

GRANT OF EXCLUSIVE NEGOTIATING RIGHTS

(Upper Harbor Terminal)

C-42691

THIS AGREEMENT, dated and entered into as of the 16th day of August 2017 by and between the CITY OF MINNEAPOLIS (the "City") acting through its Department of Community Planning and Economic Development ("CPED"), the MINNEAPOLIS PARK AND RECREATION BOARD ("MPRB") and UNITED PROPERTIES DEVELOPMENT LLC, its successors and assigns (the "Developer").

RECITALS

WHEREAS, the City owns a 48+ acre parcel of real estate located adjacent to the Mississippi River commonly known as the Upper Harbor Terminal depicted as Parcels 1-7b on Exhibit A (the "Site"); and

WHEREAS, after a publicly offered Request for Qualifications, the City Council of the City selected Developer as Master Developer with which the City and the MPRB will collaborate to pursue redevelopment of the Site pending successful negotiation of an exclusive rights agreement; and

WHEREAS, on April 28, 2017 the City Council of the City and on June 7, 2017 the Board of the MPRB authorized the execution of this Agreement whereby the City grants Developer the exclusive rights to negotiate the redevelopment of the Site; and

WHEREAS, this Agreement is intended to set forth the terms and conditions for the grant of exclusive negotiating rights as described herein and the process for the parties to reach agreement on a Coordinated Plan and the terms of redevelopment agreements that will allow implementation of that plan;

NOW, THEREFORE, the parties hereto do agree as follows:

SECTION 1. GRANT OF EXCLUSIVE NEGOTIATION RIGHTS AND TERM.

- A. The City hereby grants to the Developer exclusive rights to negotiate redevelopment of the Site, subject to the MPRB's rights to negotiate acquisition of a portion of the Site for park development as described in this Agreement. The City will not offer any portion of the Site for sale or lease to any other party (other than offering portions to the MPRB for park purposes) as long as this Agreement is in effect. The City and MPRB also will not enter into any substantive discussions with other parties about possible sale, use or redevelopment of all or any part of the Site as long as this Agreement is in effect. The City will be allowed to enter into property management agreements and possible other short-term agreements for use of the Site or portions thereof, as long as such agreements may be terminated with no more than one year of notice. The City will consult regularly with the Developer to determine whether

shorter notice periods are needed for new or renewing agreements to accommodate impending development needs.

- B. Subject to early termination or extension as described below, the exclusive rights granted herein shall automatically terminate, expire and become null and void upon the earlier of (i) June 7, 2019 (2 years after approval), (ii) execution of initial City/Developer redevelopment agreement(s); or (iii) Developer notifies the City and the MPRB in writing that it is no longer interested in pursuing redevelopment of the Site (the "Term").

SECTION 2. INTENT OF PARTIES

The parties agree that the goal of the process described herein is for the parties to reach agreement on a Coordinated Plan, as described in Section 3 of this Agreement and the terms of redevelopment and other agreement(s) that will allow implementation of that Coordinated Plan. City/Developer initial redevelopment agreement(s) will identify which part(s) of the Site will be conveyed to Developer (or designated sub-developer) for private development, conveyance terms, conditions precedent to closing, description of Minimum Improvements, timeline for completion, any implementation items for which City (or MPRB) will be responsible, standard CPED contracting provisions, and City financing assistance, if any, and such other provisions as are customarily included in City redevelopment agreements. City/MPRB initial redevelopment agreement(s) also will identify which part(s) of the Site will be conveyed to MPRB for park development, conveyance terms, conditions precedent to closing, description of Minimum Improvements, timeline for completion, any implementation items for which City will be responsible, standard CPED contracting provisions, and such other provisions as are customarily included in City redevelopment agreements. If the first redevelopment agreement(s) does not cover all of the Site, then, rights to complete later phases of park and private development after the Term of this Agreement will be granted subject to new exclusive rights agreements or other appropriate forms of land rights agreements with timelines for development as deemed appropriate by the City, provided that such timelines shall be reasonably and equitably designed to accomplish timely development, recognizing prior investments made by Developer, the City and MPRB respectively and in no event expire prior to June 7, 2019 (2 years after approval). Other agreements between the parties may be needed. Nothing herein shall be considered a commitment of the City to convey any portion of the Site to either the Developer or the MPRB and all such commitments are subject to City Council approval. Any redevelopment and land rights agreement(s) that result from this process and that convey any future development rights will designate which part(s) of the Site will be conveyed to whom (which may be an affiliate of the Developer or a member of the Project Team (the "Project Team" means Developer, Thor Development and First Avenue Productions and may include additional parties proposed by the current Project Team that are reasonably acceptable to the City)), will establish the phasing of that conveyance and will identify the timing and conditions for such conveyance (or granting of development rights).

SECTION 3. CONTENTS OF COORDINATED PLAN

The desired outcome of the exclusive negotiating period is development of a Coordinated Plan that outlines:

1. a site development plan and support graphics to: a) concept design level for park and public realm components and b) schematic design level for Phase I private components and concept design level for later phases of private components;
2. an interim and long-term development program outlining the basic land use components and densities proposed for the various portions of the site, including a phasing plan for public, private and nonprofit components;
3. a strategy for treatment of existing structures on the Site, including clarity as to what demolition and/or building changes will be allowed;
4. design guidelines for the private development;
5. a preliminary infrastructure plan to be prepared cooperatively by the parties;
6. capital sources and uses and operating pro formas for the various private and nonprofit components that demonstrate that they are financially feasible and supported by the market and anticipated funding sources (as reasonably determined by Developer and City);
7. cost estimates for the needed public and park improvements and a funding strategy that is supported by anticipated funding sources; and
8. an implementation strategy, including partners (private, nonprofit and public) and their respective roles, funding sources and uses, approval/regulatory requirements, timeline, etc.

(the "Coordinated Plan")

SECTION 4. PROCESS

The parties agree to the following general approach for meetings and communications amongst themselves to assure that all parties are up to date and in agreement with planning and other decisions as they are made, but that all parties' time is efficiently used. This approach may evolve during the Coordinated Plan process with approval of all of the Contract Managers identified in Section 13A.

The parties will generally meet once a month as part of a larger group of staff and technical resource people to provide input and make decisions as outlined in Exhibit B. A smaller core group of Developer, City and MPRB representatives will generally meet (in person or via phone/video) about twice a month as needed to supplement those larger meetings. Other meetings to address particular aspects of the plan and process will be on an as-needed basis. Updates that don't require meetings will be accomplished via email.

Any press releases or similar public communications must be approved unanimously by the Contract Managers.

The City and MPRB, at their cost, will coordinate the overall community engagement process, provide funding for advertising of public meetings and provide graphic materials, handouts and refreshments for meetings. The City, at City's cost, will continue to maintain the shared web site to support the process and to take the primary responsibility for email communications to stakeholders. Developer, at Developer's cost, will assist with graphic materials that illustrate various plan options and will participate at community meetings as

appropriate, including coordinating participation of development team members, consultants and, if appropriate (as reasonably determined by Developer), a community partner to assist with engagement.

SECTION 5. DUE DILIGENCE

The parties agree to complete the due diligence outlined in Exhibit B. The parties that will be responsible for leading various activities (“Lead Parties”) are identified, although most activities will involve extensive feedback from and collaboration with all parties. This list may be modified upon approval of all of the Contract Managers. The City and MPRB Contract Managers may only agree to additional due diligence to be completed by the City or MPRB if there is sufficient approved budget authority to do so.

SECTION 6. COSTS AND OWNERSHIP OF WORK

All costs of the parties are incurred at their own risk and no party shall have incurred any obligation or liability to any other party hereunder, except as specifically set forth in this Agreement. During the Term of this Agreement the parties will freely share copies of the work products they have funded as part of the process. In the event that this process does not result in the execution of redevelopment agreements to move the plan to implementation, it is recognized that each party will retain ownership of those products they have funded. Although such work products may be viewed by the public as appropriate under the Minnesota Data Practices Act, no other party will be entitled to rely upon any work product owned by another party unless the party that funded the work product has been reimbursed for the cost related to that work product.

SECTION 7. PROGRESS MILESTONES

Exhibit B outlines the anticipated process, site planning/programming scope of work to be accomplished and approximate timeframes for such work in order to achieve a Coordinated Plan within two years. Exhibit B also outlines milestones at which the parties will evaluate whether progress is being made by the parties and whether to continue working toward the Coordinated Plan that is guided by this Agreement (the “Milestones”).

Failure of the parties to reach agreement on the Milestones would be a potential basis for termination of this Agreement by the City, MPRB and/or Developer. The process outlined and these Milestones and their timing may be revised with the approval of all of the Contract Managers, provided the overall timeframe for achievement of Milestone #3 is not exceeded by more than 120 days. The parties agree that the Milestones will be extended as reasonably necessary to account for any unforeseeable delays due to causes outside the control of the Developer such as, but not limited to, acts of God, acts of the public enemy, the direct result of strikes, other labor troubles, fire, floods, epidemics, quarantines, unavailability of power, unusual severe weather, litigation commenced by third parties or other similar judicial or governmental action that directly results in delays, provided that the Developer is diligently pursuing achievement of the Milestones given the cause of the delay.

SECTION 8. EARLY TERMINATION NOTICE

A party may terminate this Agreement for failure to timely meet a Milestone only after at least 60 days written notice of the termination to the other parties describing the reasons the noticing party believes a Milestone has not been met (an "Early Termination Notice"), and only if the Milestone has not been met or the Early Termination Notice has not been rescinded by the noticing party within said 60 days or such longer period as is provided by the noticing party.

SECTION 9. INTERIM USE

Developer may propose interim short-term activities (e.g., a concert or special event) for portions of the Site during the Term. If those activities do not conflict with ongoing terminal operations and are acceptable to the City, access will be granted pursuant to standard City procedures, e.g., a Facilities Use Permit or short-term lease.

SECTION 10. RIGHT OF ENTRY

Throughout the Term of this Agreement, the Developer may request and the City agrees to reasonably allow access to the Site pursuant to the terms of a Right of Entry Agreement in the form attached hereto as Exhibit D to conduct studies and testing and perform other due diligence at Developer's expense. The City will cooperate with Developer as appropriate to provide access to the Site to members of the public (with individual liability waivers) for community engagement purposes.

SECTION 11. CITY COUNCIL AND MPRB APPROVALS

Neither the Contract Managers for the City and the MPRB, nor any other staff working on the planning process described herein has the authority to bind the City or the MPRB. Only the Minneapolis City Council can bind the City and only the Minneapolis Park & Recreation Board can bind the MPRB.

SECTION 12. INSURANCE

The Developer shall secure and maintain the following insurance coverage for the duration of this Agreement and, within a reasonable time after the City's request, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect.

- (a) Workers compensation insurance that meets the statutory obligations.
- (b) Commercial general liability insurance with limits of at least \$2,000,000 general aggregate/\$2,000,000 each occurrence with the City named as an additional insured.
- (c) Commercial automobile liability insurance covering all owned, non-owned and hired automobiles with limits of at least \$1,000,000 (combined single limit).

SECTION 13. MISCELLANEOUS

- A. **Contract Managers** – the following people will serve as the respective “Contract Managers” for their organization:

City: Ann Calvert
MPRB: Kate Lamers
Developer: Brandon Champeau

or such alternate “Contract Manager” with respect to any such party as that party may, from time to time, designate in writing and forward to the other parties.

- B. **Identification of Team** – Exhibit C identifies development team members and their roles. Such development team members are hereby approved by City and MPRB. Developer may add, substitute or remove Consultants, but must notify the City and MPRB Contract Managers of any such Consultant team revisions, and will, in making revisions, seek to include consultants that have strong local expertise and community knowledge or special expertise not available locally.

Developer also may propose the addition of development partners to take on one or more components of the project (e.g., adaptive reuses in existing structures), but any such addition is subject to approval by the City and MPRB (elected bodies, not Contract Manager approval needed).

- C. **Notices** - Notices shall be delivered in writing by U.S. first class mail or hand delivered as follows:

To the Developer: United Properties Development LLC
650 Nicollet Mall, Suite 450
Minneapolis, Minnesota 55402
Attention: Brandon Champeau
e-mail: brandon.champeau@uproperties.com

with a copy to: Briggs and Morgan, P.A.
2200 IDS Center
80 S. Eighth Street
Minneapolis, MN 55402
Attention: Patrick Mascia
e-mail: pmascia@briggs.com

To the MPRB: Minneapolis Park and Recreation Board
2117 West River Road North
Minneapolis, MN 55411
Attention: Kate Lamers
e-mail: klamers@minneapolisparcs.org

To the City: City of Minneapolis
Department of Community Planning
and Economic Development
105 Fifth Avenue South, Suite 200
Minneapolis, MN 55401
Attention: Ann Calvert
e-mail: Ann.Calvert@minneapolismn.gov

or at such other address with respect to any such party, as that party may from time to time designate in writing and forward to the other parties.

- D. **Equal Opportunity (nondiscrimination and affirmative action)** – Developer must obtain City approval of a written affirmative action plan in compliance with applicable provisions of Chapter 139 and 141 (Title 7, Civil Rights), Minneapolis Code of Ordinances, nondiscrimination provisions contained in Chapter 181, Minnesota Statutes, the Americans with Disabilities Act of 1990 (as amended), Section 109 of the Housing and Community Development Act of 1974 (as amended), the Age Discrimination Act of 1975 (as amended), and Executive Order 11246, as amended by Executive Order 12086. The Developer agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability or other handicap, age (40-70), marital status, or status with regard to public assistance or any requirement of a public assistance program. Developer agrees to take affirmative action to ensure that its employment practices are free of such discrimination. These employment practices include, but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause. Developer also will be required to, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that it is an equal opportunity or affirmative action employer.
- E. **Hold Harmless** – Developer agrees to defend, indemnify and hold the City and MPRB harmless from any and all claims or lawsuits that may arise from the Developer's activities under the provisions of the exclusive rights agreement that are attributable to the acts or omissions, including breach of specific contractual duties, of the Developer or the Developer's independent contractors, agents, employees or officers.

- F. **Counterparts** - This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.
- G. **Governing Law** - This Agreement shall be interpreted under the laws of the State of Minnesota.
- H. **Assignment**- Developer may assign its rights and obligations under this Agreement without the City's consent to an affiliate of Developer or to an entity comprised of Developer (or an affiliate of Developer), Thor Development (or an affiliate of Thor Development) and First Avenue Productions (or an affiliate of First Avenue Productions). Any other assignment of Developer's rights and obligations is subject to the explicit written approval of the City Council and the MPRB.

(Signature pages follow)

IN FURTHERANCE WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

CITY OF MINNEAPOLIS

By: Mwendenzuli
Finance Officer
Assistant Director of Purchasing
City Purchasing Agent

Responsible Department
Head Approval:

D. Craig Taylor
D. Craig Taylor, Director CPED

Approved as to form:

Doore
Assistant City Attorney

**MINNEAPOLIS PARK AND
RECREATION BOARD**

By: *Debra McSally*
Its: President

Date: 7/12/17


By: *Joseph B. Ryck*
Its: Secretary

Date: 7/12/17

Approved as to form:

B. Rice
Attorney for the Minneapolis
Park & Recreation Board

UNITED PROPERTIES DEVELOPMENT LLC

By: 
Its: President

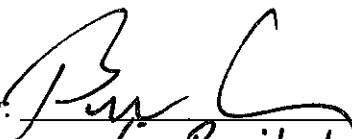
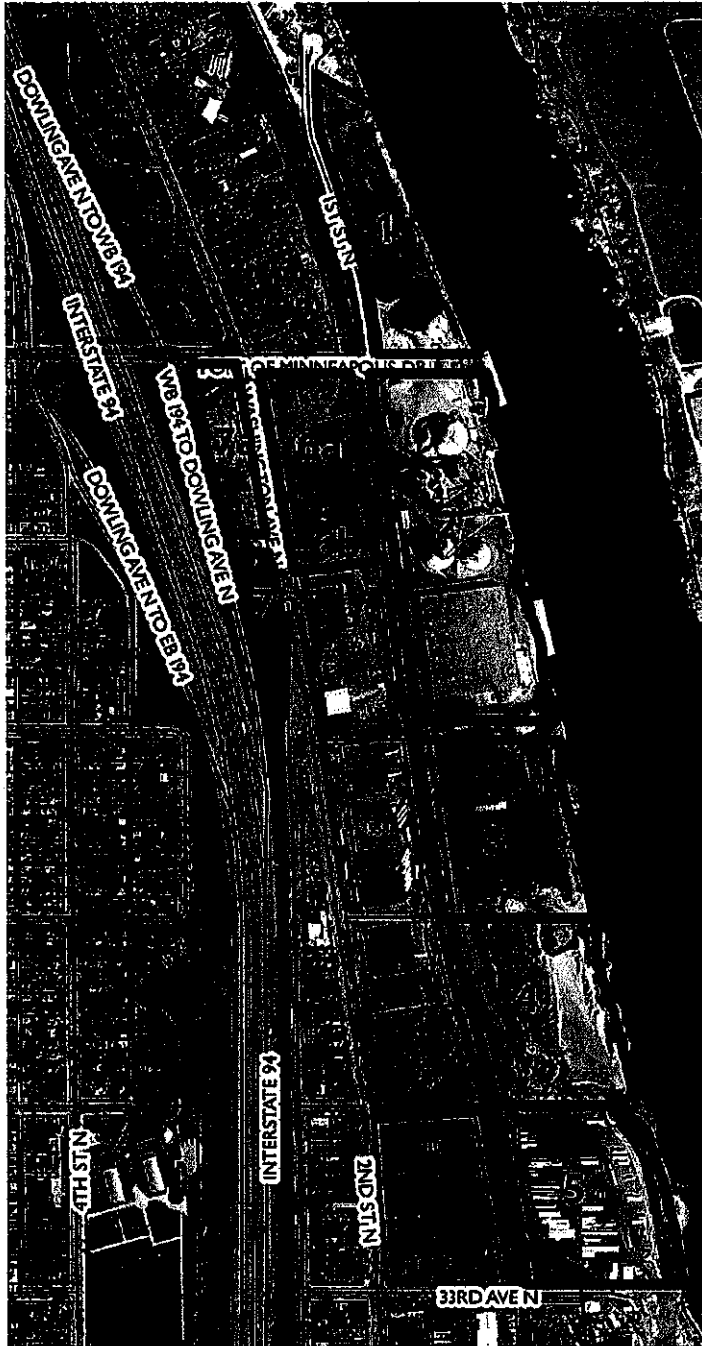
By: 
Its: Vice President

EXHIBIT A
MAP OF UPPER HARBOR TERMINAL PARCELS INCLUDED



Upper Harbor Terminal
Parcel Information

- 1. 3800 1st St N -**
03-029-24-31-0008, 5.71 acres
- 2. 2 36th Ave N -**
03-029-24-34-0026, 12.47 acres
- 3. 51 36th Ave N -**
10-029-24-21-0002, 7.25 acres
- 4. 51 34th Ave N -**
10-029-24-21-0048, 7.42 acres
- 5. 3360 1st St. N**
10-029-24-24-0065, 7.56 acres
- 6a. 3700 Washington Ave N**
03-029-24-34-0007, 4.25 acres
- 6b. 3648 Washington Ave N**
03-029-24-34-0028, .54 acres
- 7a. 3701 Washington Ave N**
03-029-24-34-0029, 2.15 acres
- 7b. 3639 Washington Ave N**
03-029-24-34-0031, 1.13 acres

EXHIBIT B

PROCESS STEPS, RELATED DUE DILIGENCE AND MILESTONES

Outlined process, timelines, due diligence items and milestones may be revised through mutual approval of the Contract Managers, as described in the body of this Agreement. Tasks in bold are third party due diligence expenses that the identified party is prepared to undertake.

Initial Reality Check (Prior to July 1, 2017):

Completion of community engagement and initial evaluation to: clarify the questions/concerns to be addressed during the planning process, identify potential major barriers and complete an initial assessment of the viability of the various components of the initial development program. If needed, make revisions.

- Community engagement plan will have been established and initiated.
- Community engagement on:
 - What initial development program components are red, yellow and green
 - What studies community requests to answer questions.
- Course corrections as appropriate based on input.
- Developer will have selected firm to complete AUAR and identified key studies.
- Parties will have identified tentative basic financial framework for business relationships amongst parties (subject to later Council and MPRB approval), e.g. how land values will be established, what financial tools will (and won't) be considered, what types of public investments will (and won't) be considered and any roles City and/or MPRB might have.
- Parties will have completed an initial assessment of potential costs and phasing for various public (park and infrastructure) and private components, how much public/philanthropic investment might be needed for each and whether that seems feasible. Course corrections as appropriate.
- Parties will have determined what types of development rights might be appropriate for phases later than those covered by redevelopment agreement(s).

Lead parties:

Developer

- Refine **master plan**, including proposed uses/densities
- Select AUAR contractor
- Identify key AUAR studies
- Create initial project pro forma
- Identify initial financing gap
- Develop project phasing plan
- Develop initial **park improvement and infrastructure concept plan**
- Perform any additional initial **geotechnical studies**
- Create initial public and private financing plan
- Identify potential additional partners to explore/undertake adaptive reuse, incubator, etc.

City / MPRB

- Establish **community engagement** plan and initiate with developer participation (**City and MPRB split**)
- Obtain updated **title commitment** (City)
- Complete **title clearance** (City)
- Obtain updated **survey** (City)
- Review master plan, uses/densities, infrastructure and phasing
- Review financing plan

Fleshing out the Phase 1 Destination Package (Prior to October 1, 2017):

Completion of additional community engagement, concept design and evaluation studies to determine if the Phase 1 destination package (amphitheater, compatible adaptive reuses of some of the existing historic structures, Phase 1 park improvements and needed Phase 1 public infrastructure) appear reasonably feasible. If not, identify alternate destination components and evaluate them.

- Council and MPRB will have approved basic financial framework.
- Key studies (initial AUAR work) will have been completed.
- Based on key studies and additional evaluations, the feasibility of amphitheater, adaptive uses of historic structures, powerline relocation and first phase park/infrastructure will have been verified (including decision whether to keep or remove river wall). If not, parties will start process to identify an alternative destination package and will refine subsequent steps and timeline accordingly.
- Community engagement on:
 - Report on key initial studies
 - Tentative Phase I
 - Potential land uses and park features in later phases, equity considerations related to housing, jobs, etc.
- Parties will have determined if any state bonding will be sought and, if so, will have sought to have that included on City and/or MPRB legislative agenda(s).

Lead parties:

Developer

- Incorporate community comments into refined **master plan**, including conceptual plans/initial cost estimating for infrastructure, park improvements and other public realm features and potential adaptive reuses
- Refine financing plan/strategies
- Create initial project timeline
- Determine **amphitheater feasibility**
- Develop preliminary **AUAR** timeline and scope
- Develop initial **parking plan**/strategy
- Develop initial **storm water management plan**
- Refine project pro forma
- Complete **key studies (e.g., amphitheater acoustics, traffic, utilities)**

City / MPRB

- **River wall evaluation and decision** (MPRB)
- Develop powerline relocation strategy with Developer input
- Determine **feasibility of adaptive re-use** strategy and develop strategy (City)
- Continue **community engagement** per preliminary development plan/key studies
- Update equitable development scorecard
- Identify whether state bonding opportunities are feasible/ timeline
- Develop planning/zoning/entitlement strategy (City)
- City and MPRB approval of financial framework

MILESTONE #1 (Deadline: December 1, 2017): Do all parties agree that reasonable progress is being made on the process steps above (or on such alternate process steps as have been approved by all of the Contract Managers) and that continuing to work on the development framework has a reasonable chance of timely resulting in a Coordinated Plan that all parties will find acceptable? If yes, this Agreement continues. If no, any party may send the other parties an Early Termination Notice.

Fleshing Out the Rest of the Concept Plan (Prior to April 1, 2018):

Completion of additional community engagement, concept design and evaluation studies to determine the private development, park improvements and public infrastructure to be included in later phases.

- Community engagement on:
 - Design aspects of land uses and park features in later phases, infrastructure/circulation
- Planning for later phases will have been completed.
- Strategy for when terminal customers will receive termination notices will have been established.
- Sufficient input will have been received to test acceptability of proposed demolition/changes to historic structures.
- Parties will have authorized Xcel to complete engineering for selected relocation option and decided how costs of engineering and then actual relocation will be allocated.
- Parties will have determined if special TIF legislation is desired and, if so, will have sought Council approval to include that on legislative agenda.
- If appropriate, process to seek Special TIF legislation and/or state bonding will have been started.

Lead parties:

Developer

- Refine **master plan**, densities, phasing and uses
- Determine estimated funding gap and refine financing plan
- Refine amphitheater development and financing plan
- Complete additional **due diligence**
- Develop financing timeline
- Prepare **concept designs** for private development

City / MPRB

- Finalize **adaptive re-use plan** (City)
- Develop terminal operations termination strategy
- Determine whether TIF legislation is going to be pursued
- Additional **community engagement**

Initial Implementation Strategy and Concept Plan Approval (Prior to July 1, 2018):

Completion of an overall concept plan and initial implementation strategy for community input and then City Council and Park Board approval.

- Initial work to further inform design and feasibility of infrastructure and park improvements identified in refined conceptual master plan will have been completed.
- Parties will have prepared an implementation strategy for entire project, including updated capital and operating pro forma and showing anticipated (and realistic) funding sources and roles.
- Any additional partners needed for initial phase will have been identified and roles confirmed.
- Community engagement on:
 - Draft concept plan
- City Council and MPRB will have approved a concept plan showing land uses, public infrastructure, park boundary, park features, anticipated phasing, basic design parameters and implementation strategy/basic business terms (“Concept Plan”).
- If needed, *Above the Falls Master Plan Update* and *Above the Falls Regional Park Master Plan* will have been amended to reflect agreed-upon park boundary, then approved by Metropolitan Council.
- With community input, parties will have identified AUAR boundary and what development scenarios will be studied in AUAR.

Lead parties:

Developer

- Finalize **Concept Plan** and phasing
- Finalize initial project pro forma, sources and uses and funding plan
- Identify and confirm additional project partners
- Finalize amphitheater plan and funding strategy
- Finalize scope of AUAR and AUAR scenarios

City / MPRB

- Finalize **community engagement** related to Concept Plan and any ATF plan revisions
- Complete initial **evaluation and cost estimates for public infrastructure** (City)
- Complete initial evaluation and cost estimates for park improvements (MPRB)
- City Council and MPRB Concept Plan approval
- Amend ATF master plan and regional park master plan, if needed, and secure Metropolitan Council approval

MILESTONE #2 (Deadline: September 1, 2018): Have the Developer, City Council and MPRB all approved, in concept, a plan showing land uses, public infrastructure, park boundary, park features, anticipated phasing, basic design parameters and implementation strategy/basic business terms? If yes, this Agreement continues. If no, any party may send the other parties an Early Termination Notice prior to September 15, 2018.

Refining the Concept Plan and Implementation Strategy (Prior to January 1, 2019):

Completion of preparatory steps needed to create the implementation framework and secure needed tools; completion of more detailed design and financing framework; and starting negotiation of detailed terms for initial redevelopment and other agreements.

- Completion of AUAR, including any needed mitigation strategy
- If needed, redevelopment and tax increment plan documents will have been prepared and then approved.
- Development parcels (at least first phase) will have been clarified and Fair Market Value appraisal(s) completed
- Zoning code will have been amended to provide for an amphitheater, if necessary.

Lead parties:

Developer

- Complete **AUAR**
- Develop **AUAR mitigation strategies**
- Finalize **schematic design** for private development

City / MPRB

- Prepare and seek approval of redevelopment and tax increment plans, if appropriate
- Complete community engagement related to redevelopment and TIF plan approvals (City)
- Complete **FMV appraisal** for initial phase (City)

Redevelopment Agreement Approval and Execution (Prior to April 1, 2019):

Authorization by the City Council and Park Board of the initial redevelopment agreements, then execution of same.

- Financing will have been secured for initial park improvements to be committed in initial redevelopment agreements
- Financing will have been secured for initial infrastructure to be committed in initial redevelopment agreements
- Approval of powerline relocation plan and securing of financing (cost allocation TBD)
- Parties will have negotiated terms for: a) at least two initial redevelopment agreements (one with MPRB for first phase of park and one with developer) for first phase of development, and b) any exclusive rights or other land rights agreements for those portions of the Properties not included in the initial redevelopment agreements.
- City Council will have approved execution of initial redevelopment agreements, any other land rights agreements and any other agreements.
- Agreements will have been drafted and executed.

Lead parties:

Developer

- Secure initial Phase I financing commitment
- Prepare **Phase I construction documents**
- Negotiate and execute redevelopment agreement

City / MPRB

- Identify initial infrastructure and park financing
- Negotiate initial redevelopment agreements with Developer and MPRB and any land rights agreements for later phases
- Reach agreement on powerline relocation plan and funding strategy
- Secure City Council approval of initial redevelopment agreements with Developer and MPRB, land rights agreements for later phases and any other agreements; then execute

MILESTONE #3 (Deadline: Later of April 28, 2019, or end of Term): Have the Developer, City Council and MPRB all approved the Coordinated Plan and the terms of at least two initial development agreements? If so, development and other related agreements replace this Agreement. If no, this Agreement terminates.

Activities after agreement execution and before land conveyance closing(s):

- Detailed design and construction documents for initial phase of park components to be completed by MPRB
- Detailed design and construction documents for initial phase of private infrastructure components to be completed by developer
- Detailed design and construction documents for initial phase of infrastructure components to be completed by City
- Final engineering, ordering of materials, etc. for powerline relocation
- Planning, zoning and HPC approvals
- Re-platting/subdivisions to create at least initial phase parcels
- Historic designation(s), if appropriate, and/or approval of demolition/changes permits
- Tax credits approved, if appropriate
- Financing secured for initial private development

EXHIBIT C
DEVELOPMENT TEAM MEMBERS AND ROLES

Entity	Role
Development partners:	
United Properties	Development team lead partner
THOR Development	Development team partner
First Avenue Productions	Development team partner
Consultants:	
Coen + Partners	Landscape architecture, overall planning
El Dorado Architects	Architecture
Nitsch Engineering	Green infrastructure, other engineering
LSE Architects	Architecture
Pierce Pini Engineering	Civil engineering
Juxtaposition Arts	Community engagement partner

EXHIBIT D
FORM OF RIGHT OF ENTRY
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2017 by and between the **City of Minneapolis**, a Minnesota municipal corporation ("City"), and **United Properties Development LLC**, a Minnesota limited liability company ("Grantee").

WHEREAS, the City is the fee owner of certain real property that is subject to an Exclusive Rights Agreement by and between the City, the Minneapolis Park & Recreation Board and the Grantee dated _____, 2017 located in Minneapolis, Minnesota and commonly referred to as the Upper Harbor Terminal ("Premises"); and

WHEREAS, the City, Grantee and the Minneapolis Park and Recreation Board have entered into an Exclusive Rights Agreement regarding the potential redevelopment of the Premises (the "ER Agreement"); and

WHEREAS, Grantee desires to enter onto portions of the Premises from time to time for the purpose of environmental testing, appraisals, and other studies or inspections ("Predevelopment Activities");

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. **Right of Entry.** When Grantee desires access to the Premises, it shall request such access in writing from the City's representative listed below via e-mail at least one week prior to the need for such access to reasonably negotiate the activity and timing. The City representative shall either approve such access request, approve such access request with conditions on the access or reasonably negotiate alternative access for such Predevelopment Activities that does not unreasonably interfere with the City's operation of the Premises. Grantee specifically agrees that its conduct shall be consistent in all material respects with the approvals provided by the City's representative via the City's e-mail approval. Grantee, its agents, contractors, employees or invitees shall conduct their activities on the Premises in an orderly and lawful manner, securing at their own expense all required permits and licenses. A copy of the results of any such testing or investigation shall be promptly provided to the City by Grantee.
2. **Term of Right of Entry.** Grantee's rights to enter upon the Premises as described herein shall commence on _____, and terminate on the date the Exclusive Rights Agreement expires or otherwise terminates. The provisions of Section 3 hereof shall survive termination of this Right of Entry Agreement.
3. **Hold Harmless and Indemnity.** Subject to the terms and conditions of Section 8 below, Grantee agrees to pay and to protect, indemnify and save harmless City from and against any and all liabilities, damages, costs, expenses (including reasonable attorneys'

fees), causes of action, suits, claims, demands, or judgments of any nature whatsoever arising from the following:

- (a) Any work or thing done by Grantee or at its direction in, on, or about the Premises.
 - (b) Grantee's use or occupation of the Premises.
 - (c) Any negligence on the part of Grantee or any of its agents, contractors, servants, employees, licensees, or invitees.
 - (d) Violation of any agreement or condition of this Right of Entry or of conditions, agreements, restrictions, statutes, charters, laws, rules, ordinances, or regulations affecting the Premises or the ownership, occupancy, or use thereof.
4. **Condition of Premises.** Grantee, agrees not to make any improvements to the Premises without the prior written approval of the City, and agrees to promptly restore the Premises to its original condition and replace any damaged improvements. Grantee will be responsible for the cost of all services, equipment, labor and utilities used in conducting its permitted activities on the Premises.
5. **Insurance.** Grantee shall procure at its own expense the following insurance coverage and shall furnish the City with a certificate of said insurance prior to entering upon the Premises:
- (a) Worker's compensation insurance as required by law.
 - (b) Comprehensive general liability insurance with a limit of not less than \$1,000,000 for each occurrence, naming the City as an additional insured.
6. **Scope of Right of Entry.** The grant of the Right of Entry to the Grantee by the City shall not be assignable and not confer any estate, title, or exclusive possessory rights in the Premises to Grantee, and may be terminated upon termination of the ER Agreement.
7. **Notices.** All notices and demands required hereunder shall be in writing and shall be deemed given when personally delivered or sent by first class mail, addressed to the parties as follows:

Grantee: United Properties Development LLC
3600 American Blvd West #750
Minneapolis, Minnesota 55431
Attention: Brandon Champeau
e-mail: brandon.champeau@uproperties.com

With a copy to:

Briggs and Morgan, P.A.
2200 IDS Center
80 S. Eighth Street
Minneapolis, MN 55402
Attention: Patrick E. Mascia
e-mail: pmascia@briggs.com

City: River Services, Inc.
3750 Washington Avenue North
Minneapolis, MN 55412-2100
Attention: Jerry Christensen
e-mail: jchristensen@riverservices.net

With a copy to:

Department of Community Planning and Economic Development
Crown Roller Mill
105 Fifth Avenue South, Suite 200
Minneapolis, Minnesota 55401-2534
Attention: Ann Calvert
e-mail: ann.calvert@minneapolismn.gov

8. Additional Provisions:

Notwithstanding anything to the contrary in this Right of Entry Agreement:

- (a) the Indemnifications and hold harmless provisions of Section 3 only apply to the extent such actions are due to the activities of Grantee, its agents, contractors, servants, employees, licensees or invitees after the date and during the term of this Right of Entry Agreement and are not caused by any action or inaction by the City or any person or entity acting by or through the City;
- (b) Grantee may terminate this Right of Entry Agreement upon 24 hours written notice to the City; and
- (c) Grantee shall have no obligation to keep the Premises in any condition other than to reasonably repair any damage it may cause to the Premises.

IN WITNESS WHEREOF, the parties hereto have executed this Right of Entry Agreement as of the day and year first written above.

UNITED PROPERTIES DEVELOPMENT LLC

By _____
Signature

Printed Name of Signatory

Its _____
Title

CITY OF MINNEAPOLIS

By _____
Its _____