

COLLATERAL ASSIGNMENT OF TIF NOTE AND DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT OF TIF NOTE AND DEVELOPMENT AGREEMENT (this "Assignment") is entered into as of the 25th day of April, 2024, by Phoenix Capital, LLC, a Minnesota limited liability company (the "Assignor") in favor of U.S. Bank, National Association, a national banking association (the "Bank").

WITNESSETH:

WHEREAS, the Bank has agreed to extend, and may in the future agree to extend, financial accommodations to the Assignor, in an amount not to exceed \$9,000,000 (the "Loan"), which Loan is evidenced and secured by that certain Agreement for the Briggs Apartments Project (Phase III) by and between the Bank and the Assignor dated May 1, 2024 (the "Agreement"), and by the other agreements, instruments and documents referred to therein or delivered in connection therewith, as the same may be amended, renewed or supplemented from time to time (collectively with the Agreement, the "Loan Documents");

WHEREAS, the Assignor shall be the payee under that certain TIF Note to be delivered by the City in conformance with the provisions of the Development Agreement by and between the City of City of Princeton, Minnesota (the "City") and the Assignor, dated January 11, 2024 (the "Development Agreement"), in the original principal amount not to exceed \$844,133 (the "Note");

WHEREAS, as a condition to its willingness to extend financial accommodations to the Assignor under the Loan Documents, the Bank requires that the Assignor assign its rights under the Note and the Development Agreement to the Bank as collateral security for the Obligations (as hereinafter defined) by entering into this Assignment;

NOW, THEREFORE, the Assignor, in consideration of the Bank's extension of the Loan and for other good and valuable consideration, and intending to be legally bound, hereby covenants in favor of the Bank and agrees as follows:

1. Assignment. The Assignor hereby grants, transfers and assigns unto the Bank, its successors and assigns, a lien upon and a security interest in the Development Agreement and the Note, when issued, together with any and all amendments, extensions, modifications, supplements, and all rights of the Assignor therein, as security for repayment of the Loan and the payment and performance of all of the Assignor's obligations under the Loan Documents and any amendments, extensions, renewals and increases of or to any of the foregoing, and all costs and expenses of the Bank incurred in the documentation, negotiation, modification, enforcement, collection and otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses (hereinafter referred to collectively as the "Obligations"). Notwithstanding this assignment, the Assignor will remain liable for payment and performance of all of its obligations under the Development Agreement. Notwithstanding anything herein to the contrary, in no event shall the Bank have any obligation to perform any of the Assignor's obligations under the Development Agreement unless and until the Bank expressly assumes the obligations of the Assignor thereunder in accordance with Paragraph 7 of this Agreement. The Assignment constitutes a present and absolute assignment to Bank of the Assignor's rights under the

Development Agreement; provided, however, the Bank confers on the Assignor the right to enforce the terms of the Development Agreement so long as no Event of Default (as defined in any of the Loan Documents) has occurred and is continuing under any of the Loan Documents. Upon the occurrence and during the continuance of an Event of Default under any of the Loan Documents, provided that the Assignor has been given a reasonable notice period and opportunity to cure the default, the Bank may give notice to the other parties to the Development Agreement of its intent to enforce the rights of the Assignor under the Development Agreement and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Nothing in this Agreement shall give Bank a greater right than the Assignor to enforce the Development Agreement. The Assignor agrees that the Bank shall have the rights stated in this Assignment with respect to the Development Agreement and the Note, in addition to the other rights which the Bank may have by law. Notwithstanding anything herein to the contrary, the Bank acknowledges and agrees, by its acceptance of this Assignment, that the City (a) has no obligation to make payments under the Note if (i) any Event of Default as defined in the Development Agreements has occurred and is continuing, or (ii) the City has canceled or rescinded the Note.

2. Performance by the Assignor. The Assignor agrees to faithfully abide by, perform and discharge each and every obligation of the Note and the Development Agreement that is to be performed by the Assignor. The Assignor shall use its best efforts to enforce or secure the performance of each and every term of the Note and the Development Agreement. Provided that the Bank has not exercised its power and right to collect payments pursuant to Section 7 hereof, the Assignor shall be entitled to receive all payments of under the Note. The Assignor agrees to provide prompt written notice to the Bank of the occurrence or existence of any default by any party to the Note or the Development Agreement.

3. Power to Modify the Note and the Development Agreement. The Assignor hereby expressly releases, relinquishes and surrenders all of the Assignor's right, power and authority to amend, modify, release, terminate or in any way alter the Development Agreement or the Note without the Bank's prior written consent, and any attempt on the part of the Assignor to exercise any such right, power or authority without the Bank's prior written consent shall constitute a default hereunder.

4. Bank Not Obligated to Perform. This Assignment is given only as collateral security, and the Bank shall not be obligated to perform or discharge any obligation or liability of the Assignor under the Development Agreement or the Note prior to enforcement of its rights under this Assignment. No payment, action or inaction of the Bank under or in connection with the Development Agreement or Note shall in any manner release the Assignor from its obligations under this Assignment or the Obligations. The Assignor, for itself and its successors and assigns, waives and releases any claims it may have against the City for any payments that the City makes to the Bank pursuant to the provisions of the attached Consent to Collateral Assignment of TIF Note and Development Agreement and that are based on a sworn under oath representation by the Bank that it has foreclosed its security interest in the Note and is the holder of the Note in full compliance with all legal foreclosure requirements.

5. Indemnity. The Assignor agrees to indemnify the Bank, each legal entity, if any, who controls the Bank and each of their respective directors, officers and employees (the

"Indemnified Parties"), and to hold each Indemnified Party harmless from and against, any and all claims, damages, losses, liabilities and expenses (including all fees and charges of internal or external counsel with whom any Indemnified Party may consult and all expenses of litigation and preparation therefor) which any Indemnified Party may incur, or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of the Assignor), in connection with or arising out of or relating to the Development Agreement or the Note or arising out of or by reason of this Assignment, whether (a) arising from or incurred in connection with any breach of a representation, warranty or covenant by the Assignor, or (b) arising out of or resulting from any suit, action, claim, proceeding or governmental investigation, pending or threatened, whether based on statute, regulation or order, or tort, or contract or otherwise, before any court or governmental authority; provided, however, that the foregoing indemnity agreement shall not apply to any claims, damages, losses, liabilities and expenses solely attributable to an Indemnified Party's gross negligence or willful misconduct. The indemnity agreement contained in this Section shall survive the termination of this Assignment, payment of any Loan and assignment of any rights hereunder. The Assignor may participate at its expense in the defense of any such action or claim.

6. Events of Default. If any of the following occur (each an "Event of Default"): (i) any Event of Default (as defined in any of the Obligations); (ii) any default under any of the Obligations that does not have a defined set of "Events of Default" and the lapse of any notice or cure period provided in such Obligations with respect to such default; (iii) demand by the Bank under any of the Obligations that have a demand feature; (iv) the failure by the Assignor to perform any of its obligations under this Assignment; (v) the falsity, inaccuracy or material breach by the Assignor of any written warranty, representation or statement made or furnished to the Bank by or on behalf of the Assignor; or (vi) the occurrence of any material default or Event of Default by the Assignor under the Development Agreement provided that any cure period thereunder has expired or the Note; then, and at any time thereafter, (a) the Bank, after providing Assignor with a written notice and reasonable opportunity to cure, may declare all Obligations secured hereby immediately due and payable, without demand or notice to the Assignor, (b) the Bank shall have, in addition to any remedies provided herein or by any applicable law or in equity, all the remedies of a secured party under the Uniform Commercial Code as the same may be amended from time to time, and (c) the Bank may, at its election and in addition to all other remedies, declare this Assignment to be absolute and not merely a collateral assignment, and thereupon this Assignment shall become and be absolute and in full force and effect. Furthermore, upon the occurrence and during the continuance of an Event of Default, the Bank shall have the right (but not the obligation), upon written notice to the City, to assume all obligations of the Assignor under the Development Agreement. Nothing herein contained shall be deemed to affect or impair any rights which Bank may have under the Loan Documents.

7. Power of Attorney. The Assignor hereby irrevocably constitutes and appoints the Bank and any officer thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Assignor or in its name, from time to time in the Bank's discretion for the purpose of carrying out the terms of this Assignment, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Assignment and, without limiting the generality of the foregoing, the Assignor hereby gives the Bank the

power and right on behalf of the Assignor, either before or after an Event of Default, and without notice to or assent by the Assignor, to do the following:

- a) to receive payment of, endorse, and receipt for, any and all monies, claims and other amounts due and to become due at any time in respect of or arising out of the Note;
- b) to commence and prosecute any suits, actions or proceeding at law or in equity in any court of competent jurisdiction to collect any amounts due under the Note and to enforce any other right in respect of the Note;
- c) to settle, compromise or adjust any suit, action or proceeding described above, and, in connection therewith, to give such discharges or releases as the Bank may deem appropriate;
- d) to negotiate with, enter into further agreements with, and otherwise deal with the City, as payor under the Note, with respect to the Note and the subject matter thereof; and
- e) to do at any time, or from time to time, all acts and things which the Bank deems necessary to protect or preserve the Note and the Bank's security interest and rights therein in order to effect the intent of this Assignment, all as fully and effectively as the Assignor might do.

The Assignor hereby ratifies all that such attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest, will be irrevocable and shall terminate only upon indefeasible payment in full of the Obligations and the termination of this Assignment. The powers conferred upon the Bank hereunder are solely to protect the Bank's interests in the Note and will not impose any duty upon it to exercise any such powers. The Bank will be accountable only for amounts that it actually receives as a result of the exercise of such powers.

8. Notice from the City; Bank Right to Cure and Perform. So long as the Development Agreement remains in effect, the Assignor agrees to give to the Bank copies of notices of any default or event of default given to the Assignor under the Development Agreement. Prior to any termination of the Development Agreement, Bank shall have an opportunity to cure such default within the cure period set forth therein. Furthermore, regardless of whether a default or event of default has occurred under the Development Agreement, the City agrees to accept from Bank any performance tendered under the Development Agreement by Bank as if the same were tendered by the Assignor; provided however that it is understood and agreed (a) that by tendering performance under any of said agreements, Bank does not assume any of the obligations or duties of the Assignor under or with respect to the Development Agreement unless Bank expressly assumes the Development Agreement in writing as provided in Paragraph 6 above, and (b) Bank shall not be obligated to cure any defaults of the Assignor under the Development Agreement except those arising from the actions or inactions of Bank.

9. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder ("Notices") must be in writing and will be effective upon receipt. Notices may be given by certified mail return receipt requested, facsimile transmission and commercial courier service are hereby agreed to as acceptable methods for

giving Notices. Regardless of the manner in which provided, Notices may be sent to a party's address as set forth above or to such other address as any party may give in writing to the other for such purpose in accordance with this section.

10. Preservation of Rights. No delay or omission on the Bank's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Bank's action or inaction impair any such right or power. The Bank's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Bank may have under other agreements, at law or in equity.

11. Illegality. If any provision contained in this Assignment should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Assignment.

12. Changes in Writing. No modification, amendment or waiver of, or consent to any departure by either party from, any provision of this Assignment will be effective unless made in a writing signed by both the Bank and the Assignor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Assignor will entitle the Assignor to any other or further notice or demand in the same, similar or other circumstance.

13. Successors and Assigns. This Assignment will be binding upon and inure to the benefit of the Assignor and the Bank and their respective successors and assigns; *provided, however,* that the Assignor may not assign this Assignment in whole or in part without the Bank's prior written consent and the Bank at any time may assign this Assignment in whole or in part.

14. Interpretation. In this Assignment, unless the Bank and the Assignor otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Assignment; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Assignment. Section headings in this Assignment are included for convenience of reference only and shall not constitute a part of this Assignment for any other purpose.

15. Defeasance. Upon payment in full of the Obligations and termination of the other Loan Documents, this Assignment shall become null and void and of no force and effect, and the Bank shall deliver a written confirmation of the same to the Assignor.

16. Governing Law and Jurisdiction. This Assignment has been delivered to and accepted by the Bank and will be deemed to be made in the State where the Bank's office indicated above is located. THIS ASSIGNMENT WILL BE INTERPRETED AND THE

RIGHTS AND LIABILITIES OF THE ASSIGNOR AND THE BANK DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE BANK'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES. The Assignor hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Bank's office indicated above is located; provided that nothing contained in this Assignment will prevent the Bank from bringing any action, enforcing any award or judgment or exercising any rights against the Assignor individually, against any security or against any property of the Assignor within any other county, state or other foreign or domestic jurisdiction. The Assignor acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and the Assignor. The Assignor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Assignment.

17. WAIVER OF JURY TRIAL. THE ASSIGNOR AND THE BANK IRREVOCABLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS ASSIGNMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS ASSIGNMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE ASSIGNOR ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

The Assignor acknowledges that it has read and understood all the provisions of this Assignment, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

[Signatures on following page]

IN WITNESS WHEREOF, the Assignor has executed this Collateral Assignment of TIF Note and Development Agreement as of the date and year first set forth above.

"ASSIGNOR"
PHOENIX CAPITAL, LLC,
a Minnesota limited liability company

By: _____
Its: _____

**CONSENT TO COLLATERAL ASSIGNMENT OF TIF NOTE AND DEVELOPMENT
AGREEMENT**

The undersigned, City of Princeton, Minnesota (the "City"), as the issuer of certain TIF Note to be issued pursuant to the Development Agreements by and between the City of City of Princeton, Minnesota (the "City") and the Phoenix Capital, LLC (the "Assignor"), dated January 11, 2024 (Phase III) (the "Development Agreement"), in the original principal amount not to exceed \$844,133 (the "Note"), hereby consents to the collateral assignment of all of the Assignor's rights under the Note and the Development Agreement to U.S. Bank, National Company (the "Bank") pursuant to the terms of that certain Collateral Assignment of TIF Note and Development Agreement executed by the Assignor in favor of the Bank dated of even date herewith (the "Assignment"). The City agrees that (i) the collateral assignment to the Bank will be noted on the registration records for the Note maintained by the City; (ii) if the Bank forecloses its security interest in the Note and as a result of such foreclosure the Bank is the holder of the Note, the City shall perform all of its obligations under the Note directly to the Bank, as the holder of the Note, and shall pay all amounts owed under the Note directly to the Bank, as the holder of the Note; and (iii) it shall give notice of the occurrence of any default or termination under the Note to both the Bank at 1015 W. Saint Germain St., St. Cloud, MN, 56301 and the Assignor at its current address, and agrees that notices from the Bank may be sent to the City at the address set forth in the Note.

WITNESS the due execution hereof as a document under seal, with the intent to be legally bound, this ___ day of April, 2024.

CITY OF PRINCETON, MINNESOTA

By: _____
Thom Walker, Mayor

By: _____
Michele McPherson, City Administrator