

**ASSIGNMENT OF TAXABLE TIF NOTE  
AND TIF ASSISTANCE AGREEMENT**

This ASSIGNMENT OF TAXABLE TIF NOTE AND TIF ASSISTANCE AGREEMENT ("**Assignment**") is made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between 5<sup>th</sup> STREET LOFTS LLC, a Minnesota limited liability limited company (the "**Borrower**"), and MERCHANTS CAPITAL CORP., an Indiana corporation ("**Lender**").

**RECITALS:**

Borrower and the City of Northfield, a Minnesota municipal corporation and political subdivision under the State of Minnesota (the "**City**") are parties to that certain TIF Assistance Agreement, dated as of \_\_\_\_\_, 2020 (the "**Agreement**").

Borrower is fee owner of the real property legally described on attached Exhibit A (herein the "**Real Property**"). Borrower will construct a 79-unit housing facility on the Real Property (the "**Project**"). Upon the satisfaction of certain terms and conditions set forth in the Agreement, the City will issue to Borrower that certain Taxable TIF Note in the original principal amount of One Million Eight Hundred Thousand and No/100ths Dollars (\$1,800,000.00) (the "**TIF Note**").

The Lender is making a mortgage loan to Borrower in the original principal amount of \$\_\_\_\_\_.00 (the "**Loan**"), which loan will be assigned to the Federal Home Loan Mortgage Corporation ("**Freddie Mac**") and evidenced and secured by (i) a Multifamily Note from the Borrower to Lender in the amount of the Loan (the "**Note**"); and (ii) a first lien priority Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement between Borrower and Lender (the "**Mortgage**"). The Note, the Mortgage and any and all other documents, agreements, guaranties, pledges or other instruments which evidence or secure the indebtedness evidenced by the Note, are hereinafter collectively referred to as the "**Loan Documents**." The Borrower intends to use the proceeds of the Loan to refinance the loans provided for the construction of the Project.

Unless otherwise defined herein, terms are used herein with the same meanings as defined in the Loan Documents. In the event of any conflict between the terms hereof and the Loan Documents, the terms and conditions of the Loan Documents shall control. As a condition to making the Loan to Borrower, Lender has required Borrower to cause the execution and delivery of this Assignment.

NOW, THEREFORE, in consideration of the Loan and intending to be legally bound, Borrower does hereby covenant, agree, warrant, represent, assign, set over and transfer, to the extent assignable and transferable, as set forth herein:

1. Borrower shall deliver the fully executed TIF Note to Lender endorsed in favor of Lender on the date hereof.
2. Borrower hereby pledges and grants Lender a security interest in the TIF Note, and hereby assigns, transfers and sets over unto Lender all of its current and future right, title and interest in and to the payments under the TIF Note and all rights and benefits therefrom, as security for the

full, timely and faithful repayment by Borrower of the Loan, and performance by Borrower of its obligations under the Loan Documents; provided, however, that Borrower shall retain the right to collect the semi-annual payments made under the TIF Note unless and until an Event of Default (as defined in the Loan Documents) has occurred. Borrower hereby agrees to execute such additional documentation as required by Lender in order to give full force and effect to such assignment to Lender of the TIF Note.

3. Upon Borrower's receipt of notice from Lender, after the occurrence of an Event of Default under the Loan Documents, Borrower shall irrevocably direct and authorize the City to pay directly and exclusively to the Lender, or its assigns, all sums due under the TIF Note, subject to the terms thereof. Such payments shall be made to Lender at the address provided in Section 15 hereof, or such other address requested by Lender. The Borrower hereby irrevocably authorizes and directs the City to recognize the claims of the Lender without investigating the reason for any action taken or the validity of or the amount of indebtedness owing to the Lender or the existence of any Event of Default under the Loan Documents; and to the extent such sums are paid to the Lender, the Borrower agrees that the City shall have no further liability to the Borrower for the same. The sole receipt by the Lender of any sum paid by the City shall be in discharge and release of that portion of any amount owed by the City. The Borrower and the Lender acknowledge that the City is intended to be, and is, a third party beneficiary of this Section 3.

4. Borrower hereby collaterally assigns to Lender its right, title and interest to and under the Agreement as security for the full, timely and faithful repayment by Borrower of the Loan, and performance by Borrower of its obligations under the Loan Documents. Borrower hereby agrees to execute such additional documentation as required by Lender in order to give full force and effect to such assignment to Lender of its rights under the Agreement.

5. Borrower agrees to faithfully observe and perform all of the obligations and agreements of the TIF Note and Agreement, subject to Borrower's right to reasonably contest observance and performance under the TIF Note or the Agreement.

6. Lender will not be deemed in any manner to have assumed any of the obligations related to the Agreement or TIF Note, nor shall Lender be liable to the City by reason of any default by any party under the Agreement or TIF Note. Borrower agrees to indemnify and to hold Lender harmless of and from any and all liability, loss or damage which it may or might incur by reason of any claims or demands against it based on its alleged assumption of Borrower's duty and obligation to perform and discharge the terms, covenants and agreements in the Agreement or the TIF Note.

7. After the occurrence of an Event of Default under the Loan Documents, subject to applicable grace or cure periods:

- (a) Lender may, after providing notice to the City if such notice has not already been given by Borrower as required in Section 3 above, instruct the City to make all payments on the TIF Note to the Lender and Lender shall have the right to apply any and all payments received to the Indebtedness (as defined in the Loan Agreement);

- (b) Lender may elect to exercise any and all of Borrower's rights and remedies under the TIF Note, without any interference or objection from Borrower, and Borrower shall cooperate in causing the City to comply with all the terms and conditions of the TIF Note;
- (c) Lender may exercise Borrower's rights under the TIF Note, and perform all acts in the same manner and to the same extent as Borrower might do. In connection with any and all of the foregoing powers, and without limiting the same, Lender may amend the terms of the TIF Note (with the consent of the City), and make concessions to the City;
- (d) Lender may exercise Borrower's rights under the provisions of the Agreement and perform all acts in the same manner and to the same extent as Borrower might do, solely as they relate to the Project; and
- (e) Lender may exercise any remedies provided to it in the Loan Documents.

**8.** All of the foregoing powers herein granted to Lender shall be liberally construed against the Borrower. Lender acknowledges that the City's rights and remedies against the Borrower under the Agreement are unaffected by this Assignment. Lender need not expend its own funds in the exercise of such power, but if it does, such amounts shall be considered as advances for and on behalf of Borrower secured by this Assignment and also secured by the Loan Documents. Any amounts so advanced shall bear interest at the applicable rate prescribed in the Note.

**9.** Nothing herein contained shall be construed as constituting a waiver or suspension by Lender of its right to enforce payment of the debts under the terms of the Loan Documents. Lender is not the agent, partner or joint venturer of the Borrower or the City.

**10.** This Assignment may be enforced from time to time by Lender at its discretion, with or without order of any court, as Lender shall determine. Lender shall have no obligation to enforce or continue to enforce this Assignment. Any failure on the part of the Lender promptly to exercise any option hereby given or reserved shall not prevent the exercise of any such option at any time thereafter. Lender may pursue and enforce any remedy or remedies accorded it herein independently of, in conjunction or concurrently with, or subsequent to its pursuit and enforcement of any remedy or remedies which it may have under the Loan Documents.

**11.** Borrower warrants and represents that:

- (a) It has the right to exercise and deliver this Assignment under the terms of the Agreement and the TIF Note. The execution of this Assignment and performance and observance of its terms hereof have been duly authorized by necessary company action and do not contravene or violate any provision of Borrower's organizational documents.
- (b) It has made no prior assignments of the TIF Note, and to the extent Borrower has assigned the TIF Note to a third-party, such assignments are null and void.

- (c) To Borrower's knowledge, as of the date hereof (i) the Agreement is in full force and effect, subject to no defenses, setoffs or counterclaims whatsoever; and (ii) there exists no event, condition or occurrence that would cause the TIF Note to be subject to any defenses, setoffs or counterclaims whatsoever upon its execution and delivery.
- (d) To Borrower's knowledge, there exists no event, condition or occurrence which constitutes, or which with notice and/or the passage of time would constitute, a breach of or default under any terms or conditions of any of the Agreement or the TIF Note. Borrower also hereby covenants and agrees not to do any act which would destroy or impair the security to Lender of this Assignment.
- (e) Borrower has filed all tax returns required to be filed and either paid all taxes shown thereon to be due, including interest and penalties, which are not being contested in good faith and by appropriate proceedings, and Borrower has no knowledge of any objections or claims for additional taxes in respect to federal tax or excise profit tax returns for prior years.

**12.** When the context so requires, the singular shall include the plural and conversely, and use of any gender shall include all genders.

**13.** This Assignment shall be governed by and be construed in accordance with the laws of the State of Minnesota. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited by or be invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.

**14.** Lender hereby agrees that upon payment in full of all amounts due and owing under the Loan Documents, that this Assignment shall terminate and Lender shall take all reasonable actions necessary to return the TIF Note to Borrower, including, but not limited to terminating this assignment and endorsing the TIF Note to Borrower.

**15.** Notices required hereunder shall be by registered or certified mail or hand delivered, addressed as follows:

Each notice shall be addressed as follows:

If to Lender at:                      Merchants Capital Corp.  
255 Kellogg Blvd E., Suite 103  
Saint Paul, Minnesota 55101  
Attention: Lisa Lundeen

With a copy to:

Fox Rothschild LLP

222 South Ninth St.  
Minneapolis, MN 55402  
Attn: Michelle L. Witzany, Esq.

If to Borrower at:

5<sup>th</sup> Street Lofts LLC  
332 Minnesota Street, Suite W120  
St. Paul, MN 55101  
Attention: Nathan Stencil

With a copy to:

Hagen Wilka & Archer, LLP  
600 S Main Avenue, Suite 102  
Sioux Falls, SD 57104  
Attention: John Archer, Esq.

or to such other address specified in writing by one party to the other in accordance herewith.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed as of the day and year first above written.

**BORROWER:**

5<sup>TH</sup> STREET LOFTS LLC  
a Minnesota limited liability company

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

STATE OF MINNESOTA            )  
                                                  ) ss.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ as the \_\_\_\_\_ of 5<sup>TH</sup> STREET LOFTS LLC, a Minnesota limited liability company, on behalf of said limited liability company.

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

\_\_\_\_\_  
(Printed Name)

My Commission Expires: \_\_\_\_\_

**CONSENT TO ENDORSEMENT OF TAX INCREMENT REVENUE NOTE  
AND ASSIGNMENT OF TIF ASSISTANCE AGREEMENT**

To induce Lender to make the Loan as described in the foregoing Assignment, the undersigned City hereby acknowledges and consents to the foregoing Assignment to Lender, including the endorsement of the TIF Note and assignment of the Agreement, all as consistent with the terms and conditions of the foregoing Assignment; provided, however, that (1) Lender executes and delivers to the City an Acknowledgment Regarding TIF Note substantially in the form attached hereto as Exhibit B, and (2) the Borrower delivers to the City (i) evidence of termination of the Assignment, Security and Pledge Agreement dated \_\_\_\_\_, 2020, for the benefit of Premier Bank Minnesota (the "Prior Lender"), (ii) a copy of an allonge endorsement of the TIF Note from the Prior Lender, and (iii) the original TIF Note for re-registration in the name of the Borrower. The City further agrees to endeavor in good faith to deliver to Lender a copy of any notice given to Borrower with respect to any breach or default by Borrower under the Agreement or the TIF Note within five (5) days after delivering any such notice to Borrower. Failure of the City to provide such timely notice shall not affect the City's rights to enforce remedies under the Agreement except remedies that suspend or terminate payments under the TIF Note, in which case, the City shall not effect such remedy until it has provided Lender a copy of such notice and allowed Lender a thirty (30) day opportunity to cure. City also agrees that a transfer of the Project by foreclosure or deed in lieu of foreclosure will not require City approval and that any such foreclosure or deed in lieu of foreclosure will not terminate or suspend the City's obligations under the TIF Note. Any transfer from Lender or Lender's nominee to a third party purchaser will be subject to the City's approval as set forth in Section 5.3 of the Agreement.

[Signature Page Follows]

**CITY'S SIGNATURE PAGE TO CONSENT TO ENDORSEMENT OF TAX  
INCREMENT REVENUE NOTE AND ASSIGNMENT OF  
TIF ASSISTANCE AGREEMENT**

**CITY OF NORTHFIELD, MINNESOTA**

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

By: \_\_\_\_\_  
Its City Clerk



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF REAL PROPERTY**

**EXHIBIT "B"**  
**FORM OF**  
**ACKNOWLEDGEMENT REGARDING TIF NOTE**

The undersigned, Merchants Capital Corp., an Indiana corporation ("Note Holder"), hereby certifies and acknowledges that:

A. On the date hereof the Note Holder has made a loan (the "Loan") to 5<sup>th</sup> Street Lofts, LLC (the "Developer") secured in part by the Taxable Tax Increment Revenue Note (5th and Washington Project), a pay-as-you-go tax increment revenue note (the "Note") in the original principal amount of [**\$1,800,000**] dated \_\_\_\_\_, 20\_\_ of the City of Northfield, Minnesota (the "City").

B. The Note Holder has had the opportunity to ask questions of and receive from the Developer all information and documents concerning the Note as it requested, and has had access to any additional information the Note Holder thought necessary to verify the accuracy of the information received. In determining to make the Loan, the Note Holder has made its own determinations and has not relied on the City or information provided by the City.

C. The Note Holder represents and warrants that:

1. The Note Holder is acquiring an interest in the Note as collateral for the Loan for investment and for its own account, and without any view to resale or other distribution.

2. The Note Holder has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of acquiring an interest in the Note as collateral for the Loan.

3. The Note Holder understands that the Note is a security which has not been registered under the Securities Act of 1933, as amended, or any state securities law, and must be held until its sale is registered or an exemption from registration becomes available.

4. The Note Holder is aware of the limited payment source for the Note and interest thereon and risks associated with the sufficiency of that limited payment source.

5. The Note Holder is a bank or other financial institution.

D. The Note Holder understands that the Note is payable solely from certain tax increments derived from certain properties located in a tax increment financing district, if and as

received by the City. The Note Holder acknowledges that the City has made no representation or covenant, express or implied, that the revenues pledged to pay the Note will be sufficient to pay, in whole or in part, the principal and interest due on the Note. Any amounts which have not been paid on the Note on or before the final maturity date of the Note shall no longer be payable, as if the Note had ceased to be an obligation of the City. The Note Holder understands that the Note will never represent or constitute a general obligation, debt or bonded indebtedness of the City, the State of Minnesota, or any political subdivision thereof and that no right will exist to have taxes levied by the City, the State of Minnesota or any political subdivision thereof for the payment of principal and interest on the Note.

E. The Note Holder understands that the Note is payable solely from certain tax increments, which are taxes received on improvements made to certain property (the "Project") in a tax increment financing district from the increased taxable value of the property over its base value at the time that the tax increment financing district was created, which base value is called "original net tax capacity". There are risk factors in relying on tax increments to be received, which include, but are not limited to, the following:

1. Value of Project. If the contemplated Project constructed in the tax increment financing district are completed at a lesser level of value than originally contemplated, they will generate fewer taxes and fewer tax increments than originally contemplated.

2. Damage or Destruction. If the Project is damaged or destroyed after completion, their value will be reduced, and taxes and tax increments will be reduced. Repair, restoration or replacement of the Project may not occur, may occur after only a substantial time delay, or may involve property with a lower value than the Project, all of which would reduce taxes and tax increments.

3. Change in Use to Tax-Exempt. The Project could be acquired by a party that devotes it to a use which causes the property to be exempt from real property taxation. Taxes and tax increments would then cease.

4. Depreciation. The Project could decline in value due to changes in the market for such property or due to the decline in the physical condition of the property. Lower market valuation will lead to lower taxes and lower tax increments.

5. Non-payment of Taxes. If the property owner does not pay property taxes, either in whole or in part, the lack of taxes received will cause a lack of tax increments. The Minnesota system of collecting delinquent property taxes is a lengthy one that could result in substantial delays in the receipt of taxes and tax increments, and there is no assurance that the full amount of delinquent taxes would be collected. Amounts distributed to taxing jurisdictions upon a sale following a tax forfeiture of the property are not tax increments.

6. Reductions in Taxes Levied. If property taxes are reduced due to decreased municipal levies, taxes and tax increments will be reduced. Reasons for such reduction could include lower local expenditures or changes in state aids to municipalities. For instance, in 2001 the Minnesota Legislature enacted an education funding reform that involved the state increasing school aid in lieu of the local general education levy (a component of school district tax levies).

7. Reductions in Tax Capacity Rates. The taxable value of real property is determined by multiplying the market value of the property by a tax capacity rate. Tax capacity rates vary by certain categories of property; for example, the tax capacity rates for residential homesteads are currently less than the tax capacity rates for commercial and industrial property. In 2001 the Minnesota Legislature enacted property tax reform that lowered various tax capacity rates to "compress" the difference between the tax capacity rates applicable to residential homestead properties and commercial and industrial properties.

8. Changes to Local Tax Rate. The local tax rate to be applied in the tax increment financing district is the lower of the current local tax rate or the original local tax rate for the tax increment financing district. In the event that the Current Local Tax Rate is higher than the Original Local Tax Rate, then the "excess" or difference that comes about after applying the lower Original Local Tax Rate instead of the Current Local Tax Rate is considered "excess" tax increment and is distributed by Rice County to the other taxing jurisdictions and such amount is not available to the City as tax increment.

9. Legislation. The Minnesota Legislature has frequently modified laws affecting real property taxes, particularly as they relate to tax capacity rates and the overall level of taxes as affected by state aid to municipalities.

10. Multi-Owner District. In determining the amount of tax increment generated by the development property, Rice County may allocate a sharing factor when there are multiple tax parcels of land in the tax increment financing district. This may result in a lower amount of tax increment attributable to the development property than if the development property was the only parcel in the district. In addition, the sharing factor calculation is not consistent with the method that the City will use to determine Pledged Tax Increments.

F. The Note Holder acknowledges that the Note was issued as part of a TIF Assistance Agreement between the City and the Developer dated October \_\_\_\_\_ 2019 ("TIF Assistance Agreement"), that the Lender is required to provide the original TIF Note to the City for re-registration in the name of the Lender if the Lender directs the City to make payments to the Lender in accordance with the assignment of taxable TIF Note and TIF Assistance Agreement between the Developer and the Lender dated \_\_\_\_\_, 2020, and that the City has the right to suspend payments under this Note and/or terminate the Note upon an Event of Default under the TIF Assistance Agreement.

G. The Note Holder acknowledges that the City makes no representation about the tax treatment of, or tax consequences from, the Note Holder's acquisition of an interest in the Note as collateral for the Loan.

WITNESS our hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**NOTE HOLDER:**

**MERCHANTS CAPITAL CORP.,**  
an Indiana corporation

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