

**December 4, 2011 Version**

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**AMENDED & RESTATED  
CONTRACT  
FOR  
PRIVATE DEVELOPMENT**

**By and Between**

**BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY**

**and**

**THE CITY OF BROOKLYN PARK**

**and**

**TARGET CORPORATION**

**Target North Campus, Brooklyn Park, Minnesota**

**December \_\_, 2011**

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**AMENDED & RESTATED**  
**CONTRACT FOR PRIVATE DEVELOPMENT**

THIS AMENDED & RESTATED AGREEMENT, is made on or as of the \_\_\_ day of December, 2011 by and between the BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic under the laws of the State of Minnesota, and having its principal office at 5200 85<sup>th</sup> Avenue North, Brooklyn Park, Minnesota 55443-4300 (the "**Authority**"), the CITY OF BROOKLYN PARK, a Minnesota municipal corporation, and having its principal office at 5200 85<sup>th</sup> Avenue North, Brooklyn Park, Minnesota 55443-4300 (the "**City**") and TARGET CORPORATION, a Minnesota corporation, having its principal offices at 1000 Nicollet Mall, Minneapolis, Minnesota 55403 ("**Target**").

WITNESSETH:

WHEREAS, the City is a Minnesota home rule charter municipal corporation and is governed by its City Council; and

WHEREAS, the Authority is a public body corporate and politic, organized and existing pursuant to the Constitution and laws of the State of Minnesota and is governed by its Board of Commissioners; and

WHEREAS, the Authority was created by the City Council by its adoption of Enabling Resolution Number 1988-273, dated October 24, 1988, whereby the Authority was granted all of the powers, rights, duties, and obligations as set forth in *Minnesota Statutes*, Sections 469.090 through 469.1081 (the Economic Development Act"); and

WHEREAS, in furtherance of the objectives of the Economic Development Act, the City and the Authority have undertaken a program to encourage and assist the orderly development of vacant and underused property in the City; and

WHEREAS, the subject of this Amended & Restated Agreement is vacant and underutilized land within an area of the City depicted on Exhibit E and identified herein as the "**Development Property**"; and

WHEREAS, Target is the owner of a majority of the Development Property, having previously constructed office facilities on the easterly portion thereof (the "**Corporate Campus**"); and

WHEREAS, the Development Property is located within the boundaries of City of Brooklyn Park Municipal Development Districts 1 and 2, having been established by the City Council pursuant to *Minnesota Statutes*, §§469.124 to 469.128; and

WHEREAS, pursuant to the Economic Development Act the Authority is authorized to establish economic development districts in order to provide for the development of the City; and

WHEREAS, pursuant to the Economic Development Act, the Authority has established the 610 Economic Development District (the "**District**") the boundaries of which are co-terminus with the perimeter of the Development Property; and

WHEREAS, a major objective of creating the District is to encourage and assist, when necessary and appropriate, with the orderly development of vacant and underused property in the District by cooperating with and encouraging potential developers and through the construction of public improvements and infrastructure improvements in connection therewith; and

WHEREAS, pursuant to *Minnesota Statutes*, §§469.1812 to 469.1915 (the "**Abatement Act**"), the City is authorized to grant an abatement of ad valorem taxes imposed by the City if it finds that the benefits to be derived from anticipated development exceed the estimated cost of such benefit and if doing so will increase tax base, provide new employment opportunities, assist in the construction of new public facilities, help City residents access services and result in the provision of new infrastructure within the City; and

WHEREAS, the Authority, the City and Target previously entered into that certain Contract for Private Development dated August 1, 2006 involving the Development Property and Target's Corporate Campus (the "**2006 Development Agreement**"), under which Target agreed to construct certain improvements on the Development Property, and the Authority agreed to provide certain financial assistance in connection with that development;

WHEREAS, Target subsequently constructed a building (Building 4) on the Corporate Campus as provided therein; and

WHEREAS, Target has proposed to undertake additional construction on and development of its Corporate Campus, generally as contemplated in the 2006 Development Agreement but with somewhat different timing, and with some changes in the nature of the Authority's assistance; and

WHEREAS, Target, the City and the Authority have participated in negotiations concerning such contemplated development and Target's current development plans for the Corporate Campus; and

WHEREAS, in order to achieve the objectives of the Authority and the City, and to facilitate the development of the Development Property, the City and the Authority are prepared to continue to provide for the construction of certain public improvements in and around the District and for reimbursement of Target for the cost of constructing certain infrastructure improvements within the District; and

WHEREAS, the City and the Authority believe that the development contemplated by this Amended & Restated Agreement is in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the District has been undertaken.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the other as follows:

**ARTICLE I**  
**Definitions**

Section 1.1. Definitions. In this Amended & Restated Agreement, unless a different meaning clearly appears from the context:

"**2006 Development Agreement**" means the Contract for Private Development by and among the Authority, the City and Target dated August 1, 2006.

"**Abatement**" means the dedication to Target of a portion of City ad valorem taxes for the reimbursement of Verified Qualified Costs plus accrued interest at the Stated Rate under the Abatement Act.

"**Abatement Act**" means *Minnesota Statutes*, Sections 469.1812 to 469.1815, as the same may be amended from time to time.

"**Abatement Eligible Property**" or "**Abatement Eligible Properties**" means (1) any parcel of Target Property designated by Target as the subject of a Final Go-Ahead Notice and (2) that portion of the Target Property associated with the Building 4 and/or future buildings on the Target Property, *except* the property on which Building 5 is constructed, it being understood that assistance related to Building 5 is governed by Section 9.10 hereof.

"**Abatement Jobs Requirement**" means the Qualified Jobs requirement set forth in **Section 7.5** hereof for the purposes of the Abatement provided hereunder.

"**Abatement Percentage**" means the following, depending upon whether or not the County agrees to abate the property taxes it levies against the Target Property at a level no less than the Minimum County Abatement Amount, as requested pursuant to Sections 2.1(e) and 2.2(g) hereof, or otherwise agrees to provide Equivalent County Incentives:

Year	Target % without County Participation	Target % with County Participation
2008	100%	95%
2009	95%	90%
2010	95%	90%
2011	90%	85%
Thereafter	90%	85%

"**Abatement Period(s)**" means the term of the Abatement for each Abatement Eligible Property, as follows:

- (1) With respect to each Abatement Eligible Property for which a Certificate of Occupancy has been issued for a Planned Improvement prior to January 1, 2017, the Abatement Period shall commence on and include the August 1<sup>st</sup> Payment Date of the second (2<sup>nd</sup>) calendar year following issuance of said Certificate of

Occupancy and shall extend to and include the thirty-ninth (39<sup>th</sup>) Payment Date thereafter.

- (2) With respect to each Abatement Eligible Property for which construction of a Planned Improvement has been Commenced, but not Completed, prior to January 1, 2017, the Abatement Period shall commence on and include the August 1, 2018 Payment Date and shall extend to and include the thirty-ninth (39<sup>th</sup>) Payment Date thereafter.
- (3) With respect to each Abatement Eligible Property for which construction has Commenced on or after January 1, 2017, the Abatement Period shall commence on the later of (i) the August 1, 2018 Payment Date or (ii) the first Payment Date following issuance of the first Building Permit for such property, and shall extend to and include the thirty-ninth (39<sup>th</sup>) Payment Date thereafter.
- (4) In no event shall an Abatement Period extend beyond February 1, 2038 or consist of more than forty (40) Payment Dates.

"**Aggregate Payment**" shall have the meaning ascribed to such term in Section 9.4(b) of this Amended & Restated Agreement.

"**Amended & Restated Agreement**" means this agreement, as the same may be from time to time modified, amended, or supplemented by agreement of the Parties.

"**Amended & Restated City Abatement Resolution**" means the amended and restated resolution in the form attached hereto as Exhibit A, adopted by the City Council, granting Abatement to Target, incorporating modifications consistent with this Amended and Restated Agreement.

"**Agreement Date**" means August 1, 2006. The parties agree that the Agreement Date, which is the Agreement Date under the 2006 Development Agreement, will continue to be used for the purposes of this Amended & Restated Agreement.

"**Annual Compensation**" means the annual salary paid to an employee plus the value of all benefits provided to the employee in addition to such salary including, but not limited to, employer provided healthcare benefits, retirement benefits, insurance benefits and vacation benefits.

"**Arbitration**" means the dispute resolution procedure set forth in Article XIII hereof.

"**Arbitrative Dispute**" means a disagreement between the Authority and Target which, pursuant to the terms of this Amended & Restated Agreement, is to be resolved pursuant to Arbitration.

"**Authority**" means the Brooklyn Park Economic Development Authority, established by the City pursuant to the Economic Development Act.

"**Authority Business Subsidy Policy**" means the Authority's wage and jobs policy in effect as of the Agreement Date as required by the Business Subsidy Act.

**“Authority Opt-Out Right”** has the meaning provided in Section 14.11(b) and (c).

**"Base Tax"** means, except as otherwise provided in Section 5.2(d) hereof, the amount identified in Exhibit I attached hereto for each tract of the Development Property, which Base Tax shall be allocated to each Abatement Eligible Property in accordance with Section 9.4(c)(iii) hereof. It is the intention of the parties that the Base Tax identified in Exhibit I for each tract of the Development Property is calculated based on the Tax Capacity attributable to the each such tract for taxes payable in calendar year 2006 *times* the City Tax Capacity Rate for each such tract for taxes payable in calendar year 2006.

**"Benefit Date"** means August 1, 2008, which is the first Payment Date upon which an Aggregate Payment was made to Target under the 2006 Development Agreement.

**"Board"** means the governing body of the Authority.

**"Building 4"** means the Target office building referenced in Section 7.1 of this Amended & Restated Agreement together with the Internal Infrastructure improvements related thereto.

**"Building 5"** means the Target office building referenced in Section 7.2 of this Amended & Restated Agreement together with the Internal Infrastructure improvements related thereto.

**“Building 5 Default”** has the meaning provided in Section 14.11(b).

**"Building Permit"** means a permit issued by a building official of the City authorizing the Commencement of construction of a Planned Improvement.

**"Business Subsidy"** has the meaning ascribed to such term in Section 8.2 of this Amended & Restated Agreement.

**"Business Subsidy Act"** means *Minnesota Statutes*, Sections 116J.993 to 116J.995.

**“Business Subsidy Jobs Requirement”** means the Qualified Jobs requirement set forth in **Section 8.5** hereof for the purposes of the Business Subsidies Act.

**"Central Park"** means certain park areas as designated on the Overall Development Site Plan, as the same may be amended by Phase Development Plans, which park areas may include activity spaces, greenery, mature trees, benches, pathways, picnic areas, signage, lighting, benches and trash receptacles.

**"Certificate of Occupancy"** means a certificate issued by a City building official or such other equivalent documentation or instrument by which the City affirms that a Planned Improvement is sufficiently complete to permit its occupancy.

**"City"** means the City of Brooklyn Park.

**"City Abatement Resolution"** means City Resolution No. 2006-159, approving the Abatement described in the 2006 Development Agreement.

"**City Assessor**" means the City assessment official charged with valuing real property within the City for ad valorem taxation purposes.

"**City Business Subsidy Policy**" means the City's wage and jobs policy in effect as of the Agreement Date as required by the Business Subsidy Act.

"**City Pledge Agreement**" means an agreement between the City and the Authority by which the City agrees to pay over to the Authority's Target Abatement Account the Semi-Annual City Abatement Amounts during each applicable Abatement Period, in the form attached hereto as Exhibit C.

"**City Property**" means that portion of the Development Property owned by the City, legally described on Exhibit B attached hereto and held for future park purposes.

"**City Tax Capacity Rate**" means the sum of all of the local tax rates imposed by the City and the Authority upon the Tax Capacity of taxable property within the City in any given year for taxes payable, including without limitation, all tax rates associated with special levies or levies that are separately designated on the tax statement (e.g. debt service levies, HRA levies, EDA levies, etc.).

"**Class Rate**" means the legislative class rate or rates applied to parcel of property based on its use pursuant to *Minnesota Statutes*, Section 273.13, which rate is multiplied by the assessed market value of such property to determine Tax Capacity.

"**Commencement**," "**Commence**" or "**Commenced**" means the beginning of physical improvement to an Abatement Eligible Property or Building 5, as the case may be, including grading, excavation, or other physical site preparation work.

"**Complete**," "**Completed**" or "**Completion**" means with respect to an Abatement Eligible Property or Building 5, as the case may be, the issuance, or entitlement to issuance upon application therefor of a Certificate of Occupancy with respect thereto.

"**Corporate Campus**" means the office facilities upon the Development Property now or in the future owned and operated by Target.

"**Cost Verification Notice**" means a written statement from the Authority to Target advising of those costs contained on a Qualified Cost Statement that the Authority reasonably accepts as Verified Qualified Costs under the terms of this Amended & Restated Agreement.

"**Council**" means the governing body of the City.

"**County**" means Hennepin County, Minnesota.

"**County Abatement**" means agreement by the County to grant an abatement to Target pursuant to the Abatement Act.

**"Designated Developer"** means any third-party or third parties with which Target enters into a written agreement for the development of portions of the Planned Improvements in accordance with this Amended & Restated Agreement.

**"Development Phase"** means any portion of the Planned Improvements the construction of which Target or its Designated Developer is prepared to undertake.

**"Development Property"** means the Target Property, the City Property and the MnDOT Property, collectively.

**"District"** means the 610 Economic Development District, encompassing the Development Property.

**"Economic Development Act"** means *Minnesota Statutes*, Section 469.090 to 469.1081.

**"Equivalent County Incentives"** means financial assistance provided Target by the County which is (1) provided in connection with the development or operation of the Target Property by Target or a Designated Developer, (2) provided pursuant to an agreement between Target and the County, (3) not a substitute for or replacement of any financial obligation undertaken or to be undertaken by the City or the Authority under this Amended & Restated Agreement and (4) in dollar amount reasonably estimated to be ninety percent (90%) or more of the total estimated Abatement to be provided by the City under this Amended & Restated Agreement.

**"Event of Default"** means an act or failure to act by Target, the City or the Authority, as defined in **Article XII** of this Amended & Restated Agreement.

**"Executive Director"** means the executive director of the Authority or, with respect to any particular action, his or her designee.

**"External Infrastructure"** means such public improvements and infrastructure to be constructed outside of the Development Property, as reasonably necessitated by the Planned Improvements constructed upon the Development Property, including but not limited to streets, interchanges, traffic control facilities, sidewalks, sewer and water facilities, trails, lighting, landscaping and public storm water facilities. External Infrastructure shall also include such public improvements and infrastructure to be constructed outside the interior curb line of any roadways constructed at the perimeter of the Development Property (i.e. within the Development Property, but at the perimeter thereof).

**"External Infrastructure Phase"** means a portion of the External Infrastructure that the parties agree must be constructed in support of a Development Phase.

**"Final Go-Ahead Notice"** means the notice delivered to the City by Target pursuant to **Section 7.7(b)** hereof.

**"For-Sale Units"** means those housing units constructed within the District and offered for sale to owner-occupants.

**"For-Sale Workforce Housing"** means For-Sale Units that meet the Ownership Income Limit and the Ownership Purchase Price Limit.

**"Full-Time Equivalent Job"** means any number of part-time employees employed within the Planned Improvements whose cumulative, annual hours worked is equal to 1800 hours."

**"Full Time Job"** means a position of employment primarily at a Planned Improvement who (1) works 1800 or more hours annually or (2) is salaried and does not get paid on an hourly basis.

**"Highway 610 Improvements"** means the extension of Highway 610 as a four-lane freeway from Highway 169 to Interstate 94 and the upgrading of Highway 610 to a six-lane freeway or such higher level as the projected needs of the region reasonably require.

**"HUD Area Median"** means the annual median family incomes for the Minneapolis-St. Paul Standard Metropolitan Statistical Area, as published annually by the United States Department of Housing and Urban Development.

**"Internal Infrastructure"** means all utilities and infrastructure improvements within the Target Property (exclusive of the External Infrastructure), including but not limited to sanitary sewer, water, streets, sidewalks, curbs, gutters, trails, lighting, landscaping, storm water facilities, private parking structures and areas, parks and other amenities.

**"Maximum Qualified Costs"** means the sum of all Verified Qualified Costs, together with interest thereon at the Stated Rate pursuant to Section 9.3 hereof, constituting the maximum amount of Abatement and Pooled Increment Assistance (combined) to be paid to Target pursuant to this Amended & Restated Agreement.

**"Minimum Construction Requirement"** means the construction and development requirements set forth in Sections 7.1, 7.2 and 7.4.

**"Minimum County Abatement Amount"** means a County Abatement with respect to the Target Property which is, in dollar amount, reasonably estimated to be ninety percent (90%) or more of the total estimated Abatement to be provided by the City under this Amended & Restated Agreement.

**"Minimum Park Improvements"** means the Central Park(s) and one or more Park Corridors constructed by Target or a Designated Developer upon the Development Property for the benefit of both the residents and employees within the District and the residents of the City generally pursuant to Article VI comprising not less than 20 acres in the aggregate, up to fifty percent (50%) of which may consist of lakes or ponds so long as such water features constitute an integrated element of the Minimum Park Improvements.

**"Minimum Requirements"** means the Minimum Construction Requirement, the Abatement Jobs Requirement and the Business Subsidy Jobs Requirement, collectively.

"**MnDOT Parcel**" means that property consisting of approximately twenty (20) acres located adjacent to the Target Property at the northeast quadrant of the intersection of Highways 610 and 169.

"**Notice of Commencement**" means a notice to the Authority from Target advising that a Building Permit has been issued for and construction of a Planned Improvement upon an Abatement Eligible Property, or Building 5, as the case may be, has been Commenced.

"**Notice of Completion**" means a notice to the Authority from Target advising that construction of a Planned Improvement upon an Abatement Eligible Property, or Building 5, as the case may be, has been Completed.

"**Overall Development Site Plan**" means the site plan for the Development Property attached hereto as Exhibit E, prepared by Target to show the potential development capacity of the Development Property.

"**Ownership Income Limit**" means that (1) fifty percent (50%) of the For-Sale Workforce Housing is initially purchased by households with annual family incomes at or below sixty percent (60%) of the HUD Area Median and (2) fifty percent (50%) of the For-Sale Workforce Housing is initially purchased by households with annual family incomes at or below eighty percent (80%) of the HUD Area Median

"**Ownership Purchase Price Limit**" means that the gross purchase price of For-Sale Workforce Housing does not exceed an amount which a person or family meeting the Ownership Income Limit can afford if spending no more than thirty percent (30%) of their income thereon.

"**Park Corridors**" means passageways, routes or connections from one area of the Development Property to another, including hard surface, multipurpose connectivity (walking, biking, hiking) to other sidewalks and trails, meeting public accessibility guidelines and designed in a pedestrian friendly manner and which may include, but shall not be limited to:

- ◆ streetscaping, lighting, signage, map location identifiers
- ◆ interest features of colored or treated concrete, brickwork or stone
- ◆ elements of public art
- ◆ rest areas (small court yard type areas adjacent to the trail, benches
- ◆ public restrooms
- ◆ small parking lot for those accessing corridor

"**Parties**" means the Authority, the City and/or Target, collectively and "Party" means the Authority, City and/or Target individually.

"**Payment Certificate**" means a certificate in the form attached hereto as Exhibit H prepared by the Authority and submitted to Target simultaneously with each Aggregate Payment showing (i) each Semi-Annual City Abatement Amount included in the Aggregate Payment, (ii) the total Verified Qualified Costs and accrued interest that remains outstanding after such Aggregate Payment and (iii) all reductions permitted under the terms of this Amended & Restated Agreement, if any. There shall be attached to each Payment Certificate the detailed calculation of each Semi-Annual City Abatement Amount included in the Aggregate Payment

(the "**Payment Detail**"), which Payment Detail shall contain, at a minimum, the detail set forth in the sample calculation included in the definition of Semi-Annual City Abatement Amount below.

"**Payment Date**" means each **August 1<sup>st</sup>** and **February 1<sup>st</sup>** during the applicable Abatement Period.

"**Phase Development Plan(s)**" means site plans for each Development Phase that Target or its Designated Developer is prepared to make the subject of a Preliminary Go-Ahead Notice, to be submitted by Target in accordance with Section 4.2 of this Amended & Restated Agreement.

"**Planned Improvements**" means, in the aggregate, approximately eight million (8,000,000) square feet of office, two million (2,000,000) square feet of retail, three thousand (3000) housing units, one or more parks totaling at least twenty (20) acres and one or more hotels, constructed, or caused to be constructed in phases by Target or its Designated Developers upon the Development Property pursuant to the applicable Final Go-Ahead Notice, including the Minimum Construction Requirement.

"**Pooled Increment Assistance**" has the meaning provided in Section 9.10 hereof.

"**Preliminary Go-Ahead Notice**" means the notice delivered to the Authority by Target in connection with a Development Phase pursuant to Section 7.7(a) hereof.

"**Public Facilities**" means one or more public parking structures, a City water tower, a City police substation and a County library as described in Section 3.3 hereof.

"**Public Improvements**" means the External Infrastructure, Internal Infrastructure and Public Facilities, collectively, as described in Article III.

"**Qualified Costs**" means the following costs incurred by Target or a Designated Developer after June 1, 2005 and certified to the Authority pursuant to Sections 9.3(a) and 9.10 hereof: (1) all costs incurred by Target associated with the purchase of the Target Property, or any portion thereof, including the purchase price paid by Target for such property and professional fees to the extent such land becomes an Abatement Eligible Property or Internal Infrastructure is constructed to serve such land, (2) all costs associated with the purchase of the City Property and/or the MnDOT Property, including the purchase price for such properties and professional fees, (3) all costs of Internal Infrastructure, including design and other professional fees and (4) all design and other professional fees incurred in connection with the preparation of Phase Development Plans and the related updating of the Overall Development Site Plan.

"**Qualified Cost Statement**" means a statement signed by an officer of Target, or person designated in writing by an officer of Target, and delivered to the Authority, detailing and certifying Qualified Costs that have been incurred by Target or a Designated Developer up to the date of the statement and which have not been detailed in a prior Qualified Cost Statement.

"**Qualified Job**" means a Full-Time Job or Full-Time Equivalent Job created at an Abatement Eligible Property, the Annual Compensation paid with respect to which, when

averaged with all prior Qualified Jobs created at the Development Property, is Fifty Thousand Dollars (\$50,000.00) or more. By way of example, a Full-Time Job or a Full-Time Equivalent Job at an Abatement Eligible Property that pays an Annual Compensation of \$28,000 shall be deemed a Qualified Job hereunder if the following formula is satisfied with respect to such job:

\$28,000 plus Annual Compensation of all prior Qualified Jobs; *Divided by* total number of Qualified Jobs at Development Property plus one (1); *Equals or exceeds* \$50,000.

Qualified Jobs created by Target, any Target subsidiary and any Target vendor will be included in the calculations.

**"Rental Income Limit"** means that (1) fifty percent (50%) of the Rental Workforce Housing is occupied by households with incomes at or below thirty percent (30%) of the HUD Area Median and (2) fifty percent (50%) is occupied by households with incomes at or below fifty percent (50%) of the HUD Area Median

**"Rent Limit"** means that the annual gross rent with respect to Rental Workforce Housing does not exceed thirty percent (30%) of the applicable Rental Income Limit.

**"Rental Units"** means leased apartment units located within multifamily developments constructed within the District.

**"Rental Workforce Housing"** means Rental units that meet the Rental Income Limit and the Rent Limit.

**"Semi-Annual City Abatement Amount"** means, with respect to each Abatement Eligible Property, an amount equal to: the Tax Capacity attributable to the Abatement Eligible Property for the year in question *times* the City Tax Capacity Rate for such year; *minus* the Base Tax applicable to such property; *times* the applicable Abatement Percentage; *divided* by two (2). By way of example, if an Abatement Eligible Property has a Tax Capacity equal to \$1,000,000 for taxes payable year 2008, the City Tax Capacity Rate is 0.40 for such taxes payable year, the Base Tax for such property is \$50,000, and the applicable Abatement Percentage hereunder is 95%, the Semi-Annual Abatement Amount for such Abatement Eligible Property payable hereunder on each Payment Date in 2008 is equal to \$166,250 calculated as follows:

- (i)  $\$1,000,000 \times 0.40 = \$400,000$
- (ii)  $\$400,000 - 50,000 = \$350,000$
- (iii)  $\$350,000 \times 0.95 = \$332,500$
- (iv)  $\$332,500 / 2 = \$166,250$

**"State"** means the State of Minnesota.

**"Stated Rate"** means nine percent (9%) per annum compounded semi-annually on each Payment Date.

**"Target"** means Target Corporation, a Minnesota corporation, its wholly-owned subsidiaries, successors and approved assigns; provided that notwithstanding anything to the

contrary herein, any financial obligation of Target under this Amended & Restated Agreement remains an obligation of Target Corporation.

**"Target Abatement Account"** means a separate and segregated account of the Authority into which there shall be deposited only the Semi-Annual City Abatement Amounts transferred by the City to the Authority pursuant to the City Pledge Agreement and from which such Semi-Annual City Abatement Amounts shall be paid to Target in accordance herewith.

**"Target Opt-Out Right"** has the meaning provided in Section 14.11(a).

**"Target Property"** means those portions of the Development Property owned by Target as of the Agreement Date, as legally described on Exhibit F attached hereto, together with such additional portions of the Development Property as may be acquired by Target.

**"Tax Capacity"** means the total assessed fair market value attributable to a parcel of real property *times* the Class Rate(s) applicable to such property in any given year for taxes payable, without regard to any allocation of tax capacity for fiscal disparities purposes pursuant to Chapter 473F of *Minnesota Statutes*.

**"Unavoidable Delays"** means delays beyond the reasonable control of the Party claiming the benefit of such delay, which include, without limitation, the direct result of: (i) strikes or other labor troubles; (ii) acts of God, fire or other casualty to the Planned Improvements or Public Improvements; (iii) a determination that the construction of the Planned Improvements or Public Improvements requires the preparation of an environmental impact statement, (iv) litigation commenced by third parties which directly results in delays; (v) the filing of a petition by a third-party which mandates by operation of law the delaying of the effective date of any City or Authority action required by this Amended & Restated Agreement or necessary to achieve its purpose; (vi) severe adverse weather conditions beyond those reasonably foreseeable or commonly scheduled for in this State; (vii) acts or failures to act of any Federal, State or local governmental unit or (viii) delay resulting from the failure of another Party to timely perform its obligations hereunder.

**"Verified Qualified Costs"** means those Qualified Costs submitted to the Authority by Target and verified pursuant to Sections 9.3 and 9.10 hereof.

**"Workforce Housing"** means Rental Workforce Housing and For-Sale Workforce Housing, collectively.

## **ARTICLE II**

### **Representations and Warranties**

Section 2.1. Representations by the Authority. The Authority represents, warrants and covenants as follows:

- (a) The Authority is a public body corporate and politic duly organized and existing under the laws of the State and is duly authorized and has the requisite power to enter into this Amended & Restated Agreement and perform its obligations

hereunder. Performance of the Authority's obligations under this Amended & Restated Agreement does not conflict with any of its contracts, enabling legislation, or governing documents.

- (b) The activities of the Authority are undertaken for the purpose of providing increased employment opportunities in the City, County and State and providing an impetus for office, commercial and housing development of underutilized property within the District.
- (c) The Authority will perform its obligation under this Amended & Restated Agreement fully and timely.
- (d) The Authority will work with Hennepin County and the State of Minnesota in an attempt to raise money from all available sources to pay for External Infrastructure costs necessitated by construction of the Planned Improvements.
- (e) The Authority will make application to the County for County Abatement equal to or greater than the Minimum County Abatement Amount.
- (f) In the event of (i) a change in laws or regulations applicable to this Amended & Restated Agreement including, but not limited to, the Business Subsidies Act, the Abatement Act, and laws related to the taxation of real property in Minnesota, (ii) a court order, judgment or judicial decision, or (iii) an administrative action or adjudication that reduces or eliminates the economic benefits to Target contemplated by this Amended & Restated Agreement, the Authority shall exercise reasonable diligence in finding an alternative means of accomplishing the same or similar overall result. In addition to the foregoing, the Authority will reasonably cooperate with Target in (i) opposing such changes in law, administrative actions or court actions that will have the effect of reducing or eliminating the economic benefits to Target contemplated by this Amended & Restated Agreement and (ii) seeking legislative changes necessary to mitigate the effects of such changes in law, administrative actions or judicial decisions that are adverse to Target's economic interests herein (e.g. sponsor such legislation where necessary); provided, however, that the Authority shall not be required to expend any out of pocket costs related thereto and (ii) it shall be deemed "reasonable" for the Authority not to oppose such changes in law or seek legislative changes to the extent that doing so may pose a material conflict of interest to other interests of the Authority and/or City.

Section 2.2. Representations by the City. The City represents, warrants and covenants as follows:

- (a) The City is a municipal corporation under the laws of the State and is duly authorized and has the requisite power to enter into this Amended & Restated Agreement and perform its obligations hereunder. Performance of the City's obligations under this Amended & Restated Agreement does not conflict with any of its contracts, enabling legislation, or governing documents.
- (b) The City will perform its obligations under this Amended & Restated Agreement fully and timely.

- (c) The City will cooperate with Target in Target's effort to realign existing roadways within the Development Property; provided that the cost of such realignment shall be borne exclusively by Target.
- (d) The City will undertake discussions with Hennepin County regarding the transfer of all management responsibility for public roadways within the District to the City and in any event will cooperate with and assist Target in achieving its roadway design goals, as set forth in the Overall Development Site Plan and each Phase Development Plan.
- (e) The City will cooperate with and assist Target in lobbying the Minnesota Legislature for accelerating funding for the completion of the Highway 610 Improvements.
- (f) The City will in good faith and with all due regard to the provisions of this Amended & Restated Agreement undertake to consider flexible zoning/land use classifications and standards for the Development Property as necessary to develop the Planned Improvements in accordance herewith, including adoption of an ordinance that permits developments similar to those typically found in central business districts of other metropolitan cities with taller, more dense buildings, smaller or minimal setbacks, slower traffic speeds, narrower streets and more curb cuts. If necessary, each Phase Development Plan will follow a planned unit development process to control future development of the District in furtherance of this Amended & Restated Agreement. In addition, the City will in good faith and with all due regard to the provisions of this Amended & Restated Agreement undertake to cause the City Comprehensive Plan to be revised as necessary to guide the uses of the Development Property as contemplated in the Overall Development Site Plan, as amended from time to time pursuant to **Section 4.1** hereof.
- (g) The City will join with the Authority in making application to the County for County Abatement equal to or greater than the Minimum County Abatement Amount.
- (h) In the event of (i) a change in laws or regulations applicable to this Amended & Restated Agreement or the 2006 Development Agreement including, but not limited to, the Business Subsidies Act, the Abatement Act, and laws related to the taxation of real property in Minnesota, (ii) a court order, judgment or judicial decision, or (iii) an administrative action or adjudication that reduces or eliminates the economic benefits to Target contemplated by this Amended & Restated Agreement or the 2006 Development Agreement, the City shall exercise reasonable diligence in finding an alternative means of accomplishing the same or similar overall result. In addition to the foregoing, the City will reasonably cooperate with Target in (i) opposing such changes in law, administrative actions or court actions that will have the effect of reducing or eliminating the economic benefits to Target contemplated by this Amended & Restated Agreement or that have been granted to Target under the 2006 Development Agreement, and (ii) seeking legislative changes necessary to mitigate the effects of such changes in law, administrative actions or judicial decisions that are adverse to Target's economic interests herein (e.g. sponsor such legislation where necessary); provided, however, that the City shall not be required to expend any out of pocket

costs related thereto and (ii) it shall be deemed “reasonable” for the City not to oppose such changes in law or seek legislative changes to the extent that doing so may pose a material conflict of interest to other interests of the Authority and/or City.

Section 2.3. Representations by Target. Target represents, warrants and covenants as follows:

- (a) Target is not knowingly in violation of any the laws of the State or Federal government that would affect its ability to enter into this Amended & Restated Agreement, and has all necessary power and authority to enter into this Amended & Restated Agreement and to carry out its obligations hereunder.
- (b) Subject to: (i) performance by the Authority and the City of their obligations hereunder; (ii) re-zoning and guiding of the Development Property as provided in **Section 2.2(f)** hereof; and (iii) receipt of all necessary permits, licenses, and approvals; Target shall construct or cause to be constructed, the Minimum Construction Requirement in accordance with the terms of this Amended & Restated Agreement and all local, State and Federal laws and regulations (including, but not limited to, environmental, zoning, building code, energy conservation, and public health laws and regulations). The foregoing is subject to **Section 12.1** as such section relates to the Minimum Construction Requirement.
- (c) Target agrees to reasonably cooperate with the Authority in seeking funds for the construction of the Highway 610 Improvements provided that Target shall not be required to incur any additional and material obligations to do so. Internal overhead (including employee time) shall not be deemed an additional and material obligation.
- (d) Subject to **Section 2.3(b)** above as it relates to the Minimum Construction Requirement, Target will, at its expense, apply for and pursue with reasonable diligence, or cause to be applied for and pursued with reasonable diligence, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, or cause to be met, in a timely manner, all requirements of all applicable local, State and Federal laws and regulations, in each case which must be obtained or met before the Minimum Construction Requirement may be lawfully constructed in accordance herewith. The foregoing is subject to **Section 12.1** hereof as such section relates to the Minimum Construction Requirement.
- (e) Neither the execution and delivery of this Amended & Restated Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Amended & Restated Agreement by Target is prevented, materially limited by, or materially conflicts with or results in a material breach of the terms, conditions or provisions of any evidences of indebtedness, agreement or other instrument of whatever nature to which Target is now a party or by which it is bound, or constitutes a default under any of the foregoing.

- (f) The proposed development of the District by Target pursuant to this Amended & Restated Agreement would not occur but for the cooperation and financial assistance being provided by the City and Authority hereunder.
- (g) Target will perform its obligations under this Amended & Restated Agreement fully and timely, and will cooperate with and respond promptly to the City and the Authority with respect to the development of the Minimum Construction Requirement.

### **ARTICLE III**

#### **Public Improvements**

##### Section 3.1. Internal Infrastructure.

- (a) Except as otherwise provided in **Section 3.1(c)** below, Target and/or its Designated Developers shall construct at their cost all Internal Infrastructure in a manner that will adequately and timely serve construction and operation of the Planned Improvements in accordance with this Amended & Restated Agreement.
- (b) Upon completion of construction of all or a portion of the utilities and roadways that are a part of the Internal Infrastructure, Target may offer to dedicate all or a portion of the same to the City. In such event, the City shall inspect such infrastructure and if it conforms to standard design and quality standards of the City with respect to similarly situated infrastructure improvements, as reasonably determined by the City, the City shall accept such dedication and thereafter be responsible for the general maintenance thereof. Extraordinary maintenance, in excess of that customarily provided by the City with respect to other similar public improvements within the City, shall be the responsibility of Target or its successors, assigns and tenants through covenants placed on the Target Property or, if the Parties agree, through establishment of a special service district pursuant to *Minnesota Statutes*, Chapter 428A. If Target does not offer to dedicate all or a portion of the Internal Infrastructure to the City, Target shall be responsible for the maintaining or assuring the maintenance thereof.
- (c) Upon request by Target, delivery of Target guaranties or other security, if any, reasonably necessary and acceptable to the City and determination by the City that it may legally do so, the City shall (i) issue assessment bonds pursuant to *Minnesota Statutes*, Chapter 429 to pay the costs of constructing all or a portion of the Internal Infrastructure described in **Section 3.1(a)** hereof, (ii) construct or cause to be constructed such Internal Infrastructure in accordance with plans and specifications prepared by Target or its Designated Developer and approved by the City in its reasonable discretion and (iii) unless Target has agreed to pay the cost thereof by other means, levy special assessments against benefited properties in the amount of the cost of such Internal Infrastructure, including reasonable and customary City administrative costs, and such assessments shall constitute a lien on the benefited property pursuant to *Minnesota Statutes*, Section 429.061, subd. 2. Target or its Designated Developer shall be entitled to review and approve all construction bids before they are accepted and contracts are let by the City, provided that such approval shall constitute consent to the special

assessment levy described in this **Section 3.1(c)** and a waiver of all objections thereto. Target or its Designated Developer shall be permitted to submit design/build construction bids with respect to any Internal Infrastructure to be constructed pursuant to this **Section 3.1(c)**. By the recording of this Amended & Restated Agreement against the Target Property, the provisions of this **Section 3.1** shall be binding upon all successors in interest thereto. Upon review and approval of the construction bids by Target or its Designated Developer and letting of the construction contract, Target or its Designated Developer shall provide the City with such title to or access over the Target Property as may be legally required, in the reasonable judgment of the City, in order to implement this **Section 3.1(c)**. Nothing contained in this Section shall obligate Target to request that the City construct any portion of the Internal Infrastructure.

- (d) Notwithstanding any City or Authority ordinance, regulation or policy to the contrary, neither the City nor the Authority will require payment bonds, performance bonds, letters of credit, cash escrows or other forms of financial security for any development or construction activities undertaken upon the Target Property by (i) Target or (ii) a Designated Developer or other parties so long as Target guarantees proper performance and completion via a separate written corporate guaranty delivered to the City. To the extent that such bonds or other financial security would otherwise be permitted or required, the City and the Authority agrees to waive them. Except as provided in this **Section 3.1(d)**, the City may require performance bonds or other forms of financial security as permitted or required by the Code of City Ordinances.
- (e) In the event that **after one hundred twenty (120) months after the Agreement Date**, (i) all of the Internal Infrastructure necessary for development of Planned Improvements west of existing West Broadway has not been substantially completed and (ii) Target or a Designated Developer requests that the City or Authority undertake to construct such unfinished Internal Infrastructure, the City or Authority may, but shall not be required to do so. If under these circumstances the City or Authority does construct such Internal Infrastructure (A) the cost thereof may be assessed against the requesting party and (B) the property that is both owned by the requesting party and benefited by the Internal Infrastructure constructed by the City or Authority, and which has not previously been designated as an Abatement Eligible Property hereunder, shall not be an Abatement Eligible Property and Target shall not received Abatement payments with respect thereto.

### Section 3.2. External Infrastructure.

- (a) Subject to (i) agreement of the City and Target as to the specific External Infrastructure Phase, if any, that is necessary to support each Phase Development Plan as described in **Section 7.7** hereof, (ii) the ability of the City to obtain financing for the construction of such External Infrastructure Phase and (iii) receipt by the City of a Final Go-Ahead Notice for the related Development Phase, the City and Authority shall be responsible for the construction and maintenance of such External Infrastructure Phase pursuant to **Section 7.7** hereof at their sole cost and expense. In no event shall the cost of constructing External

Infrastructure be assessed against the Target Property; provided, however, that the costs of maintaining such External Infrastructure once completed may be assessed to benefited property owners, including Target to the extent and in such manner as is customary for similar maintenance projects within the City and as provided by law.

- (b) It is agreed by the Parties that External Infrastructure currently serving the District is adequate to serve at least Six Hundred Thousand (600,000) gross square feet of office building area, Three Hundred Thousand (300,000) gross square feet of retail or mixed-use development and fifteen hundred (1500) additional employees and is, therefore, adequate to serve the Minimum Construction Requirement.
- (c) The City and the Authority hereby agree to waive any pending or levied assessments against the Target Property as of the Agreement Date and any assessments associated with infrastructure improvements planned or contemplated as to the Agreement Date including, but not limited to approximately \$2,400,000 of infrastructure costs for trunk water and storm and sanitary sewer improvements planned in the area of the District. The City agrees that none of the cost for such infrastructure improvements shall be assessed against the Target Property or otherwise charged to Target or its Designated Developers, so long as Target is in compliance with the Minimum Requirements. To the extent Target acquires all or any portion of the City Property and/or the MnDOT Parcel subsequent to the Agreement Date, at the time of such acquisition any City assessment against such properties for the infrastructure costs described in this **Section 3.2(c)** shall be paid in full by the City or Authority and released of record against such properties.

### Section 3.3. Public Facilities.

- (a) As part of its review of each Phase Development Plan submitted after **December 31, 2010**, the City may, to the extent reasonably necessary to serve the public health, safety and welfare, require Target or its Designated Developer to identify a specific location for, the City water tower and/or police substation if not already identified by a prior Phase Development Plan.
- (b) Upon delivery by Target of a Final Go-Ahead Notice with respect to a Development Phase that requires the construction of one or more of the Public Facilities, the following shall apply:
  - (i) If the Public Facility is a public parking structure and Target requests that the Authority construct it, the Authority will do so on the condition that (A) it or the City has the legal authority, as determined by their respective counsel, to do so, (B) one or more market studies prepared and paid for by Target indicate sufficient market demand, (C) projected revenues from the facility will cover revenue bond debt service, operations and maintenance and required security coverage with respect to parking revenue bonds and (D) any additional security from third parties necessary to market and sell revenue bonds for such construction is provided.
  - (ii) If the Public Facility is a City water tower the location thereof shall be determined jointly by Target and the City and the land required shall be approximately one (1) acre in size or of such size and configuration as is

necessary to meet reasonably acceptable City maintenance and security requirements applied to similarly situated water towers located within the City.

- (iii) If the Public Facility is a City police sub-station it may be located within a larger building constructed as part of the Planned Improvements so long as it is approximately five thousand (5,000) square feet in size and has direct access to parking. Such space shall be provided to the City as a "cold, dark shell" and the City shall be solely responsible for all tenant improvements therein. In no event shall the City police sub-station be located within the Corporate Campus.
- (iv) If the Public Facility is a County Library, its timing and location shall be mutually determined by Target, the City and the County.
- (v) Except as provided in **Section 3.3(b)(i)(D)** hereof, if any, Target shall have no responsibility for the cost of constructing or finishing the Public Facilities described in this **Section 3.3** nor shall the cost of such construction be assessed against the Target Property. Construction of a Public Facility shall not be commenced by the City, Authority or County until all funding therefor is in place.
- (vi) The land necessary for the City water tower and the County Library shall be conveyed or leased to the City or County, as applicable, at no cost except for such pro rations as are customary in connection with land transfers such as property taxes, escrow fees, closing costs, recording fees, etc. Any lease of building space for the City police sub-station shall be in the form of a "triple net" lease, whereby the City will be solely responsible for (aa) a proportionate share of common area maintenance costs and (bb) operational costs associated with its use and occupancy, including taxes, insurance and a proportionate share of assessments.

#### **ARTICLE IV** **Site Planning**

Section 4.1. Overall Development Site Plan. There is attached hereto as Exhibit E the Overall Development Site Plan that shows the potential development capacity of the Development Property. The City and the Authority understand and agree that the Planned Improvements may be in the nature of a "City Center" similar to those typically found in central business districts of other metropolitan cities, with taller, more dense buildings, smaller or minimal setbacks, slower traffic speeds, narrower streets and more curb cuts. It is also understood that except with respect to the Minimum Construction Requirement, the Overall Development Site Plan does not contain a specific phasing plan or schedule, but rather that the timing, nature and scope of the various Development Phases shall be dictated by market forces. The Parties understand and agree that the Overall Development Site Plan will be amended as planning and design of the Planned Improvements progresses, Development Phase Go-Ahead Notices are delivered and further environmental studies and planning are completed.

Section 4.2. Phase Development Plans. When Target or a Designated Developer determines to proceed with a Development Phase other than any Minimum Construction Requirement, prior to or simultaneously with delivery of the applicable Preliminary Go-Ahead Notice it shall submit to the City a Phase Development Plan for such Development Phase for consideration pursuant to the City's standard site plan review process. The basis for City review of the Phase Development Plan shall include its consistency with **Sections 3.3, 4.1 and 6.2** of this Amended & Restated Agreement, but shall otherwise be limited solely to the City's standard site plan review process as set forth in the City's code of ordinances. It is acknowledged by the Parties that regulations of government entities other than the City and Authority may mandate a plan that includes more Target Property than is the subject of a Phase Development Plan (e.g. AUAR requirements). A Phase Development Plan, when approved by the City, shall constitute an amendment to the Overall Development Site Plan. A Phase Development Plan need not be submitted in connection with all or any portion of the Minimum Construction Requirement.

## **ARTICLE V**

### **Development Property**

#### Section 5.1. Target Property.

- (a) Target represents that as of the date of this Amended & Restated Agreement it is the owner of the Target Property described on Exhibit F. Upon request of the Authority, Target shall furnish to the Authority copies of the executed deeds evidencing Target's fee title to the Target Property.
- (b) Target acknowledges that neither the City nor the Authority make any representations or warranties as to the condition of the soils on the Development Property or its fitness for construction of the Planned Improvements or any other purpose for which Target may make use of such property.

#### Section 5.2. Additional Property.

- (a) The City and Authority shall cooperate with Target if it desires to acquire title to the MnDOT Parcel. In the event that either the City or Authority gain the right to acquire the MnDOT Parcel upon terms and conditions reasonably acceptable to Target, subject to then-existing legal requirements they shall at Target's request either (i) acquire the MnDOT Parcel directly from the owner thereof and immediately convey the same to Target in consideration of the payment by Target of all out-of-pocket costs of acquisition (including all out-of-pocket soft costs related thereto) incurred by the City or the Authority or (ii) assign the right to acquire the MnDOT Parcel to Target, upon which Target shall acquire the same directly from the owner thereof. If requested by the City or Authority in connection with option (i) in the foregoing sentence, Target shall escrow in advance with the Authority or the title company retained to close the transaction the estimated costs of acquisition.
- (b) Target may include all or a portion of the City Property in a Phase Development Plan. If the Parties agree on terms, Target may purchase some or all of the City Property, upon compliance by the City with all applicable legal requirements.

- (c) In the event that Target or a Designated Developer acquires all or any portion of the MnDOT Parcel described in this **Section 5.2** and Target seeks Abatement hereunder with respect to Planned Improvements constructed thereon, the Base Tax applicable to such property shall be zero.
- (d) In the event that the City conveys all or a portion of the City Property described in this **Section 5.2** to Target or a Designated Developer and Target seeks Abatement hereunder with respect to Planned Improvements constructed thereon, the Base Tax applicable to such property shall be calculated by multiplying the Tax Capacity thereof times the City Tax Capacity Rate for taxes payable in the year such property is acquired by Target or a Designated Developer. If the City Assessor's market value, as determined pursuant to *Minnesota Statutes*, Section 273.18(a), was established more than two (2) years before such City conveyance, for the purpose of determining Base Tax for the City Property being conveyed, the City Assessor shall re-assess the fair market value thereof in accordance with standard valuation procedures and as of the date of such conveyance.

## ARTICLE VI

### Parks

Section 6.1. Planning. The Overall Development Site Plan, as amended by Phase Development Plans, shall provide for the Minimum Park Improvements, which shall, to the extent required by the applicable Phase Development Plan, be integrated into the City's comprehensive parks plan and may include connections to the City and County trail system and the City Property. In no event shall Target be obligated to provide public park improvements in excess of the twenty (20) acre Minimum Park Improvements.

#### Section 6.2. Construction.

- (a) Upon delivery by Target of a Final Go-Ahead Notice with respect to any Development Phase that includes a portion of the Minimum Park Improvements, the construction of such Minimum Park Improvements shall be completed by Target or a Designated Developer at its sole cost no later than Completion of the related Planned Improvements identified in such Final Go-Ahead Notice. Such Minimum Park Improvements shall be finished to a standard equal to or greater than that of other similar City parks.
- (b) For each fifty (50) acres of Target Property located west of West Broadway (as it exists as of the Agreement Date) made subject to a Final Go-Ahead Notice, Target shall be legally obligated to construct or cause to be constructed, at no cost to the Authority or City, five (5) acres of the Minimum Park Improvements. The location and timing of such Minimum Park Improvements shall be subject to the Phase Development Plan process described in Section 7.7.
- (d) To the extent that on or before the tenth (10th) anniversary of the Agreement Date, Target has not constructed or caused to be constructed the Minimum Park Improvements, on or before such date Target shall identify to the reasonable

satisfaction of the City the specific location or locations and construction timing of the balance of the Minimum Park Improvements.

- (e) To the extent that Target has not completed the Minimum Park Improvements on or before the **twentieth (20th)** anniversary of the Agreement Date, Target shall forthwith deed and convey to the City an amount of contiguous, developable Target Property equal to twenty (20) acres *minus* the acreage of all Minimum Park Improvements constructed or caused to be constructed by Target as of such twentieth (20th) anniversary date. The Target Property conveyed to the City pursuant to this **Section 6.2(e)**, if any, shall be of such condition and location as to allow for commercial or residential development, subject to necessary re-zoning, applicable governmental permitting, and construction of necessary infrastructure and utilities.

**Section 6.3. Dedication to City.**

- (a) Upon completion of any portion of the Minimum Park Improvements, Target or a Designated Developer shall either (i) record a private covenant against the Development Property upon which the Minimum Park Improvements are located dedicating the same, without condition or limitation other than as may exist for comparable parks and public space within the City, for the use and benefit of all residents of the City of Brooklyn Park or (ii) request in writing that the City accept dedication of such Minimum Park Improvements for park purposes and the City shall accept the dedication thereof if such Minimum Park Improvements satisfy the minimum design standards generally applicable to City-owned parks of a similar nature and scope.
- (b) In the event Target or a Designated Developer offers to dedicate any Minimum Park Improvements to the City pursuant to **Section 6.3(a)** above and the City accepts the same, the City shall thereafter be responsible for maintenance and repair thereof and, except as otherwise provided in this **Section 6.3**, the cost of such maintenance and repair. Any maintenance costs in excess of those typically incurred by the City with respect to City-owned parks of a similar nature and scope ("**Extraordinary Maintenance Costs**") shall be assessed against the properties within the District enjoying the direct benefit of such Minimum Park Improvements, including the Target Property, as applicable. Prior to any dedication of Minimum Park Improvements, the City and Target or a Designated Developer shall agree in writing as to (i) identification of Extraordinary Maintenance Costs, (ii) identification of benefited properties to be assessed for such Extraordinary Maintenance Costs and (iii) the mechanism by which such assessments may be legally levied. Failure by the City and Target (or its Designated Developer, as applicable) to agree to any matters described in clauses (i)-(iii) shall constitute an Arbitrative Dispute. Target shall maintain, or cause to be maintained, any portion of the Minimum Park Improvements that are not dedicated to the City to a standard at least equal to that employed by the City in connection with other similar public parks.
- (c) As a condition of the offer by Target to dedicate all or any portion of the Minimum Park Improvements to the City, Target may require that it, or its designated representative, be retained to manage the maintenance of the dedicated

Minimum Park Improvements, subject to such legal requirements as may exist at the time, and the cost thereof shall be treated as an Extraordinary Maintenance Cost and paid as provided in **Section 6.3(b)** above to the extent it exceeds the management costs that would otherwise be incurred by the City to maintain such dedicated Minimum Park Improvements.

Section 6.4. Park Dedication Requirements. In consideration of Target's obligations pursuant to **Section 6.2** above, any and all City and Authority parkland dedication requirements (including the payment of fees in lieu of parkland dedication) applicable to the subdivision and/or development of the Development Property, as set forth in the City Code of Ordinances or otherwise, are fully satisfied.

## ARTICLE VII

### **Minimum Construction Requirement; Abatement Jobs Requirement; Housing Goals; Go-Ahead Procedure**

Section 7.1. 2006 Office Construction. The Parties acknowledge that Target has constructed Building 4, an office building of approximately two hundred forty-five thousand (245,000) square feet, in accordance with the requirements of the 2006 Development Agreement.

Section 7.2. Subsequent Office Construction; Building 5. (a) Under the 2006 Development Agreement, Target was also required to construct additional office space of not less three hundred fifty five thousand (355,000) gross square feet, 250,000 square feet of which was required to be Commenced by December 31, 2008, and 105,000 square feet of which was required to be Commenced by June 30, 2009, and all of which was required to be completed by December 31, 2010. The parties agree and understand that, as of the date of this Amended & Restated Agreement, Target has not Completed this component of the Minimum Construction Requirement, and that the Construction Component of the Aggregate Payments is currently subject to the Construction Reduction as described in Section 9.8 (subject to later reinstatement under Section 9.9 if Target subsequently Completes the required square footage of office space).

(b) Target currently plans to construct additional office space with at least two-hundred forty-five thousand (245,000) gross square feet ("Building 5"). Target must Commence construction of Building 5 on or before July 1, 2012; the consequences of failure to meet that Commencement deadline are described in Section 14.11(c) hereof. The parties agree and understand that Completion of Building 5 will satisfy a portion of the requirement under Sections 7.2 and 7.4 (depending on the final size), and will therefore eliminate a portion of the Construction Reduction (the precise amount of such elimination depending on the actual square footage Completed), all in accordance with Section 9.9 hereof.

Section 7.3. *INTENTIONALLY LEFT BLANK*

Section 7.4. Retail or Office Construction. Under the 2006 Development Agreement, in addition to Sections 7.1 and 7.2, Target or its Designated Developer was required to Complete construction of not less than three hundred thousand (300,000) gross square feet of retail or office space by December 31, 2009. The parties agree and understand that, as of the date of this

Amended & Restated Agreement, Target has not Completed this component of the Minimum Construction Requirement, and that the Construction Component of the Aggregate Payments is subject to the Construction Reduction as described in Section 9.8 (subject to later reinstatement under Section 9.9 if Target subsequently Completes the required square footage or retail or office space).

Section 7.5. Abatement Jobs Requirement. Under the 2006 Development Agreement, Target was required, on or before January 15, 2011, to certify and demonstrate to the reasonable satisfaction of the Authority that at any time between the Agreement Date and December 31, 2010 there has been created at least fifteen hundred (1,500) new Qualified Jobs within the District (inclusive of the Qualified Jobs created pursuant to the Business Subsidy Jobs Requirement). On or before July 15, 2011, Target was also required to certify and demonstrate to the reasonable satisfaction of the Authority that such 1,500 Qualified Jobs have been maintained for at least six (6) continuous calendar months during any time between the Agreement Date and July 15, 2011 (such covenant generally referred to as the “Abatement Jobs Requirement.”) The parties agree and understand that, as July 15, 2011, Target demonstrated that it had created, and maintained for at least 6 continuous calendar months, 467.4 Qualified Jobs, which did not fully satisfy the Abatement Jobs Requirement. Accordingly, the Wage and Job Component of the Aggregate Payments are subject to the Abatement Jobs Reduction as described in Section 9.8 (subject to later reinstatement under Section 9.9 if Target subsequently satisfies the Abatement Jobs Requirement).

Section 7.6. Housing.

- (a) The Overall Development Site Plan, as described in **Section 4.1** hereof, shows the potential location of future housing development within the District. As a part of the development of the District, it is the goal of the Parties hereto that twenty percent (20%) of housing units constitute Workforce Housing reasonably distributed throughout the District and not located in a single building or concentrated in a group of buildings.
- (b) It is the intention of the parties that the construction of Workforce Housing within the District be revenue neutral to Target or a Designated Developer, meaning that the Authority shall be required to find such financing resources as shall be required in order assure that there is no cost to Target or a Designated Developer in constructing, or causing to be constructed, and, in the case of Rental Units, maintaining such Workforce Housing. In no event shall Target or a Designated Developer be required to subsidize any housing developed within the District (via below market purchase prices, rentals or otherwise) in order to create Workforce Housing.
- (c) It is understood that Target or a Designated Developer will only construct housing within the District to the extent that market demand, in Target's reasonable judgment, exists therefor. Subject to City ordinances and **Section 7.6(a)** hereof, Target and Designated Developers shall have sole discretion over the location, design and quality of housing constructed within the District. In no event shall it be deemed an Event of Default if the Workforce Housing objectives described herein are not achieved.

Section 7.7. Development Phases; Go-Ahead Notices.

- (a) Whenever Target or a Designated Developer determines to proceed with development of any Development Phase, including the Minimum Construction Requirement (but excluding Building 4), it shall provide notice to the Authority in the form of a Preliminary Go-Ahead Notice. Such notice shall be provided on or before submission of the Phase Development Plans for City site plan review and shall include a summary of the following information with respect to such Development Phase:
- (i) Type of construction to be undertaken (i.e. office, retail, housing, etc.);
  - (ii) Tenant or owner identified to occupy the new development, if known;
  - (iii) Approximate number of square feet to be constructed;
  - (iv) Estimated construction cost;
  - (v) Estimated construction schedule;
  - (vi) Location of development within the District;
  - (vii) If housing, number of units and estimated rental rates or sales prices; and
  - (viii) Timing, location and scope of the construction of the External Infrastructure, if any;

provided that so long as the Authority or City has been involved in the applicable planning process relating to a Final Go-Ahead Notice, an inadvertent failure by Target to deliver a Preliminary Go-Ahead Notice to the Authority shall in no event be detrimental to the Development Phase planning process leading to the Final Go-Ahead Notice.

- (b) Except with respect to the Minimum Construction Requirement, upon receipt of a Preliminary Go-Ahead Notice, the City and Target or its Designated Developer shall review and analyze the External Infrastructure requirements, if any, reasonably necessary to support the Development Phase that is the subject of the Preliminary Go-Ahead Notice. Upon (i) agreement of the City and Target or its Designated Developer as to the scope and nature of such required External Infrastructure, if any, (ii) confirmation of the City that financing therefor has been or can be secured and (iii) approval of such Development Phase by the City as required in Section 4.2 of this Amended & Restated Agreement, and (iv) receipt of all required permits and approvals associated with such Development Phase, Target or its Designated Developer may deliver to the City and Authority a Final Go-Ahead Notice with respect to such Development Phase. Upon delivery of a Final Go-Ahead Notice for a Development Phase that requires External Infrastructure (i) Target or its Designated Developer shall be legally obligated to construct the Development Phase that is the subject of the Final Go-Ahead Notice and (ii) the Authority and City shall be legally obligated to construct the External Infrastructure associated with such Development Phase, all in accordance with the construction schedules included with such Final Go-Ahead Notice. To the extent the City and/or the Authority construct External Infrastructure based on a Final Go-Ahead Notice and Target does not construct the applicable Development Phase as set forth in the Final Go-Ahead Notice such that it is in default hereunder and fails to Commence construction thereof within 180 days after written notice

from the City and/or Authority, Target shall reimburse the City and/or Authority for its expenses associated with the External Infrastructure that was the subject of the applicable Final Go-Ahead Notice.

- (c) Except for the additional requirements of this **Section 7.7** and **Section 4.2** of this Amended & Restated Agreement, or as otherwise provided herein, the normal and customary site plan review and permitting requirements of the City shall apply to all Development Phases.
- (d) Notwithstanding anything in this Amended & Restated Agreement to the contrary Target shall not be required to submit a Preliminary or Final Go-Ahead Notice with respect to Building 5.

Section 7.8. Parking. The Parties anticipate significant joint use of parking within the District and, subject to review of specific plans and the exercise of its reasonable discretion, the City shall take such steps as necessary to approve a parking ratio for the District of not more than three and one-half (3 1/2) parking spaces per one thousand (1000) gross square feet of office and/or retail development.

Section 7.9. Status Reports. Upon written request of the Authority, which shall occur no more often than biennially, Target shall provide the Authority with a written report regarding the status of existing development within the Target Property, its efforts to precipitate development of the Target Property and its reasonable expectations as to future development.

Section 7.10. Market Forces. Notwithstanding any provision to the contrary contained in this Amended & Restated Agreement, the timing, nature and scope of any Development Phase hereunder other than the Minimum Construction Requirement shall be subject to (i) Target's operational objectives, (ii) the existence, in the opinion of Target, of sufficient market demand and (iii) the commitment of the Authority and/or City to complete the necessary External Infrastructure.

## **ARTICLE VIII**

### **Business Subsidy Agreement**

Section 8.1. Purpose; Waivers. The purpose of this **Article VIII** is compliance with the Business Subsidy Act and this **Article VIII** shall constitute a "subsidy agreement" thereunder. Simultaneously with approval of the 2006 Development Agreement, the City and the Authority conducted a public hearing pursuant to 116J.994, Subd. 5 of the Business Subsidy Act. In their respective resolutions approving this 2006 Development Agreement, the City has waived certain specific provisions of its City Business Subsidy Policy and the Authority has waived certain specific provisions of its Authority Business Subsidy Policy. The terms, covenants and provisions of this Amended & Restated Agreement simply restate the terms, covenants and provisions of the 2006 Development Agreement in connection with the subsidy agreement. Accordingly, the City and the Authority hereby agree that all provisions of the City Business Subsidy Policy and Authority Business Subsidy Policy, respectively, that are inconsistent with the provisions of this Amended & Restated Agreement have been and continue to be waived. The City and the Authority agree that the Authority staff report attached hereto as Exhibit L submitted to the City Council and the

Authority Board reasonably describe the deviations from the City Business Subsidy Policy and Authority Business Subsidy Policy, respectively, represented by this Amended & Restated Agreement and the Authority have submitted such report and a copy of **Section 8.1** of the 2006 Development Agreement on behalf of the Authority and the City to the Commissioner of the Minnesota Department of Employment and Economic Development on or before April 1, 2007, as required by Section 116J.994, Subdivision 2 of the Business Subsidy Act. Notwithstanding anything contained herein to the contrary, as necessary, the provisions of **Article VIII** of the 2006 Development Agreement will continue to control, and the parties acknowledge that such provisions are restated herein for clarity's sake only.

Section 8.2. Description of Business Subsidy. If Target constructs or causes to be constructed all of the Planned Improvements, it is estimated that total Abatement and Pooled Increment Assistance under this Amended & Restated Agreement attributable to such construction could equal or exceed a net present value of approximately Twenty Million Dollars (\$20,000,000.00). In addition, the Authority and City are agreeing (i) to waive any planned, pending or levied assessments against the Development Property as of the Agreement date, including planned assessments in the amount of approximately Two Million Four Hundred Thousand Dollars (\$2,400,000.00) for trunk water, storm and sanitary sewer improvements pursuant to **Section 3.2(c)** hereof, (ii) to construct certain External Infrastructure pursuant to **Sections 3.2** and **7.7** hereof, the cost of which is not presently determinable and (iii) to waive certain fees and charges related to the development of the Development Property. The Business Subsidy is a "pro-rata" subsidy in that it is being provided on a pro-rata basis in proportion to and in exchange for each Qualified Job created pursuant to Business Subsidy Jobs Requirement. Because Target created less than all of the Qualified Jobs included in the Business Subsidy Jobs Requirement, the Business Subsidy shall be proportionately reduced in accordance with Section 8.6 below.

Section 8.3. Statement Of Need for Business Subsidy. Target is a rapidly growing retail company. To support this growth, Target anticipates that it will substantially increase its headquarters employment base in the Twin Cities over the next decade. Target has adopted a "Best Corporate Campus Ever" vision for the District as a means of accommodating a substantial portion of its anticipated employment growth. This vision goes far beyond just the need for additional office space. It involves a comprehensive master planned urban community that will create the environment necessary to attract and retain the brightest and best employees. To this end, it is the intent of the Parties that the District be developed in a comprehensive manner with a diverse mix of uses and premium amenities, including well appointed park facilities and park corridors, community spaces, landscaped boulevards, pedestrian trails and higher densities than exist in the typical suburban context, the cost of which will be incurred by Target and/or its Designated Developers. Because of the need to incur inordinate infrastructure costs in connection with the Planned Improvements, the Authority and the City have agreed to assist in defraying such costs.

Section 8.4. Public Purpose Statement. The City and Authority anticipate that the assistance provided hereunder by the City and Authority will significantly enhance the City's tax base over the long run, promote an urban-type community, provide significant City job growth and result in housing alternatives for its residents.

Section 8.5. Business Subsidy Jobs Requirement. In consideration of the Business Subsidy to be received by Target, as described in **Section 8.2**, the following Business Subsidy Jobs Requirement is established:

- (a) Under the 2006 Development Agreement, on or before **August 15, 2010**, Target was required to certify and demonstrate to the reasonable satisfaction of the Authority that it has created or caused to be created five hundred (500) new Qualified Jobs within the District **as of August 1, 2010** (the “**Business Subsidy Jobs Requirement**”). The Parties agree that the Business Subsidy Jobs Requirement was in addition to the nine hundred (900) Qualified Jobs existing within the Target Property as of July 1, 2005 and that the phrase “new” Qualified Jobs referenced herein refers to Qualified Jobs in excess of such existing Qualified Jobs.

The parties agree and understand that, as of August 15, 2010, Target demonstrated the creation of 467.4 new Qualified Jobs, which is 32.6 fewer than the Business Subsidy Job Requirement. The consequences of this shortfall are described in Sections 8.6 and 9.8 hereof.

- (b) The Business Subsidy Jobs Requirement set forth in this **Section 8.5** constitutes the sole and exclusive goals that must be satisfied pursuant to the Business Subsidies Act in exchange for the Business Subsidy described in **Section 8.2**.

**Section 8.6. Repayment of Business Subsidy.** Because of Target’s failure to fully comply with the Business Subsidy Jobs Requirement of **Section 8.5(a)**, the Authority has imposed a proportionate repayment and reduction of the Business Subsidy (referred to as the Business Subsidy Reduction) pursuant to **Section 9.8** hereof. Moreover, if any of the forms of Business Subsidy described in Section 8.2, clauses (i), (ii) or (ii) materialize, the amounts of such assistance will each be reduced by the Business Subsidy Reduction (the precise mechanics of which will be determined if and when such forms of Business Subsidy occur).

**Section 8.7. Reporting Requirements.** Target was required to file a Minnesota Business Assistance Form until the Business Subsidy Jobs Requirement is met or two years after the Benefit Date, whichever is later; and further, if the Business Subsidy Jobs Requirement was not met, Target was required to provide information on the subsidy until the subsidy was repaid. As described in Sections 8.6 and 9.8, Target did not timely meet the Business Subsidy Jobs Requirement, but any prior subsidy has been repaid and future assistance has been proportionately reduced such that no further repayment is required. Target has filed all required reports. Therefore, all reporting requirements under this Section 8.7 have been satisfied.

**Section 8.8. Five Year Commitment.**

- (a) In exchange for the Business Subsidy provided hereunder, Target hereby agrees to continue operations within the City, for at least five (5) years after the Benefit Date.
- (b) If, during the five year period referred to in subparagraph (a), above, Target decides to move all of its operations that it was conducting within the City to a location other than the City, Target must first notify the City of such decision, including in its notification the specific business reasons for such decision. Such move shall be subject to the consent of the City after a public hearing in accordance with Section 116J.994, Subd. 3(e) of the Business Subsidy Act, which consent shall not be unreasonably withheld or delayed.

Section 8.9. Name and Address of Parent Corporation. Target has no parent corporation.

Section 8.10. Other Business Subsidies Received for the Planned Improvements. As of the Agreement Date, Target has received no other business subsidy in connection with its construction of the Planned Improvements or Internal Infrastructure. It is the intention of the Authority and City to request that the County also grant an abatement for the District pursuant to the Abatement Act, in which event both the County and Target may be subject to additional Business Subsidy Act requirements.

Section 8.11. Successors and Assigns. This **Article VIII** and all terms, conditions and obligations contained herein, shall run with each Abatement Eligible Property and shall be binding upon and inure to the benefit of the Authority and the City, and their respective successors and permitted assigns until the earlier of fulfillment of the Business Subsidy Jobs Requirement or a reduction of Aggregate Payments associated therewith pursuant to Section 9.8.

## **ARTICLE IX**

### **Abatement**

Section 9.1. Abatement Resolution. Simultaneously with approval of the 2006 Development Agreement, the City conducted a public hearing pursuant to Section 469.1813, Subdivision 5 of the Abatement Act and adopted the City Abatement Resolution. Pursuant to Sections 2.1(e) and 2.2(g) of the 2006 Development Agreement, the Authority and City has requested that the County provide County Abatement (but as of the date of this Amended and Restated Agreement, the County has not approved any County Abatement). Simultaneously with approval of this Amended & Restated Agreement, the City conducted a public hearing pursuant to the Abatement Act, and adopted the Amended & Restated City Abatement Resolution, intended to conform to the changes described in this Amended & Restated Agreement. It is the intent of the parties hereto that the Amend & Restated City Abatement Resolution and this Amended & Restated Agreement shall govern the terms of the public assistance to be provided Target hereunder. To the extent there is a conflict between the terms of the Amended & Restated City Abatement Resolution and this Amended & Restated Agreement, the terms of this Amended & Restated Agreement shall govern and control. In all events, the sum of City and County Abatements shall not exceed Maximum Qualified Costs. The City and Authority represent and warrant that they have complied with the requirements of Section 469.1813, Subdivision 6, paragraph (b) of the Abatement Act in order to qualify for the twenty (20) year Abatement Periods contemplated hereunder.

Section 9.2. City Pledge Agreement. Concurrently with the execution of the 2006 Development Agreement, the City and the Authority adopted, executed and delivered the City Pledge Agreement. In the Amended & Restated City Abatement Resolution, the City consented to this Amended & Restated Agreement and acknowledges that references to the 2006 Development Agreement in the City Pledge Agreement are deemed to refer to this Amended and Restated Agreement. The City agrees to transfer the Semi-Annual City Abatement Amount for each Abatement Eligible Property to the Target Abatement Account in advance of each Payment Date during the Abatement Period for such property so that the Authority may perform its obligations under this **Article IX**. Each Semi-Annual City Abatement Amount so transferred

shall be calculated based on the Tax Capacity and City Tax Capacity Rate attributable to the Abatement Eligible Property for the year in which the respective Payment Dates arise. Notwithstanding the foregoing, the City shall in no event be obligated to transfer a Semi-Annual City Abatement Amount to the Target Abatement Account pursuant to this **Section 9.2** unless and until (a) all ad valorem property taxes due and payable with respect to such Abatement Eligible Property as of the applicable Payment Date have been paid in full and (b) the City has received from the County or any other source as provided by law an ad valorem property tax distribution that includes all or any portion of the taxes described in **clause (a)** above. If the City does not transfer such Semi-Annual City Abatement Amounts to the Target Abatement Account by the later of (i) the applicable Payment Date or (ii) within 30 days after fulfillment of the conditions described in **clauses (a) and (b)** of the previous sentence, interest will accrue on such unpaid Semi-Annual City Abatement Amount and be payable to Target at the Stated Rate until the Semi-Annual City Abatement Amount is paid to Target.

**Section 9.3. Qualified Cost Certification.** The process for determining Verified Qualified Costs shall be as follows:

- (a) At any time following the Agreement Date, and from time to time but no more often than once each quarter during a calendar year, Target may submit to the Authority a Qualified Cost Statement, signed by an officer of Target or a person designated in writing by an officer of Target, detailing and certifying Qualified Costs that have been incurred with respect to the Development Property by Target or a Designated Developer and not previously submitted hereunder.
- (b) In its review of such Qualified Cost Statement, and anytime within thirty (30) days of receipt thereof, the Authority may reasonably request such additional information from Target as may be reasonably necessary to verify the nature and amount of such submitted Qualified Costs.
- (c) The Authority shall deliver a Cost Verification Notice to Target within thirty (30) days after receipt of each Qualified Cost Statement or twenty (20) days of receipt of all reasonably requested information if a request for such information is made during the initial thirty-day period. If the Authority fails to deliver a Cost Verification Notice within the time described in this **Section 9.3(c)**, all of the Qualified Costs identified in the Qualified Cost Statement shall be deemed verified by the Authority as if such Cost Verification Notice had been provided. To the extent the Cost Verification Notice does not verify all Qualified Costs identified in the Qualified Cost Statement, the Cost Verification Notice shall set forth in detail the reasons why such cost are not being verified by the Authority.
- (d) Target shall have thirty (30) days after receipt of the Cost Verification Notice (the "**Cost Objection Period**") to notify the Authority, in writing, that it does not agree with the content of the Cost Verification Notice. Failure to object in writing during the Cost Objection Period shall constitute a waiver by Target of any and all objections to the Cost Verification Notice and the Qualified Costs accepted or not accepted by the Authority therein. In the event of an objection, the Parties hereto shall meet and confer in an attempt to settle the underlying objection(s). If such settlement is not reached within thirty (30) days of receipt by the Authority of such written objection, the matter shall constitute an Arbitrative Dispute and shall be settled by Arbitration pursuant to **Article XIII** hereof.

- (e) The Authority shall maintain a ledger account of all Verified Qualified Costs (the "**VQC Ledger**") and shall accrue interest on all Verified Qualified Costs recorded therein at the Stated Rate from and after the later of (i) the date such cost was incurred, if evidenced by information submitted by Target, or (ii) the Agreement Date. The Authority shall record all Verified Qualified Costs in the VQC Ledger within ten (10) days after such costs are verified in accordance with this **Section 9.3**. The interest accruing upon Verified Qualified Cost at the Stated Rate shall be recorded by the Authority in the VQC Ledger on each Payment Date and compounded accordingly.
- (f) The payment of Semi-Annual City Abatement Amounts pursuant to **Section 9.4** shall be applied first against accrued interest and second against Verified Qualified Costs recorded on the VQC Ledger, but not to exceed the Maximum Qualified Costs. The Authority shall record all Semi-Annual City Abatement Amount payments in the VQC Ledger within ten (10) days after such payment.

Section 9.4. Abatement. Calculation and payment of Semi-Annual City Abatement Amounts shall be determined and made as follows:

- (a) Upon Completion of the Planned Improvements upon an Abatement Eligible Property prior to **January 1, 2017**, Target or its Designated Developer shall submit to the Authority a Notice of Completion and a copy of the applicable Certificate of Occupancy, the latter to serve as evidence of the beginning of the Abatement Period with respect to such Abatement Eligible Property. For each Planned Improvement that will not be Completed prior to **January 1, 2017**, upon Commencement of construction of such Planned Improvement upon an Abatement Eligible Property, Target or its Designated Developer shall deliver to the Authority a Notice of Commencement and a copy of the applicable Building Permit, the latter to serve as evidence of the beginning of the Abatement Period with respect to such Abatement Eligible Property. If Target or its Designated Developer fails to timely deliver a Notice of Completion or a Notice of Commencement to the Authority in accordance with this **Section 9.4(a)** and provided such notice is delivered within thirty-six (36) months of the date of Completion or Commencement, as applicable, such failure shall not result in any modification or waiver of the applicable Abatement Period as described in the definition contained herein, provided that with respect to the Semi-Annual Abatement Amounts owing with respect to such Abatement Eligible Properties for the period of time from which the notice should have been delivered to when it was received, the Authority shall have a period of twelve months to make such payment(s) and interest shall not be due thereunder. If Target or its Designated Developer fail to timely deliver a Notice of Completion or a Notice of Commencement to the Authority in accordance with this **Section 9.4(a)** and such notice is not delivered within thirty-six (36) months of the date of Completion or Commencement, as applicable, the Authority shall be required to pay the Semi-Annual Abatement Amounts with respect to such Abatement Eligible Properties owing from and after the Notice of Completion or Notice of Commencement is received, if at all, and shall not be required to pay any Semi-Annual Abatement

Amounts with respect thereto for the period of time prior to its receipt of such notice.

- (b) On or before each Payment Date throughout the Abatement Period for each Abatement Eligible Property, the Authority shall pay to Target the Semi-Annual City Abatement Amount transferred to the Target Abatement Account with respect to each such Abatement Eligible Property pursuant to **Section 9.2** above, except as otherwise provided in **Section 9.4(a)** above. The sum of all Semi-Annual City Abatement Amounts paid to Target on each Payment Date shall be collectively referred to herein as the “**Aggregate Payment.**” Each Aggregate Payment shall be delivered to Target to the attention of such persons and at the address provided to the Authority by Target in writing.
- (c) In calculating each Aggregate Payment, the Authority shall apply the following rules of construction:
  - (i) The 2006 Development Agreement provided that, during any calendar year, the total of all Aggregate Payments under this **Section 9.4** shall not exceed (x) the greater of Two Hundred Thousand Dollars (\$200,000) or ten percent (10%) of the total City property tax levy for such year as required by Section 469.1813, Subdivision 8 of the Abatement Act (the “**Existing Abatement Limitation**”) or (y) such larger amount as may be authorized or such smaller amount as may be mandated by amendment to the Abatement Act. In the event the Existing Abatement Limitation is increased by future legislative action (an “**Abatement Limitation Increase**”), the limitation applicable to the total of all Aggregate Payments in any tax-payable year pursuant to this Section 9.4(c)(i) shall be increased by seventy-five percent (75%) of such Abatement Limitation Increase.

Legislation enacted in 2008 included an Abatement Limitation Increase, by authorizing total annual abatements under the Abatement Act in the maximum amount of ten percent (10%) of the City’s tax capacity for that tax-payable year (which will always exceed \$200,000 and is therefore the applicable limitation). Therefore, in any tax-payable year during the Abatement Period, the limitation applicable to all Aggregate Payments will be: 10% of the City’s tax levy in that year, plus 75% of the difference between that number and 10% of the City’s tax capacity in that tax-payable year.

After the date of this Amended & Restated Agreement, the same process of Abatement Limitation Increase will apply, assuming the original Existing Abatement Limitation remains the base of calculations, and future legislative increases are measured against that base. By way of example, if the Existing Abatement Limitation is legislatively increased to fifteen percent (15%) of the total City tax capacity for that tax-payable year, the applicable Section 9.4(c)(i) limitation following the effective date of such Abatement Limitation Increase shall be: 10% of the City’s tax levy in that year (i.e., the original Existing Abatement Limitation), plus 75% of the difference between that number and 15% of the City’s tax capacity in that year. Any Abatement Limitation Increase shall be

prorated among the Abatement Eligible Properties based upon the City Assessor's market value of each such property.

- (ii) The sum of all Aggregate Payments (together with Pooled Increment Assistance under Section 9.10 hereof) shall not exceed the Maximum Qualified Costs.
- (iii) It is anticipated that the Target Property may be subdivided from time to time into separate Abatement Eligible Properties as the development of the Planned Improvements progresses. For purposes of allocating Base Taxes to such subdivided parcels (the "**Smaller Parcels**"), the following rules shall apply:
  - (1) The per square foot Base Tax payable in 2006 with respect to the parcel to be subdivided (the "**Larger Parcel**") shall first be determined (the "**Per Square Foot Base Tax**").
  - (2) Except as otherwise modified pursuant to **paragraphs (3) and (4)** below, the Base Tax applicable to each Smaller Parcel shall be equal to the square footage of the Smaller Parcel multiplied by the Per Square Foot Base Tax of the Larger Parcel within which it is located.
  - (3) In the event of buildings located upon a Larger Parcel, the Base Tax payable with respect to such buildings shall be allocated exclusively to the Smaller Parcel upon which they are located.
  - (4) In the event of buildings located upon a Larger Parcel that are subsequently destroyed by casualty or are to be demolished for purposes of development of the Planned Improvements, the Base Tax allocable to such buildings shall be deducted from the Base Tax of such Larger Parcel.

However, if a tax parcel of the Target Property is not subdivided, and a building is built on the same tax parcel as a previously existing building that is not subject to Abatement, or on the same tax parcel as another building this is subject to Abatement, then prior to commencement of construction of such building, Target and the Authority shall agree in writing as to the method for allocating Base Taxes to the new building. Any failure to reach agreement regarding such allocation shall be an Arbitrative Dispute.

- (iv) Each Aggregate Payment to Target shall be accompanied by a Payment Certificate. Unresolved disagreements between the Parties regarding the consent to any Payment Certificate shall constitute an Arbitrative Dispute and shall be settled by Arbitration pursuant to **Article XIII** hereof.
- (v) The procedures set forth in this **Section 9.4** shall be followed until the earlier of (A) February 2, 2038 or (B) reimbursement of Target for Maximum Qualified Costs. Except as otherwise pledged, assigned or transferred by Target in accordance with **Section 9.5(e)** below, all payments of Semi-Annual City Abatement Amounts shall be made directly to Target during any period while Target owns or leases the relevant Abatement Eligible Parcels. If Target conveys ownership of any

Abatement Eligible Parcel to a third party, the Authority will make payments of Semi-Annual Abatement Amounts to Target only upon the Authority's receipt of a written assignment from the owner of such Abatement Eligible Parcel, assigning to Target the right to receive such payments.

- (vi) The City and the Authority acknowledge and agree that each Aggregate Payment to Target hereunder is intended to be a reimbursement for land and/or capital infrastructure costs incurred by Target in connection with its development of the Development Property as provided herein.

**Section 9.5. Target Representations Concerning Abatement Amounts.** Target makes the following representations to the Authority and City with respect to Aggregate Payments under **Section 9.4** of this Amended & Restated Agreement:

- (a) Target has not relied on any representations of the Authority or City, or any of their officers, agents, or employees, and has not relied on any opinion of any attorney of the Authority or City, as to the Federal or State income tax consequences relating to the Semi-Annual Abatement Amounts.
- (b) Target is sufficiently knowledgeable and experienced in financial and business matters to be able to evaluate the risks and merits of entering into this Amended & Restated Agreement and has received the cooperation of the Authority and City in undertaking any due diligence that Target has deemed necessary or appropriate prior to entering into this Amended & Restated Agreement.
- (c) Notwithstanding anything to the contrary herein, Target understands that the City shall in no event be obligated to transfer a Semi-Annual City Abatement Amount to the Target Abatement Account unless and until (i) all ad valorem property taxes due and payable with respect to such Abatement Eligible Property as of the applicable Payment Date have been paid in full and (ii) the City has received from the County or any other source as provided by law an ad valorem property tax distribution that includes all or any portion of the taxes described in Section 9.5(c)(i) and that the Semi-Annual City Abatement Amounts payable hereunder may not be sufficient to reimburse Target for the Maximum Qualified Costs, and in that event no right will exist to have special taxes levied by the Authority or City to pay for any such shortfall.
- (d) Target understands that all past estimates of Semi-Annual City Abatement Amounts that have been prepared by or on behalf of the Authority or City have been done for the Authority's and City's use only and neither the Authority, City nor their consultants shall have liability to Target if the actual Semi-Annual City Abatement Amounts are less than the amounts estimated.
- (e) The right to receive Semi-Annual City Abatement Amounts hereunder may not be assigned or otherwise transferred by Target to any person or entity unless and until such transferee executes and delivers to the Authority an instrument making the representations to the Authority contained in this **Section 9.5**.

**Section 9.6. Restriction on Additional Abatement.** The Parties acknowledge and agree that the Abatement provided to Target hereunder must be maximized in order for the

development of the Planned Improvements to be feasible. To that end, the City and the Authority covenant and agree that all other abatements granted within the City pursuant to the Abatement Act shall be subordinate to the Abatement granted to Target hereunder as related to the Existing Abatement Limitation as adjusted by any Abatement Limitation Increase, all as described in Section 9.4(c)(i) hereof). For example, if in calendar year ten (10) of this Amended & Restated Agreement the total Aggregate Payments payable to Target equal \$2,000,000 and the City's cap on total abatements for the year pursuant to the Abatement Act (and after application of any Abatement Limitation Increase) is \$2,500,000, the Aggregate Payments for such year shall be applied against such statutory cap first and the remaining \$500,000 shall be available on a subordinated basis for other abatements granted within the City pursuant to the Abatement Act. If, under the foregoing example, the Aggregate Payments for the year were equal to or greater than \$2,500,000, the entire statutory cap would be utilized to satisfy the Aggregate Payments and any other abatements that may be granted within the City would go unfunded. The City and Authority covenant and agree that other abatements granted pursuant to the Abatement Act shall be conditioned on the terms of this **Section 9.6**.

Section 9.7. Audit Rights. The Authority and the City shall keep accurate books and records related to the Semi-Annual City Abatement Amounts collected and paid hereunder. Within ten (10) business days after delivery of a written request by Target, the Authority shall deliver to Target a copy of the updated VQC Ledger and an updated account statement for the Target Abatement Account. Once each calendar year, Target or its duly authorized agent shall have the right, at its expense and upon at least twenty (20) days prior written notice, to audit all of such books and records including, but not limited to, the VQC Ledger, Target Abatement Account and related books and records. In the event such audit shall disclose any error(s) in the payment of Semi-Annual City Abatement Amounts to Target in accordance herewith, the Authority and/or the City shall promptly undertake to correct such error or errors. Unresolved differences between the Parties resulting from such Audits shall constitute an Arbitrative Dispute.

Section 9.8. Aggregate Payment Adjustments. If Target does not meet the Abatement Jobs Requirement, the Business Subsidy Jobs and/or the Minimum Construction Requirement, the Aggregate Payments shall be adjusted as follows:

- (a) For purposes of this **Section 9.8**, it is assumed that fifty percent (50%) of each Aggregate Payment is attributable to the Abatement Jobs Requirement (the "**Wage and Job Component**") and fifty percent (50%) attributable to the Minimum Construction Requirement (the "**Construction Component**"). However, 100 percent (100%) of each Aggregate Payment is attributable to the Business Subsidy Jobs Requirement.
- (b) The parties agree and understand that Target failed to timely meet the Business Subsidy Jobs Requirement as of August 1, 2010. Accordingly, the Aggregate Payments to Target between the Agreement Date through and including August 1, 2010 was reduced by 6.42 percent (referred to as the "Business Subsidy Reduction"), representing a fraction, the numerator of which is five hundred (500) *minus* the 467.4 verified Qualified Jobs certified pursuant to Section 8.5(a), and the denominator of which is five hundred (500), plus interest upon such amount at the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period

ending March 31 of the previous year (the "Business Subsidy Rate") accrued from the first Aggregate Payment to August 1, 2010. The Business Subsidy Reduction through August 1, 2010 was repaid deducting the amount thereof from the Aggregate Payment otherwise due Target on the February 1, 2011 Payment Date.

- (c) In addition to the repayment described in paragraph (b) of this Section, all subsequent Aggregate Payments to Target under this Amended & Restated Agreement will be reduced by the Business Subsidy Reduction. Moreover, the Business Subsidy Reduction will be used to reduce the amount of Pooled Increment Assistance in connection with Building 5, as described in Section 9.10. The parties agree and understand that such Business Subsidy Reduction, together with the repayment described in paragraph (b) of this Section and any reduction applied to any other form of Business Subsidy as described in Section 8.6, satisfies in full any obligation of Target to repay assistance under this Amended & Restated Agreement by reason of failure to meet the Business Subsidy Jobs Requirement.
- (d) If Target fails to meet the Abatement Jobs Requirement, commencing upon and including the August 1, 2011 Payment Date, the Wage and Job Component of each subsequent Aggregate Payment shall be reduced by a fraction, the numerator of which is fifteen hundred (1500) *minus* the actual number of verified Qualified Jobs certified pursuant to Section 7.5 and the denominator of which is fifteen hundred (1500) (such reduction referred to herein as the "Abatement Jobs Reduction").
- (e) If Target fails to timely meet each successive Completion milestone of the Minimum Construction Requirement, thereafter the Construction Component of each Aggregate Payment shall be reduced by a fraction, the numerator of which is the gross square footage required to be Completed by such milestone date of the Minimum Construction Requirement *minus* the actual gross square footage Completed by such milestone date, and the denominator of which is the gross square footage required to be Completed by such milestone date of the Minimum Construction Requirement (such reduction to be referred to herein as the "**Construction Reduction**").
- (f) To the extent Aggregate Payments have been made to Target prior to any Abatement Jobs Reduction or Construction Reduction pursuant to **Section 9.8(d)** and/or (e), the Abatement Jobs Reduction or Construction Reduction, as the case may be, shall be retroactively applied to such prior Aggregate Payments (the "**Retroactive Reductions**"). Such Retroactive Reductions shall be reconciled by deducting the amount thereof from future Aggregate Payments hereunder until the Retroactive Reductions are paid in full.
- (f) The methodology used by the Authority in calculating any Abatement Jobs Reduction, Construction Reduction and/or Retroactive Reduction, as the case may be, shall be set forth upon each Payment Certificate accompanying an Aggregate Payment involving such reduction.

Section 9.9. Reinstatement. Any Abatement Jobs Reduction and/or Construction Reduction under **Section 9.8(d)** and (e) is not intended to be permanent if Target subsequently

meets or causes to be met the Abatement Jobs Requirement or the Construction Requirement (exclusive of the dates specified herein for achieving or reporting the achievement of such requirements, which shall not be a condition to such reinstatement). In that event, any Abatement Jobs Reduction and/or Construction Reduction, as the case may be, shall terminate and not apply to future Aggregate Payments. In no event, however, shall the Business Subsidy Jobs Reduction, or any Retroactive Reduction or Construction Reduction applied to prior Aggregate Payments be made up or restored; and in no event shall the Business Subsidy Jobs applied to any future Aggregate Payments be made up or restored.

Section 9.10. Pooled Increment Assistance for Building 5.

(a) Notwithstanding anything to the contrary in this Article IX, the Authority will provide assistance in connection with development of Building 5 in accordance with this Section 9.10, in lieu of providing the Abatement assistance otherwise described in this Article. In no event will any Aggregate Payment include Abatement from the parcel on which Building 5 is constructed. The Pooled Increment Assistance is not subject to, or counted against, the Abatement limitations described in, Section 9.4(c) hereof.

(b) In order to provide assistance substantially equivalent to the Abatement assistance that would have been generated from Building 5 under the 2006 Development Agreement, the Authority will provide available Authority funds to Target in the amount, and subject to the terms described in this Section. The parties agree and understand that the Authority intends to fund the assistance described in this Section from certain tax increments authorized to be expended for these purposes under Minnesota Statutes, Section 469.176, subd. 4m (the “Special Pooling Act”), and that the Authority has previously adopted a spending plan authorizing such expenditures in accordance with the Special Pooling Act. Target warrants and represents, that in light of the economic conditions that created a significant delay in proceeding with Building 5, the up-front assistance made possible by the Special Pooling Act is a substantial inducement to Commence construction of Building 5, and that such construction would not have Commenced before July 1, 2011 without such assistance.

(c) The assistance under this Section is referred to as the “Pooled Increment Assistance.” The amount of the Pooled Increment Assistance, as calculated under paragraph (d) of this Section, represents the Authority’s best estimate of an amount that is no more than Target would have received if Building 5 were subject to the Abatement provisions under Article IX hereof. Accordingly, the substitution of Pooled Increment Assistance does not represent a new or increased Business Subsidy for the purposes of the Article VIII hereof; and the amount of Pooled Increment Assistance will be reduced to account for the partial satisfaction of the Business Subsidy Jobs Requirement, as described in Section 9.10(d)(iv).

(d) The amount of the Pooled Increment Assistance will be the net present value of the hypothetical aggregate Semi-Annual Abatement Amount that would have been payable with respect to Building 5 if Section 9.4 applied to such parcel. The Authority will calculate the Pooled Increment Assistance amount promptly after the taxable square footage of Building 5 is determined as described in clause (i), and the Authority will, as soon as practicable thereafter, provide written notice to Target regarding the amount of Pooled Increment Assistance and a

description of how it was calculated. For purposes of calculating such amount, the Authority shall assume the following:

(i) Building 5 will have an estimated market value of \$100.00 per square foot times the taxable square footage of Building 5 stated in the Building Permit (or if not stated in the permit itself, the square footage from plans submitted for purposes of issuing the Building Permit), and the annual Abatement amount from Building 5 is assumed to increase annually by a factor of 2.0 %.

(ii) The projection will assume class rates and local tax rates in effect for taxes payable in 2011.

(iii) The hypothetical Abatement Period will be the tax-payable years 2015 through 2034, and the discount rate for calculation of net present value shall be 6.5%, calculated to December 31, 2012.

(iv) The Semi-Annual City Abatement Amount in each project year is assumed to be reduced by: (1) the Business Subsidy Jobs Reduction; and (2) the Construction Reduction in effect as of the date of calculation, but assuming that Target will have constructed at least 655,000 gross square feet of space (i.e., representing the Minimum Construction Requirement under Sections 7.2 and 7.4 combined) by December 31, 2015. That is, any Construction Reduction will be assumed to be eliminated as of taxes payable in 2016. The Semi-Annual City Abatement Amount is not assumed to be reduced by any Abatement Jobs Reduction, because the expectation is that the Abatement Jobs Requirement will be satisfied upon Completion and occupation of Building 5.

(v) For purposes of calculating each the hypothetical Semi-Annual City Abatement Amount from Building 5, the Base Tax for that building will be assumed to be \$13,028.

(vi) In all other respects, the projected Semi-Annual Abatement Amounts will be calculated as described in Section 9.4 hereof and in the definition of the term Semi-Annual Abatement Amount.

(e) The Pooled Increment Assistance, in the amount determined under paragraph (d) of this Section, will be disbursed by the Authority to Target on or about December 15, 2012 (but in no event later than December 31, 2012), upon satisfaction of the following conditions:

(i) Target received approval of the AUAR regarding the Development Property, and Commenced construction of Building 5 by no later than June 30, 2012, as evidenced by delivery of a Notice of Commencement and a copy of the Building Permit for that building.

(ii) By no later than December 1, 2012, Target submitted, and the Authority has accepted, Verified Qualified Costs incurred in connection with Building 5 after the

date of this Amended & Restated Contract, in at least the amount of the Pooled Increment Assistance. Such Verified Qualified Costs must be submitted and verified substantially in accordance with the terms and procedures described in Section 9.3(a) through (d) hereof. Verified Qualified Costs submitted under this Section must be different from any such costs included in any Qualified Cost Statement under Section 9.3 for purposes of Abatement; that is, such costs may not be double-counted to support both an Abatement payment under Section 9.4, and Pooled Increment Assistance under this Section.

(iii) By no later than December 1, 2012, Target submitted evidence reasonably satisfactory to the Authority demonstrating the number of jobs created or retained by Target in connection with construction of Building 5 (including jobs either created or retained directly by Target, or construction jobs created or retained by any contractors working on any portion of the Building 5, including site work). If jobs are construction jobs, Target shall include reasonable evidence supplied by the contractor that the jobs were created or retained because of the subject construction contract. Jobs demonstrated under this clause are not credited against the Abatement Jobs Requirement under Section 7.5 hereof; rather, these jobs are intended solely to show compliance with the job creation requirements under Minnesota Statutes, Section 469.176, subd. 4m.

(f) As described in Section 9.10(d)(4), the amount of Pooled Increment Assistance is based on hypothetical Abatement projections that assume satisfaction of the Abatement Jobs Requirements as of tax-payable year 2015, and satisfaction of the Minimum Construction Requirement as of tax-payable 2016. If either or both of those assumptions do not materialize, then commencing in 2015 and each year thereafter, the Authority will calculate the Construction Reduction and/or Abatement Job Reduction (as the case may be) that *would have been* imposed on Abatement from Building 5 if the assistance had been delivered in the form of Abatement rather than Pooled Increment. That reduction will then be applied to reduce the Aggregate Payments under Section 9.4 (in addition to the Construction Reduction and Abatement Job Reduction, if any, that is otherwise calculated under Section 9.8). The net result is that the "overpayment" of Pooled Increment Assistance related to Building 5 is remedied by a commensurate reduction in Abatement payments related to Building 4. The methodology and calculation used to determine the reductions described in this paragraph will be included in each Payment Certificate accompanying an Aggregate Payment, as described in Section 9.8(f). If, after any Construction Reduction or Abatement Jobs reduction under this paragraph, Target subsequently adds Qualifying Jobs or constructs additional portions of the Minimum Construction Requirement, the reductions under this paragraph will be adjusted as described in Section 9.9.

(g) If Target fails to timely Commence construction of Building 5, the Authority may exercise the remedies described in Section 14.11(b) hereof.

## ARTICLE X

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

Section 10.1. Representation as to Development. Target represents and agrees that its purchase of the Target Property, and its other undertakings pursuant to this Amended & Restated Agreement, are and will be used for the purpose of development of the Target Property. Target further recognizes that, in light of: (a) the importance of development of the Development Property to the general welfare of the community and (b) the substantial financing and other public aids that have been made available by the City and Authority for the purpose of making such development possible, the qualifications and identity of Target are of particular concern to the City and the Authority. Accordingly, except as otherwise provided herein this Amended & Restated Agreement may not be assigned by Target without the written consent of the Authority and City.

Section 10.2. Transfer of Rights to Receive Semi-Annual City Abatement Amounts. Target may assign, pledge or otherwise transfer its right to receive Semi-Annual City Abatement Amounts without consent of the Authority or City, provided the Authority shall have no obligation to make payment thereof to any party other than Target unless and until Target shall first comply with the requirement of **Section 9.5(e)**.

#### Section 10.3. Release and Indemnification Covenants.

- (a) Target agrees to indemnify the Authority and the City, their officers, employees, agents, and others acting on their behalf, to hold them harmless, and to defend and protect them, from and against any and all loss, damage, liability, cost and expense (specifically including attorneys' fees and other costs and expenses of defense), of any sort whatsoever, to the extent based upon, resulting from, or otherwise arising in connection with any actions claims or proceedings (from any source whatsoever) brought, or any loss, damage or injury of any type whatsoever sustained, by reason of any act or omission of Target, its officers, employees or agents, or any person(s) or entity(ies) for whose acts or omissions Target is legally responsible, in the performance of any of Target's obligations under this Amended & Restated Agreement.
- (b) The Authority and the City agree to indemnify Target, its officers, employees, agents, and others acting on its behalf; to hold them harmless, and to defend and protect them, from and against any and all loss, damage, liability, cost and expense (specifically including attorneys' fees and other costs and expenses of defense), of any sort whatsoever, to the extent based upon, resulting from, or otherwise arising in connection with any actions claims or proceedings (from any source whatsoever) brought, or any loss, damage or injury of any type whatsoever sustained, by reason of any act or omission of the City or the Authority, its officers, employees or agents, or any other person(s) or entity(ies) for whose acts or omissions the Authority or the City is legally responsible, in the performance of any of the City's or Authority's obligations under this Amended & Restated Agreement.
- (c) The provisions of this **Section 10.3** shall not be deemed or construed as a waiver of the liability limits applicable to the City or the Authority set forth in Minnesota Statutes, Chapter 466 as against third parties.

- (d) All covenants, stipulations, promises, agreements and obligations of the City, Authority and Target contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the respective entities and not of any governing body member, officer, agent, servant or employee in an individual capacity.

## **ARTICLE XI**

### **Termination of Agreement**

Section 11.1. Automatic Termination. Except as provided in **Section 11.2** below, this Amended & Restated Agreement shall automatically terminate on **February 2, 2038** without further action by any of the Parties.

Section 11.2. Effect of Termination. Following the termination of this Amended & Restated Agreement pursuant to **Section 11.1**, the Parties shall be forever released and discharged from further liability and obligations hereunder except as to (a) defaults occurring prior to such termination and (b) claims under the indemnity provisions of **Section 10.3**.

Section 11.3. Evidence of Termination. If requested by any Party, the other Parties will provide the requesting Party with a certification recordable among the land records certifying that the Amended & Restated Agreement has been terminated or has expired and, if true, that requesting Party was not in default of its obligations hereunder at the time of such termination or expiration.

## **ARTICLE XII**

### **Default and Remedies**

Section 12.1. Defined. The term "**Event of Default**" shall mean any failure by Target, the City or the Authority to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Amended & Restated Agreement after the expiration of the applicable cure periods. The Parties acknowledge and agree that it shall in no event be deemed an Event of Default hereunder if Target does not meet or cause to be met the Business Subsidy Jobs Requirement, Abatement Jobs Requirement and/or the Minimum Construction Requirement, the exclusive remedies for which are set forth in **Section 9.8** hereof.

Section 12.2. Remedies. Upon an Event of Default as described in **Section 12.1**, the non-defaulting party may exercise the following remedies under this **Section 12.2**, after providing thirty (30) days written notice to the defaulting party of the Event of Default, but only if (a) the Event of Default has not been cured within said thirty (30) days or (b) if the Event of Default is by its nature incurable with reasonable diligence within said thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured as soon as reasonably possible:

- (a) Suspend its performance under this Amended & Restated Agreement;
- (b) Cancel, rescind or terminate this Amended & Restated Agreement; or

- (c) Take whatever action permitted by law, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Amended & Restated Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Amended & Restated Agreement.

Section 12.3. Exclusivity of Remedies. No remedy herein conferred upon or reserved to the Authority, the City or Target is intended to be exclusive of any other available remedy or remedies. Each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Amended & Restated Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any remedy or power accruing upon any Event of Default shall impair any such remedy or power or shall be construed to be a waiver thereof. Any such remedy and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle any party 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 XII**.

Section 12.4. No Additional Waiver Implied by One Waiver. In the event any Event of Default is waived by the non-defaulting party, such waiver shall be limited to the particular Event of Default so waived and shall not be deemed to waive any other concurrent, previous or subsequent Event of Default hereunder.

### **ARTICLE XIII** **Arbitration**

Section 13.1. Scope. The Parties recognize that Arbitrative Disputes as identified herein may from time to time arise and that such Arbitrative Disputes shall be resolved by binding arbitration. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the Agreement Date, except as such rules and procedures may be otherwise expressly modified by this **Article XIII** or by written agreement of the Parties. Litigation shall not be commenced by either Party with respect to an Arbitrative Dispute.

Section 13.2. Notice. At any time an Arbitrative Dispute arises between the Parties, a notice of demand for binding arbitration may be given in writing by one Party to another. Once given, the Parties waive their right to subsequently commence litigation, except as otherwise provided by law. In no event may a notice of demand for binding arbitration be filed more than one (1) year after the date the Arbitrative Dispute arose, and if such demand is not timely filed, the Arbitrative Dispute referenced in the demand shall be deemed released, waived and barred for purposes of binding arbitration.

Section 13.3. Arbitrators. The Arbitrative Dispute shall be referred to and decided and settled by a standing panel of three arbitrators, one selected by the City and Authority together (the "**City Arbitrator**"), one selected by Target (the "**Target Arbitrator**") and the third by the two arbitrators so selected (the "**Neutral Arbitrator**"). The City Arbitrator and Target Arbitrator shall be knowledgeable about ad valorem property taxation matters and the Neutral

Arbitrator shall be a former judge of one of the Minnesota District Courts, the U.S. District Courts or one of the U.S. Court of Appeals or such other classes of persons as the Parties may agree. In addition, all three arbitrators shall be members of the AAA Large, Complex Case Panel or a CPR Panel of Distinguished Neutrals, or have professional credentials similar to those persons listed on such AAA or CPR panels. Selection of arbitrators shall be made within forty-five (45) days after the date of the first notice of demand given pursuant to **Section 13.2** and within thirty (30) days after any resignation, disability or other removal of such arbitrator. Following appointment, each arbitrator shall remain a member of the standing panel, subject to recusal for just cause or resignation or disability.

Section 13.4. Cost of Arbitration. The cost of each arbitration proceeding, including without limitation the arbitrators' compensation and expenses, hearing room charges, court reporter transcript charges, etc., shall be borne by the Party whom the arbitrators determine has not prevailed in such proceeding, or borne equally by the City/Authority and Target if the arbitrators determine that neither Party has prevailed. The arbitrators shall also award the prevailing Party its reasonable attorneys' fees and costs incurred in connection with the arbitration. The arbitrators are specifically instructed to award attorney's fees for instances of abuse of the discovery process.

Section 13.5. Location of Proceedings. All arbitration proceedings shall be held in the Minneapolis/St Paul metropolitan area.

Section 13.6. Governing Law. This arbitration provision shall be governed by, and all rights and obligations specifically enforceable under and pursuant to the laws of the State of Minnesota.

Section 13.7. Consolidation. No arbitration shall include, by consolidation, joinder, or in any other manner, any additional person not a Party to this Amended & Restated Agreement except by written consent of the Parties hereto containing a specific reference to this Amended & Restated Agreement.

Section 13.8. Award. The arbitrator(s) shall base the award on the applicable law and judicial precedent which would apply if the Arbitrative Dispute were decided by a United States District Court, and the arbitrator(s) shall have no authority to render an award which is inconsistent therewith. The foregoing shall in no way imply or grant (in any manner whatsoever, whether procedural or substantive) either party the right to bypass arbitration and proceed to a judicial hearing; the parties agreeing that arbitration shall be the sole means of dispute resolution for Arbitrative Disputes under this Amended & Restated Agreement. The award shall be in writing and include the findings of fact and conclusions of law upon which it is based, and shall be issued by the Arbitrators within ninety (90) days of the submission of all written and/or oral evidence (including testimony) (the "Initial Decision"). The arbitrators are empowered to render an award of general compensatory damages and equitable relief (including, without limitation, injunctive relief), but are not empowered to award punitive damages. The award rendered by the arbitrators (1) shall be final (subject to **Section 13.9** below); (2) shall not constitute a basis for collateral estoppel as to any issue; and (3) shall not be subject to vacation or modification (subject to **Section 13.9** below).

Section 13.9 Appeal. Either party may have the right to appeal (“**Appeal**”) the Initial Decision to a new arbitral panel determined in accordance with **Section 13.3** above by providing notice of appeal in writing by personal service in accordance with Rule 5 of the Minnesota Rules of Civil Procedure on the opposing party within ninety (90) days of the date of the Initial Decision (the “**Notice of Appeal**”). If the Notice of Appeal is not served within said ninety (90) day period, the right to Appeal shall be deemed waived.

The Appeal shall be de novo and shall be conducted in accordance with the procedures set forth in **Sections 13.1, 13.3, 13.4, 13.5, 13.6 and 13.8** (provided that there shall be no further right to appeal) of this Amended & Restated Agreement. Either party shall be permitted to present any and all evidence that would or could have been submitted at the first arbitration hearing, provided however that the Initial Decision may be submitted as evidence and the arbitrators that rendered the Initial Decision may be called by either party as a witness to testify as to the amount and basis of their award and may be examined and qualified as any other witness. If either party determines to include the Initial Decision as evidence in the Appeal, the arbitrators that rendered such decision shall be subject to discovery.

The arbitrators that are selected to hear the Appeal shall render their decision within ninety (90) days of the submission of all written and/or oral evidence (including testimony). Notwithstanding anything to the contrary, the decision upon Appeal shall be final and conclusive, and neither party shall have the right to further appeal such ruling.

#### **ARTICLE XIV** **Additional Provisions**

Section 14.1. Extensions. The Executive Director of the Authority, in his/her discretion, is authorized to extend any Target timeline requirement contained herein, for good cause shown, for up to One Hundred Eighty (180) days. Any additional extension shall only be granted by the Board as an amendment to this Amended & Restated Agreement.

Section 14.2. Conflicts of Interest; Authority and City Representatives Not Individually Liable. No member, official, or employee of the Authority or the City shall have any personal interest, direct or indirect, in this Amended & Restated Agreement, nor shall any such member, official, or employee participate in any decision relating to this Amended & Restated Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Authority or the City shall be personally liable to Target, or any successor in interest, in the event of any default or breach by the Authority or the City or for any amount which may become due to Target or successor or on any obligations under the terms of this Amended & Restated Agreement.

Section 14.3. Fees.

- (a) Except as specifically provided otherwise in this Amended & Restated Agreement, Target shall pay the normal and customary City fees and expenses for the approval and construction of the Planned Improvements including, but not limited to building permit fees, state surcharges, and sewer accessibility charges (**SAC**) and water accessibility charges (**WAC**). The City and Authority agree that

with respect to the foregoing Target will be treated similarly to other similarly situated developers seeking such permits from the City.

- (b) Simultaneously with its execution and delivery of this Amended & Restated Agreement, Target shall reimburse the Authority for its legal and financial advisory fees associated with this Amended & Restated Agreement in an amount not to exceed twenty-five thousand dollars (\$25,000).

Section 14.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Amended & Restated Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 14.5. Notices and Demands. Except as otherwise expressly provided in this Amended & Restated Agreement, a notice, demand, or other communication under the Amended & Restated Agreement by any Party to the other shall be sufficiently given or delivered upon receipt if personally delivered or three (3) days after dispatched by U.S. registered or certified mail, postage prepaid, return receipt requested; and

- (a) in the case of Target, is addressed to or delivered personally to:

Target Corporation  
Property Development – TPN 12H  
Attn: Real Estate Portfolio Management/Amended & Restated Development  
Agreement/T-0591, Brooklyn Park, MN  
1000 Nicollet Mall,  
Minneapolis, Minnesota 55403

with copies to:

Target Corporation Property Development  
Attn: Corporate Real Estate  
1000 Nicollet Mall, Mail Stop TPN 1202  
Minneapolis, Minnesota 55403

and to

Target Corporation  
Law Department, TPS-3155  
1000 Nicollet Mall  
Minneapolis, Minnesota 55403

- (b) in the case of the Authority and the City, is addressed to or delivered personally to the Authority and/or the City, as the case may be, at 5200 85th Avenue North, Brooklyn Park, Minnesota 55443-4300

or at such other address with respect to such Party as that Party may, from time to time, designate in writing and forward to the other Parties as provided in this Section.

Section 14.6. Counterparts. This Amended & Restated Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 14.7. Law Governing. This Amended & Restated Agreement will be governed and construed in accordance with the laws of Minnesota.

Section 14.8. Severability. If any provision of this Amended & Restated Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, subject to the representations of the City and Authority in **Sections 2.1(f)** and **2.2(h)**, (i) that provision shall be automatically reformed in such a manner as is consistent with the remaining terms of this Amended & Restated Agreement and sufficient to comply with applicable law or (ii) if such reformation is not reasonably feasible under the circumstances, the provision shall be deemed severed from this Amended & Restated Agreement and the remainder of this Amended & Restated Agreement shall otherwise remain in full force and effect. Notwithstanding the foregoing, in the event a provision of this Amended & Restated Agreement is declared invalid, illegal or otherwise unenforceable and such provision cannot be so reformed, then the equivalent provision contained in the 2006 Development Agreement will control to the extent not itself invalid, illegal or otherwise unenforceable.

Section 14.9. Complete Agreement. This Amended & Restated Agreement supersedes the 2006 Development Agreement as of the date hereof except as otherwise specifically provided herein, but the 2006 Development Agreement is enforceable and valid from August 1, 2006 up until the date of this Amended & Restated Agreement. As of the date hereof, except as otherwise specifically provided herein this Amended & Restated Agreement will control all of the terms, conditions and understandings of the parties in connection with the Development Property and the Corporate Campus.

Section 14.10. Execution by City and Authority. Notwithstanding Board and Council approval of the terms and conditions contained herein, this Amended & Restated Agreement shall not be binding upon the Authority and City until executed by the appropriate representatives thereof.

Section 14.11. Binding Effect; Opt-Out Rights. (a) This Amended & Restated Agreement shall be binding upon the Parties hereto, their successors, heirs, and assigns and is intended to supersede and take the place of the 2006 Development Agreement except as otherwise specifically provided herein. Notwithstanding the foregoing provision or any other provision of this Amended & Restated Agreement to the contrary, Target may transfer by sale, lease or otherwise any portion of the Target Property free and clear of any obligations or encumbrances created under this Amended & Restated Agreement (with respect only to the property transferred and specifically excepting Target's obligations under **Section 3.1** hereof with respect to the Target Property not transferred, **Section 2.3**, **Section 3.3**, **Article VI**, **Sections 7.1, 7.2 7.4, 7.5**, **Sections 8.5, 8.6, 8.7, 8.8**, **Sections 9.3 and 9.8, 9.10** and **Section 10.3**), provided that neither the transferee nor the property so transferred shall be entitled to any Abatement or other rights and benefits set forth herein (the "**Target Opt-Out Right**"). The foregoing Target Opt-Out Right shall be personal to Target and shall not be available to any successors or assigns to the Target Property. Target shall in no event be deemed to have exercised the Target Opt-Out Right with respect to any transfer of Target Property unless it provides written notice to the Authority and the City in advance of such transfer expressly stating that it wishes to exercise such Target Opt-Out Right in connection therewith.

(b) If Target fails to Commence construction of Building 5 by June 30, 2012 (a **“Building 5 Default”**), then the Authority may, by written notice to Target, cancel this Amended & Restated Agreement with respect to both Building 5 and any Development Property that has not become an Abatement Eligible Property the **“Authority Opt-Out Right”**). That is, in the event of a Building 5 Default, the Authority’s cancellations rights described in the Section 14.11 of the 2006 Development Agreement are reinstated.

(c) If Target timely Commences construction of Building 5, then the Authority may exercise the Authority Opt-Out Right described in paragraph (b) above with respect to any Development Property that has not become an Abatement Eligible Property *only if* during any consecutive five-year period after the date of this Amended & Restated Agreement (i) Target or its Designated Developer has not been issued a Building Permit for any Planned Improvements and Commenced development activity with respect thereto, or (ii) material Internal Infrastructure Development has not occurred. For the purposes of the foregoing sentence, any delays constituting an Unavoidable Delay shall not be counted toward the five-year period. The effect of this paragraph is to begin a new five-year period similar to that provided in Section 14.11 of the 2006 Development Agreement, but only if there is no Building 5 Default.

(d) From and after the date of exercise of the Authority Opt Out Right (whether under paragraph (b) or (c) of this Section), Target has no further rights or interest in any Abatement that might be generated in the future from such parcel; and if improvements are subsequently constructed on such parcel, those improvements will not be treated as meeting the Minimum Construction Requirement and will not eliminate any pending Construction Reduction as described in Section 9.9. Likewise, any jobs created on such parcel will not be treated as meeting the Abatement Jobs Requirement, and will not eliminate any pending Abatement Jobs reduction as described in Section 9.9.

(e) If the Authority does not exercise the Authority Opt-Out Right under paragraph (b) after a Building 5 Default, or under paragraph (c) for any portion of the Development Property that remains undeveloped for five consecutive years, then Target remains entitled to Abatement from that property under Section 9.4 until the earlier of (i) the date the Authority exercises the Authority Opt-Out Right, or (ii) the date Target or its Designated Developer Commences construction on the relevant property. That is, the Authority Opt-Out Right expires as of the date of Commencement of construction of improvements on the relevant portion of the Development Property, provided that no action of the City or Authority will impair the Authority’s ability to exercise the Authority Opt-Out Right (in accordance with paragraph (b) or (c) of this Section, as the case may be) at any time through the date of Commencement of the relevant construction.

Section 14.12. Authority. Each of the undersigned Parties warrants that it has full authority to exercise this Amended & Restated Agreement, and each individual signing this Amended & Restated Agreement on behalf of a corporation or other legal entity hereby warrants that he or she has full authority to sign on behalf of the corporation or other legal entity that he or she represents and to bind such corporation or other legal entity thereby.

Section 14.13. Recording. The Authority shall, at its expense, record this Amended & Restated Agreement with the County Recorder's office and/or the Registrar of Titles and deliver a recorded copy of the Amended & Restated Agreement to Target.

Section 14.14. Unavoidable Delay. Whenever the terms of this Amended & Restated Agreement require an action upon or within a specified date, the obligation to perform shall be subject to any Unavoidable Delay that directly relates to such action.

IN WITNESS WHEREOF, the Authority has caused this Amended & Restated Agreement to be duly executed in its name and behalf, the City has caused this Amended & Restated Agreement to be duly executed in its name and behalf and Target has caused this Amended & Restated Agreement to be duly executed in its name and behalf on or as of the date first above written.

**BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY**

(seal) By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA            )  
  ) ss  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011, by Robert Schreier, the Executive Director of the Brooklyn Park Economic Development Authority, a public body corporate and politic under the laws of the State of Minnesota, on behalf of such public body.

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

**CITY OF BROOKLYN PARK, MINNESOTA**

(seal)

By \_\_\_\_\_  
Jeffrey Lunde  
Its: Mayor

By \_\_\_\_\_  
Jamie Verbrugge  
Its: City Manager

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011, by Jeffrey Lunde and Jamie Verbrugge, the Mayor and City Manager, respectively, of the City of Brooklyn Park, a Minnesota municipal corporation , on behalf of such municipal corporation.

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

