

(reserved for recording information)

**SITE IMPROVEMENT PERFORMANCE AGREEMENT
CITY OF EDINA
4917 EDEN AVENUE**

THIS **SITE IMPROVEMENT PERFORMANCE AGREEMENT** (“Agreement”) dated November 3, 2021, by and between the **CITY OF EDINA**, a Minnesota municipal corporation (“City”) and **EDEN AVENUE GROUP, LLC**, a Minnesota limited liability company (“Developer”).

1. BACKGROUND.

A. Developer has applied to redevelop **Tracts A and C, Registered Land Survey No. 1501, Hennepin County Minnesota** (*torrens COT 125457*), in the City of Edina, State of Minnesota (“Subject Property”), into a seven (7) story, 196-unit apartment building with a 3,700 square foot restaurant. Ten (10%) percent of the apartment units will qualify for affordable housing (the “Project”).

B. The City has rezoned the Subject Property to Planned Unit Development (“PUD”). The Project is in accordance with the PUD. A Site Improvement Performance Agreement is required for the PUD.

2. RIGHT TO PROCEED. On the Subject Property, the Developer may not grade or otherwise disturb the earth, remove trees, construct public or private improvements, or any buildings until all the following conditions have been satisfied: (1) this Agreement has been fully executed by both parties and filed with both the City Clerk and the Hennepin County Registrar's Office, (2) the required security has been received by the City, and (3) the required insurance certificate has been received by the City.

3. PLANS. The Subject Property shall be developed in accordance with the following Plans which are on file with the City. The Plans shall not be attached to this Agreement. If the Plans vary from the written terms of this Agreement, the written terms shall control. The Plans are:

- Existing Conditions and Removal Plans dated 10/5/21 prepared by Loucks
- Erosion Control Plan dated 10/15/21 prepared by Loucks
- Final Development Plan dated 3/12/21 prepared by Loucks & BKV Group
- Utility Plans dated 10/5/21 prepared by Loucks
- Details Plan dated 10/5/21 prepared by Loucks
- Design and Building Plan dated 10/5/21 prepared by BKV Group
- Final Landscaping Plan dated 10/5/21 prepared by BKV Group
- Parking Plan dated 10/5/21 prepared by Loucks
- Sidewalk and Pedestrian Plan dated 10/5/21 prepared by Loucks & BKV Group
- Transportation System Plan dated 4/19/21 prepared by Wenck resolving issues east of Highway 100 in the Grandview District
- Bike Racks and Bike Parking Stalls Plan following the City Code and the recommendations of the Association of Pedestrian and Bicycle Professionals (APBP) dated 10/5/21 prepared by BKV Group

The Developer may request changes to the Plans. For Plan changes deemed minor, pursuant to City ordinances, changes can be reviewed and approved by City staff. All other Plan changes shall require approval by the City Council.

4. EROSION CONTROL. Prior to initiating construction, the Erosion Control Plan shall be implemented by the Developer and inspected and approved by the City. The City may impose additional erosion control obligations if they would be reasonable and beneficial. All areas disturbed by the grading operations shall be stabilized per the Minnesota Pollution Control Agency

("MPCA") Stormwater Permit for Construction Activity. Seed shall be in accordance with the City's current seeding specification, which may include temporary seed to provide ground cover as rapidly as possible. All seeded areas shall be fertilized, mulched, and disc anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the MPCA Stormwater Permit for Construction Activity or with the Erosion Control Plan or any schedule of supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within thirty (30) days of receipt of notice thereof, the City may draw on the letter of credit to pay any costs. No development or utility construction will be allowed on the Subject Property and no building permits will be issued for the Subject Property unless the Subject Property is in full compliance with the approved Erosion Control Plan.

5. LICENSE. The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Subject Property to perform (a) all work permitted to be performed by the City under this Agreement, and (b) all inspections deemed appropriate by the City in conjunction with site development.

6. CONSTRUCTION ACCESS. Construction traffic access and egress must be in accordance with the Construction Management Plan, which will be provided by the Developer and approved by the City prior to the commencement of construction. A driveway entrance permit will be required for entrance reconstruction. The driveway on Wilson Road shall be at least 50-feet from the intersection with Eden Avenue pursuant to City Code.

7. CONSTRUCTION ACTIVITY/HOURS. Grading, construction activity, and the use of power equipment are prohibited between the hours of 9 o'clock p.m. and 7 o'clock a.m. The City may, at the City's discretion and at the Developer's expense, have one or more City inspectors and a soil engineer inspect the work on a part-time basis. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor. The Developer or its engineer shall schedule a pre-construction meeting at a mutually agreeable time at the City with all parties concerned, including the City staff, to review the program for the construction work.

8. DEWATERING. Due to the variable nature of groundwater levels and stormwater flows, it is the Developer's responsibility to satisfy itself with regard to the elevation of groundwater and to perform any necessary dewatering and storm flow routing. All dewatering shall be in accordance with applicable laws and regulations.

9. TIME OF PERFORMANCE. The Developer shall install the Public Improvements within eighteen (18) months after issuance of the necessary permits for the Public Improvements.

10. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Agreement and final acceptance by the City Engineer, the Public Improvements shall become City property without further notice or action. Prior to acceptance of the Public Improvements by the City, the Developer must furnish the following affidavits:

- Contractor's Certificate
- Engineer's Certificate
- Developer's Certificate

certifying that all construction has been completed in accordance with the terms of this Agreement. Upon receipt of affidavits and verification by the City Engineer, the City Engineer will accept the completed Public Improvements. Within thirty (30) days after the acceptance of the Public Improvements and before the security is released, the Developer shall supply the City with a complete set of reproducible record drawings. The City's standard specifications for utility construction identify the procedures for final acceptance of utilities.

11. CLEAN UP. Within 24 hours the Developer shall clean dirt and debris from streets that has resulted from construction work by the Developer, subcontractors, their agents or assigns. Prior to any construction in the Subject Property, the Developer shall identify in writing a responsible party for erosion control, street cleaning, and street sweeping.

12. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION. The Developer shall pay for in-house engineering administration. City in-house engineering administration will include monitoring of construction observation, consultation with Developer and its engineer on status or problems regarding the Project, coordination for final inspection and acceptance, Project monitoring during the warranty period, final inspection and acceptance, and processing of requests for reduction in security.

13. SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of the costs of all Public and Private Improvements, and construction of all Public and Private Improvements in accordance with the Plans, the Developer shall either deposit cash with the City or furnish the City with a letter of credit in the form attached hereto as **Exhibit A** (or some combination of cash and a letter of credit), from a bank in the total amount of \$110,000 total = \$60,000 sidewalk + \$50,000 sanitary sewer extension ("Security"). The bank issuing the letter of credit shall be subject to the approval of the City Manager. The City may draw down the

security, on five (5) business days written notice to the Developer, for any violation of the terms of this Agreement or without notice if the security is allowed to lapse prior to the end of the required term. If the security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City that the Project has been substantially completed in accordance with the Plans and financial obligations to the City have been satisfied, with City approval the security may be reduced from time to time by ninety percent (90%) of the financial obligations that have been satisfied. Ten percent (10%) of the security shall be retained as security until all Public Improvements have been completed, all financial obligations to the City satisfied, the required "as constructed" plans have been received by the City, a warranty is provided, and the Public Improvements are accepted by the City Council. The City's standard specifications for utility and street construction outline procedures for security reductions.

14. WARRANTY. The Developer warrants all Public and Private Improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. The warranty period for all Public Improvements is one year and shall commence following completion and acceptance by City Engineer. The Developer shall post or cause its contractor to post maintenance bonds in the amount of twenty-five percent (25%) of final certified construction costs of the Public Improvements to secure the warranties. The City shall retain ten percent (10%) of the security posted by the Developer until the maintenance bonds are furnished to the City or until the warranty period expires, whichever first occurs. The retainage may be used to pay for warranty work.

15. SPECIAL PROVISIONS.

A. The Developer shall comply with the conditions outlined in City Council Resolution No. 2021-41.

B. The Developer shall comply with the conditions outlined in the Director of Engineering's memo dated April 21, 2021 and the Transportation Engineer's memo dated April 21, 2021.

C. The Developer shall comply with the conditions outlined and in the Fire Marshal and Building Official's memo dated April 22, 2021.

D. The Developer must conform to the City's affordable housing policy. The Project shall provide ten (10%) percent of the units (20 units) within the building for affordable housing for families earning fifty (50%) percent area median income (AMI) for the Twin Cities.

E. Developer shall obtain and submit to the City for approval the Minnehaha Creek Watershed District permit that meets the District's requirements.

F. Developer shall construct pedestrian crossing improvements to the intersection of Wilson Road and Eden Avenue subject to the review and approval by the City. Developer shall install a sidewalk from the restaurant entrance and west side parking area to Eden Avenue for pedestrian access and safety. Maintenance of the sidewalks shall be the responsibility of the property owner. Except, maintenance of the sidewalks on Eden Avenue and Wilson Road will be the responsibility of the City.

16. RESPONSIBILITY FOR COSTS.

A. The Developer shall pay all reasonable costs incurred by it or the City in conjunction with the installation of the Public Improvements, including but not limited to the development of the site, legal, planning, engineering and inspection expenses incurred in

connection with approval and development of the Subject Property, the preparation of this Agreement, review of any other plans and documents.

B. The Developer shall hold the City and its officers, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from Developer's development of the site and installation of Public Improvements, except for costs incurred as a result of the City's negligence or intentional misconduct. The Developer shall indemnify the City and its officers, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including reasonable attorneys' fees, except for costs, damages or expenses incurred as a result of the City's negligence or intentional misconduct, occurring during Developer's ownership of the Subject Property.

C. The Developer shall pay in full all bills submitted to it by the City for undisputed obligations incurred under this Agreement within thirty (30) days after receipt. If the undisputed bills are not paid on time, the City may halt site development and construction until the bills are paid in full. Bills not paid within thirty (30) days shall accrue interest at the rate of eight percent (8%) per year.

17. MISCELLANEOUS.

A. Third parties shall have no recourse against the City or the Developer under this Agreement.

B. Breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits, including property conveyed to third parties.

C. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portions of this Agreement.

D. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.

E. This Agreement shall run with the land and may be recorded against the title to the Subject Property. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the Subject Property or has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the property; that there are no unrecorded interests in the property; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

F. The Developer and its contractors shall acquire public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of the Developer's work or the work of their subcontractors or by one directly or indirectly employed by any of them. Limits for such insurance shall be in a combination single limit policy of \$1,000,000 or more. The City shall be named as an additional insured on the policy on a primary and noncontributory basis, and the Developer and contractors shall file with the City a certificate evidencing coverage. The Developer and contractors must provide a Certificate of Insurance which meets the following requirements:

1. The Description section of the Accord form needs to read "City of Edina is named as Additional Insured with respect to the General Liability and Auto Liability policies on a Primary and Non-Contributory Basis."
2. Certificate Holder must be City of Edina.
3. Provide a copy of the policy endorsement showing City of Edina named as Additional Insured on a Primary and Non-Contributory Basis.

These insurance coverages and the requirements hereunder shall be required until the Certificate of Completion is issued.

G. The Developer and its general contractor shall obtain Workmen's Compensation Insurance in accordance with the laws of the State of Minnesota, including Employer's Liability Insurance, to the limit of \$100,000 each accident. These insurance coverages and the requirements hereunder shall be required until the Certificate of Completion is issued.

H. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

I. The Developer represents to the City that the Public Improvements comply with all city, county, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, and environmental regulations. If the City determines that the Public Improvements do not comply, the City may, at its option, refuse to allow construction or development work on the Subject Property until the Developer does comply. Upon the City's demand, the Developer shall cease work until there is compliance.

J. The Developer may not assign this Agreement without the written permission of the City Council prior to issuance of the Certificate of Completion. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire Subject Property, or any part of it.

K. An uncured breach of the terms of this Agreement by the Developer and the failure to cure such breach within the period provided in this Agreement, including nonpayment of billings

from the City, shall be grounds for denial of building permits and certificates of occupancy, and the halting of all work on the property.

L. From time to time, when requested by Developer, the City shall execute and deliver a recordable certificate confirming the satisfaction or completion of certain requirements contained in this Agreement.

18. DEVELOPER'S DEFAULT. In the event of default by the Developer, beyond the applicable notice and cure periods provided in this Agreement, as to any of the work to be performed by it hereunder, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any actual, out-of-pocket expense incurred by the City, provided the Developer, except in an emergency as determined by the City, is first given written notice of the work in default and the opportunity to cure, not less than thirty (30) days in advance. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek a Court order for permission to enter the land. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part.

19. NOTICES. Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer or mailed to the Developer by certified mail at the following address:

Eden Avenue Group, LLC
C/O Reuter Walton Development, LLC
Attn: Nicholas Walton
4450 Excelsior Boulevard, Suite 400
St. Louis Park, MN 55416-5541

Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by certified mail in care of the City Manager at the following address:

City of Edina
Attn: City Manager
Edina City Hall
4801 West 50th Street,
Edina, MN 55424-1330

20. CERTIFICATE OF COMPLETION. After the Developer has received the final certificate of occupancy for the Improvements and completed the work required under this Agreement, the City Manager will issue a certificate of completion after written request from the Developer, unless denied as set forth below. The certificate of completion shall be consistent in form with the certificate of completion issued by the City and shall be in recordable form and may be recorded against the Subject Property.

*[Remainder of page intentionally left blank.
Signature pages follow.]*

CITY OF EDINA

By: _____
James Hovland, Mayor

And _____
Scott Neal, City Manager

STATE OF MINNESOTA)
 (ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by **James Hovland** and **Scott Neal**, respectively the Mayor and City Manager, of the **City of Edina**, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

Notary Public

DEVELOPER:
EDEN AVENUE GROUP, LLC

By: _____
 _____ [print name]
 Its _____ [title]

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of **Eden Avenue Group, LLC**, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

DRAFTED BY:
CAMPBELL KNUTSON
Professional Association
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, MN 55121
Telephone: 651-452-5000
DSK

EXHIBIT A

IRREVOCABLE LETTER OF CREDIT

No. _____
Date: _____

TO: City of Edina
4801 West 50th Street
Edina, Minnesota 55424-1330

Dear Sir or Madam:

We hereby issue, for the account of _____ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$_____, available to you by your draft drawn on sight on the undersigned bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 2_____, of _____ (Name of Bank) _____";
- b) Be signed by the City Manager or Finance Director of the City of Edina.
- c) Be presented for payment at _____ (Address of Bank) _____, on or before 4:00 p.m. on November 30, 2_____.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Edina Finance Director that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: Edina City Manager, Edina City Hall, 4801 West 50th Street Edina, MN 55424-1330, and is actually received by the City Manager at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: _____
Its _____

**FEE OWNER CONSENT
TO
SITE IMPROVEMENT PERFORMANCE AGREEMENT**

EDEN VENTURES, LLC, a Minnesota limited liability company, fee owner of the Subject Property, the development of which is governed by the foregoing Site Improvement Performance Agreement, affirms and consents to the provisions thereof and agrees to be bound by the provisions as the same may apply to the Subject Property.

Dated this ____ day of _____, 2021.

EDEN VENTURES, LLC

By: _____
Ned Abdul-Hajj, Its Manager

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by **Ned Abdul-Hajj**, the Manager of **Eden Ventures, LLC**, a Minnesota limited liability company, on behalf of the entity.

Notary Public

DRAFTED BY:
CAMPBELL, KNUTSON
Professional Association
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121
Telephone: (651) 452-5000
DSK

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