

4<sup>th</sup> Draft – 5/12/2016

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**CONTRACT**  
**FOR**  
**PRIVATE DEVELOPMENT**  
**By and Between**  
**CITY OF NORTHFIELD**  
**and**  
**BIG TEN RESIDENTIAL, LLC**

| **Dated as of: 5-12 \_\_\_\_\_, 2016**

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## CONTRACT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT, made as of \_\_\_\_\_, 2016, by and between the CITY OF NORTHFIELD, a Minnesota municipal corporation (the "City") and BIG TEN RESIDENTIAL, 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, and in this connection created the Master Development District (hereinafter referred to as the "Project") in an area (hereinafter referred to as the "Project Area") located in the City and the Riverfront Tax Increment Financing District (the "TIF District") within the Project Area, all pursuant to Minnesota Statutes, Sections 469.124 to 469.134 (the "Act") and Minnesota Statutes, Sections 469.174 to 469.179; and

WHEREAS, pursuant to the Act, the City is authorized to undertake certain activities to prepare such real property for development by private enterprise; and

WHEREAS, in order to achieve the objectives of the Development Plan for the Project the City is prepared to pay certain public development costs of the Project, in order to bring about development in accordance with the plans for the Project and the TIF District; and

WHEREAS, the City previously entered into a contract for private development with a prior developer regarding a portion of the TIF District; and

WHEREAS, some of the property in the TIF District was developed by the prior developer, but the portion described as the "Development Property" in Schedule A was not developed; and

WHEREAS, the Development Property consists of: the Bank Parcels (which were obtained by Highland Bank through foreclosure are now owned by an entity related to the Bank); and the City Parcels (which are owned by the City); and

WHEREAS, the City and the Bank entered into a Supplemental Agreement Regarding Crossings Development, dated as of June 15, 2010 (the "Supplemental Agreement"), describing those parties' respective rights and responsibilities regarding the Development Property and certain other property in the TIF District; and

WHEREAS, the Developer has proposed to construct a hotel on one portion of the Development Property, and to develop the remainder of the Development Property for other commercial uses; and

WHEREAS, City has now determined to enter into this Agreement with the Developer to facilitate development of the Development Property, consistent with the City's long-term goals for the TIF District and the Project; 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 and 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 promises 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 Minnesota Statutes, Sections 469.124 to 469.134, as amended.

“Additional Assistance” has the meaning provided in Section 7.5.

“Additional City Lot” means the property so described on Schedule A.

“Affiliate” means with respect to entity (a) any corporation, partnership, limited liability company or other business entity or person controlling, controlled by or under common control with the entity, and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words “controlling”, “controlled by” and “under common control with” shall mean, with respect to any corporation, partnership, limited liability company or other business entity, the ownership of fifty percent or more of the voting interests in such entity or possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether through ownership of voting securities or by contract or otherwise.

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

“Assessment Agreement” means the Assessment Agreement entered into pursuant to Section 6.3 hereof.

“Available Tax Increment” means on any payment date under the TIF Note, 95 percent of the Tax Increments received by the City from the County pursuant to the TIF Act in the six-month period before such payment date.

“Bank” means Highland Bank, a Minnesota banking corporation.

“Bank Parcels” means the parcels so described on Schedule A.

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

“Byzantine Parcel” means the property so described on Schedule A.

“City Representative” means the City Administrator or any person designated in writing by the City Administrator to serve as City Representative.

“City” means the City of Northfield.

“City Parcels” means all the parcels so described on Schedule A.

“Certificate of Commencement” means the certificate substantially the form of Schedule C, to be executed by the City pursuant to Section 4.4 of this Agreement.

“Certificate of Completion” means the certificate substantially the form of Schedule D, to be executed by the City pursuant to Section 4.4 of this Agreement.

“Closing” has the meaning provided in Section 3.2(b).

“Component” means any component of the Minimum Improvements as described in the definition of Minimum Improvements.

“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 by the Developer on the Development Property, including 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) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) 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 Rice, Minnesota.

“Developer” means Big Ten Residential, LLC, a Minnesota limited liability company, and any permitted successors and assigns of Developer.

“Development Plan” means the City’s Modified Master Development Program for the Master Development District as modified November 7, 2005 as it may be further modified.

“Development Property” means, collectively, the Hotel Property and the Future Commercial Property.

“EDA” means the Northfield Economic Development Authority.

“EDA Loan” has the meaning provided in Section 7.6 hereof.

“Event of Default” means an action by the Developer listed in Article IX of this Agreement.

“Future Commercial Improvements” means the construction on the Future Commercial Property of any commercial improvements that comply with the PUD and all City ordinances.

“Future Commercial Property” means the Property so described on Schedule A.

“Holder” means the owner of a Mortgage.



“Hotel Improvements” means the construction on the Hotel Property of an approximately 80-unit hotel, including underground parking with approximately 52 stalls; and the hotel must carry the Fairfield Inn & Suites brand.

“Hotel Property” means the property so described on Schedule A.

“Maturity Date” means the date that the TIF Note has all been paid in full, redeemed or prepaid, defeased or terminated in accordance with its terms.

“Minimum Improvements” means, collectively, the construction of the Hotel Improvements on the Hotel Property, and construction of the Future Commercial Improvements on the Future Commercial Property; each such separate improvement being a “Component” of the Minimum Improvements.

“Mortgage” means any mortgage made by the Developer or its Affiliate which is secured, in whole or in part, with the Development Property.

“Parcel” means any parcel of the Development Property.

“Project” means the City’s Master Development District created under the Act.

“Project Area” means the real property located within the boundaries of the Project.

“PUD” means the planned unit development for the property that includes the Development Property, as approved by the City Council on \_\_\_\_\_, 2005.

“Remnant Lot” means the property so described on Schedule A.

“Series 2006 TIF Note” means the \$2,123,412 Amended and Restated Taxable Tax Increment Revenue Note (The Crossings Project), Series 2006 issued by the City.

“State” means the State of Minnesota.

“Supplemental Agreement” means the Supplemental Agreement Regarding Crossings Development between the City and the Bank, dated June 10, 2010.

“Tax Increment” means that portion of the real property taxes that is allocable to the Development Property and that 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 (4) of the Tax Increment Act. Tax Increment is allocated to the Development Property by determining the captured tax capacity of the Development Property (using the original and current-year tax capacity of each Parcel of the Development Property), and the percentage that such captured tax capacity of the Development Property bears to the total captured tax capacity of the TIF District, excluding parcels on which taxes are delinquent (the “Developer’s Percentage”). The Tax Increments allocated by the City to the Development Property will be equal to the tax increment received by the City from the TIF District multiplied by the Developer’s Percentage.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 to 469.179, as amended.

“Tax Increment District” or “TIF District” means the City’s Riverfront Tax Increment Financing District.

“Tax Increment Plan” or “TIF Plan” means the City’s Tax Increment Financing Plan for the Riverfront Tax Increment Financing District, as approved November 7, 2005 and as it may be amended.

“Tax Official” means any County 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.

“Transfer” has the meaning provided in Section 8.2(a).

“TIF Note” means the Taxable Tax Increment Revenue Note, Series 2016 to be issued by the City as described in Section 7.4 hereof.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, 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 or any other delays beyond the reasonable control of the party seeking to be excused. Unavoidable Delays shall not include delays in the Developer’s obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 of this Agreement, unless (a) Developer has timely filed any application and materials required by the City for such permit or approvals, and (b) the delay is beyond the reasonable control of the Developer. The number of days attributable to Unavoidable Delays will be added to any required deadline to which Unavoidable Delays applies under this Agreement.

## 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 their part herein contained:

(a) The City is a home rule charter city duly organized and existing under the laws of the State. Under the provisions of its charter and the laws of the State the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The activities of the City are undertaken for the purpose of fostering the redevelopment an area originally occupied by substandard and obsolete buildings, which together will revitalize this portion of the Project, increase tax base, and increase employment opportunities.

(c) The City has on May 17, 2016 held a duly-noticed public hearing regarding conveyance of the City Parcels to Developer as described in Article III of this Agreement; and on the same date held a duly-noticed public hearing regarding the business subsidy described in Section 7.7 of this Agreement; and duly authorized the execution, delivery and performance of this Agreement by action of its City Council on May 17, 2016.

(d) The City will use its best efforts to facilitate development of the Minimum Improvements, including but not limited to cooperating with the Developer in obtaining necessary administrative, environmental and land use approvals.

(e) The City has received no notice or communication arising under law or 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 or any other local, state or federal laws or regulations. The City is aware of no facts the existence of which would cause it to be, by virtue of the execution of this Agreement and performance of its obligations herein, in violation of any local, state or federal development or environmental law, regulation or review procedure.

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

(a) The Developer is a limited liability company duly organized and in good standing under the laws of the State, is not in violation of any provisions of its organizing documents or (to the best of its knowledge) the laws of the State, 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 officers.

(b) If the conditions precedent to construction occur, and subject to the terms, covenants and conditions herein, the Developer will construct, operate and maintain, or cause to be constructed, operated and maintained, the Minimum Improvements in accordance with the terms of this Agreement, the Development Plan and all applicable local, state and federal laws and

regulations (including, but not limited to, applicable environmental, zoning, building code 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 (other than those notices or communications of which the City is aware). 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, 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) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) The proposed development by the Developer hereunder would not occur but for the tax increment financing assistance being provided by the City hereunder.

(g) The Developer shall promptly advise City in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting Developer or its business which may delay or require changes in construction of the Minimum Improvements.

### ARTICLE III

#### Land Acquisition and Conveyance

Section 3.1. Status of Development Property. (a) The Development Property consists of Lots 4, 5 and 6, Block 1 in The Crossing of Northfield, as described in Schedule A. Of that Development Property, the City owns the Remnant Lot (which is a portion of Lot 6) and the Additional City Lot (which is a portion of Lots 4, 5 and 6); all of which are described in Schedule A and are referred to together as the "City Parcels." Northfield Lots, LLC ("Northfield Lots"), an entity related to the Bank, owns the remainder of the Development Property, described in Schedule A and referred to as the "Bank Parcels." Developer has entered into a purchase agreement with Northfield Lots to acquire the Bank Parcels.

(b) The Developer shall acquire the Bank Parcels from the Bank in accordance with the terms of the purchase agreement with Northfield Lots and shall close on such purchase by no later than July 11, 2016. For the purposes of Section 4(a) of the Supplemental Agreement, the City consents to such purchase. Upon acquisition of the Bank Parcels by the Developer, the City will cooperate with and grant the Developer a temporary easement for ingress and egress purposes over that portion of the Additional City Lot which provides access for Lot 6 to Second Street West, such easement to terminate upon the Closing under Section 3.2. The City shall prepare the appropriate easement document, subject to review and approval by Developer.

(c) The City shall convey the City Parcels to the Developer as further described in Section 3.2 of this Agreement.

(d) The parties agree and understand that the Hotel Property will consist of Lot 6; and that the Future Commercial Property will consist of Lots 4 and 5; all as described in Schedule A.

(e) In order to make redevelopment of the Development Property financially feasible, the City will convey the City Parcels for less than fair market value as described in Section 3.2; and the City will reimburse Developer for a portion of the costs of acquiring the Bank Parcels through issuance of the TIF Note under Section 7.4.

Section 3.2. Conditions of Conveyance; Purchase Price. (a) The City shall convey title to and possession of the City Parcels to the Developer by quit claim deed. The deed for the Remnant Lot shall be substantially in the form of Schedule B. In addition, if requested by Developer's title company the City will execute a quit claim deed for Lots 4, 5 and 6, because the Additional City Lot contains portions of all those lots.

(b) The parties agree and understand that the City intends to retain a right of reverter to Lot 5. To effectuate that goal, at Closing the Developer will give the City a quit claim deed to Lot 5, and the City will re-convey Lot 5 to the Developer by a deed substantially in the form attached as Schedule B. The deed to the Developer shall contain a provision that in the event of reverter, the City would cooperate with the Developer (at no expense to the City) to provide the Developer with an easement for ingress and egress purposes over that portion of Lot 5 which provides access for Lot 6 to Second Street West.

(c) The deed from the City to the Developer for the Remnant Lot shall include any and all interest which the City has in the Remnant Lot and the temporary easement for construction purposes which is located adjacent to the Remnant Lot. Said temporary easement was obtained by the City as part of the same condemnation proceeding in which the City obtained title to the Remnant Lot. Said temporary easement is legally described in the Final Certificate for condemnation proceedings recorded as Document Number 663764 in the Office of the Rice County Recorder. In addition, the Remnant Lot will be encumbered by a public easement in favor of the City for trail purposes, covering approximately 10 feet along the eastern boundary of the Remnant Lot, provided that the easement will be designed to be compatible with the Hotel Improvements.

(d) The City's obligation to convey the City Parcels to the Developer and Developer's obligation to close are subject to satisfaction of the following terms and conditions:

(i) the Developer having closed on acquisition of the Bank Parcels, and the Bank having executed the consent form attached to this Agreement, evidencing the Banks' consent to Developer's acquisition of the City Parcels in accordance with Section 4(a) of the Supplemental Agreement;

(ii) the Developer having reviewed and approved title to the City Parcels, as the case may be, as set forth in Section 3.4 and environmental conditions in accordance with Section 3.5;

(iii) the City having approved any easement agreements and joint maintenance agreements that the City reasonably requires Developer to enter in connection with the Development Property, which agreements must include, at a minimum, a provision entitling the City to bring an action as a third party beneficiary or otherwise to enforce the agreement, and a provision prohibiting amendment of such agreements without prior written approval of the City; provided that the City's approval of the initial agreements and any amendments may not be unreasonably withheld;

(iv) the parties having agreed upon the terms of the trail easement on the Remnant Lot as described in paragraph (c) above, and having executed an easement agreement;

(v) the City having approved Developer's financing in accordance with Article VII;

(vi) the parties and the County assessor having executed the Assessment Agreement regarding the Hotel Property in accordance with Section 6.3 hereof;

(vii) there is no uncured Event of Default under this Agreement.

| The conditions described in ~~clause (i)~~ and clauses (iii) through (vii) above are for the benefit of the City, and may be waived or modified by the City at its discretion. The conditions described in clause (ii) are for the benefit of the Developer, and may be waived or modified by the Developer at its discretion.

(e) The closing on conveyance of the City Parcels from the City to the Developer (the "Closing") shall occur promptly upon satisfaction of the conditions in clause (d) but no later than

the later of April 30, 2017 or such other date as the parties hereto agree in writing. If the conditions to such Closing have not been satisfied by April 30, 2017, then either party may terminate this agreement upon written notice to the other.

(f) The purchase price to be paid to the City by the Developer in exchange for the conveyance of the City Parcels shall be \$1.00; provided that the Developer agrees and understands that such conveyance represents a business subsidy as further described in Section 7.7 hereof.

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 location in the City as reasonably designated by 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; title company closing fees, the cost of a title insurance policy premium. The City represents that there are not, and will not be as of each Closing, any outstanding levied or pending special assessments against the City Parcels, and that the City Parcels are exempt from real property taxes for taxes payable in 2016.

Section 3.4. Title. (a) As soon as reasonably practical after the date of this Agreement, the Developer shall obtain a commitment for the issuance of a policy of title insurance for the City Parcels from the title insurance company of ~~its~~<sup>its</sup> choice. The Developer shall have twenty (20) days from the date of its receipt of such commitment to review the state of title to the City Parcels and to provide the City with a list of written objections to such title. Upon receipt of the Developer's list of written objections (which may include inability to secure endorsements deemed necessary or appropriate on terms acceptable to Developer), the City shall proceed in good faith and with all due diligence to attempt to cure the objections made by the Developer. Promptly after expiration of the Developer's 20-day review period, or after the date that any title 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 Section 3.2 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, the Developer may (i) by the giving of written notice to the City terminate this Agreement, upon the receipt of which this Agreement shall be null and void and neither party shall have any liability hereunder, or (ii) by written notice to the City request that the City acquire any interest encumbering the subject property, upon receipt of which the City shall promptly commence to acquire such interest by negotiation, subject to the Developer's obligation to pay when due all costs in connection with such acquisition. Except as otherwise provided in clause (ii) of this paragraph, 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 the deed is delivered to the Developer.

(c) From the date of Closing and until the City approves financing for Future Commercial Improvements on Lot 5 as described in Section 7.2, the Developer shall take no actions to encumber title to Lot 5 of the City Parcels.

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 Development Property or the fitness of the Development Property for construction of the Hotel Improvements or any other purpose for which the Developer may make use of such property, and that the assistance provided to the Developer under this Agreement neither implies any responsibility by the City for any contamination of the Development Property nor imposes any obligation on such parties to participate in any cleanup of the Development Property.

(b) Upon Developer's request, the City will deliver to Developer the following documents to the extent they are available to the City: (i) reports (whether in draft or final form) of any environmental inspections, audits or examinations of the City Parcels; (ii) reports of all engineering tests, inspections and studies of the City Parcels (iii) reports of soil tests of the City Parcels (all such records, plans, permits and reports being hereafter referred to as the "Existing Tests").

(c) Before Closing, the Developer shall have determined in its reasonable judgment that the physical condition of the City Parcels and the matters and conditions disclosed by any Existing Tests and any environmental, soils, engineering or other assessments, surveys, reports, investigations and tests received or performed by Developer with respect thereto (collectively, the "Additional Tests") are suitable for construction of the Hotel Improvements on Lot 6, and for construction of any Future Commercial Development on Lots 4 and 5. The City shall provide Developer and its agents and representatives access to the City Parcels at reasonable times and in a reasonable manner, for purposes of completing such Additional Tests.

(d) Without limiting its obligations under Section 8.3 of this Agreement the Developer further agrees that it will indemnify, defend, and hold harmless the EDA, the City, and their governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants existing on or in the Development Property, 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 or EDA under State or federal law, including without limitation Minnesota Statutes Sections 466.04 and 604.02.



## ARTICLE IV

### **Construction of Minimum Improvements, and Public Improvements**

Section 4.1. Construction of Improvements. The Developer agrees that it will construct or cause to be constructed the Minimum Improvements on the Development Property in accordance with the approved Construction Plans and at all times prior to the Maturity Date will operate and maintain, preserve and keep the Minimum Improvements or cause such improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition and in compliance with all State and local laws. The City shall have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans. (a) *Construction Plans.* Before commencement of construction of each Component of the Minimum Improvements, the Developer shall submit to the City Construction Plans. The Construction Plans shall provide for the construction of the relevant improvements and shall be in material conformity with the Development Plan, the PUD, this Agreement, and all applicable State and local laws and regulations. The City Representative will approve the Construction Plans in writing if: (i) the Construction Plans materially conform to the terms and conditions of this Agreement; (ii) the Construction Plans materially conform to the goals and objectives of the Development Plan and the PUD; (iii) the Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the relevant improvements; and (v) no Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans and shall be conclusive evidence that Developer has satisfied its obligations under this Section. No approval by the City Representative 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 Representative 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 Representative, 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 Representative 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 City Representative's approval shall not be unreasonably withheld, delayed or conditioned. 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.

(c) If the Developer desires to make any material change in the Construction Plans after their 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 of this Agreement 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 30 days after receipt of the notice of such change. The City's approval of any such change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction. (a) *Minimum Improvements.* Subject to Unavoidable Delays, the Developer shall commence and complete construction of each Component of the Minimum Improvements in accordance with the following schedule:

<b>Component</b>	<b>Commencement</b>	<b>Completion</b>
Hotel Improvements*	April 30, 2017	April 30, 2018
Future Commercial Improvements on Lot 5	December 31, 2018	December 31, 2019
Future Commercial Improvements on Lot 4	No required date	No required date

\*The Developer will make reasonable and good faith efforts to commence construction of the Hotel Improvements in the fall of 2016 and complete construction of the Hotel Improvements in the late summer or fall of 2017. However, in the event the Developer is unable to commence construction of the Hotel Improvements in the fall of 2016, the Developer (in its sole discretion) shall have the right to delay commencement of construction until the spring of 2017, provided that the construction commences on or before April 30, 2017. The purpose for delaying construction until the spring of 2017, if necessary, is to avoid additional costs of commencing construction during the winter months and to avoid opening the hotel in the winter months during which time the demand for hotel rooms in Northfield is generally the lowest.

(b) *General Requirements.* 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 promptly begin and diligently proceed 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 of this Agreement. After the date of this Agreement and 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.

(c) *Vacating or Confining Drainage and Utility Easements on Lots 4, 5 and 6.* The parties acknowledge that as part of the plat for THE CROSSING OF NORTHFIELD, a 50-foot wide drainage and utility easement was dedicated to the public over portions of Lot 4 and Lot 6 and a 30-foot wide drainage and utility easement was dedicated to the public over portions of Lot 5 and Lot 6. These easements, as currently located, would make viable commercial development on Lots 4 and 5 unreasonably difficult. The City hereby agrees to cooperate with the Developer

to vacate, confine or relocate said easements, as appropriate, to allow for the Future Commercial Improvements on Lots 4 and 5 as described in this Agreement.

Section 4.4. Certificates of Commencement and Completion. (a) Promptly after completion of each Component of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements or relevant Component (including the dates for beginning and completion thereof), the City Representative will furnish the Developer with a Certificate shown as Schedule C. 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) Promptly after commencement of the Future Commercial Improvements on Lot 5 of the Future Commercial Property, the City Representative will furnish the Developer with a Certificate shown as Schedule D. 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 Future Commercial Improvements or any part thereof.

(c) If the City Representative shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4 of this Agreement, the City Representative shall, within fifteen (15) 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 commence or complete the relevant Component of 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 City, for the Developer to take or perform in order to obtain such certification.

(d) The construction of the Future Minimum Improvements on Lot 5 shall be deemed to be commenced when visible improvements to the building have begun (such as footings or foundations), as determined by the City Representative.

(e) The construction of each Component of the Minimum Improvements shall be deemed to be complete when the City has issued a final certificate of occupancy for all improvements making up the relevant Component.

Section 4.5 City Maintenance of Outlot A. The City acknowledges that the Developer, in undertaking the Hotel Improvements, is making a substantial investment in the Project Area, and the proposed development of the Development Property is consistent with the City's long-term goals for the property. The City also acknowledges that it owns the parcel of property legally described as Outlot A, THE CROSSING OF NORTHFIELD, Rice County, Minnesota, which is located between Lot 6 and the Cannon River. In order to help facilitate the development and future success of the Development Property, the City agrees that it will use reasonable efforts to maintain Outlot A by (a) controlling noxious weeds, (b) regularly mowing grass and vegetation during the growing season; and (c) removing debris on the property deposited by the Cannon River. The City shall perform such maintenance activities during ~~the period~~ the period from completion of construction of the Hotel Improvements through the earlier of the Maturity Date, or the date the City begins construction of public trail across Outlot A.

## ARTICLE V

### Insurance and Condemnation

Section 5.1. Insurance. (a) The Developer or its contractor 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.

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Protective Liability 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

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

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity 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.

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer or its tenant, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer or its tenant may 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 or its tenant 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 or its tenant 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 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) In lieu of its obligation to reconstruct the Minimum Improvements or any Component thereof as set forth in this Section, the Developer shall have the option of paying to the City an amount that, in the opinion of the City and its fiscal consultant, is sufficient to pay or redeem the outstanding principal and accrued interest on the TIF Note.

(f) The Developer and the City agree that all of the insurance provisions set forth in this Article V shall terminate upon the termination of this Agreement.

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.

## ARTICLE VI

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### Tax Increment; 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 redevelopment described in this agreement through issuance of the TIF Note. The Developer understands that the Tax Increments pledged to the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, until the Maturity Date the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, ~~that 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. 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 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. The parties agree and understand that upon a permitted Transfer under Section 8.3, the transferee assumes the obligation under this Section as to the property transferred, and the original Developer is released.

Section 6.2. Reduction of Taxes. (a) The Developer agrees that prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (A) willful destruction of the Minimum Improvements or any part thereof; (B) willful refusal to reconstruct damaged or destroyed property, except to the extent otherwise provided in Section 5.1(e); (C) subject to Section 6.3, apply for a deferral or abatement of property tax on the Development Property pursuant to any law; or (D) convey or transfer or allow conveyance or transfer of the Development Property to any entity that is exempt from payment of real property taxes under State law (other than any portion thereof dedicated or conveyed to the City in accordance with this Agreement).

(b) The Developer (or any successor) may use any administrative or legal process provided under State law to seek reduction of market value of any Parcel of the Development Property and Minimum Improvements thereon for ad valorem tax purposes, provided that (i) promptly upon filing any petition or claim with any Tax Official, the Developer shall provide written notice of such action to the City; and (ii) if Developer (or any successor) files such a petition or claim, the City will withhold payment of any Available Tax Increment (without interest) that is attributable to the relevant Parcel in the tax-payable year that is the subject of the petition or claim, until the petition or claim is fully resolved such that the County has finally determined the amount of property taxes payable with respect to the relevant Parcel of the Development Property for that year.

Section 6.3. Assessment Agreement. (a) As a condition of Closing on sale of the City Parcels to Developer, the Developer shall, with the City, execute an Assessment Agreements pursuant to Minnesota Statutes, Section 469.177, subd. 8, specifying an assessor's minimum market value of \$3,760,000 for the Hotel Improvements and the Hotel Property. The Assessment Agreement will remain in effect for the period described in the Assessment Agreement.

(b) The Assessment Agreement shall be substantially in the form attached hereto as Schedule E. Nothing in the Assessment Agreement shall limit the discretion of the assessor to assign a market value to the property in excess of such assessor's minimum market value nor prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in such market value for property tax purposes; provided however, that (i) the Developer shall not seek a reduction of such market value below the assessor's minimum market value in any year so long as such Assessment Agreement shall remain in effect, and (ii) any petition to reduce the market value of Hotel Property is subject to the terms of Section 6.2(b) hereof.

## ARTICLE VII

### Financing

Section 7.1. Developer Financing for Hotel Improvements. (a) Before Closing on sale of the City Parcels, Developer shall submit to the City evidence that Developer has fully secured and closed on financing which, together with committed equity, is sufficient for the acquisition of the Bank Parcels and construction of the Hotel Improvements. At the City's sole discretion (determined by the City Administrator in consultation with the City's financial advisor) the City may accept commercially reasonable commitments for such financing if the financing is not actually closed as of the date of Closing under this Agreement.

(b) If the City Representative finds that the financing is closed or sufficiently committed and adequate in amount to provide for the undertakings described in paragraph (a), 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 ten (10) days from the date when the City is provided the evidence of financing. A failure by the City to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the City rejects the evidence of 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 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~~ 7.2 Developer Financing for Future Commercial Improvements on Lot 5. (a) Before commencement of construction of the Future Commercial Improvements on Lot 5, Developer shall submit to the City evidence that Developer has obtained commercially reasonable commitments for financing which, together with committed equity, is sufficient for the construction of those Future Commercial Improvements.

(b) If the City finds that the financing is sufficiently committed and adequate in amount to provide for the undertakings described in paragraph (a), 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 ten (10) days from the date when the City is provided the evidence of financing. A failure by the City to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the City rejects the evidence of 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 financing within ten (10) days after such rejection.

(c) Notwithstanding anything to the contrary in this Section, the Developer shall not encumber, or permit the encumbrance of, Lot 5 of the Future Development Property with a



Mortgage or any other encumbrance, prior to City approval of such financing in accordance with this Section.

Section 7.3. Subordination. In order to facilitate the Developer obtaining financing for the development of any Component 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; (ii) any subordination agreement must include the provision described in Section 7.1(c); (iii) the City will not subordinate the City's rights under the Assessment Agreement; and (iv) the City will subordinate the City's right of reverter as to the Remnant Lot under Sections 9.3 and 9.4 hereof, but will not subordinate the City's right of reverter as to Lot 5 until the City approves financing for improvements to that Parcel as described in Section 7.2.

Section 7.4. Issuance of TIF Note. (a) To finance reimbursement of a portion of Developer's cost of acquiring the Bank Parcels, the City shall issue and the Developer shall purchase the TIF Note in the maximum principal amount of \$987,500, with the terms, and substantially in the form, set forth in the Authorizing Resolution attached as Schedule F. The City and the Developer agree that the consideration from the Developer for the purchase of the TIF Note shall consist of the Developer's payment of the cost of acquiring the Bank Parcels in at least the principal amount of the TIF Note. The City shall deliver the TIF Note as soon as practicable after satisfaction of the following conditions:

(i) the Closing has occurred under Section 3.2 hereof;

(ii) Developer has submitted to the City a fully executed settlement statement from Developer's purchase of the Bank Parcels, showing that Developer paid an amount at least equal to the principal amount of the TIF Note;

(iii) the City has determined, in its sole discretion, that conditions have been met for release of prior pledge of the Available Tax Increment to the Series 2006 TIF Note; and

(iv) Developer delivers an investment letter regarding the TIF Note reasonably acceptable to the City.

The TIF Note will be dated as of delivery, and interest will accrue from the date of issue at the rate of 4.5% per annum. If the conditions for delivery of the TIF Note have not been met by July 11, 2016, the City's obligation to issue, and the Developer's right to receive the TIF Note and any payments of Available Tax Increment thereunder, shall terminate.

(c) 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 TIF Note will be sufficient to pay the principal of and interest on the TIF Note. Any 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. Developer expressly acknowledges that:

(i) Available Tax Increment from the Hotel Improvements alone is not expected to be sufficient to pay the full principal and interest on the TIF Note, and that even if both lots of the

Future Commercial Property Lots are fully ~~developed, developed~~; the Available Tax Increment may be insufficient to pay the full principal and interest on the TIF Note.

(ii) The TIF District includes properties other than the Development District, and the County remits Tax Increments to the City on the basis of the captured tax capacity of the entire TIF District. The City allocates tax increments to each Parcel of the Development Property as described in the definition of "Tax Increment." This allocation means that the amount of Available Tax Increment allocable to the Development Property could be less than the property taxes actually paid by the owner of such property on the captured tax capacity as a result of decreases in valuation of the other properties in the TIF District to a valuation that is less than that upon which the original tax capacity was based.

(iii) While the Available Tax Increment is pledged to the TIF Note on a superior basis to the Series 2006 TIF Note, any Available Tax Increments remaining after payment in full of the TIF Note remain pledged to the Series 2006 TIF Note.

Section 7.5. Additional Assistance. (a) As additional assistance to make development of the Hotel Improvements financially feasible, the City shall reimburse Developer for up to \$250,000 in costs related to the parking structure within the Hotel Improvements (referred to as the "Parking Improvements"). The City will make such payments from any legally available funds.

(b) The City shall disburse funds for the Parking Improvements upon satisfaction of the following conditions:

(i) the Parking Improvements are substantially complete, as determined by the City Administrator in consultation with the City building official;

(ii) Developer has submitted invoices or other similar evidence that it has incurred costs for the Parking Improvements in at the least the amount to be disbursed;

(iii) there is no uncured Event of Default under this Agreement.

Section 7.6. EDA Loan. (a) The parties agree and understand that Developer expects to obtain a loan from the EDA in the principal amount of \$250,000 (the "EDA Loan"), to finance certain additional costs of the Hotel Improvements. The terms of the EDA Loan will be negotiated by Developer and the EDA, but City agrees that it will cooperate with such efforts and take any actions necessary to facilitate the approval and implementation of the EDA Loan. The City hereby approves use of any EDA funds that the EDA determines are reasonable or necessary to finance the EDA Loan.

(b) The parties further agree and understand that the EDA Loan represents an additional business subsidy, which subsidy was considered at a public hearing held by the City (on behalf of both the City and the EDA) held on May 17, 2016. The Developer acknowledges that business subsidy agreement regarding the EDA Loan is incorporated in Section 7.7 of this Agreement, and that the EDA is expressly intended as a third-party beneficiary with regard to enforcement of Section 7.7 as it relates to the EDA Loan.

Section 7.7. Business Subsidy Agreement. The provisions of this Section constitute the “business subsidy agreement” for the purposes of the Business Subsidy Act.

(a) General Terms. The parties agree and represent to each other as follows:

(1) The subsidy provided to the Developer consists of:

(i) conveyance of the City Parcels for \$1.00 (Section 3.2) which represents a subsidy measured by the estimated market value of those Parcels. The City estimates that the market value of the City Parcels is \$267,700.

(ii) issuance of the TIF Note in the principal amount of \$987,500 (Section 7.4). The TIF Note is payable with Tax Increment from the TIF District, which is a redevelopment district.

(iii) Additional Assistance in the amount of \$250,000 (Section 7.5). The Council reserves the right to fund the Additional Assistance from any legally available funds; one possible source of funds is tax increments from the City’s Downtown Tax Increment Financing District, which is a redevelopment district.

(iv) the EDA Loan in the principal amount of \$250,000 (Section 7.6).

To the extent that any of the above forms of assistance could be characterized as a “grant,” ~~the~~ the City instead designates all such assistance as a forgivable loan, which loan is forgiven if all the goals described in subsection (3) of this paragraph are met, but is repayable if goals are not met under the terms of paragraph (c) of this Section.

(2) The public purposes of the subsidy are to help complete the redevelopment of the Development Property, thereby fulfilling the City’s goals when it created the TIF District in 2005; increase tax base; and increase employment opportunities in the City.

(3) The goals for the subsidy are: timely completion of the Hotel Improvements; operating the Hotel Improvements for the period described in clause (6) below; and creating the jobs described in paragraph (b) of this Section. The City may, after a public hearing, extend the deadlines for these respective goals by up to one year, provided that nothing in this section will be construed to limit the City’s legislative discretion regarding this matter.

(4) If the goals described in clause (3) are not met, the Developer must make the payments to the City described in Section 7.7(c).

(5) The subsidy is needed because the Developer has submitted, and the City has reviewed, financial information demonstrating that construction of the Hotel Improvements is financially infeasible without the assistance described in this Agreement.

(6) The Developer or its permitted successors and assigns must continue

operating the Hotel Improvements as a hotel for at least five years after the hotel is completed (as specified in the Certificate of Completion). The hotel will be considered to be “operating” during any calendar month when it is open for business, and in compliance with State and local laws, during at least two weeks of that month.

(7) The Developer does not have a parent corporation.

(8) Other than the EDA Loan, Developer does not expect to receive financial assistance from any other “grantor” as defined in the Business Subsidy Act, in connection with any portion of the Minimum Improvements.

(b) Job and Wage Goals. The “Benefit Date” is the earlier of (i) the date the Hotel Improvements are occupied for business, or (ii) the date of substantial completion of the Hotel Improvements (as confirmed by the Certificate of Completion). Within two years after the Benefit Date (the “Job Creation Date”), the Developer shall create at least 5 Full-Time Equivalent Jobs, each of which pays a Qualified Wage. “Full-Time Equivalent Jobs” are any combination of full and part-time jobs that together represent at least 1,750 hours of work annually. A “Qualified Wage” is an hourly wage that is the greater of (i) 100 percent of the median hourly wage in Rice County for the hotel industry (NAICS Code 721110), and (ii) hourly wages and health benefits that, when annualized assuming full-time work, total at least the rate of the 110 percent of the poverty level for a family of four. The Qualified Wage will be based on the data that is effective as of the Job Creation Date. If the required ~~number of jobs, paying a Qualified Wage, are~~ number of jobs, paying a Qualified Wage, is created by the Job Creation Date, then such requirement shall be satisfied and Developer shall have no further obligation with respect to creation or maintenance of jobs or wages.

(c) Remedies. If the Developer fails to meet the goals described in Section 7.7(a)(3), and subject to the notice and cure provisions of Article IX, the Developer shall repay (or accept reduction of) the aggregate business subsidy as follows:

(i) If the Developer fails to timely create the required number of jobs at a Qualified Wage, all forms of subsidy are reduced by a fraction calculated as follows: 5, less the number of jobs with a Qualified Wage that were actually created, divided by 5. The principal amount of the TIF Note will be reduced by that fraction, and the Developer must repay to the City that fraction of any prior payments on the TIF Note. In addition, the Developer must repay to the City that fraction of the Additional TIF Assistance, and must repay to the EDA that fraction of the principal amount of the EDA Loan. All amounts to be repaid shall include interest at the rate specified in Section 119J.994, subd. 6 of the Business Subsidy Act, accrued from the date the Developer received the subsidy to the date of repayment; provided that if the interest rate on the EDA Loan exceeds the cited statutory rate, any EDA Loan repayment shall be at the stated rate in the EDA Loan documents.

(ii) If Developer fails to continue operating the Hotel Improvements for the five-year period described in Section 7.7(a)(3), all forms of subsidy are reduced by a fraction described as follows: 60, less the number of months during which the Hotel Improvements are operated as a hotel, divided by 60. The principal amount of the TIF Note will be reduced by that fraction, and the Developer must repay to the City that fraction of any prior payments on the TIF Note. In addition, the Developer must repay to the City that fraction of the Additional TIF Assistance, and

shall repay to the EDA that fraction of the principal amount of the EDA Loan. Interest shall accrue under the terms and at the rate as described in clause (i) above.

(iii) If Developer makes a payment under clause (i), and then is required to make a subsequent payment under clause (ii) because of a later failure, the prior payments will be credited against the later repayment obligation.

Nothing in this Section shall be construed to limit the City's remedies under Article IX hereof. In addition to the remedy described in this Section and any other remedy available to the City for failure to meet the goals stated in Section 7.7(a)(3), the Developer agrees and understands that it may not receive a business subsidy from the City, EDA or any grantor (as defined in the Business Subsidy Act) for a period of five years from the date of the failure or until the Developer satisfies its repayment obligation under this Section, whichever occurs first.

(d) Reports. The Developer must submit to the City a written report regarding business subsidy goals and results by no later than March 1 of each year, commencing on the March 1 immediately following completion of the Hotel Improvements and continuing until the later of (i) the date the goals stated Section 7.7 (a)(3) are met; (ii) thirty (30) days after expiration of the five-year period described in Section 7.7(a)(6); or (iii) if the goals are not met, the date the subsidy is repaid in accordance with Section 7.7(c). The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The City will provide information to the Developer regarding the required forms. If the Developer fails to timely file any report required under this Section, the City will mail the Developer a warning within one week after the required filing date. If, after fourteen (14) days of the postmarked date of the warning, the Developer fails to provide a report, the Developer must pay to the City a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this Section is \$1,000. Such penalty for failure to file reports is in addition to any other remedy for an Event of Default under this Agreement.

Section 7.8. Future Assistance. The parties agree and understand that Developer also owns the parcel known as the "Byzantine Parcel" (as described in Schedule A), which parcel is also within the TIF District. While that parcel is not part of the Development Property, the Developer hopes to develop it for commercial use at a future date, and such development would further the City's long-term goals for the TIF District as well. Under current law, the City's ability to enter into new contracts or issue new obligations payable with tax increments from the TIF District expires on July 12, 2016 (the end of the ten-year period under Section 469.1763, subd. 3(c) of the TIF Act). However, as of the date of this Agreement, the Minnesota legislature was considering special legislation that, if adopted, would extend the time period for entering into new contracts and obligations payable with tax increment from the TIF District by up to three years. If such legislation becomes law in the 2016 legislation session, the City agrees to negotiate in good faith with Developer regarding future tax increment assistance from the TIF District to facilitate development of the Byzantine Parcel, to the extent permissible under the special law and the TIF Act. Any such assistance is subject to the City's determination that the assistance is reasonable necessary to make the proposed development feasible, and such assistance will constitute an additional business subsidy, subject to compliance with the Business Subsidy Act and a new business subsidy agreement, and subject to the TIF Act in effect at the time the assistance is negotiated.

Section 7.9. Payment of Administrative Costs. The Developer is responsible to pay all reasonable out of pocket costs for legal and financial advising services incurred by the City that are attributable to or incurred in connection with the negotiation and preparation of this Agreement and other documents and agreements in connection with the development contemplated hereunder (collectively, "Administrative Costs"). Such obligation includes Administrative Costs incurred before the date of this Agreement, and continues through the Maturity Date or termination of this Agreement. Administrative Costs shall be evidenced by invoices, statements or other reasonable written evidence of the costs incurred by the City, copies of which will be provided to the Developer upon request. Developer shall pay any Administrative Costs within 20 days after receipt of an invoice therefore; provided that any amount deposited by Developer with the City for such purposes shall be applied to pay such costs first. Upon termination of this Agreement in accordance with its terms, Developer remains obligated to pay Administrative Costs incurred as of the effective date of termination.

## ARTICLE VIII

### **Prohibitions Against Assignment and Transfer; Indemnification**

Section 8.1. Representation as to Development. The Developer represents and agrees that its purchase of the Development Property, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of development of the Development Property and not for speculation in land holding.

Section 8.2. Prohibition Against Developer or Developer's Transfer of Property and Assignment of Agreement. The Developer represents and agrees that until the Maturity Date:

(a) Except as specifically described in this Agreement, 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, or 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, to any person or entity (collectively, a "Transfer"), without the prior written approval of the Council. Any such Transfer is subject to the provisions of this Section. The term "Transfer" does not include (i) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Developer or any successor in interest to the Development Property or to construct the Minimum Improvements or component thereof, (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Minimum Improvements, (iii) any sale, conveyance, or transfer in any form to any Affiliate, or (iv) any change in ownership of the Developer so long as the identity of the parties in control of Developer do not change..

(b) If the Developer seeks to effect a Transfer, the City shall be entitled to require as conditions to such Transfer that:

(1) 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; and

(2) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable in the public land records of Rice County, Minnesota, 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, has not, for whatever reason, assumed such obligations or so agreed, 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, the Minimum Improvements, 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 Development Property 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 Development Property, from any of its obligations with respect thereto.

(3) 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.

(c) If the conditions described in paragraph (b) are satisfied, then the Transfer will be approved and the Developer shall be released from its obligation under this Agreement, as to the portion of the Development Property that is transferred, assigned, or otherwise conveyed, unless the parties mutually agree otherwise. The City will review and respond to a request for Transfer within 30 days after receipt of a written request. Notwithstanding anything to the contrary herein, any Transfer that releases the Developer from its obligations under this Agreement (or any portion thereof) shall be approved by the City's City Council. If the Developer remains fully bound under this Agreement notwithstanding the Transfer, as documented in the transfer instrument, the Transfer may be approved by the City Representative. The provisions of this paragraph (c) apply to all subsequent transferors.

(d) The parties agree and understand that Developer intends to assign its interest in the Hotel Property, and its obligations under this Agreement that relate to the Hotel Property and the Hotel Improvements, to an entity called Northfield Hotel Properties, LP ("Northfield Hotel"). To effectuate that transfer, Developer must submit to the City Representative an assignment and assumption agreement that allocates to Northfield Hotel all the Developer's obligations under this agreement that relate to the Hotel Improvements, including without limitation the business subsidy provisions in Section 7.7 of this Agreement. The City Representative, in consultation with the City's legal counsel, shall review the assignment and assumption agreement, and upon his or her approval, and execution of the agreement by the Developer and Northfield Hotel, the Developer shall be released from the obligations transferred to Northfield Hotel, but shall remain obligated under all other provisions of this Agreement. The approval of the City Representative of the assignment and assumption agreement shall not be unreasonably withheld. The transfer described in this paragraph is not a "Transfer" subject to the other terms of this Article. The parties acknowledge that Developer may, at the same time, transfer ownership of the TIF Note to Northfield Hotel, which transfer is subject to the provisions regarding transfer in the TIF Note and the authorizing resolution. Developer acknowledges any transfer of any obligations under the Agreement to any other entity (including transfers to future owners of Lots 4 and 5 as described in paragraph (e) below), does not impair the City's remedies regarding the TIF Note under Section 9.2 hereof in the event of any default under the Agreement, regardless of whether the default is the responsibility of the Developer or any assignee.



(e) The parties further agree and understand that Developer intends to assign its interest in Lots 4 and 5 to separate entities at some time in the future as those lots are developed for commercial use. To effectuate such transfers, Developer must submit to the City Representative an assignment and assumption agreement that allocates to the new entity all the Developer's obligations under this Agreement that related to Lot 4 or Lot 5 (as the case may be) and the related Future Commercial Improvements. The City Representative, in consultation with the City's legal counsel, shall review the assignment and assumption agreement, and upon his or her approval, and execution of the agreement by the Developer and the assignee, the Developer shall be released from the obligations transferred to the new entity. The approval of the City Representative to the assignment and assumption agreement shall not be unreasonably withheld. The transfer described in this paragraph is not a "Transfer" subject to the other terms of this Article.

Section 8.3. Release and Indemnification Covenants. (a) Except for any ~~willful~~ willful or wanton misconduct or negligence of the following named parties, 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 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.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence 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, maintenance and operation of the Minimum Improvements.

(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, 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.

## 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):

(a) Failure by the Developer or City to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement, or any covenant, condition or agreement imposed as part of the City approval of the PUD.

(b) If, before issuance of the Certificate of Completion for all the Minimum Improvements, the Developer shall

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law; or

(ii) make an assignment for benefit of its creditors; or

(iii) admit in writing its inability to pay its debts generally as they become due; or

(iv) be adjudicated a bankrupt or insolvent.

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 (including without limitation suspending payments on the TIF Note) until it receives assurances that the defaulting party will cure its default and continue its performance under the Agreement;

(b) Upon default by Developer, cancel and rescind or terminate this Agreement, provided that the City may not terminate the TIF Note 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 commencement of construction of the Future Commercial Improvements on Lot 5:

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

(b) the Developer, subject to Unavoidable Delays, shall fail to commence construction of the Future Commercial Improvements on Lot 5 in conformity with this Agreement and such failure to commence construction is not cured within 90 days after written notice from the City to the Developer to do so; or

(c) the Developer fails to pay real estate taxes on any Parcel of the Development Property or any part thereof when due, or creates, suffers, assumes, or agrees to any encumbrance or lien on the parcel (except to the extent permitted by this Agreement), or shall suffer any levy or attachment to be made, or any materialmen'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) there is, in violation of the Agreement, any Transfer (as defined in Section 8.2 above) of any Parcel of the Development Property or any part thereof (other than leasehold and mortgage interests), 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 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

(e) the Developer fails to comply with any of its other covenants under this Agreement related to the Development Property 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:

(1) in the case of the breach described paragraph (a), to re-enter and take possession of the Remnant Lot;

(2) in the case of the breach described in paragraph (b), to re-enter and take possession of Lot 5; and

(3) in the case of any breach described in paragraphs (c), (d) or (e), to re-enter and take possession of either or both the Remnant Lot or Lot 5; provided however that if at the time of a breach described in paragraphs (c), (d) or (e), the Developer has commenced construction of the Hotel Improvements, then the City shall not have the right to re-enter and take possession of the Remnant Lot.

This Section gives the City the right to terminate (and revest in the City) the estate conveyed by the deed to the Developer (subject to leasehold interests and subject to mortgage interests to the extent the City has subordinated its interests to such mortgage interests), it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the Remnant Lot and Lot 5 to the Developer shall be made upon, and that the deed(s) shall contain a condition subsequent to the effect that in the event of any default on the part of the Developer 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 subdivisions, 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. The Developer shall cooperate with the City in taking any actions necessary to permit subdivision of any Parcel so as to effectuate reversion of title to the applicable lot as described in this Section. In the case of a breach which results in the City re-entering and taking possession of Lot 5, the City shall cooperate with the Developer (at no expense to the City) to provide the Developer with an easement for ingress and egress purposes over that portion of the Additional City Lot which provide access for Lot 6 to Second Street West. In the event no breach occurs hereunder to trigger the City right to re-enter and take possession of the Remnant Lot or Lot 5, as the case may be, then upon the failure of such condition to occur, the City (upon written request by the Developer) shall provide the Developer with a document in recordable form evidencing the fact that the City's right to re-enter and take possession of the applicable parcel has terminated.

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 Parcel 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 Parcel or part thereof in the Development Plan. During any time while the City has title to and/or possession of a Parcel obtained by reverter, the City will not disturb the rights of any tenants under any leases encumbering such Parcel. 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 County 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 reversion 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 amount actually invested by it in making any of the subject improvements on the Parcel or part thereof, less (2) any gains or income withdrawn or made by it from the Agreement or the Parcel.

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.

## 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 the Agreement, nor shall any such member, official, or employee participate in any decision relating to the 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 EDA or for any amount which may become due to the Developer or successor or on any obligations under the terms of the 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 the 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. The Developer agrees that, prior to the Maturity Date, the Developer, and such successors and assigns, shall devote the Development Property to the operation of the Minimum Improvements in accordance with this Agreement and 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 the 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 the 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 527 Professional Drive, Northfield, MN 55057, Attn: Brett D. Reese; and

(b) in the case of the City, is addressed to or delivered personally to the City at City Hall, 801 Washington Street, Northfield, MN 55057, Attn: City Administrator; and

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 Rice County recorder. The Developer shall pay all costs for recording.

Section 10.9. Minnesota Law. This Agreement will be construed in accordance with the laws of the State, and any claim arising from this Agreement will be adjudicated in the State.

Section 10.10. Disclaimer of Relationships. The Developer acknowledges that nothing contained in this Agreement nor any act by the City or the Developer shall be deemed or construed by the Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City and the Developer.

Section 10.11. Modifications. This Agreement may be modified solely through written amendments hereto executed by the Developer and the City.

Section 10.12. Records. The Developer acknowledges that it is subject to audit by the City and the State Auditor in accordance with Minnesota Statutes, Section 16C.05, subd. 5.

Section 10.13. Status of Supplemental Agreement. The parties agree and understand that this Agreement supersedes Section 4(a) of the Supplemental Agreement; and supersedes Section 4(d) of the Supplemental Agreement as it relates to Lots 4, 5 and 6. However, in all other respects, the Supplemental Agreement remains in full force and effect.

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

CITY OF NORTHFIELD

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Administrator

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF RICE         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_ and \_\_\_\_\_, the Mayor and City Administrator, respectively, of the City of Northfield, Minnesota, on behalf of the City.

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



BIG TEN RESIDENTIAL, LLC, a Minnesota  
limited liability company

By \_\_\_\_\_  
Brett D. Reese, its Chief Manager

STATE OF MINNESOTA    )  
                                  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016  
by Brett D. Reese, the Chief Manager of Big Ten Residential, a Minnesota limited liability  
company, on behalf of the company.

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

**CONSENT OF BANK**

The Bank hereby consents to the following portions of the forgoing Contract for Private Development between the City of Northfield and Name of Entity (the "Contract"):

- 1. All of the real estate transactions described in Article III.
- 2. All terms of Section 10.13; and the Bank expressly acknowledges that the Supplemental Agreement remains in full force and effect except as otherwise specified in Section 10.13.

Date: \_\_\_\_\_, 2016

HIGHLAND BANK,  
a Minnesota banking corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, the \_\_\_\_\_ of Highland Bank, a Minnesota banking corporation, on behalf of the bank.

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

**SCHEDULE A**  
**PROPERTY DESCRIPTIONS**

**SCHEDULE B**

**FORM OF QUIT CLAIM DEED  
[REMNANT LOT] [LOT 5]**

THIS INDENTURE, between the City of Northfield, Minnesota, a Minnesota municipal corporation (the “Grantor”), and Big Ten Residential, LLC, a Minnesota limited liability company (the “Grantee”).

WITNESSETH, that Grantor, in consideration of the sum of \$ \_\_\_\_\_ 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 Rice and State of Minnesota described as follows, to-wit (such tract or parcel of land is hereinafter referred to as the “Property”):

[insert legal description of Remnant Lot or Lot 5, as the case may be]

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging.

**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 \_\_\_\_\_, 2016 identified as “Contract for Private Development” (hereafter referred to as the “Agreement”), the provisions of which shall survive closing and delivery of this deed, and 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 leasing this Property or 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 Northfield, Minnesota, or for the refinancing of the same.

Promptly after [commencement and substantial completion, respectively, of the Hotel Improvements] [commencement of the Future Commercial Improvements on this land] 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 [commence and substantially complete the Hotel Improvements] [commence construction of the Future Commercial Improvements on this land].

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, Rice 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 commence or substantially complete the Minimum Improvements (as the case may be) 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 commencement 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.

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; 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:

(a) Provision of the ordinances, building and zoning laws of the City of Northfield and state and federal laws and regulations in so far as they affect this real estate.



**SCHEDULE C**

**CERTIFICATE OF COMPLETION REGARDING  
[HOTEL COMPONENT] [FUTURE COMMERCIAL IMPROVEMENTS ON LOT 4]  
[FUTURE COMMERCIAL IMPROVEMENTS ON LOT 5]**

The undersigned hereby certifies that Name of Entity (the “Developer”) has fully complied with its obligations under Articles III and IV of that document titled “Contract for Private Development,” dated \_\_\_\_\_, 2016 between the City of Northfield and the Developer (the “Contract”), with respect to construction of the [INSERT NAME OF RELEVANT COMPONENT] of the Minimum Improvements on [INSERT LEGAL DESCRIPTION OF THE RELEVANT PARCEL] in accordance with the Construction Plans, and that the Developer is released and forever discharged from its obligations to construct of that Component under Articles III and IV. [This certification further releases this Parcel from the City’s right of reverter as to this Parcel under Sections 9.3 and 9.4 of the Contract.]

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

CITY OF NORTHFIELD

By \_\_\_\_\_  
City Administrator

This instrument drafted by:

Kennedy & Graven, Chartered  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

**SCHEDULE D**

**CERTIFICATE OF COMMENCEMENT  
FUTURE COMMERCIAL IMPROVEMENT IMPROVMENTS ON LOT 5**

The undersigned hereby certifies that Name of Entity (the "Developer") has fully complied with its obligations under Articles III and IV of that document titled "Contract for Private Development," dated \_\_\_\_\_, 2016 between the City of Northfield and the Developer (the "Contract"), with respect to commence construction of the Future Commercial Improvements on Lot 5, Block 1, Crossing of Northfield, according to the recorded plat thereof, Rice County, Minnesota, in accordance with the Construction Plans, and that the Developer is released and forever discharged from its obligations to commence construction of the Future Commercial Improvements on this Parcel under Articles III and IV. This certification further releases Lot 5 from the City's right of reverter as to this Parcel under Sections 9.3 and 9.4 of the Contract.

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

CITY OF NORTHFIELD

By \_\_\_\_\_  
City Administrator

This instrument drafted by:

Kennedy & Graven, Chartered  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402



**SCHEDULE E**

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**ASSESSMENT AGREEMENT**

**and**

**ASSESSOR'S CERTIFICATION**

**By and Between**

**CITY OF NORTHFIELD, MINNESOTA**

**and**

**BIG TEN RESIDENTIAL, LLC**

---

This Document was drafted by:

KENNEDY & GRAVEN, Chartered  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402

## ASSESSMENT AGREEMENT

THIS ASSESSMENT AGREEMENT, dated as of \_\_\_\_\_, 2016, by and between the City of Northfield, Minnesota (the "City") and Big Ten Residential, LLC, a Minnesota limited liability company (the "Developer"), and certified by the County Assessor for Rice County, Minnesota (the "Assessor"):

WITNESSETH

WHEREAS, the City and the Developer have entered into a certain Contract for Private Development, dated as of \_\_\_\_\_, 2016 (the "Development Agreement"), regarding certain real property located in the City of Northfield, Rice County, Minnesota (the "Hotel Property"), which property is legally described on the Exhibit A attached to and made a part of this Assessment Agreement;

WHEREAS, the Development Agreement provides that the Developer will construct certain improvements (the "Hotel Improvements") on the Hotel Property;

WHEREAS, the City and the Developer desire to establish certain minimum market values for the Hotel Property and the Hotel Improvements thereon, all as the same may exist from time to time pursuant to Minnesota Statutes, Section 469.177, Subdivision 8;

WHEREAS, the Developer, the City, and the Assessor have reviewed certain plans for the Hotel Improvements:

NOW, THEREFORE, the parties to this Assessment Agreement, in consideration of the promises, covenants and agreements herein, do hereby agree as follows:

1. As of January 2, 2019, the minimum market value which shall be assigned to and assessed for the Hotel Property and Hotel Improvements thereon for purposes of real estate property taxation for taxes payable 2020 shall be not less than \$3,760,000. It is the express intent hereof that said minimum market values shall apply with respect to the real property taxes payable through the term of this Agreement.

2. This Agreement shall automatically terminate upon the date of receipt by City from Rice County of the final tax increments from the Riverfront TIF District.

3. This Assessment Agreement shall be promptly recorded by the Developer, with the County Recorder and/or the Registrar of Titles (as applicable) of Rice County, Minnesota, and shall be filed against the Development Property.

4. Neither any preamble nor any provision of this Assessment Agreement is intended to modify the terms of the Development Agreement.

5. This Assessment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties, shall be governed by and interpreted pursuant to Minnesota law, and may be executed in counterparts, each of which shall constitute an original hereof and all of which shall constitute one and the same instrument.

[Signature pages follow.]

IN WITNESS WHEREOF, the City and the Developer have caused this Assessment Agreement to be executed in their names and on their behalf by their duly authorized representatives all as of the date set forth above.

CITY OF NORTHFIELD, MINNESOTA

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its City Administrator

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF RICE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 2016, by \_\_\_\_\_ and \_\_\_\_\_, the Mayor and City Administrator, respectively, of the City of Northfield, Minnesota, on behalf of said City.

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

BIG TEN RESIDENTIAL, LLC

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

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF RICE    )

This instrument was acknowledged before me on \_\_\_\_\_, 2016, by Brett D. Reese, the Chief Manager, of Big Ten Residential, a Minnesota limited liability company, on behalf of said company.

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

CERTIFICATION BY COUNTY ASSESSOR

The undersigned, having reviewed certain plans for the Minimum Improvements to be constructed and the market value assigned to the land upon which the Minimum Improvements are to be constructed, as described in this Assessment Agreement, hereby states as follows: The undersigned Assessor, being legally responsible for the assessment of the above described property, hereby certifies that the \$3,760,000 market value hereinabove assigned to the Hotel Property and Hotel Improvements is reasonable.

\_\_\_\_\_  
County Assessor for Rice County

STATE OF MINNESOTA    )  
                                  ) SS  
COUNTY OF RICE    )

This instrument was acknowledged before me on \_\_\_\_\_, 2016 by  
\_\_\_\_\_, the County Assessor of Rice County.

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

EXHIBIT A TO ASSESSMENT AGREEMENT

Legal Description of Development Property

Lot 6, Block 1, THE CROSSING OF NORTHFIELD, according to the recorded plat thereof,  
Rice County, Minnesota.

**SCHEDULE F**

**AUTHORIZING RESOLUTION FOR TIF NOTE**

**CITY OF NORTHFIELD**

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AWARDING THE SALE OF, AND PROVIDING THE FORM,  
TERMS, COVENANTS AND DIRECTIONS FOR THE ISSUANCE OF ITS \$987,500  
TAXABLE TAX INCREMENT REVENUE NOTE, SERIES 2016**

BE IT RESOLVED BY the City Council of the City of Northfield (the “City”) as follows:

Section 1. Authorization; Award of Sale.

1.01. Authorization. The City of Northfield has heretofore approved the establishment of its Riverfront Tax Increment Financing District (the “TIF District”) within the Master Development District (the “Project”), and has adopted a tax increment financing plan for the TIF District to finance 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 its \$987,500 Taxable Tax Increment Revenue Note, Series 2016 (the “Note”) for the purpose of financing certain public costs of the Project.

1.02. Issuance and Terms of the Note. The Note will be issued in accordance with the Contract for Private Development between the City and Big Ten Residential, LLC dated as of May 17, 2016 (the “Agreement”). The City hereby delegates to the City Administrator the determination of the date on which the Note is to be delivered, in accordance with the Agreement. The Note shall be issued to Big Ten Residential, LLC (the “Owner”) shall be dated the date of delivery thereof, and shall bear interest at the rate specified in the form of the Note. The City shall receive in exchange for the sale of the Note the evidence that the Owner paid costs of the acquisition of the Bank Parcels as defined in the Agreement, in at least the principal amount of the Note.

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 adjusted as of the date of issue:

UNITED STATE OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF RICE  
CITY OF NORTHFIELD

No. R-1

\$987,500

TAXABLE TAX INCREMENT REVENUE NOTE  
SERIES 2016

Rate:

Date of Original Issue

4.5%

\_\_\_\_\_, 2016

The City of Northfield, Minnesota (the "City"), for value received, certifies that it is indebted and promises to pay to Big Ten Residential, LLC or registered assigns (the "Owner"), the principal sum of \$987,500 and to pay interest thereon at the rate of 4.5 percent per annum, as and to the extent set forth herein. Unless the context clearly requires otherwise, capitalized terms in this Note have the meaning provided in the Contract for Private Development between the City and Owner dated as of May 17, 2016 (the "Agreement").

1. Payments. Principal and interest ("Payments") shall be paid on August 1, 2018 and each February 1 and August 1 thereafter ("Payment Dates") to and including February 1, 2033, or such earlier Payment Date when principal and accrued interest have been paid in full, and shall be made in the amounts and solely from the sources set forth in Section 3 hereon. Payments shall be applied first to accrued interest, and then to unpaid principal.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon thirty (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 at the rate stated herein shall accrue on the unpaid principal from and after the date of issue of this Note. Interest accruing from the date of issue through February 1, 2018 will be compounded semiannually on each August 1 and February 1 and added to principal. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

3. Available Tax Increment. Payments on this Note on each Payment Date are payable solely from and in the amount of Available Tax Increment. The term "Available Tax Increment" means 95 percent of the Tax Increment attributable to the



Development Property that ~~are~~is paid to the City by Rice County in the six (6) months preceding the Payment Date. The term “Tax Increment” is defined in the Agreement, and all qualifications regarding the calculation and amounts of Tax Increment set forth in Section 7.4(c) of the Agreement are incorporated herein by reference. The Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement; any amount of Available Tax Increment so withheld shall be paid, without interest on the withheld amount, on the next Payment Date after the default is cured, unless the Note has been terminated in accordance with Section 9.2(b) of the Agreement. Available Tax Increment shall also not include any Tax Increment if, as of any Payment Date, there is an outstanding petition or claim to reduce the market value of the Development Property as described in Section 6.2(b) of the Agreement; any amount of Available Tax Increment so withheld shall be paid, without interest on the withheld amount, on the next Payment Date after resolution of the tax petition or claim in accordance with Section 6.2(b) of the Agreement.

The City shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the Payment on the final Payment Date described in Section 1 hereof.

4. Prepayment. The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the City without premium or penalty, and is subject to deemed prepayment in accordance with Section 3.8 of the Agreement.

5. Nature of Obligation. This Note is one of an issue in the total principal amount of \$987,500 issued to aid in financing certain public development costs and administrative costs of a Project undertaken by the City pursuant to Minnesota Statutes, Sections 469.125 through 469.134, and is issued pursuant to the Agreement and an authorizing resolution (the “Resolution”) duly adopted by the City on May 17, 2016, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.179, and the Special Laws. 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. This Note and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the City. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on 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 or interest on this Note or other costs incident hereto.

6. 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 Administrator, 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 by law 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, bearing interest at the same rate and maturing on the same dates.

This 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.

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 Council of the City of Northfield, Minnesota has caused this Note to be executed with the manual signatures of its Mayor and City Administrator, all as of the Date of Original Issue specified above.

CITY OF NORTHFIELD, MINNESOTA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Administrator

#### 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

Registered Owner

Signature of City Finance Director

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 the Note shall be payable by check or draft issued by the Registrar described herein.

3.02. Payment Dates. Principal of and interest 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 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 City Administrator and shall be executed on behalf of the City by the signatures of its Mayor and City Administrator. 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 City Administrator 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 and interest on the Note all Available Tax Increment as defined in the Note. Available Tax Increment shall be applied to payment of the principal and interest 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 and interest thereon (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 and interest on 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 after the TIF Note has been paid in full, redeemed, or terminated in accordance with its terms remains pledged to the Series 2006 Note (as defined in the Agreement).

Section 5. Certification of Proceedings.

5.01. 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 17th day of May, 2016.

CITY OF NORTHFIELD

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk