November __, 2019 (“Effective Date”), by and between the CITY OF EDINA, MINNESOTA, a Minnesota statutory city (the “City”), and EDINA MARKET STREET LLC, a Minnesota limited liability company (the “Developer”).

RECITALS

WHEREAS, the Housing and Redevelopment Authority of Edina, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), the City, and Developer have entered into a Redevelopment Agreement dated June 27, 2017 (as amended, the “Contract”); and

WHEREAS, such Contract is intended to provide for the redevelopment of certain land within the City’s 50th & France District located on Market Street (formerly known as 49 1/2 Street) by the Developer in coordination with the Authority and with the cooperation and assistance of City, including that certain land legally described on **Exhibit A** attached hereto (referred to herein and in the Contract as the “South Site”); and

WHEREAS, the Contract provides for the expenditure of public and other funds to assist with the construction of certain improvements to the South Site (referred to herein and in the Contract as the “South Site Vertical Improvements”); and

WHEREAS, the South Site Vertical Improvements include (a) a ground-level, outdoor plaza and amenity area (“Market Street Plaza”; defined in the Contract as the Shared Plaza Element), sidewalks and related improvements, including, without limitation, planters, landscaping, trees, lighting and trash cans (collectively, the “Sidewalks”), and woonerfs for shared vehicular and pedestrian traffic (collectively, the “Woonerfs”), which Market Street Plaza, Sidewalks and Woonerfs (collectively, the improvements located thereon are referred to herein as the “Market Street Plaza Improvements”) are depicted on **Exhibit B** attached hereto, each located in the City of Edina, County of Hennepin, State of Minnesota; and

WHEREAS, the City and the Developer have agreed in the Contract that the Developer will grant an easement to the City pursuant to which the Market Street Plaza Improvements will be permanently open and accessible to the general public for its use and enjoyment pursuant to the terms and conditions of this Agreement; and

WHEREAS, the City has agreed to operate and manage Market Street Plaza and to maintain the Market Street Plaza Improvements pursuant and subject to the terms and conditions of the Contract and this Agreement, and

WHEREAS, the City and Developer deem it to be in their interest and in furtherance of the economic development and redevelopment plan for South Site to enter into this this Agreement with respect to the Market Street Plaza Improvements; and

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

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

ARTICLE I.

GRANT OF EASEMENTS

Section 1.1. Easement Premises. Developer hereby grants and conveys to the City, for the benefit of the City, each in accordance with and subject to the terms and conditions of this Agreement,

(a) an exclusive, perpetual public easement over, across, upon and through Market Street Plaza for the purpose of utilizing **Market Street Plaza** and all the amenities located therein and thereon for their respective intended purposes, including use as public gathering and event space;

(b) a non-exclusive, perpetual public easement over, across, upon and through the **Woonerfs** for (i) pedestrian and vehicular access to and from public rights of way, streets, alleys, public spaces, and private buildings or businesses, and (ii) public gathering and event spaces, subject to the terms and conditions of Section 3.3; and

(c) a non-exclusive, perpetual public easement over, across, upon and through the **Sidewalks** for (i) pedestrian access to and from public rights of way, streets, alleys, public spaces, and private buildings or businesses immediately adjoining or contiguous to the Sidewalks, including all exterior concourses, passageways, sidewalks and stairways providing such means of access and intended for use by the public, and (ii) public gathering and event spaces, subject to the terms and conditions of Section 3.2, but in either case excluding all such areas or means of access intended to serve as exclusively private access to, or for the sole benefit of, the South Site Vertical Improvements.

The real property encumbered by the foregoing grants of easements for Market Street Plaza, the Woonerfs and the Sidewalks, is depicted on **Exhibit B** attached hereto and is collectively referred to herein as the "Easement Premises".

ARTICLE II.

TERM

Section 2.1. Term. Subject to Section 4.8, the easements granted hereby, and each reservation, covenant, condition and restriction contained in this Agreement, shall be effective as of the date hereof, shall be perpetual, and shall remain in effect until affirmatively released by the City. Such release shall be

evidenced by the recording of a release or termination of this Agreement in the real estate records of Hennepin County, Minnesota, at which time this Agreement shall terminate, subject to reconciliation of expenses and obligations incurred through the date of release or termination and the continuation of those provisions that specifically survive termination of this Agreement, and the Market Street Plaza Improvements and any other areas of the South Site shall thereafter belong to and be under the sole control of Developer.

ARTICLE III.

USE OF EASEMENT PREMISES

Section 3.1. Operation and Control of Market Street Plaza. During the term of this Agreement, the City shall operate Market Street Plaza, in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders, at its own cost except as otherwise provided in this Agreement. Subject to the terms of this Agreement, the City shall have full authority and control over the management, operation, and use of Market Street Plaza. Except as specifically set forth herein, the City shall be entitled to make all decisions and to execute all agreements, in its sole discretion, with respect to Market Street Plaza so long as such decisions and agreements do not (i) violate the provisions of this Agreement, the Contract, the approved Final Development Plan, or any applicable governmental laws, ordinances, regulations or orders, as each of the foregoing may be amended and so long as each of the foregoing remains in effect, or (ii) unreasonably disturb the users and occupants of the South Site Vertical Improvements, including the Apartment Element. The City may establish (and modify from time to time) (a) such hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate in the City's reasonable discretion for the safe, efficient, and orderly use and operation of the Market Street Plaza and (b) such rates and charges for the use of the Market Street Plaza as it deems advisable or desirable in the City's reasonable discretion. The City shall be entitled to keep and retain as its own property all income and revenue produced from the operation and use of the Market Street Plaza during the term of this Agreement and shall have no obligation to report to or account to the Developer for any such income or revenue. Except for temporary closures as provided herein or private use as provided in Section 3.4 below, the Market Street Plaza Improvements shall be open to the public as provided in the Contract.

Section 3.2. Use of Sidewalks. During the term of this Agreement, the City shall operate the Sidewalks consistent with its general operation of public City sidewalks, and otherwise in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders, at its own cost except as otherwise provided in this Agreement. Notwithstanding anything in this Agreement to the contrary, owners, tenant and subtenants of the South Site Commercial Elements may make reasonable use of such portions of the Easement Premises which are immediately adjacent to entrances and storefronts of such South Site Commercial Elements for the purpose of placing non-permanent moveable items such as planters, benches, removable advertising signs, and seasonal decorations, provided that such items do not unreasonably obstruct or impair the public's use of the Easement Premises or the free flow of pedestrian traffic thereon, each as determined by the City in its reasonable discretion. In addition, the owner or operator of the Apartment Element shall at all times have the right to install, operate, maintain, repair and replace signage, lighting, decoration, landscaping and related improvements in the areas depicted on **Exhibit B** hereto and identified thereon as "Apartment Element Entry Area". Furthermore, the City acknowledges and agrees that certain portions of the ground level, pedestrian surfaces of the South Site Vertical Improvements, which areas are each depicted on **Exhibit B** hereto and identified thereon as an "Area of Potential Private Use" (collectively, the "Areas of Potential Private Use") may be withdrawn from the Easement Premises by Developer and reserved for the private use of the owners, tenants, and subtenants of the South Site Commercial Elements or the Apartment Element. Such Areas of Potential Private Use so withdrawn from the Easement Premises and reserved for private use may be used for any legal use, including, without limitation, outdoor dining, outdoor bar, or seating area. The City acknowledges that the Developer may

desire to modify the Areas of Potential Private Use from time to time (and consequently modify the Easement Premises) based on changing uses and tenancies of the South Site Commercial Elements. The City agrees to consider any such requested modifications to the Areas of Potential Private Use and the Easement Premises, and if such modification does not (x) cause the overall gross square footage of Market Street Plaza Improvements to be reduced by more than five percent (5%) (in the aggregate for all requested modifications) from the size of Market Street Plaza Improvements on the date hereof, less the areas of the initial Areas of Potential Private Use, as shown on Exhibit B, or (y) in the City's reasonable discretion, materially and adversely diminish the public use or benefit intended to be derived from Market Street Plaza and this Agreement, the City will enter into an amendment to this Agreement to reflect such modification; provided, however, in no event will the City be obligated to agree to a modification or reduction in the area of Market Street Plaza. The Developer may temporarily close portions of the Sidewalks for purposes of maintaining the South Site Vertical Improvements, or for preventing the creation of any rights of adverse possession or prescriptive easement rights in any party.

Section 3.3. Use of Woonerfs. During the term of this Agreement, the City and Developer shall collectively operate the Woonerfs in accordance with rules and regulations concerning the Woonerfs mutually acceptable to the City and Developer in their commercially reasonable discretion, and otherwise in accordance with this Agreement and all applicable governmental laws, ordinances, regulations and orders, at the City's own cost except as otherwise provided in this Agreement. Notwithstanding anything in this Agreement to the contrary, (a) vehicular use of the Woonerfs shall be solely for the short-term transit of the South Site or the short-term delivery and pick up of customers, supplies, inventory or outgoing orders, except where parking is specifically permitted by signage on-site, subject to the terms hereof, (b) subject to terms and conditions mutually acceptable to the City and Developer in their commercially reasonable discretion, the City may temporarily close all or portions of the Woonerfs for purposes of public events, and (c) the Developer may temporarily close all or portions of the Woonerfs for purposes of maintaining the South Site Vertical Improvements or for preventing the creation of any rights of adverse possession or prescriptive easement rights in any party. Notwithstanding anything to the contrary, pedestrian and delivery access to the customer and delivery entrances to Spalon Montage (or its successors) must at all times be maintained.

Section 3.4. Private Use of Easement Premises. All requests by Developer or adjoining owners or tenants to utilize any portion of the Easement Premises for private or semi-private use shall be given or withheld by the City and Developer on terms mutually agreeable to City and Developer in their commercially reasonable discretion. The private use of the Easement Premises by any such party shall be conditioned at all times to such party (a) providing evidence of insurance, (b) executing an instrument of indemnification in favor of the City and Developer, (c) receiving the written approval of the City and Developer of the improvements or personal property to be located on or over the Easement Premises, (d) agreeing to maintain such portion of the Easement Premises in a first class condition, in each case on terms acceptable to the City and Developer in their commercially reasonable discretion, and (e) agreeing to repair any damage to the Easement Premises arising from such private use at no cost to the City.

Section 3.5. Waste; Nuisance. Neither the City nor the Developer shall knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any improvements hereafter erected or located upon the Easement Premises, or any part thereof, or the fixtures and/or equipment thereof. The City in its use and occupancy of the Easement Premises, shall not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time shall not be considered "waste," "nuisance," "damage," "disfigurement," or "injury."

ARTICLE IV.

CONSTRUCTION AND MAINTENANCE OF THE EASEMENT PREMISES

Section 4.1. Construction of Market Street Plaza; Operations and Maintenance Plan.

(a) Construction. In accordance with the provisions of the Contract and this Agreement, the Developer is responsible, at its sole cost and expense, to initially build, construct, and install the Market Street Plaza, consisting of (a) all surface improvements, including, without limitation, all paving, sidewalks, pathways, retaining walls, and other hardscapes (collectively “Surface Improvements”) and (b) all amenities, components and fixtures located thereon, including, without limitation, all lighting, fountains, benches, tables, chairs, fences, planters and plantings, trees, shrubs, landscaping, irrigation systems, and signage (collectively, “Plaza Amenities”). The size, location, and design of the Market Street Plaza, the Surface Improvements, and the Plaza Amenities must be constructed substantially in accordance with the Final Development Plans. In addition, the Developer is responsible for initial construction of a subsurface structural support system capable of supporting the Market Street Plaza.

(b) O&M Plan. By no later than sixty (60) days after the Effective Date, the Developer shall prepare, in consultation with a qualified professional engineer with experience and knowledge about industry best practices for proper maintenance of plazas (similar to the Market Street Plaza and Plaza Amenities) constructed over underground parking facilities or other underground structures (“Qualified Engineer”), a proposed operation manual and maintenance schedule for the Market Street Plaza, the Plaza Amenities, and the underlying structural components (“O&M Plan”) which shall identify the nature and frequency of all recommended routine and preventative Maintenance Work (as defined below); provided, however, the City will not be required maintain the Easement Premises in accordance with this Agreement until receipt and approval of such O&M Plan or until Developer otherwise provides the City with sufficient instruction (as determined by the City in its reasonable discretion) for proper interim maintenance of the Easement Premises until the O&M Plan is finalized (e.g., snow removal). The Developer shall be responsible for causing the O&M Plan to be reviewed and updated at such intervals as may be appropriate in accordance with relevant industry standards, and providing such revised O&M Plan for the City’s use. The O&M plan, and each revision thereof, shall be subject to the City’s and Developer’s reasonable approval prior to the implementation thereof.

Section 4.2. Developer Maintenance. The Developer shall, at all times during the term hereof, at its sole cost and expense, keep, maintain, and repair the components of the Market Street Plaza described in this Section 4.2 in good condition and repair in a first-class manner, including in accordance with in the O&M Plan, as the same may be revised from time to time. Such maintenance and repair work shall include, without limitation, the following (collectively “Developer’s Work”):

(a) maintenance, repair or replacement of the subsurface structural element of the Market Street Plaza at or below the level of the hot applied waterproofing barrier applied to the roof of the UG Parking Element (the “Developer Waterproofing Layer”), including the foundation, foundation walls, floor slabs, support walls, and waterproofing systems related thereto; and

(b) replacement, repair, or correction of any structural or other construction defects arising from Developer’s construction, including enforcement of any applicable construction warranties.

Section 4.3. City Maintenance. Subject to Section 4.8, the City shall, at all times during the term hereof, at its sole cost and expense, keep, maintain, repair and replace the Market Street Plaza Improvements, including the Market Street Plaza (including all Surface Improvements and Plaza Amenities), the Sidewalks and Woonerfs, in good condition and repair in accordance with standards set forth in (i) the City's 50th & France District maintenance policy and schedule, as the same may be amended from time to time ("50th & France Maintenance Policy"), and (ii) the O&M Plan, as the same may be revised from time to time (provided however, in the event that any inconsistency exists with respect to the 50th & France Maintenance Policy and the O&M Plan, the O&M Plan shall control). Subject to any additional requirements of the 50th & France Maintenance Policy and the O&M Plan, such maintenance and repair work shall include the following (collectively the "City's Work", and together with the Developer's Work, collectively the "Maintenance Work"):

(a) the inspection, repair, replacement, and maintenance of the Surface Improvements and Plaza Amenities (including waterproofing or containment systems associated with any fountain located in the Market Street Plaza) and those portions of the subsurface located above the Developer Waterproofing Layer, including any repair or replacement necessitated by Developer's obligation to perform subsurface, structural maintenance, repair or replacement in accordance with Section 4.2(a);

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

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

(d) maintaining and replacing all landscaping and other vegetation located on the Easement Premises;

(e) keeping in repair, replacing and repainting any appropriate directional signs or markers, within or associated with the Market Street Plaza Improvements;

(f) maintaining, keeping in repair, replacing, repainting, emptying and cleaning all trash receptacles located on the Easement Premises;

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

(h) maintaining in good working order, repairing, and replacing as necessary all domestic water, irrigation, storm sewer, gas, electricity, and any and all other utility or similar services used, rendered, or supplied, upon, at, from, or in connection with the Market Street Plaza Improvements.

Section 4.4. Manner of Performance. All Maintenance Work shall be done: (i) in such manner as to not unreasonably interfere with the normal use and enjoyment of the South Site Vertical Improvements and the area on which such work is being done; (ii) in full compliance with the provisions of this Agreement and the Contract; (iv) in full compliance with all applicable statutes, codes, ordinances, rules and regulations; (v) with respect to reconstruction, maintenance, repair, alterations or modifications, the

Maintenance Work shall use materials, equipment and design and engineering standards, equal to or better than those originally used; (vi) in a good and workmanlike manner; (vii) in such manner as not to unreasonably adversely affect, impair or destroy the structural soundness or integrity, aesthetic appearance or functional utility of the Market Street Plaza Improvements or the South Site Vertical Improvements; (viii) with all due diligence; and (ix) in such a manner so as to clean the area and restore the affected portion of the area on which the Maintenance Work was done to a condition equal to or better, to the extent practical, than the condition which existed prior to the commencement of such Maintenance Work. The City or Developer, as applicable, may temporarily close such portions of the Easement Premises as may be reasonably necessary for the performance of Maintenance Work. Each of the City and the Developer may, from time to time, select and hire one or more third parties to perform each party's respective Maintenance Work, provided that each of the City and the Developer shall remain responsible at all times for the performance of each such party's respective Maintenance Work. Notwithstanding anything to the contrary contained herein, to the extent that any Maintenance Work is required due to (a) damage or destruction caused by the negligence or willful misconduct of the City, the Developer, or their respective employees or agents, or (b) the failure of a party to comply with the 50th & France Maintenance Policy or the O&M Plan, the cost and responsibility for the repair of such damage or destruction shall be borne by the party whose negligence or willful misconduct caused such damage or destruction or failed to comply with the 50th & France Maintenance Policy or the O&M Plan.

Section 4.5. 50th & France District Maintenance Assessments. The Developer acknowledges and agrees that nothing in this Agreement will be deemed to limit the City's right to recoup its costs of the City's Work hereunder by including such costs in the 50th & France District commercial area maintenance assessments, including assessments levied upon property owned by the Developer, all as specified and in accordance with the City Code.

Section 4.6. Liens. Neither the City nor the Developer will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the City or the Developer, as the case may be, (and will promptly discharge (by payment, bonding over or otherwise) the same upon their occurrence); provided, however, the City or Developer, as applicable, may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the City or Developer, as applicable, shall file a bond or deposit cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Market Street Plaza to secure the payment of such lien if finally determined to be valid.

Section 4.7. Temporary License for Maintenance. Developer hereby grants and conveys to the City, its employees, agents, contractors, subcontractors, and others engaged in directing and performing the City's Work, a license to access portions of the South Site outside the Easement Premises, as and to the extent reasonably necessary for the purpose of performing the City's Work (e.g., access to the control room for any fountain located in the Market Street Plaza).

Section 4.8. Phased Delivery. Developer and the City acknowledge that Developer's initial construction of the Easement Premises, as required by Section 4.1, may be completed in phases. Developer may deliver, and the City will accept, the Easement Premises in mutually agreeable phases as such initial construction is completed. Notwithstanding an earlier Effective Date and earlier grant of the easements herein, the City's rights hereunder (including under Article III) and the City's obligations hereunder (including under Article IV), will only commence upon such delivery and acceptance of such phases of the Easement Premises.

ARTICLE V.

UTILITIES

Section 5.1. Utility Charges. Developer shall cause the utilities serving the Market Street Plaza to be separately metered and City will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, storm water, gas, electricity, power, heat, telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with the Easement Premises, or any part thereof.

ARTICLE VI.

TAXES AND ASSESSMENTS

Section 6.1. Payment of Taxes and Assessments. Developer shall pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies (collectively “Taxes”), assessed and levied by any governmental taxing authority during the term of this Agreement against the Market Street Plaza. Notwithstanding the foregoing, if (i) the Market Street Plaza is ever subdivided such that it becomes a separate tax parcel and such parcel is deemed to be subject to Taxes, or (ii) records of the tax assessor provide reasonable evidence that the Market Street Plaza is deemed to be subject to Taxes, the City shall pay directly to the relevant taxing authority any such Taxes.

ARTICLE VII.

INDEMNIFICATION, INSURANCE, IMMUNITIES

Section 7.1. Property Insurance. At all times during the term hereof, the Developer at its initial cost and expense, shall keep the South Site Vertical Improvements (including the Market Street Plaza Improvements), and all alterations, extensions, and improvements thereto and replacements thereof, insured, in the amount of the full replacement cost thereof and with such deductibles as the Developer deems appropriate, against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to buildings and improvements similar in construction, general location, use, and occupancy to the South Site Vertical Improvements and the Market Street Plaza Improvements. The City shall pay within sixty (60) days following receipt of Developer’s invoice therefor, an amount equal to the cost of such insurance which is directly attributable to the Market Street Plaza, taking into account the use, nature, and/or value of the Market Street Plaza (and not merely as a percentage of the total of such insurance costs) as reasonably determined by the parties and the applicable insurer, and any deductible charged with respect to the Market Street Plaza Improvements.

Section 7.2. Indemnification of Developer. Except to the extent caused by the willful misconduct or negligence of the Developer or its employees or agents, or arising out of the default by Developer of its obligations hereunder, the City hereby covenants and agrees to assume and to permanently indemnify and save harmless Developer and its employees and agents, from and against any and all claims, demands, actions, damages, costs, expenses, attorneys’ fees, and liability in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in, at, upon, or from the use or occupancy of the Easement Premises by any party other than Developer and its employees or agents.

Section 7.3. Indemnification of the City. Except to the extent caused by the willful misconduct or negligence of the City, its employees or agents or the general public or arising out of the default by the City and its officers, employees or agents of obligations made pursuant to a contract with Developer, including this Agreement, Developer hereby covenants and agrees to assume and to permanently indemnify and save harmless the City and its employees and agents from and against any and all claims, demands, actions, damages, costs, expenses, attorneys’ fees, and liability in connection with the loss of life, personal injury and/or damage to property to the extent arising from or out of the design or

initial construction of the Easement Premises, or in connection with the use or occupancy of the Easement Premises, or any part thereof, by the Developer, or to the extent arising out of the breach of Developer's obligations hereunder

Section 7.4. Liability Insurance. The Developer and the City shall procure and maintain continuously in effect (or shall cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to facilities and improvements similar to those located on the Easement Premises and, to be reviewed from time to time by the parties and adjusted in accordance with the requirements of Minnesota Statutes Section 466.04, as follows:

(a) Insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Market Street Plaza. Developer (and Developer's lender and property manager) shall be named as additional insureds on the City's such policy of insurance and the City shall be named as additional insured on the Developer's such policy of insurance.

(b) Liability insurance including coverage for:

(i) fire and explosion; and

(ii) riot, civil commotion, malicious mischief, and vandalism.

(c) To the extent reasonably available, insuring the indemnifications expressed in 7.2 and 7.3 hereof (as applicable).

Section 7.5. General Insurance Requirement. All insurance required in this Agreement shall be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. Each party shall, within a commercially reasonable time following the other party's request therefor, furnish the requesting party with copies of policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel it without giving written notice to the parties at least thirty (30) days before the cancellation becomes effective. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 7.6. Immunities. Nothing herein shall be deemed or constitute a waiver by the City of any statutory limitations on liability, statutory or common law immunities or any defenses that would otherwise be available to it in claims by third parties, including specifically the maximum liability amount contained in Minnesota Statutes Section 466.04. To the extent that the Developer performs construction, operation, maintenance, repair, or replacement of any part of the Market Street Plaza, pursuant to the terms of this Agreement, it is the intention of the parties that the Developer is entitled to the immunities provided pursuant to Minnesota Statutes Section 466.03, or any successor statute.

ARTICLE VIII.

ASSIGNMENT

Section 8.1. General. Due to the public nature of the easement granted herein, the City may not assign or transfer its interest under this Agreement without the prior written consent of Developer, which consent shall be granted, conditioned or withheld in Developer's sole discretion. During the term of the Contract, the Developer may not assign or otherwise transfer its interest under this Agreement, except as provided in the Contract. The City shall recognize and approve any successors or assigns of Developer

in accordance with the terms and provisions of the Contract. Following the expiration or earlier termination of the Contract, Developer may freely assign or transfer its interest under this Agreement without the consent of the City. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that the rights and easements established, granted, conveyed, reserved and consented to by this Agreement will run with the land and will inure to the benefit of and be binding on all present and future owners of any applicable portion of the South Site and their respective successors and assigns.

ARTICLE IX.

CASUALTY

Section 9.1. Destruction. Promptly upon any casualty loss or damage to all or any part of the Market Street Plaza Improvements (excluding subsurface structural support elements of the Market Street Plaza at below the Developer Waterproofing Layer, which shall be repaired by Developer in accordance with Section 4.2(a) above)) which is not a Total Casualty Loss (a defined herein), the City shall proceed with diligence to restore the Market Street Plaza Improvements to the condition existing before the casualty in a manner consistent with Article IV. Developer shall make all net insurance proceeds obtained with respect to the loss or damage available to the City for purposes of making such repairs. As used herein, a “Total Casualty Loss” shall mean any casualty loss or damage to any part of the Market Street Plaza Improvements, the cost of which to repair shall exceed 80% of the cost to rebuild. Promptly following a Total Casualty Loss to any portion of the Market Street Plaza Improvements, the Developer shall proceed with diligence to rebuild such damaged portion of the Market Street Plaza Improvements to the condition prior to the casualty with the insurance proceeds obtained with respect to the loss or damage to the extent the insurance proceeds recovered allow for such rebuilding. Notwithstanding anything to the contrary, the Developer shall not be obligated to rebuild the Market Street Plaza Improvements or provide the insurance therefor to the City if any of the Developer’s lenders or loan agreements (whether executed before or after the date hereof) do not permit such rebuilding or require that insurance amounts recovered with respect to any loss or damage to the Market Street Plaza Improvements be paid directly to the lender; provided, however, Developer will use reasonable efforts to cause its lenders and loan agreements to allow net insurance proceeds available with respect to any loss or damage to the Market Street Plaza Improvements be made available to Developer for repair and restoration of the Market Street Plaza Improvements.

ARTICLE X.

EMINENT DOMAIN

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

Section 10.2. Partial Condemnation. If any portion of the Easement Premises shall be taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then each party shall make its own claim in the condemnation proceeding based upon the value of its respective interest in that part of the Easement Premises subject to the acquisition or condemnation, provided, however, that no award to the City based on its easement interest shall be permitted to the extent such award reduces Developer’s award based on its fee interest. Following any such partial taking, the City shall restore the remaining portion of the Market Street Plaza Improvements above the Developer Waterproofing Layer, and Developer shall restore the corresponding portion of the subsurface support of the Market Street Plaza at and below the Developer Waterproofing Layer.

ARTICLE XI.

DEFAULT AND REMEDIES

Section 11.1. Events of Default. It shall be an “Event of Default” hereunder if (a) either party defaults in any obligation of this Agreement requiring the payment of money and fails to cure such default within ten (10) days after receipt of written notice of such default from the other party or (b) if a party defaults in any of its other obligations under this Agreement and fails to cure such default within thirty (30) days after receipt of written notice of such default from the other party (or, if such default reasonably requires more than thirty (30) days to cure, fails to commence such action as is necessary to cure such default within such 30-day period and to proceed diligently thereafter to cure such default).

Section 11.2. Remedies. Following an Event of Default hereunder, the non-defaulting party may: (a) exercise its self-help rights in accordance with Section 11.3 with respect to a default in the performance of Maintenance Work; (b) pay all or any part of such obligations and charge the amount of such payment, together with reasonable attorneys’ fees and interest at a rate of twelve percent (12%) per annum, to the defaulting party; (c) bring an action for injunctive relief; or (d) enforce the obligations of the defaulting party by an action at law or in equity. In an emergency, any such payment or performance may be undertaken or action brought by the non-defaulting party prior to the giving of any notice or expiration of any notice period, but the party curing the default will provide such notice as soon as may be reasonable under the circumstances. If the Developer has failed to cure a default requiring the payment of money in accordance this section, the City shall have the right to assess the costs incurred by the City to all or any portion of the South Site as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute.

Section 11.3. Self Help; Failure to Maintain. In the event the City defaults in its obligation to perform the City’s Work, or the Developer defaults in its obligation to perform the Developer’s Work, each as required by this Agreement, then the non-defaulting party, after compliance with the notice and cure provisions of Section 11.1 (except in an emergency, in which case the applicable Maintenance Work may be initiated with whatever notice is reasonable under the circumstances), shall have the right to enter any portion of the Easement Premises (including subsurface structural support elements) and perform such Maintenance Work as required herein and charge the costs of such performance plus ten percent (10%) of such costs for overhead, together with reasonable attorneys’ fees, to the defaulting party. The defaulting party shall promptly pay to the non-defaulting party any and all such costs as are due and owing on account thereof. The non-defaulting party shall submit a statement to the defaulting party evidencing the costs incurred for such Maintenance Work. If the Developer is the defaulting party and has failed to make payment in accordance with the statement within sixty (60) days after receipt thereof, the City shall have the right to assess the costs incurred by the City to all or any portion of the South Site as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. The Developer hereby agrees to such an assessment for maintenance and repair costs, agrees that the South Site assessed for such service charges is benefited thereby, and waives any rights the Developer or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429. The Easement Premises are subject to entry without notice and at any time, by the non-defaulting party or its authorized employees and/or agents and/or by any public safety personnel to perform such Maintenance Work as the non-defaulting party shall deem necessary in its reasonable discretion. Notwithstanding anything to the contrary contained herein, the City shall have no obligation of any kind, expressed or implied, to perform the Developer’s Work or any part thereof, and the Developer shall have no obligation of any kind, expressed or implied, to perform the City’s Work or any part thereof.

Section 11.4. Remedies Cumulative. Each right, power and remedy provided under this Agreement will be cumulative and concurrent and will be in addition to every other right, power or remedy

provided for under this Agreement or at law or in equity. The exercise or beginning of exercise of any one or more rights, powers or remedies will not preclude the concurrent or later exercise of any other rights, powers or remedies. Failure to enforce any covenant under this Agreement will not be deemed a waiver of the right to do so thereafter.

Section 11.5. Easements and Duties Survive. The Developer may not terminate any of the easements created by this Agreement or discontinue performance of its obligations with respect to maintenance, repair or replacement of any easement due to a default by the City under this Agreement. The City may not discontinue performance of its obligations with respect to maintenance, repair or replacement of any easement due to a default by the Developer under this Agreement.

ARTICLE XII.

MISCELLANEOUS

Section 12.1. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 12.2. Amendments. Except as otherwise herein provided, and not otherwise, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement shall be binding upon the parties to this Agreement unless in writing and signed by such parties. The Developer and the City agree to join in and consent to amendments to this Agreement to the extent such amendments are reasonably required by the Developer's construction lender and/or permanent lender for the South Site, provided, however, that the Developer and the City shall not be required to enter into such amendments if the amendments are not consistent with the approved Final Development Plan, as the same may be amended and so long as the same remains in effect, or materially and adversely affect the interest and security of the City with respect to the South Site, including any increase in obligations or diminution of rights hereunder.

Section 12.3. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of the Developer, is addressed to or delivered personally to the Developer at:

Edina Market Street LLC
Attention: Peter Deanovic
5100 Eden Ave., Suite 317
Edina, MN 55424

with a copy to:

Brent Rogers
Saturday Properties
1400 Van Buren St. NE, Suite 200
Minneapolis, MN 55413

with a copy to:

Daniel J. Van Dyk
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

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

City of Edina
Attention: City Manager
4801 W. 50th St.
Edina, MN 55424

with a copy to: Housing and Redevelopment Authority of Edina, Minnesota
Attention: Executive Director
4801 W. 50th St.
Edina, MN 55424

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

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

Section 12.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.5. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 12.6. Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 12.7. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 12.8. Joinder; Permitted Encumbrance. Except for the consent attached hereto, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement shall constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Developer and any construction lender or permanent lender.

Section 12.9. Survival. The easements granted hereby and each reservation, covenant, condition and restriction contained in this Agreement will run with the land and will be binding upon, and inure to the benefit of, as the case may be, the Developer and the City and their respective successors and assigns.

Section 12.10. Estoppel Certificate. Each party shall, within fifteen (15) days after request from the other party hereto, deliver a written statement which may be relied upon by the requesting party, or any lender or transferee of the requesting party, setting forth (a) whether the requesting party has fully complied

with the provisions hereof, and if not, setting forth in reasonable detail the nature of any violations; and (b) any other matter reasonably requested by the requesting party.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

CITY OF EDINA, MINNESOTA

By: _____
James B. Hovland, Mayor

By: _____
Scott Neal, City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of November, 2019, by James B. Hovland and Scott Neal, the Mayor and City Manager respectively, of the City of Edina, Minnesota, on behalf of the City of Edina.

Notary Public

EDINA MARKET STREET LLC,
a Minnesota limited liability company

By: EDINA MARKET STREET MANAGER LLC,
a Minnesota limited liability company,
its Managing Member

By: _____

Name: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of November, 2019, by _____, the _____ of Edina Market Street Manager LLC, a Minnesota limited liability company, Managing Member of Edina Market Street LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

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

EXHIBIT A

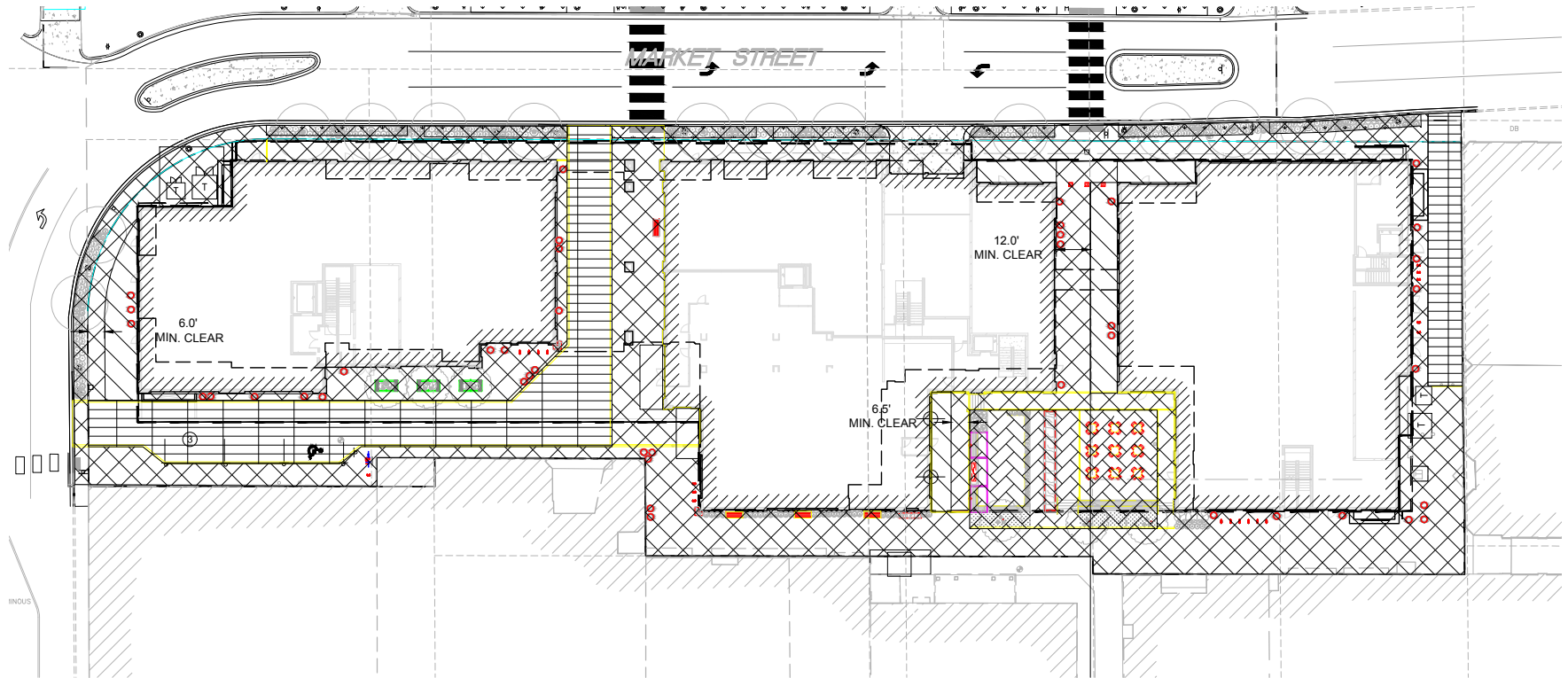
LEGAL DESCRIPTION OF THE SOUTH SITE

Lot 1, Block 2, Edina Market Street, according the recorded plat thereof, Hennepin County, Minnesota.



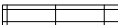

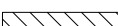
EXHIBIT B

DEPICTION OF THE MARKET STREET PLAZA IMPROVEMENTS

[Exhibit B to Easement and Maintenance Agreement (Market Street Plaza and Public Access)]



LEGEND

	MARKET STREET PLAZA		APARTMENT ELEMENT ENTRY AREA
	WOONERF		SIDEWALK
	AREA OF POTENTIAL PRIVATE USE		

CONSENT AND SUBORDINATION

The undersigned, _____, a _____, holder of that certain [Mortgage] executed by Edina Market Street LLC, a Minnesota limited liability company, dated _____, 201__, filed _____, 201__, as Document No. _____, in the office of the County Recorder in and for Hennepin County, Minnesota, and filed _____, 201__, as Document No. _____, in the office of the Registrar of Titles in and for Hennepin County, Minnesota, in favor of _____ (the "Mortgage"), hereby consents to the foregoing Easement and Maintenance Agreement (Market Street Plaza and Public Access) (the "Easement Agreement"), and hereby subordinates the Mortgage and all of its right, title and interest in the Easement Premises to the Easement Agreement.

_____,
a _____

By: _____
Printed Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__,
by _____, the _____ of _____, a
_____, on behalf of the _____.

(Signature of Person Taking Acknowledgment)