

## 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 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 Developer has closed on its purchase of the Bank Parcels under Section 3.1(b) 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.

(b) 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. Further, if the conditions for Closing on conveyance of the City Parcels have not been met by April 30, 2017 in accordance with Section 3.2(e) hereof, the City may terminate the TIF Note.

(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, 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. As of the date of this Agreement, the City expects to fund the Additional Assistance in part with certain City funds that are not tax increments, and in part with tax increments from the TIF District that are not pledged to the TIF Note or the Series 2006 TIF Note. The TIF District 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 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 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 Assistance and (if the City has not otherwise exercised its rights of reverter under Section 9.3 hereof) that fraction of the market value of the City Parcels stated in Section 7.7(a)(1)(i), 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 Assistance, and (if the City has not otherwise exercised its rights of reverter under Section 9.3 hereof) that fraction of the market value of the City Parcels stated in Section 7.7(a)(1)(i), 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 is significantly limited after 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.