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**ABATEMENT CONTRACT FOR PRIVATE DEVELOPMENT**

**between**

**CITY OF ARDEN HILLS, MINNESOTA,**

**RAMSEY COUNTY, MINNESOTA,**

**and**

**LAND O'LAKES, INC.**

**Dated: April 12, 2016**

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This document was drafted by:

KENNEDY & GRAVEN, Chartered (JSB)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
Telephone: 337-9300

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## ABATEMENT CONTRACT FOR PRIVATE DEVELOPMENT

THIS ABATEMENT CONTRACT FOR PRIVATE DEVELOPMENT (the “Agreement”) is made as of April 12, 2016, by and between the CITY OF ARDEN HILLS, MINNESOTA, a Minnesota municipal corporation (the “City”), RAMSEY COUNTY, MINNESOTA, a political subdivision of the State of Minnesota (the “County”), and LAND O’LAKES, INC., a Minnesota cooperative corporation, or any of its affiliates (the “Developer”).

### RECITALS

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815 (the “Act”), the City and the County are authorized to abate property taxes in order to increase or preserve tax base, provide access to services for residents, and provide public infrastructure; and

WHEREAS, pursuant to Minnesota Statutes, Sections 116J.993 to 116J.995, as amended (the “Business Subsidy Act”), the City and the County are authorized to grant business subsidies to facilitate development in the City, the County and the State of Minnesota (the “State”); and

WHEREAS, the Developer proposes to construct an at least 145,000 square foot office expansion to Developer’s corporate headquarters office building located on the property described on Exhibit A; and

WHEREAS, pursuant to the Act, the City Council of the City and the Board of Commissioners of the County have each approved resolutions authorizing abatements of a portion of real property taxes on the Development Property; and

WHEREAS, in order to reimburse the Developer for certain costs it incurs in relation to the Minimum Improvements, the Developer has requested the following assistance: (i) tax abatement pursuant to the Act from the City for up to 15 years in the maximum amount of \$650,000; and (ii) tax abatement pursuant to the Act from the County for up to 15 years in the maximum amount of \$1,500,000; and

WHEREAS, the City and the County have determined that the financial assistance provided to the Developer as contemplated herein and the fulfillment generally of this Agreement are in the vital and best interests of the City and the County and the health, safety, morals, and welfare of their residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which this Agreement has been undertaken; and

NOW, THEREFORE, in consideration of the mutual obligations contained in this Agreement, the parties agree as follows:

(The remainder of this page is intentionally left blank.)

## ARTICLE I

### Definitions

Section 1.1. Definitions. In addition to those terms defined in the text, in this Agreement, unless a different meaning clearly appears from the context:

“Abatement Capacity” means the maximum amount of property taxes that may be abated in any year by a political subdivision under Section 469.1813, subdivision 8 of the Act, as amended. As of the date of this Agreement, the Abatement Capacity for the City is the greater of 10% of the net tax capacity of the City for the taxes payable year to which the abatement applies or \$200,000. As of the date of this Agreement, the Abatement Capacity for the County is the greater of 10% of the net tax capacity of the County for the taxes payable year to which the abatement applies or \$200,000.

“Act” means Minnesota Statutes, Sections 469.1812 through 469.1815, as amended.

“Agreement” means this Abatement Contract for Private Development, as the same may be from time to time modified, amended, or supplemented, pursuant to the terms hereof.

“Benefit Date” means the date the City issues the last in a series of temporary certificates of occupancy for the Minimum Improvements which denotes that the Developer is authorized to allow employees to fully occupy all of area of the Minimum Improvements (at least 145,000 square feet); provided however, that such date shall not be later than December 31, 2018.

“Benefits” means one or more of the following: health, dental, life and disability insurance, retirement program, profit sharing and other non-mandatory benefits paid by the Developer.

“Business Day” means any day except a Saturday, Sunday, legal holiday, a day on which the City, or the County is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

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

“Certificate of Completion” means the certification provided to the Developer pursuant to Section 4.4 of this Agreement.

“City” means the City of Arden Hills, Minnesota.

“City Abatement” means the amount equal to that which is calculated in each tax-payable year as follows: the Net Tax Capacity of the Development Property as improved by the Minimum Improvements, as of January 2 in the prior year, less the Net Tax Capacity of the value of the land and existing improvements on the Development Property, as established by the County Assessor on January 2, 2016 for taxes payable in 2017 and less any portion of the Net Tax Capacity attributable to the areawide tax under Minnesota Statutes, Chapter 473F, then multiplied by the City’s Local Tax Rate for the Development Property for the subject tax-payable year, to the extent actually paid to the County and transmitted to the City as its share of property taxes.

“City Abatement Maximum” means the lesser of (i) \$650,000 or (ii) the amount equal to that which is generated by the actual square footage of the building that is constructed, as set forth in the Certificate of Completion, and calculated as shown in **Exhibit C**.

“City Abatement Resolution” means Resolution No. 2016-\_\_, approved by the City Council of the City on April 11, 2016, regarding abatement of property taxes on the Development Property.

“Compliance Date” means the date which is 2 years after the Benefit Date.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Developer and/or the Developer’s contractors on the Development Property, including the Minimum Improvements and the related site 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 Ramsey County, Minnesota.

“County Abatement” means the amount equal to that which is calculated in each tax-payable year as follows: the Net Tax Capacity of the Development Property as improved by the Minimum Improvements, as of January 2 in the prior year, less the Net Tax Capacity of the value of the land and existing improvements on the Development Property, as established by the County Assessor on January 2, 2016 for taxes payable in 2017 and less any portion of the Net Tax Capacity attributable to the areawide tax under Minnesota Statutes, Chapter 473F, then multiplied by the County’s Local Tax Rate for the Development Property for the subject tax-payable year, to the extent actually received by the County as its share of property taxes.

“County Abatement Maximum” means the lesser of (i) \$1,500,000 or (ii) the amount equal to that which is generated by the actual square footage of the building that is constructed, as set forth in the Certificate of Completion, and calculated as shown in **Exhibit C**.

“County Abatement Resolution” means Resolution No. 2016-\_\_, adopted by the Board of Commissioners of the County on April 12, 2016, regarding abatement of property taxes on the Development Property.

“Developer” means Land O’Lakes, Inc., a Minnesota cooperative corporation, or its permitted successors and assigns.

“Development Property” means the real property described in **Exhibit A** of this Agreement.

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

“Full-Time Equivalent (FTE)” is the equivalent of one person working 2,080 hours or more per year or the ratio of the total paid hours during a calendar year (permanent part-time or full-time) to the total of working hours in that same period.

“Holder” means the owner of a Mortgage.

“Local Tax Rate” has the meaning provided in Minnesota Statutes, Section 275.08, subd. 1b, as it may be amended from time to time.

“Minimum Improvements” means the construction and equipping of an at least 145,000 square foot expansion to Developer’s corporate headquarters office building on the Development Property

“Mortgage” means any mortgage made by the Developer which is secured, in whole or in part, with the Development Property and which is a permitted encumbrance pursuant to the provisions of Article VIII of this Agreement.

“Net Tax Capacity” has the meaning provided in Minnesota Statutes, Section 273.13, subd. 21b, as it may be amended from time to time.

“Payment Date” means each February 1 and August 1, commencing August 1, 2020; provided that if any such Payment Date is not a Business Day, the Payment Date shall be the next succeeding Business Day.

“School District” means the Mounds View Schools, Independent School District # 621.

“State” means the State of Minnesota.

“Subsidy Jobs” has the meaning set forth in Section 3.8(b) of this Agreement.

“Tax Abatement” means collectively the City Abatement, and the County Abatement.

“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.

“Termination Date” means the last date the Tax Abatement will be provided to the Developer, which is anticipated to be February 1, 2035.

“Transfer” has the meaning set forth in Section 8.2(a) 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 Development Property, 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 and the County in exercising their rights under this Agreement) which directly result in delays. 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, so long as the Construction Plans have been approved in accordance with Section 4.2 hereof and provided that such delay(s) is not the direct result of the acts or omissions of the City, County or other public agency.

(The remainder of this page is intentionally left blank.)

## ARTICLE II

### Representations and Warranties

Section 2.1. Representations by the City. The City makes the following representations and warranties as the basis for its covenants herein:

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

(b) The City proposes to grant abatement of taxes on the Minimum Improvements to assist in financing the Minimum Improvements and specifically assist the Developer in expanding its corporate headquarters, in order to increase tax base, and provide increased employment opportunities.

Section 2.2. Representations by the County. The County makes the following representations and warranties as the basis for its covenants herein:

(a) The County is a political subdivision of the State, duly organized and existing under the laws of the State. Under the provisions of the Act, the County has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The County proposes to grant abatement of taxes on the Minimum Improvements to assist in financing the Minimum Improvements and specifically assist the Developer in expanding its corporate headquarters, in order to increase tax base, and provide increased employment opportunities.

Section 2.3. Representations and Warranties by the Developer. The Developer makes the following representations and warranties as the basis for its covenants herein:

(a) The Developer is a cooperative corporation duly organized and in good standing under the laws of the State, is not knowingly in violation of any provisions of its articles of incorporation or its bylaws, 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) The Developer will cause the Minimum Improvements to be constructed, operated and maintained in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(c) The Developer intends to expend approximately \$80,000,000 for construction of the Minimum Improvements, site costs, renovation of the Developer's existing corporate headquarters, fixtures, furniture and equipping, and soft costs in approximately the next 3 years.

(d) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer with respect to the Minimum Improvements may be or will be in violation of any environmental law or environmental 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, environmental regulation or environmental review procedure with respect to the Minimum Improvements.

(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, which default or breach might prevent the Developer from performing its obligations under this Agreement.

(f) The Developer shall promptly advise the City, and the County in writing of all litigation or material claims arising from or out of the Minimum Improvements and all written complaints and material charges made by any governmental authority arising from or out of the Minimum Improvements which may delay or require changes in construction of the Minimum Improvements through the date of the Certificate of Completion.

(g) To the best of the Developer's knowledge, the Developer is not in default under any business subsidy agreement within the State of Minnesota pursuant to Section 116J.994 of the Business Subsidy Act.

(h) The Developer has made its own projections of Tax Abatement and revenues to be generated from the Minimum Improvements and of the Developer's returns on cost or investment and the Developer has not relied on any assumptions, calculations, determinations or conclusions made by the City, the County, their governing body members, officers or agents, including the independent contractors, consultants and legal counsel, servants and employees thereof, with respect to the foregoing or in determining to proceed with the Minimum Improvements.

(i) The Developer acknowledges that land use permits shall be governed by City land use ordinances and specific land use approvals separate from this Agreement.

(j) The Developer would not construct the Minimum Improvements on the Development Property but for the agreement by the City and the County to provide the Tax Abatement as set forth herein.

(The remainder of this page is intentionally left blank.)

## ARTICLE III

### Property Tax Abatement

Section 3.1. Status of Development Property. As of the date of this Agreement, the Developer owns the Development Property. The City and the County shall have no obligation to acquire the Development Property or any portion thereof.

#### Section 3.2. Environmental Conditions.

(a) The Developer acknowledges that the City and the County, in providing the Tax Abatement as set forth herein, make 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 Minimum 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, or the County for any contamination of the Development Property nor imposes any obligation on such parties to participate in any cleanup of the Development Property.

(b) Without limiting its obligations under Section 8.3 of this Agreement, the Developer further agrees that it will indemnify, defend, and hold harmless the Indemnified Parties (as defined in Section 8.3), 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 Indemnified Parties (or any one of them). Nothing in this section will be construed to limit or affect any limitations on liability of the City, or the County under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02.

Section 3.3. Minimum Improvements. The Developer hereby covenants to construct the Minimum Improvements on the Development Property pursuant to the terms and conditions of this Agreement. The City and the County understand and acknowledge that the Developer will pay the costs of constructing the Minimum Improvements. The Minimum Improvements consist of the construction and equipping of an at least 145,000 square foot expansion to Developer's corporate headquarters office building on the Development Property. In connection with the construction of the Minimum Improvements, the Developer acknowledges that the construction of the Minimum Improvements may require the relocation of an existing water main on the Development Property or construction of a new water main. The Developer will be responsible for relocating or replacing the existing water main and all costs associated therewith. Any relocated or replacement water main shall be located in a public easement conveyed to the City.

#### Section 3.4. City Property Tax Abatement.

(a) Generally. In order to make the Minimum Improvements economically feasible and encourage the Developer to maintain its corporate headquarters in the State, the City will grant the City Abatement to the Developer commencing August 1, 2020 and continuing through February 1, 2035. In no event shall the City Abatement exceed a cumulative total over the term of the City Abatement greater than the City Abatement Maximum. In no event shall the City Abatement and the County Abatement provided to the Developer from August 1, 2020 through February 1, 2035, together with the amount of property tax abatements provided by the School District, exceed \$2,768,100. The City Abatement will reimburse the Developer for a portion of the costs of constructing the Minimum Improvements in the City. Subject to the City Abatement Maximum and the City Abatement Capacity described in Section 3.4(b), the City shall pay the Developer on each February 1 and August 1, commencing August 1, 2020 and terminating

on February 1, 2035 (each a “Payment Date”) the City Abatement received by the City in the 6-month period preceding each Payment Date.

(b) Limitations. The pledge of City Abatement is subject to all the terms and conditions of the City Abatement Resolution. The amount payable by the City hereunder is payable solely from and to the extent of the City Abatement, and nothing herein shall be construed to obligate the City to make payments from any other funds. The City makes no warranties or representations as to the amount of the City Abatement. Any estimates of City Abatement amounts prepared by the City’s financial consultants are for the benefit of the City only, and the Developer is not entitled to rely on such estimates.

The Developer further acknowledges that the total property tax abatements payable by the City in any year may not exceed the greater of \$200,000 or 10% of the Net Tax Capacity of the City for the taxes payable year to which the abatement applies (the “City Abatement Capacity”), all pursuant to Section 469.1813, subdivision 8 of the Act. The City has not granted any other abatement under the Act as of the date of this Agreement, and agrees that if the City grants any additional abatements under the Act during the term of this Agreement, the City’s Abatement Capacity will be allocated first to the City Abatement pledged pursuant to this Agreement.

### Section 3.5. County Property Tax Abatement.

(a) Generally. In order to make the Minimum Improvements economically feasible and encourage the Developer to maintain its corporate headquarters in the State, the County will grant the County Abatement to the Developer commencing August 1, 2020 and continuing through February 1, 2035. In no event shall the County Abatement exceed a cumulative total over the term of the County Abatement greater than the County Abatement Maximum. In no event shall the City Abatement and the County Abatement provided to the Developer from August 1, 2020 through February 1, 2035, together with the amount of property tax abatements provided by the School District, exceed \$2,768,100. The County Abatement will reimburse the Developer for a portion of the costs of constructing the Minimum Improvements in the City. Subject to the County Abatement Maximum and the County Abatement Capacity described in Section 3.5(b), the County shall transfer the County Abatement to the City and the City shall pay to the Developer on each February 1 and August 1, commencing August 1, 2020, and terminating on February 1, 2035 (each a “Payment Date”) the County Abatement received by the County in the 6-month period preceding each Payment Date.

(b) Limitations. The pledge of County Abatement is subject to all the terms and conditions of the County Abatement Resolution. The amount payable by the County hereunder is payable solely from and to the extent of the County Abatement, and nothing herein shall be construed to obligate the County to make payments from any other funds. The County makes no warranties or representations as to the amount of the County Abatement. Any estimates of County Abatement amounts prepared by the County’s financial consultants are for the benefit of the County only, and the Developer is not entitled to rely on such estimates.

The Developer further acknowledges that the total property tax abatements payable by the County in any year may not exceed the greater of \$200,000 or 10% of the Net Tax Capacity of the County for the taxes payable year to which the abatement applies (the “County Abatement Capacity”), all pursuant to Section 469.1813, subdivision 8 of the Act. The County has not granted any other abatement under the Act as of the date of this Agreement, and agrees that if the County grants any additional abatements under the Act during the term of this Agreement, the County’s Abatement Capacity will be allocated first to the County Abatement pledged pursuant to this Agreement.

On or before May 15 of each year, for purposes of calculating the County Abatement levy for the following tax payable year, the City agrees to notify the following County representatives of the amount of the County Abatement based on the County's then-current Local Tax Rate for the Development Property:

Chief Financial Officer, Ramsey County  
Attn: Lee Mehrkens  
[lee.mehrkens@co.ramsey.mn.us](mailto:lee.mehrkens@co.ramsey.mn.us)

County Auditor  
Attn: Chris Samuel  
[chris.samuel@co.ramsey.mn.us](mailto:chris.samuel@co.ramsey.mn.us)

Section 3.6. Payment of Administrative Costs. The Developer is responsible for Administrative Costs, as hereafter defined. For the purposes of this Agreement, the term "Administrative Costs" means reasonable out of pocket costs incurred by the City and the County in connection with the negotiation, preparation and implementation of this Agreement and other documents and agreements in connection with the Minimum Improvements including without limitation the cost of financial advisors, attorneys, and planning and environmental consultants. The parties agree and understand that Developer deposited \$10,000 in escrow with the City toward payment of Administrative Costs. If Administrative Costs exceed such amount, then at any time, but not more often than monthly, the City will deliver written notice to Developer setting forth any additional Administrative Costs and requesting payment for such additional Administrative Costs, and Developer agrees to pay all undisputed Administrative Costs within 30 days of the City's written request. Administrative Costs shall be evidenced by invoices, statements or other reasonable written evidence of the costs incurred by the City or the County, as applicable. Administrative Costs shall not include wages and benefits of City and County employees. Any funds remaining within the escrow that are not utilized on or prior to the Compliance Date will be returned to the Developer. The Developer remains obligated under this section for reasonable Administrative Costs incurred through the Termination Date. This Section 3.6 does not limit or affect City ordinances, policies or procedures relating to escrows and the payment of costs of development.

The Developer may request the calculations supporting the Tax Abatement amount for any year from the City's municipal advisor; provided, however, that the Developer shall be responsible for the cost of procuring a copy of any such calculations.

Section 3.7. Records. The City, and the County and their respective representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Minimum Improvements. The Developer shall also use commercially reasonable efforts to cause the contractor or contractors, all subcontractors and their agents and lenders to make their books and records relating to the Minimum Improvements available to City and the County, upon reasonable notice, for inspection, examination and audit.

Section 3.8. Business Subsidy Agreement. The provisions of this Section constitute the "business subsidy agreement" in connection with the business subsidy provided by the City, the County and the State for the purposes of the Business Subsidy Act.

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

(1) The business subsidy provided to the Developer under this Agreement consists of the City Abatement and the County Abatement. All such payments and grants represent forgivable loans that are repayable by the Developer in accordance with this Section.

(2) The public purposes of the subsidies are to increase the tax base of the City, and the County, provide additional employment opportunities for residents of the City and the County, to encourage economic development within the City and the County, and to encourage the Developer to maintain its corporate headquarters in the City through the Termination Date. Absent the subsidy provided in this Agreement, the development of the Minimum Improvements would not likely occur in the City.

(3) The goals for the subsidies are to secure development of the Minimum Improvements and to maintain the Minimum Improvements as an expansion to the Developer's corporate headquarters for the term of this Agreement as described in clause (5) below, to increase the tax base of the County, and to create the Subsidy Jobs described in paragraph (b) of this Section.

(4) If the goals described in clause (3) are not met, the Developer must make the payments to the City and the County described in Section 3.8(c).

(5) The Developer must continue operation of the Development Property as the Developer's corporate headquarters through the Termination Date of this Agreement.

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

(7) In addition to the subsidies described in this Section 3.8(a), the Developer has also applied for or may apply for financial assistance from the following other "grantors" as defined in the Business Subsidy Act, in connection with the Development Property or the Minimum Improvements:

- (i) Property tax abatement assistance from the School District in the amount of up to \$618,100;
- (ii) Employee Training Grant assistance from the State of up to \$400,000;
- (iii) Job Creation Fund assistance from the State of up to \$2,000,000; and a
- (iv) A loan from the City, funded by a grant from the Minnesota Investment Fund in the amount of \$1,000,000, which will be addressed in a separate agreement.

(b) Job and Wage Goals. The Developer represents that as of April 11, 2016 it has \_\_\_\_\_ Full-Time Equivalent permanent, non-contract, non-seasonal employees in the Developer's Arden Hills and Shoreview, Minnesota locations. The Company will transfer the employees currently located at the Shoreview, Minnesota location to the Arden Hills, Minnesota location by the Compliance Date. On or before the Compliance Date, the Developer shall cause to be created at least 200 new Full-Time Equivalent jobs (the "New Jobs") for a total of \_\_\_\_\_ Full-Time Equivalent jobs on the Development Property and shall cause the wages for all New Jobs on the Development Property to be no less than \$18.00 per hour, exclusive of Benefits (the "Subsidy Jobs"). Any jobs created after April 11, 2016 will be considered New Jobs and count toward the Developer's job creation goals. The City and the County each may, after a public hearing, extend the deadlines for the goals described in this clause (b) by up to one year, provided that nothing in this section will be construed to limit the City's and the County's respective legislative discretion regarding this matter.

(c) Remedies.

(1) If the Developer fails to meet the goals described in Section 3.8(a)(5), this Agreement shall terminate and the Developer shall repay to the City and the County, respectively, within 90 Business Days of written notice from the City, any amount of the City Abatement and

the County Abatement received on or prior to the date the Developer ceases to maintain its corporate headquarters in the City.

(2) If none of the Subsidy Job creation goals described in Section 3.8(b) are met (not even in part) on or before the Compliance Date or any extension thereof, upon notice provided in accordance with Section 9.2, this Agreement shall terminate and the Developer shall repay to the City and the County, respectively, within 90 Business Days of written notice from the City, any amount of the City Abatement and the County Abatement, respectively, plus interest set at the implicit price deflator defined in Minnesota Statutes, Section 275.70, Subdivision 2 (“Interest”), accruing from and after the Compliance Date, compounded semiannually.

(3) If the Subsidy Job creation goals described in Section 3.8(b) are met in part on or before the Compliance Date or any extension thereof, upon notice provided in accordance with Section 9.2, the Developer shall repay to the City and the County, respectively, within 90 Business Days of written notice from the City, a pro rata portion of the amount of the City Abatement and the County Abatement received on or prior to the Compliance Date, plus Interest accruing from and after the Compliance Date, compounded semiannually. Such “pro rata portion” shall be determined by multiplying the City Abatement and the County Abatement received to date by a fraction, the numerator of which is the number of Subsidy Jobs which were not created at the wage level set forth in Section 3.8(b) and the denominator of which is 200 (i.e. number of Subsidy Jobs). In addition, thereafter, City and the County, respectively, will pay the Developer only such “pro rata portion” of the remaining City Abatement and the County Abatement.

Any amounts received under this Section by the City and related to payments of the City Abatement and the County Abatement shall be distributed between the City and the County based on the pro rata amount of Tax Abatement that have been paid by each entity to the Developer. Promptly upon receipt of any repayment by the Developer, the City will remit to the County its portion attributable to the County Abatement paid by the County. Nothing in this Section shall be construed to limit the City’s or County’s remedies under Article IX hereof.

In addition to the remedy described in this Section and any other remedy available to the City or the County for failure to meet the goals stated in Section 3.8(a)(3), the Developer agrees and understands that it may not receive a business subsidy from the City, the County, or any other grantor (as defined in the Business Subsidy Act) for a period of 5 years from the date of the failure unless the Developer satisfies its repayment obligation under this Section, whichever occurs first.

(d) Reports. The Developer must submit to the City, with a copy to the County, a written report regarding Subsidy Job creation goals and results by no later than January 25th of each year, commencing January 25, 2017, and continuing for two years after the Benefit Date or until the later of (i) the date the Subsidy Job creation goals stated in Section 3.8(b) are met and maintained for a period of at least 3 months or (ii) if the Subsidy Job creation goals are not met, the date the subsidy is repaid in accordance with Section 3.8(c). The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The report must be filed on the Non-JOBZ Minnesota Business Assistance form as found on the Minnesota Department of Employment and Economic Development website: <http://mn.gov/deed/government/business-subsidy/report-forms/index.jsp>. 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 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. The City will

file, on behalf of the City, and the County, any reports required to be filed with the State under the Business Subsidy Act.

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## ARTICLE IV

### Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property in accordance with the approved Construction Plans and a separate development contract with the City relating to the City's land use regulations. The Developer further agrees that it at all times during the term of this Agreement will operate, maintain, preserve and keep the Minimum Improvements with the appurtenances and every part and parcel thereof, in good repair and condition (wear and tear excluded). The City and the County shall have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans. (a) Before construction of the Minimum Improvements is commenced, the Developer shall submit to the City the Construction Plans. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in conformity with this Agreement and all applicable State and local laws and regulations. The City will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations; (iii) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (iv) materials and exterior finishes are similar in quality and appearance to existing buildings on the Development Property; and (v) no Event of Default by the Developer has occurred and is continuing under this Agreement.

No approval of the Construction Plans by the City shall relieve the Developer of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations. No approval of the Construction Plans by the City 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, in whole or in part. Such rejections shall set forth in detail the reasons therefore, and shall be made promptly, but in no event later than 30 days after the date of their receipt by the City. If the City 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's approval shall not be unreasonably withheld or delayed. 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.

(b) 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. For this Agreement, the following changes will be considered "material": (1) changes that reduce the square footage of the Minimum Improvements by more than 15%; (2) changes which reflect a change in the basic use of the Minimum Improvements; (3) changes which would adversely affect the value (for property tax purposes) of the Minimum Improvements to the extent that such changes (independent of other factors) would be likely to reduce such value below than \$100 per square foot. 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 20 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 or delayed.

(c) The approval of Construction Plans by the City under this Section 4.2 is for the purposes of this Agreement only. The Developer must also obtain any approvals necessitated by the City's planning and zoning requirements. The County has no responsibility with respect to approving Construction Plans or any other requirements of this Section.

Section 4.3. Completion of Construction. Subject to Unavoidable Delays, the Developer shall substantially complete construction of the Minimum Improvements by December 31, 2018. 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 shall promptly begin and diligently prosecute 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.

Section 4.4. Certificate of Completion. (a) Promptly after completion 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 (including the dates for beginning and completion thereof) and Developer's receipt of a certificate of occupancy (or similar documentation) for the Minimum Improvements from the governing or regulating authority, the City will furnish the Developer with a Certificate of Completion in substantially the form provided in **Exhibit B**. Such certification by the City shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement to construct the Minimum Improvements.

(b) The Certificate of Completion shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the City shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4 of this Agreement, the City shall promptly, but in no event later than 30 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 complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such certification. If the City has not provided the Certificate of Completion or a written response regarding why it believes the Minimum Improvements have not been completed within 30 days after written request by the Developer, the Minimum Improvements shall be deemed complete and no Certificate of Completion shall be required.

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## **ARTICLE V**

### **Insurance**

Section 5.1. Insurance. (a) The Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Insurance Policy and, from time to time during that period, at the request of the City, furnish the City with appropriate certificates of insurance covering the following:

(i) Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to 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. The interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence, and shall be endorsed to show the City and County as additional insureds (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 Termination 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 insurance as follows:

(i) Property insurance against physical 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) Commercial general public liability insurance, including personal injury liability, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$2,000,000 and shall be endorsed to show the City and County as additional insureds (to accomplish the above-required limits, an umbrella excess liability policy may be used).

(iii) Such other insurance, including workers' compensation insurance respecting all employees of Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure.

(c) All insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Developer that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit with the City a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. In lieu of separate policies, Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event 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 \$500,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. If such an event shall occur prior to the Termination Date the Developer shall, by their own action or actions of their contractors, forthwith repair, reconstruct, and restore, the Minimum Improvements to substantially the same or an improved condition 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, or its designee, shall complete the repair, reconstruction and restoration of the Minimum Improvements, regardless of whether 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) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of \$500,000 and the Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within one year from the date of damage, the City and or the County, each in its own discretion, may, at its option, suspend payments of Tax Abatement or other financial assistance provided herein or exercise any other remedies provided in Section 9.2 hereof.

Section 5.2. Subordination of Insurance Requirements. Notwithstanding anything to the contrary herein, the rights of the City and the County with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage allowed pursuant to Article VII of this Agreement.

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## ARTICLE VI

### Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the City and the County are providing substantial aid and assistance in furtherance of the Minimum Improvements pursuant to this Agreement. The Developer understands that the City Abatement and County Abatement pledged pursuant to this Agreement are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, that in addition to the statutory obligation to pay real estate taxes, it is also obligated by reason of this Agreement to pay, before delinquency, all undisputed 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 and the County through the Termination Date to declare an Event of Default or 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, and the County shall also be entitled to recover its costs, expenses and reasonable attorney fees. Property taxes shall not be deemed delinquent under this Section 6.1 if the Developer is contesting such property taxes under procedures allowed pursuant to this Agreement.

Section 6.2. Review of Taxes. The Developer agrees that prior to the Termination Date it will not cause a reduction in the real property taxes paid in respect of the Minimum Improvements through willful destruction of the Minimum Improvements or any part of the Development Property; or willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 of this Agreement. Developer also agrees that it will not, prior to the Termination Date, apply for a deferral of property tax on the Minimum Improvements pursuant to any law, or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the property would result in the Development Property being exempt from real estate taxes under State law.

Section 6.3. Reduction in Taxes. Nothing in this Agreement is intended to hinder or impair the rights of Developer to seek reduction in market value or property taxes on any portion of the Development Property under any State law (referred to as a "Tax Appeal"); provided, however, that prior to the Termination Date, the Developer agrees it will not seek reduction in the assessed market value of the Minimum Improvements for property tax purposes below \$100 per square foot (exclusive of land value). This minimum assessed market value does not apply to property assessed prior to the construction commencement of the Minimum Improvements. The Developer shall notify the City and the County within 10 days of filing any Tax Appeal. If as of any Payment Date, any Tax Appeal is then pending, the City and the County will withhold payments of Tax Abatement attributable to the tax payment that is the subject of the Tax Appeal. The City and the County will pay any withheld amount to the extent not reduced as a result of the Tax Appeal, without interest, promptly after the Tax Appeal is fully resolved and the amount of Tax Abatement attributable to the disputed tax payments is finalized.

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## ARTICLE VII

### Financing

Section 7.1. Financing. The Developer warrants and represents to the City and the County that it has or will have available funds sufficient to construct the Minimum Improvements in accordance with the Construction Plans.

Section 7.2. Modification; Subordination. If the Developer requires mortgage financing for the development of the Minimum Improvements, the City and the County agree to subordinate their rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing and the City and the County agree to consent to such subordination, in accordance with the terms of a subordination agreement in such other form as the City and the County approve.

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## ARTICLE VIII

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

Section 8.1. Representation as to Development. The Developer's undertakings pursuant to the Agreement, are, and will be, for the purpose of constructing the Minimum Improvements for the Developer's use as an expansion to its corporate headquarters and not for speculation in land holding.

Section 8.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to the Termination Date:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by 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 the Agreement or its interests in 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 City and the County; provided, however, Developer may Transfer all or a portion of the Development Property including, but not limited to the Minimum Improvements to an entity that is at least 50% owned by the Developer. Any such Transfer shall be subject to the provisions of this Agreement. However, if the Developer remains liable and bound by this Agreement, including without limitation its obligation to operate its corporate headquarters in the City through the Termination Date, the City's and County's approvals are not required. Notwithstanding anything to the contrary in this Section, the Developer may assign its rights under this Agreement to the Holder of a Mortgage, provided the Mortgage is approved by the City and the County.

(b) In the event the Developer, upon Transfer of the Development Property or any portion thereof, seeks to be released from its obligations under this Agreement as to the portions of the Development Property that is transferred or assigned, the City and the County shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City and the County, 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 will operate the Development Property as the corporate headquarters of a Fortune 500 company.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and the County and in form recordable in the public land records of the County, shall, for itself and its successors and assigns, and expressly for the benefit of the City and the County, 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, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City and the County) deprive the City and the County of any rights or remedies or controls with respect to the Development Property 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 and the County of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City and the County would have had, had there been no such transfer or change. In the absence of specific written agreement by the City and the County to the contrary, no such transfer or approval by the City and the County shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) 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 and the County.

In the event the foregoing conditions are satisfied then 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. The restrictions under this Section terminate upon issuance of the Certificate of Completion.

Section 8.3. Release and Indemnification Covenants. The scope of this Agreement with respect to the City and the County is to provide Tax Abatements as set forth herein; therefore:

(a) The City and the County and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties") shall not be liable for and the Developer shall indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person arising out of this Agreement, unless and to the extent that such loss or damage is a direct result of the willful or wanton misconduct of the City or the County.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Indemnified Parties, now and 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 out of this Agreement.

(c) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Indemnified Parties 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 arising out of this Agreement.

(d) Notwithstanding anything to the contrary in this Section 8.3, the existence of this Agreement shall not create any additional liability for which the City and/or the County would not otherwise be responsible.

(e) All covenants, stipulations, promises, agreements and obligations of the City and the County contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of such entities and not of any governing body member, officer, agent, servant or employee of such entities 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, any one or more of the following events:

- (a) Failure by the Developer to substantially observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed hereunder;
- (b) Commencement by the Holder of any Mortgage on the Development Property or any improvements thereon, or any portion thereof, of foreclosure proceedings as a result of default under the applicable Mortgage documents;
- (c) Failure of the Developer to complete the Minimum Improvements pursuant to the terms of Section 4.3 of this Agreement; or
- (d) The Developer:
  - (i) files 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) makes an assignment for benefit of its creditors; or
  - (iii) admits in writing its inability to pay its debts generally as they become due; or
  - (iv) is 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 City or the County may each exercise any of the following rights under this Section 9.2 after providing 30 days’ written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said 30 days or, if the Event of Default is by its nature incurable within 30 days, the Developer does not, within such 30-day period, provide assurances reasonably satisfactory to the party or parties providing notice of default that the Event of Default will be cured and will be cured as soon as reasonably possible:

- (a) Suspend its performance under the Agreement until it receives reasonably satisfactory assurances that the Developer will cure its default and continue its performance under the Agreement.
- (b) Cancel and rescind or terminate its obligations under the Agreement, provided that:
  - (i) if the City terminates its obligations under the Agreement, it shall have no obligation to make payments of City Abatement after the date of such rescission or termination;
  - (ii) if the County terminates its obligations under the Agreement, it shall have no further obligations to make payments of County Abatement to the City hereunder, and the City shall have no obligation to make payments of County Abatement to the Developer after the date of such rescission or termination; and



(iii) if the City and the County both terminate their obligations hereunder this Agreement shall be deemed terminated and neither shall have any further obligations hereunder except as provided in Section 10.10.

(c) Demand repayment of any Tax Abatement paid by the City or the County and, within 90 Business Days of written notice of any such demand for repayment from the City or the County, the Developer shall repay to the City and the County, respectively, any amount of the City Abatement and the County Abatement paid on or prior to such date, plus interest set at the implicit price deflator defined in Minnesota Statutes, Section 275.70, Subdivision 2, accruing from and after the Compliance Date, compounded semiannually; provided, however, that to the extent Section 3.8(c) of this Agreement applies, that provision shall control.

Nothing in this Agreement shall entitle the City or the County to make any claim against the Developer for any damages whatsoever, other than an outstanding payment obligation of the Developer under this Agreement, and the City and the County's remedies are strictly limited to the foregoing.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or the County 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 for the City or the County 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 X.

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by the Developer and thereafter waived by the City or the County, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Attorney Fees and Other Costs. Whenever any Event of Default occurs and if the City or the County employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of Developer under this Agreement, the Developer shall, within 10 days of written demand by the City or the County, pay to the City or the County the reasonable fees of such attorneys and such other expenses so incurred by the City or the County.

Section 9.6 Developer Remedies on Default. If the City or the County fails to make a payment, when due in accordance with the terms of this Agreement, pursuant to Section 3.4 or Section 3.5, respectively, the Developer may, after providing the 30 days' written notice to the City or the County of the Event of Default, as applicable, suspend or terminate its performance under this Agreement and/or take whatever action at law or in equity may appear necessary or desirable to the Developer to enforce performance of an outstanding payment obligation of the City or the County under this Agreement. If the Developer terminates its obligations hereunder, this Agreement shall be deemed terminated and the Developer shall have no further obligations hereunder except as provided in Section 10.10.

Nothing in this Agreement shall entitle the Developer to make any claim against the City or the County for any damages whatsoever, other than an outstanding payment obligation of the City or the County under this Agreement, and the Developer's remedies are strictly limited to the foregoing. Nothing

in this section will be construed to limit or affect any limitations on liability of the City or the County under State or federal law, including without limitation Minnesota Statutes Sections 466.04 and 604.02.

## ARTICLE X

### Additional Provisions

Section 10.1. Conflict of Interests; Representatives Not Individually Liable. The City, and the County and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the City or the County 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 or her personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested. No member, official, or employee of the City, or the County shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City, or the County or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement. No member or employee of Developer shall be personally liable to the City or the County in the event of any default or breach by the Developer or for any amount which may become due to the City or the County 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 in constructing 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 it shall devote the Development Property to the operation of the Developer's headquarters, office space and related business thereto, 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 Minimum Improvements erected or to be erected thereon, or any part thereof.

Section 10.4. 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 10.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by any party to another shall be in writing and shall be deemed sufficiently given or delivered (a) upon personal delivery, (b) 5 days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (c) one (1) business day after deposit with a national overnight courier, fees prepaid, to such party or parties at the following addresses; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at Land O'Lakes, Inc., P.O. Box 64101, St. Paul, MN 55164-0101; Attention: Corporate Real Estate with a copy to Land O'Lakes, Inc., Law Department MS 2500, P.O. Box 64101, St. Paul, MN 55164-0101;

(b) in the case of the City, is addressed to or delivered personally to the City at City Hall, 1245 Highway 96 West, Arden Hills, Minnesota 55112, Attn: City Administrator;

(c) in the case of the County, is addressed to or delivered personally to the County at the Ramsey County Courthouse, Suite 220, 15 West Kellogg Blvd., St. Paul, Minnesota 55102; Attention: (i) County Manager, Attn: Julie Kleinschmidt, [julie.kleinschmidt@co.ramsey.mn.us](mailto:julie.kleinschmidt@co.ramsey.mn.us); (ii) Chief Financial

Officer, Ramsey County, Attn: Lee Mehrkens, [lee.mehrkens@co.ramsey.mn.us](mailto:lee.mehrkens@co.ramsey.mn.us); (iii) County Auditor, Attn: Chris Samuel, [chris.samuel@co.ramsey.mn.us](mailto:chris.samuel@co.ramsey.mn.us).

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

Section 10.7. Jurisdiction and Venue. This Agreement, and its amendments and supplements, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Agreement, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

Section 10.8. Separability. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

Section 10.9. Amendment. This Agreement may be amended only by written agreement approved by the City, the County and the Developer.

Section 10.10. Termination. This Agreement terminates on the Termination Date; provided however Sections 3.2, 8.3 and 9.5 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the Termination Date.

Section 10.11. Effect of Agreement. This Agreement supersedes in all respects the Term Sheet dated January 22, 2016 regarding the assistance to be provided under this Agreement, and it shall have no remaining force or effect.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the City, the County, and the Developer have caused this Abatement Contract for Private Development to be duly executed by their duly authorized representatives as of the date first above written.

**CITY OF ARDEN HILLS, MINNESOTA**

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

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

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the Mayor of the City of Arden Hills, Minnesota, on behalf of the City.

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

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the City Administrator of the City of Arden Hills, Minnesota, on behalf of the City.

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

Execution page of the County to the Abatement Contract for Private Development, dated as of the date and year first written above.

**RAMSEY COUNTY, MINNESOTA**

By: \_\_\_\_\_  
Its: Chair of the Board of Commissioners

By: \_\_\_\_\_  
Its: Chief Clerk

By: \_\_\_\_\_  
Its: County Manager

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the Chair of the Board of Commissioners of Ramsey County, Minnesota, on behalf of the County.

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

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the Chief Clerk of Ramsey County, Minnesota, on behalf of the County.

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

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the Manager of Ramsey County, Minnesota, on behalf of the County.

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

Execution page of the Developer to the Abatement Contract for Private Development, dated as of the date and year first written above.

**LAND O'LAKES, INC.**

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

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

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of Land O'Lakes, Inc., a Minnesota cooperative corporation, on behalf of Land O'Lakes, Inc.

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

**EXHIBIT A**

**DEVELOPMENT PROPERTY**

The Development Property is located in the County of Ramsey, State of Minnesota and is more particularly described as follows:

Lot 2, Block 1, Land O'Lakes Addition, according to the recorded plat, Ramsey County, Minnesota.

Torrens Property Certificate of Title No. 292196

Tax Parcel Identification Numbers 27-30-23-11-0001 and 27-30-23-11-0002



**EXHIBIT B**

**CERTIFICATE OF COMPLETION**

The undersigned hereby certifies that Land O'Lakes, Inc., a Minnesota cooperative corporation (the "Developer"), has fully complied with its obligations under Article IV of that document titled "Abatement Contract for Private Development," dated \_\_\_\_\_, 2016, between the City of Arden Hills, Minnesota, Ramsey County, Minnesota, and the Developer, with respect to construction of the Minimum Improvements in accordance with the Construction Plans (each as defined in the Abatement Contract for Private Development), and that the Developer is released and forever discharged from its obligations to construct the Minimum Improvements set forth in Article IV of the Abatement Contract for Private Development for purposes of the Agreement. The square footage of the Minimum Improvements is \_\_\_\_\_ square feet.

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

CITY OF ARDEN HILLS, MINNESOTA

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

STATE OF MINNESOTA        )  
                                          ) ss.  
COUNTY OF RAMSEY                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the City of Administrator of the City of Arden Hills, Minnesota, a municipal corporation under the laws of the State of Minnesota, on behalf of the City.

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

[A copy of this Certificate shall be provided to the County.]

## EXHIBIT C

### SAMPLE ABATEMENT CALCULATION



#### Land O Lakes Tax Abatement

City of Arden Hills

City, County and School District - Increased Taxes Only

#### ASSUMPTIONS AND RATES

<b>DistrictType:</b>	<b>Abatement</b>		
<b>First Year Construction or Inflation on Value</b>	<b>2018</b>	Current Total Local Tax Rate:	120.427% Prelim Pay 2016
Inflation Rate - Every Year:	<b>1.00%</b>	Current City Tax Rate	26.382% Prelim Pay 2016
Interest Rate	<b>0.00%</b>	Current County Tax Rate	58.562% Prelim Pay 2016
		Current School District No. 621 Tax Rate	26.304% Prelim Pay 2016
Present Value Date:	<b>1-Aug-18</b>	Current Other Tax Rate	9.179% Pay 2015
First Period Ending	1-Feb-19	State-wide Tax Rate (Comm./Ind. only used for total taxes)	49.000% Prelim Pay 2016
Cashflow Assumes First Abatement	2020	Market Value Tax Rate (Used for total taxes)	0.222% Prelim Pay 2016
Assumes Last Year of Abatement	2034		
Fiscal Disparities Election [Inside, Outside or NA]	<b>Inside</b>		
Incremental or Total Fiscal Disparities	<b>Incremental</b>		
Fiscal Disparities Contribution Ratio	<b>34.727%</b>		
Fiscal Disparities Metro-Wide Tax Rate	150.262%		
Term of City Abatement	<b>15</b>		
Term of County Abatement	<b>15</b>		
Term of School District Abatement	<b>15</b>		
School District No.	<b>621</b>		
Total Years of Abatement:	15		

  

<b>PROPERTY TAX CLASSES AND CLASS RATES:</b>		
Exempt Class Rate (Exempt)		0.00%
Commercial Industrial Preferred Class Rate (C/I Pref.)		
First \$150,000		1.50%
Over \$150,000		2.00%
Commercial Industrial Class Rate (C/I)		2.00%
Rental Housing Class Rate (Rental)		1.25%
Affordable Rental Housing Class Rate (Aff. Rental)		0.75%
Non-Homestead Residential (Non-H Res.)		1.25%
Homestead Residential Class Rate (Hmstd. Res.)		
First \$500,000		1.00%
Over \$500,000		1.25%
Agricultural Non-Homestead		1.00%

#### BASE VALUE INFORMATION (Original Tax Capacity)

Map #	PID	Owner	Address	Land Market Value	Building Market Value	Total Market Value	Percentage Of Value Used for District	Original Market Value	Tax Year Original Market Value	Property Tax Class	Current Original Tax Capacity	Class After Conversion	After Conversion Orig. Tax Cap.	Area/Phase
	273023110001		4001 Lexington	4,544,800	0	4,544,800	100%	4,544,800	Prelim Pay 2016	C/I	90,896	C/I Pref.	90,146	1
	273023110002		4001 Lexington	4,339,300	9,160,700	13,500,000	100%	13,500,000	Prelim Pay 2016	C/I	270,000	C/I	270,000	1
								<b>18,044,800</b>			<b>360,896</b>		<b>360,146</b>	

- Note:**
1. Base values are for pay 2017 based upon discussions with County Assessor on 1-7-16 and are to be utilized for calculating the tax abatement amount.
  2. Tax Rates to be utilized for final sizing of the tax abatement are the preliminary pay 2016 rates as stated above.



**Land O Lakes Tax Abatement**  
 City of Arden Hills  
 City, County and School District - Increased Taxes Only

PROJECT INFORMATION (Project Tax Capacity)														
Area/Phase	New Use	Estimated Market Value Per Sq. Ft./Unit	Taxable Market Value Per Sq. Ft./Unit	Sq. Ft./Units	Market Value	Property Tax Class	Project Tax Capacity	Percentage Completed 2018	Percentage Completed 2019	Percentage Completed 2020	Percentage Completed 2021	First Year Full Taxes Payable		
1	Existing Office	47	47	284,650	13,500,000	C/I Pref.	269,250	100%	100%	100%	100%	2020		
1	New Office	100	100	145,000	14,500,000	C/I	290,000	100%	100%	100%	100%	2020		
<b>TOTAL</b>					<b>28,000,000</b>		<b>559,250</b>							
<b>Subtotal Residential</b>				0	0		0							
<b>Subtotal Commercial/Ind.</b>				429,650	28,000,000		559,250							

- Note: 1. Market values are based upon agreed amount os \$100 per sq/ft and to be utilized for calculating the tax abatement.  
 2. Actual size of building will be utilized for purposes of calculating the tax abatement.

TAX CALCULATIONS									
New Use	Total Tax Capacity	Fiscal Disparities Tax Capacity	Local Tax Capacity	Local Property Taxes	Fiscal Disparities Taxes	State-wide Property Taxes	Market Value Taxes	Total Taxes	Taxes Per Sq. Ft./Unit
Existing Office	269,250	93,502	175,748	211,648	140,499	131,933	29,986	514,065	1.81
New Office	290,000	100,708	189,292	227,958	151,326	142,100	32,207	553,592	3.82
<b>TOTAL</b>	<b>559,250</b>	<b>194,211</b>	<b>365,039</b>	<b>439,606</b>	<b>291,825</b>	<b>274,033</b>	<b>62,193</b>	<b>1,067,656</b>	

- Note:  
 1. Taxes and abatement will vary significantly from year to year depending upon values, rates, state law, fiscal disparities and other factors which cannot be predicted.



**Land O Lakes Tax Abatement  
City of Arden Hills  
City, County and School District - Increased Taxes Only**

Project Tax Capacity	Original Tax Capacity	Fiscal Disparities Incremental	Captured Tax Capacity	Combined City, County, & School Tax Rate	Maximum Annual Gross Tax Abatement	Semi Annual Gross Tax Abatement	100%	County	100%	Semi Annual Net Tax Abatement	Semi-Annual Present Value	PERIOD ENDING Yrs.	Tax Year	Payment Date
							City Abatement w/ Tax Rate 26.3822%	Abatement w/ Tax Rate 58.5617%	School Abatement w/ Tax Rate 26.3041%					
							-	-	-	-	-			02/01/19
							-	-	-	-	-			08/01/19
							-	-	-	-	-			02/01/20
559,250	(360,146)	(69,143)	129,961	111%	144,579	72,290	17,143	38,054	17,093	72,290	72,290	0.5	2020	08/01/20
						72,290	17,143	38,054	17,093	72,290	144,579	1	2020	02/01/21
564,843	(360,146)	(71,085)	133,612	111%	148,640	74,320	17,625	39,123	17,573	74,320	218,899	1.5	2021	08/01/21
						74,320	17,625	39,123	17,573	74,320	293,219	2	2021	02/01/22
570,491	(360,146)	(73,046)	137,298	111%	152,742	76,371	18,111	40,202	18,058	76,371	369,590	2.5	2022	08/01/22
						76,371	18,111	40,202	18,058	76,371	445,961	3	2022	02/01/23
576,196	(360,146)	(75,028)	141,022	111%	156,884	78,442	18,602	41,293	18,547	78,442	524,403	3.5	2023	08/01/23
						78,442	18,602	41,293	18,547	78,442	602,846	4	2023	02/01/24
581,958	(360,146)	(77,029)	144,783	111%	161,068	80,534	19,098	42,394	19,042	80,534	683,380	4.5	2024	08/01/24
						80,534	19,098	42,394	19,042	80,534	763,914	5	2024	02/01/25
587,777	(360,146)	(79,050)	148,582	111%	165,294	82,647	19,600	43,506	19,542	82,647	846,561	5.5	2025	08/01/25
						82,647	19,600	43,506	19,542	82,647	929,208	6	2025	02/01/26
593,655	(360,146)	(81,091)	152,418	111%	169,562	84,781	20,106	44,629	20,046	84,781	1,013,990	6.5	2026	08/01/26
						84,781	20,106	44,629	20,046	84,781	1,098,771	7	2026	02/01/27
599,592	(360,146)	(83,152)	156,293	111%	173,873	86,937	20,617	45,764	20,556	86,937	1,185,708	7.5	2027	08/01/27
						86,937	20,617	45,764	20,556	86,937	1,272,644	8	2027	02/01/28
605,588	(360,146)	(85,235)	160,207	111%	178,227	89,114	21,133	46,910	21,071	89,114	1,361,758	8.5	2028	08/01/28
						89,114	21,133	46,910	21,071	89,114	1,450,871	9	2028	02/01/29
611,643	(360,146)	(87,338)	164,160	111%	182,625	91,312	21,655	48,067	21,590	91,312	1,542,184	9.5	2029	08/01/29
						91,312	21,655	48,067	21,590	91,312	1,633,496	10	2029	02/01/30
617,760	(360,146)	(89,462)	168,152	111%	187,066	93,533	22,181	49,236	22,115	93,533	1,727,029	10.5	2030	08/01/30
						93,533	22,181	49,236	22,115	93,533	1,820,562	11	2030	02/01/31
623,938	(360,146)	(91,607)	172,185	111%	191,552	95,776	22,713	50,417	22,646	95,776	1,916,338	11.5	2031	08/01/31
						95,776	22,713	50,417	22,646	95,776	2,012,114	12	2031	02/01/32
630,177	(360,146)	(93,774)	176,257	111%	196,083	98,041	23,250	51,610	23,181	98,041	2,110,156	12.5	2032	08/01/32
						98,041	23,250	51,610	23,181	98,041	2,208,197	13	2032	02/01/33
636,479	(360,146)	(95,962)	180,371	111%	200,659	100,329	23,793	52,814	23,722	100,329	2,308,526	13.5	2033	08/01/33
						100,329	23,793	52,814	23,722	100,329	2,408,856	14	2033	02/01/34
642,843	(360,146)	(98,172)	184,525	111%	205,281	102,640	24,341	54,031	24,269	102,640	2,511,496	14.5	2034	08/01/34
						102,640	24,341	54,031	24,269	102,640	2,614,136	15	2034	02/01/35
<b>Total</b>						<b>2,614,136</b>	<b>619,936</b>	<b>1,376,099</b>	<b>618,101</b>	<b>2,614,136</b>				
<b>Present Value From 08/01/2018</b>			<b>Present Value Rate</b>	<b>0.00%</b>		<b>2,614,136</b>	<b>619,936</b>	<b>1,376,099</b>	<b>618,101</b>	<b>2,614,136</b>				

Note: 1. Maximum tax abatement for City is \$650,000  
2. Maximum tax abatement for County is \$1,500,000  
3. Maximum tax abatement for School District is \$618,100