

Following Recording,
Please Return Copy to:

Doran SLV III, LLC
c/o Doran Management, LLC
7803 Glenroy Road, Ste. 100
Bloomington, MN 55439

**AMENDED AND RESTATED
EASEMENT, MANAGEMENT AND MAINTENANCE AGREEMENT**

THIS AMENDED AND RESTATED EASEMENT, MANAGEMENT AND MAINTENANCE AGREEMENT (this “**Agreement**”) is entered into this ____ day of _____, 2021 (“**Effective Date**”) by and among **Doran SLV III, LLC**, a Minnesota limited liability company (together with its successors and assigns “**Salo Park Owner**”); **SVAP III Silver Lake Apache Park, LLC**, a Delaware limited liability company (together with its successors and assigns “**Apache Park Owner**”), **SVAP III Silver Lake Village, LLC**, a Delaware limited liability company (“**Shopping Center Owner**,” and together with both Salo Park Owner and Apache Park Owner, collectively, the “**Owners**”); and **The City of Saint Anthony Village, Minnesota**, a Minnesota statutory city (together with its successors and assigns, the “**City**”). Salo Park Owner, Apache Park Owner, Shopping Center Owner and the City are each referred to herein from time to time as a “**Party**” and, together referred to herein from time to time as the “**Parties**”.

WHEREAS, Salo Park Owner, Apache Park Owner, Shopping Center Owner, the City, and The Housing and Redevelopment Authority of the City of Saint Anthony Village, a public body corporate and politic organized and existing under the laws of the State of Minnesota (together with its successors and assigns, the “**Authority**”) are the current parties to that certain unrecorded Assignment, Assumption, Easement, Park Management and Maintenance Agreement dated January 1, 2006, as amended by that certain unrecorded First Amendment to Assignment, Assumption, Easement, Park Management and Maintenance Agreement dated November 15, 2006 (collectively, “**Original Agreement**”).

WHEREAS, the Original Agreement affects certain real property owned, as of the Effective Date, by Salo Park Owner and legally described on **Exhibit A** attached hereto (“**Salo Park Property**”);

WHEREAS, the Original Agreement affects certain real property owned, as of the Effective Date, by Apache Park Owner and legally described on **Exhibit B** attached hereto (“**Apache Park Property**”, and together with the Salo Park Property, collectively, the “**Property**”);

WHEREAS, the Property features two drainage and retention ponds (each a “**Pond**” and collectively, the “**Ponds**”), and related general stormwater management improvements (together with the Ponds, collectively, as the same may be modified, replaced, substituted, and removed from time-to-time in accordance with this Agreement, applicable law, and best management practices, collectively, the “**Stormwater Improvements**”);

WHEREAS, the Property also features an amphitheater, walking paths and other hardscape, a waterfall feature, a water fountain feature, irrigation systems (including control systems), landscaping (collectively, as the same may be modified, replaced, substituted, and removed from time-to-time in accordance with this Agreement, collectively, the “**Community Amenity Improvements**”);

WHEREAS, the Property, the Stormwater Improvements and Community Amenity Improvements are referred to herein, collectively, as the “**Easement Premises**”.

WHEREAS, the Original Agreement was entered into in connection with the original redevelopment of the Easement Premises and surrounding commercial property and as part of certain tax increment financing and other financing incentives provided by the City and Authority related to such original redevelopment.

WHEREAS, as contemplated by the Original Agreement and by the related original redevelopment contracts, the Easement Premises are designed and intended for the purposes of (1) stormwater management for the surrounding commercial property and (2) providing a community amenity for all of the residents of the development, the City, and the general public.

WHEREAS, the Parties wish to amend, restate, and replace the Original Agreement, in its entirety, upon and pursuant to the terms and conditions of this Agreement for the purposes of updating, modifying, and clarifying the allocation of rights and responsibilities with respect to the Easement Premises between the City and the Owners;

WHEREAS, the Authority is executing this Agreement as indicated on the signatures hereto for the sole purpose of acknowledging and consenting to such amendment, restatement, and replacement of the Original Agreement, and hereafter the Authority shall no longer be a party to this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The Parties acknowledge that the foregoing recitals are true and correct and that such recitals are incorporated herein by this reference as if restated in full herein.

2. Grant of Easements.

(a) City Access Easement. The Salo Park Owner and the Apache Park Owner hereby grant and convey to the City and its agents, employees, and contractors, and their respective officers, directors, employees, contractors, and agents (each a “**City Party**”, and, collectively, the “**City Parties**”), a perpetual, non-exclusive easement over each Owner’s respective portion of the Easement Premises for the purposes of (i) access to, from, over, and through the Easement Premises and (ii) use of the Easement Premises, each as may be reasonably necessary for any or all of the City and any City Party to perform its obligations under this Agreement.

(b) Public Access Easement. The Salo Park Owner and the Apache Park Owner hereby grant and convey to the City a perpetual, non-exclusive easement over and across the Easement Premises for the purpose of permitting the general public to utilize the Easement Premises for pedestrian access, passage, temporary gathering, and other general recreational uses that are consistent with such uses, by the public, of other City parks with amenities similar to the Easement Premises; such easement is, however, granted subject to (i) the City’s exercise of its ordinary regulation of City parks and (ii) the express terms and conditions set forth herein, including, without limitation, those certain procedures and rules as are established (and modified

or amended, from time to time) and memorialized in a separate agreement by and among the Parties (“**Rules and Procedures**”). The City agrees that it shall maintain a copy of the then-current Rules and Procedures in its offices and make such copy available upon request.

(c) Procedures and Rules. The City shall manage the Easement Premises according to the Rules and Procedures.

(d) City Access Easement Granted By Shopping Center Owner. The Shopping Center Owner hereby grants and conveys to the City Parties a perpetual, but non-exclusive, easement over those areas (i) of that certain shopping center property owned by the Shopping Center Owner (the “**Shopping Center**”), and (ii) depicted on **Exhibit “D”** attached hereto and incorporated herein by this reference (the “**Shopping Center Access Areas**”), it being understood that the sole purpose of the foregoing easement (the “**Shopping Center Access Easement**”) shall be to provide the City Parties with access to the Easement Premises so as to enable and permit the City Parties to perform and satisfy the City’s obligations (as to repair, maintenance and replacement) imposed under this Agreement. The City hereby covenants and agrees that, at all times, when any of the City Parties is exercising the rights granted under and with respect to the Shopping Center Access Easement and the Shopping Center Access Areas, none of the City Parties shall block any drive aisles that are located on or near the Shopping Center Access Areas, nor may any City Parties take any action (or fail to take any action) that may interfere with the normal and customary patterns of traffic flow throughout the Shopping Center. Attached hereto as **Exhibit “D-1”** and incorporated herein by this reference is the legal description of the Shopping Center Property.

3. City Maintenance Obligations.

(a) Community Amenity Obligations. The City shall be responsible, at its sole cost and expense, for all of the following matters with respect to the Community Amenity Improvements (collectively, the “**Amenity Maintenance Obligations**”):

(i) the care, maintenance, and replacement the landscaping located on the Easement Premises;

(ii) the repair, maintenance, and replacement of any irrigation system servicing the Easement Premises (including assignment of the corresponding water meter account to the City);

(iii) the repair, maintenance, and replacement of the amphitheater located on the Salo Park Property, the canopy shade structure thereon and its corresponding supports;

(iv) the repair, maintenance, and replacement of all concrete, asphalt and bituminous stairs, sidewalks and paved pathways located on the Easement Premises, including, but not limited to, all snow and ice removal in accordance with the City’s ordinary policy for removing and snow and ice from City parks;

(v) the repair, maintenance, and replacement of all lighting and electrical facilities located on or within the Easement Premises, including electrical costs relating thereto through two existing electrical meters which corresponding accounts shall be transferred to the City upon execution of this Agreement (which electrical and lighting facilities shall, at a minimum, be required to be lit from dusk until dawn); and

(vi) the ordinary, but regular, removal of trash located on the Easement Premises and the maintenance, repair and replacement of any trash receptacles located thereon.

Provided, however, and notwithstanding anything herein to the contrary, if, at any time or from time to time, the City reasonably determines that any of the Community Amenity Improvements have exceeded their useful life and that the replacement thereof is cost prohibitive or otherwise contrary to the City's then-current policies, then the City shall so advise the Owners, in writing, (a "**Replacement Notice**"), with a reasonably detailed description of the City's schedule for, and plan to, either (A) remove such Community Amenity Improvements and restore the applicable portion of the Property to a good, clean, and orderly condition with new and reasonably appropriate (for a City park) landscaping or (B) replace such Community Amenity Improvements with alternative Community Amenity Improvements. It is understood and agreed that (A) or (B) (as applicable, the "**CA Replacement**") shall be performed by the City and at the City's sole cost and expense. Any CA Replacement shall be subject to the approval of the Salo Park Owner and the Apache Park Owner; provided that any approval relating to a CA Replacement pursuant to clause (A) above shall not be unreasonably withheld or conditioned. Upon the City's delivery of a Replacement Notice, the Salo Park Owner and the Apache Park Owner shall have thirty (30) days ("**Replacement Response Period**") in which to either or both (x) confer with one another and (y) discuss the then-applicable CA Replacement plan with the City, as each such Owner may elect. Each such Owner shall advise the City and the Salo Park Owner or Apache Park Owner, as the case may be, in writing ("**Replacement Response Notice**"), on or before the expiration of the Replacement Response Period, as to whether or not such notifying Owner (acting reasonably and in good faith) approves the then-applicable CA Replacement. If either of the Salo Park Owner or the Apache Park Owner fails to timely deliver a Replacement Response Notice, then such Owner shall be automatically deemed to have approved the then-applicable CA Replacement. If either of the Salo Park Owner or the Apache Park Owner (acting in good faith and reasonably) objects to the then-applicable CA Replacement, and such objecting Owner timely delivers a Replacement Response Notice (an "**Objecting Owner**"), such Objecting Owner shall provide (in its Replacement Response Notice) a reasonably detailed description of the basis upon which such Objecting Owner objects to the then-applicable CA Replacement, and such Objecting Owner shall propose to the City its suggestion to address the City's concerns set forth in the then-applicable Replacement Notice; thereafter, the City, the Salo Park Owner and the Apache Park Owner, each acting reasonably and in good faith, shall promptly attempt to address the Objecting Owner's concerns, as set forth in its Replacement Response Notice. The Salo Park Owner and the Apache Park Owner shall not have the right to require the City to perform a CA Replacement that the City, acting in good faith, reasonably believes is cost-prohibitive or inappropriate for a City park. Consent by either or both of the Salo Park Owner and the Apache Park Owner to one or more CA Replacements shall not operate as a waiver of that Owner's respective rights as to any subsequent CA Replacement. The City's maintenance obligations imposed under this Agreement shall apply to any CA Replacement, and shall continue in accordance with this Agreement.

(b) **Pond Obligations.** The City shall be responsible for the following matters with respect to the Ponds and Stormwater Improvements, subject to reimbursement by Apache Park Owner in accordance with Section 3(d) (collectively, the "**Pond Maintenance Obligations**"):

(i) the management, monitoring, and maintenance of the water quality of the Ponds (including any and all testing and reporting that may be required, from time to time, by the applicable watershed district or otherwise);

(ii) dredging the Ponds as deemed reasonably necessary by the City or as otherwise required by applicable laws and regulations;

(iii) the repair, maintenance, and replacement of the alum water management system serving the Ponds; and

(iv) the repair, maintenance, and replacement of the facilities connecting the two Ponds under 39th Avenue N.E. and any drainage systems feeding into or out of the Ponds to the extent located on the Easement Premises.

(c) Delegation of Pond Responsibilities. The Parties acknowledge and agree that the Pond Maintenance Obligations are currently the obligation of Apache Park Owner pursuant to and in accordance with that certain Amended and Restated Stormwater Maintenance and Easement Agreement dated April 30, 2004, and recorded in the Office of the County Recorder in and for Ramsey County on May 4, 2004, as Document No. 3786716, as amended by the First Supplement to Amended and Restated Stormwater Maintenance and Easement Agreement, dated October 10, 2004, and recorded October 20, 2004, as Document Number 3801284; as amended by that Second Supplement to Amended and Restated Stormwater Maintenance and Easement Agreement, dated April 13, 2005, and recorded on May 26, 2006, as Document Number 3951512; and as assigned by that certain Assignment and Assumption Agreement (Silver Lake), dated February 24, 2012, and recorded on February 29, 2012 as Document Number 4322217 (collectively and as further amended, supplemented and modified from time to time, the “**Stormwater Agreement**”). Accordingly, the City’s agreement to perform the Pond Maintenance Obligations pursuant to this Agreement shall be a permanent sub-delegation (from the Apache Park Owner to the City) of the corresponding obligations of Apache Park Owner under the Stormwater Agreement, such that, as between the parties to the Stormwater Agreement, Apache Park Owner, rather than the City, will be liable to and responsible for the Pond Maintenance Obligations in accordance with the Stormwater Agreement; and as between the Parties, the City will be liable to and responsible for the Pond Maintenance Obligations in accordance with this Agreement. The Parties acknowledge and agree that the terms and provisions of this Agreement are intended to supplement, rather than override, or be superior to, the terms and provisions of the Stormwater Agreement. As a result, in the event of any conflict between the terms and provisions of the Stormwater Agreement and those of this Agreement, the terms and provisions of the Stormwater Agreement shall control, in all events.

(d) Reimbursement of Pond Maintenance Costs. The Parties acknowledge and agree that all costs incurred by the City and the City Parties for the City’s performance of the Pond Maintenance Obligations (the “**Pond Maintenance Costs**”) are “Common Expenses” under the Stormwater Agreement and are reimbursable by the parties to the Stormwater Agreement in accordance with the terms and conditions of the Stormwater Agreement. Accordingly, Apache Park Owner shall reimburse the City for all Pond Maintenance Costs within thirty (30) days after receipt of written demand therefor, together with a reasonably detailed invoice evidencing the costs so incurred. The Apache Park Owner shall retain its right, under the Stormwater Agreement, to bill the Pond Maintenance Costs to all of the parties to the Stormwater Agreement.

(e) Standard of Maintenance. The City shall cause the Amenity Maintenance Obligations and Pond Maintenance Obligations to be performed in such manner as is necessary to

maintain the applicable aspects of the Easement Premises in a condition that is consistent with the Stormwater Agreement, all applicable laws (including, without limitation, the Americans with Disabilities Act) and in a condition otherwise consistent with a first class, mixed-use (with a luxury residential component) center located in the Twin Cities metropolitan area.

4. Owner Maintenance Obligations.

(a) Apache Park Owner. The Apache Park Owner shall be responsible for (i) maintenance, repair and replacement of the waterfall feature and water fountain and related equipment, systems and fixtures; and (ii) the maintenance, repair and replacement of the drainage systems feeding into or out of the Ponds located on the Salo Park Property and Apache Park Property; provided, however, that if and to the extent that either or both of the Stormwater Agreement or the REA (as defined below) impose such obligations (for the maintenance, repair and replacement of such feeder drainage systems) on other parties (other than the Apache Park Owner) to either or both of the Stormwater Agreement and the REA, then the Apache Park Owner shall not be responsible under this Section 4(a), but the Apache Park Owner shall use its reasonable and good faith efforts to enforce the applicable terms and provisions of either or both of the Stormwater Agreement and the REA, as applicable, with respect to such maintenance, repair and replacement obligations. For purposes of this Agreement, the obligations imposed on the Apache Park Owner under this Section 4(a) are collectively referred to as the “**Owner Maintenance Obligations**.”

(b) Common Expenses. The Parties acknowledge and agree that costs and expenses relating to such maintenance, repair and replacement of the waterfall feature and water fountain and related equipment, systems and fixtures and maintenance, repair and replacement of the drainage systems feeding into or out of the Ponds are “Common Expenses” pursuant to either or both of (i) the Stormwater Agreement and (ii) that certain Amended and Restated Reciprocal Easements Agreement dated April 30, 2004, and recorded in the Office of the County Recorder in and for Ramsey County on May 4, 2004, as Document No. 3751784 (as amended, supplemented and modified from time to time, the “**REA**”).

(c) Notice to City of Certain Pond Activities. Before the Apache Park Owner undertakes any material repair or replacement activity with respect to Owner Maintenance Obligations set forth in Sections 4(a) above that (A) could be reasonably expected to adversely impact the water quality in the Ponds or (B) is otherwise an activity that requires a permit from the applicable watershed district or other regulatory body (“**Permit**”), such Owner shall first provide the City with at least thirty (30) days’ prior written notice of the proposed activity, together with a reasonably detailed description of the proposed activity (“**Pond Activity Notice**”). The City shall have the right (acting reasonably and in good faith) to advise the applicable Owner delivering a Pond Activity Notice, within the thirty (30) day period after the delivery thereof (the “**Pond Response Period**”), of any issues or concerns that the City has with respect to the repair or replacement activity that is the subject of the then-applicable Pond Activity Notice (a “**City Pond Response**”). If the City fails to deliver a City Pond Response prior to the expiration of the Pond Response Period, then the City shall automatically be deemed to have approved the repair or replacement activity that is the subject of the then-applicable Pond Activity Notice, and the Owner delivering the Pond Activity Notice may proceed with the repair or replacement described therein, subject to the procurement (by the applicable Owner) of any necessary Permit. If the City timely delivers a City Pond Response, the Owner delivering the then-applicable Pond Activity Notice and the City shall promptly confer with one another and make reasonable and good faith efforts to address the City’s concerns; provided, however, that (x) the Owner delivering the then-applicable Pond Activity Notice shall not be required to expend

monies (beyond a de minimis amount in excess of the amount that such Owner plans to expend in order to perform the repair and replacement that is the subject of the then-applicable Pond Activity Notice) to address the City's concerns; and (y) if the repairs and replacements that are the subject of a given Pond Activity Notice require a Permit, and such Permit is issued to the applicable Owner, then the City shall not have a right to object to the repair or replacement that is the subject of the then-applicable Pond Activity Notice.

(d) Maintenance Standard. The Owners shall cause the Owner Maintenance Obligations to be performed in such manner as is necessary to maintain the applicable aspects of the Easement Premises in a condition that is consistent with all applicable laws and in a condition otherwise consistent with a first class, mixed-use (with a luxury residential component) center located in the Twin Cities metropolitan area.

5. Work Necessitated by a Party's Fault. Notwithstanding the foregoing, if any repairs, maintenance, or replacements pertaining to the Easement Premises are necessary or reasonably necessitated due to, or the result of, the negligence or intentional acts of one or more of the Parties ("**Causing Party**"), its guests, licensees or invitees, the performance of, and all costs to perform, such repairs, maintenance or replacements shall be the sole responsibility of the Causing Party.

6. Deferred Maintenance. The Parties agree that there is certain maintenance of Ponds and the Community Amenity Improvements which constitute Amenity Maintenance Obligations that will need to be resolved by September 30, 2022, including, but not limited to, dredging of the Ponds, damaged sidewalks, asphalt repairs, root remediation and a damaged irrigation system. The Parties conducted a walk-through of the Property to develop a deferred maintenance remediation plan, which remaining portions of the deferred maintenance is attached hereto as **Exhibit "C"** and incorporated herein by this reference ("**Remediation Plan**"). The City Council has approved the Remediation Plan. The City hereby covenants and agrees that it shall cause the Remediation Plan to be implemented, and all actions described therein to be performed, as expeditiously as is reasonably possible after the date of this Agreement and, in any event, prior to September 30, 2022. The costs incurred to implement and perform the Remediation Plan shall be paid and reimbursed (as applicable) pursuant to Section 3 above.

7. Insurance.

(a) Each Party shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance covering both the Salo Park Property and the Apache Park Property with a combined single limit of liability of not less than Three Million Dollars (\$3,000,000.00) for bodily injury to or personal injury or death of any person, and for property damage arising out of any one occurrence or in the aggregate;); provided, however, that from time to time, these coverage limits may be raised or lowered in accordance with industry standard recommendations for comparable policies. Each Party shall be a named additional insured under each such policy. It is the agreement of the Parties that the insurance maintained by the City shall be primary and non-contributory insurance. All insurance required by this Section 7 shall be procured from companies licensed in Minnesota and shall be rated by Best's Insurance Reports not less than A-X; provided, however, that any insurance requirements of the City may be provided through the League of Minnesota Cities Insurance Trust (a self-insurance pool available to cities within Minnesota). All insurance may be provided under (i) an individual policy covering the Easement Premises, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party, or (iii) a combination of any of the foregoing insurance programs. Each Party shall furnish to all of the other Parties, no less frequently than once in each twelve (12) month period during the term of this Agreement, an ACORD (or comparable, if ACORD is no longer applicable) certificate of insurance (in form and substance reasonably

acceptable to the recipient Party) evidencing the delivering Party's compliance with the requirements of this Section 7.

(b) Notwithstanding anything to the contrary set forth in this Agreement, each Party hereby waives any and all claims against the others for any claims, damages, causes of action, costs, expenses and losses (collectively, "**Losses**") to the extent such Losses are insured against, or are required (under the terms of this Agreement) to be insured against, which waiver includes, but is not limited to, Losses, deductibles or self-insured retentions covered by each Party's respective commercial property, business income/extra expense/rental value insurance, commercial general liability, business auto liability, workers' compensation or employers' liability policies. The risk to be borne by each of the Parties to this Agreement shall also include the satisfaction of any deductible (or self-insured retention) amounts required to be paid under the applicable insurance carried by the Party incurring the Losses, and each of the Parties hereto agrees that the others shall not be responsible for satisfaction of such deductible (or self-insured retention amount). The waivers set forth above in this Section 7(c) shall apply if the Losses in question would have been covered by a normal and customary "all risks" or "special form" property insurance policy, even if the Party suffering the Losses fails to maintain such coverage. The respective insurance policies of each of the Parties hereto shall include a waiver of all rights of subrogation by the insurance carrier against the other Parties and their respective agents and employees.

(c) EACH OF THE PARTIES HERETO, FOR ITSELF AND ITS RESPECTIVE MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS ("**RELEASING PARTIES**"), HEREBY RELEASES AND FOREVER DISCHARGES, WAIVES AND EXONERATES THE OTHER PARTIES TO THIS AGREEMENT AND THEIR RESPECTIVE MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS ("**RELEASEES**") FROM ANY AND ALL LIABILITIES, OBLIGATIONS, CLAIMS, CAUSES OF ACTION AND DEMANDS AT LAW OR IN EQUITY, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES (WHETHER KNOWN OR UNKNOWN AS OF THE DATE OF THIS AGREEMENT) THAT ANY OR ALL OF THE RELEASING PARTIES NOW HAS, OR MAY HAVE IN THE FUTURE, DIRECTLY ARISING OUT OF ANY MATTERS, OF ANY NATURE WHATSOEVER, UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS IN TORT OR CONTRACT, ALL CLAIMS UNDER A WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED, OR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY) AND INCLUDING ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR GOOD AND WORKMANLIKE CONSTRUCTION AND WARRANTIES OF FITNESS FOR USE OR ACCEPTABILITY FOR THE PURPOSE INTENDED, AND ANY OTHER BASIS FOR RECOVERY OR REIMBURSEMENT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR STRICT LIABILITY (COLLECTIVELY, THE "**RELEASED CLAIMS**"). NOTWITHSTANDING ANY OF THE FOREGOING RELEASE LANGUAGE, HOWEVER, THE FOREGOING RELEASE SHALL NOT APPLY, IN ANY CIRCUMSTANCE OR UNDER ANY CONDITION TO ANY MATTERS, OF ANY NATURE WHATSOEVER, THAT ARISE OR ACCRUE, AND ARE SUFFERED OR INCURRED BY ANY OR ALL OF THE RELEASING PARTIES AS A RESULT OF, OR DUE TO, OR BECAUSE OF THE BREACH OR DEFAULT UNDER THE TERMS OF THIS AGREEMENT, ANY MALFEASANCE OR ANY NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF ANY OR ALL OF THE RELEASEES.

8. **Liens.** In the event any mechanic's lien is filed against any portion of the Easement Premises as a result of services performed or materials furnished (pursuant to the requirements of this Agreement) by or at the direction of a Party (a "**Lien**"), the Party permitting or causing such Lien to be so filed agrees to cause such Lien to be discharged (or bonded over) within thirty (30) days of the date on which such Lien is so filed or recorded; and further agrees to indemnify, defend, and hold harmless the other Parties against liabilities, losses, actual damages, costs or expenses (including reasonable attorneys' fees and cost of suit) actually suffered or incurred by an indemnified Party as a direct result of any Lien. Nothing herein shall prevent a Party permitting or causing such Lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence and, pending the resolution of such dispute, the Lien is bonded over or otherwise secured as provided herein for the benefit of the Party whose property is encumbered thereby. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to unconditionally release such Lien.

9. **Default.** The failure by a Party ("**Defaulting Party**") to observe or perform any of the covenants, conditions or obligations of this Agreement within thirty (30) days after the issuance of a notice by the non-defaulting party ("**Non-Defaulting Party**") specifying the nature of the default claimed shall constitute a default and breach of this Agreement; provided, however, that (i) the thirty (30) day period shall be extended for defaults reasonably taking longer than thirty (30) days to cure as long as the Defaulting Party commences curing such default in the thirty (30) day period and diligently proceeds to completion thereafter; (ii) a Party who fails to discharge (or otherwise appropriately address, in accordance with Section 8) a Lien within the timeframes set forth in Section 8 shall not be afforded an additional thirty (30) day notice and cure period pursuant to this Section 9 and the Non-Defaulting Party shall have all cure rights afforded pursuant to this Section 9 immediately following the expiration of the such timeframes set forth in Section 8; and (iii) the notice and cure period relating to a breach of Section 7 of this Agreement shall be limited to one (1) business day. Following the expiration of the thirty (30) day notice and cure period (or such longer time afforded pursuant to the immediately preceding sentence, the Non-Defaulting Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party. In the event that any Non-Defaulting Party exercises the foregoing right of self-help, the Defaulting Party shall automatically be deemed to have granted, to such Non-Defaulting Party, a temporary access easement, over, along, across and through those portions of the Defaulting Party's property that are reasonably necessary for access in order to perform the actions reasonably required to cure the Defaulting Party's then-applicable default ("**Temporary Easement**"). The Temporary Easement shall automatically terminate upon the completion of the cure by the Non-Defaulting Party. Any Non-Defaulting Party exercising the foregoing right of self-help shall use its reasonable, diligent and good faith efforts to complete the cure as soon as is reasonably possible under then-applicable circumstances, and with as little disruption, as is reasonably possible, to the Defaulting Party's property. Nevertheless and notwithstanding the foregoing provisions of this Section 9 with respect to delivery of notice of default, and an opportunity to cure, in the event that any default shall constitute an unsafe or emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as reasonably possible thereafter. The City shall be responsible for the defaults resulting from the actions or inactions of its licensees and permittees and the City Parties. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest at the Default Rate (as defined below), within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made. No waiver by any Party of any default under this Agreement shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such

default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement. All of the remedies permitted or available to a Party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to another permitted or available right or remedy. For purposes of this Agreement, “**Default Rate**” shall mean that rate publicly announced, or published, from time to time, by JPMorgan Chase (or its successor) as its prime rate of interest, plus five percent (5.0%) per annum, on a cumulative basis.

The City acknowledges that a breach or threatened breach of Section 3(a) relating to an unauthorized CA Replacement would give rise to irreparable harm to the Owners for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by the City of any such obligations, each Owner shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

10. Attorneys’ Fees. In the event a Party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing Party after a final adjudication shall be entitled to recover its costs and reasonable attorneys’ fees incurred in the preparation and prosecution of such action or proceeding.

11. Estoppel Certificate. Each Party agrees that upon written request of any other Party, it will issue to such Party, at no cost, an estoppel certificate stating, to the issuer’s knowledge, as of such date: (a) whether or not it knows of either or both (x) any default under this Agreement and (y) any circumstance or condition that, with the passage of time or giving of notice or both, would constitute a default under this Agreement, and if there are known defaults or other circumstances or conditions that, either with the passage of time or giving of notice or both, would constitute a default, specifying the nature thereof; (b) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and (c) whether this Agreement is in full force and effect.

12. Notices. All notices, demands and requests (collectively the “**notice**”) required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given (a) if and when delivered in person, (b) on the first business day after deposit with a commercial overnight courier, (c) three (3) business days after having been deposited with the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, or (d) when sent by electronic delivery (e.g. email), provided that a duplicate copy is sent on the same day, pursuant to (b) above, addressed as follows (or sent to such other address as any Party shall specify to the other Parties pursuant to the provisions of this Section 12). The initial addresses of the Parties shall be:

If to Salo Park Owner: For so long as Doran SLV III, LLC is the Salo Park Owner:

Doran SLV III, LLC
c/o Doran Management, LLC
7803 Glenroy Road, Suite 100
Bloomington, Minnesota 55439
Attn: Chief Manager
Kelly.doran@doranpg.com

Copy to: Doran SLV III, LLC
c/o Doran Management
7803 Glenroy Road, Suite 100
Bloomington, Minnesota 55439
Attn: Legal Department
erica.delain@doranpg.com

If Doran SLV III, LLC is not the Salo Park Owner:

The address of record for real property tax assessment notices with respect to the Salo Park Property.

If to Apache Park Owner: For so long as SVAP III Silver Lake Apache Park, LLC is the Apache Park Owner:

SVAP III Silver Lake Apache Park, LLC
c/o Sterling Retail Services, Inc.
302 Datura Street, Suite 100
West Palm Beach, Florida 33401
Attn: Greg Moross
gmoross@sterlingorganization.com

Copy to: Diamond & Kaplan, P.A.
302 Datura Street, Suite 300
West Palm Beach, Florida 33401
Attn: Sandra H. Ransdell
sransdell@diamonddlawpa.com

If SVAP III Silver Lake Apache Park, LLC is not the Apache Park Owner:

The address of record for real property tax assessment notices with respect to the Apache Park Property.

If to Shopping Center Owner: SVAP III Silver Lake Village, LLC
c/o Sterling Retail Services, Inc.
302 Datura Street, Suite 100
West Palm Beach, Florida 33401
Attn: Greg Moross
gmoross@sterlingorganization.com

Copy to: Diamond & Kaplan, P.A.
302 Datura Street, Suite 300
West Palm Beach, Florida 33401
Attn: Sandra H. Ransdell
sransdell@diamonddlawpa.com

If SVAP III Silver Lake Village, LLC is not the Shopping Center Owner:

The address of record for real property tax assessment notices with respect to the Shopping Center.

If to City: City of Saint Anthony Village
Attention City Manager
City Hall
3301 Silver Lake Blvd.
St. Anthony, MN 55418
charlie.yunker@savmn.com

Copy to: Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Attn: Jay R. Lindgren
Lindgren.jay@dorsey.com

Upon at least ten (10) days' prior written notice, each Party shall have the right to change its address to any other address within the United States of America. Any Party's respective counsel is hereby authorized to deliver any notice, pursuant to this Agreement, on behalf of that Party so represented by such counsel.

13. Binding Effect. The terms of this Agreement and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. Except with respect to the Original Agreement, this Agreement is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the Easement Premises.

14. Exhibits. All Exhibits referred to in, and attached to, this Agreement upon execution are incorporated in and form a part of this Agreement as if fully set forth herein.

15. Construction and Interpretation. This Agreement amends, restates, and replaces the Original Agreement in its entirety, and the Original Agreement is hereby terminated, null and void. This Agreement and the exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this Agreement and exhibits hereto, and, based on the foregoing, the provisions of this Agreement and the exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation on of this Agreement. Capitalized terms shall have the meaning set forth herein and not any other meaning that might otherwise be attached to such term in a context outside of this Agreement. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

16. Amendment. No provision of this Agreement may be amended or modified except by an agreement in writing signed by the Parties or their respective successors in interest; provided, however, that (a) the City and Salo Park Owner may amend or modify this Agreement for matters affecting only the Salo Park Property and (b) the City and Apache Park Owner may amend or modify this Agreement for matters affecting only the Apache Park Property.

17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one complete document.

18. No Waiver of Governmental Immunity and Limitations on Liability. Nothing in this Agreement shall in any way affect or impair the City's immunity or the immunity of the City's employees, consultants and contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity or otherwise. Nothing in this Agreement shall in any way affect or impair the limitations on the City's liability or the liability of the City's employees, consultants and independent contractors. By entering into this Agreement, the City do not waive any rights, protections, or limitations as provided under law and equity for the City, or of their respective employees, consultants and contractors.

19. City Regulatory Authority. Nothing in this Agreement shall be construed to limit or modify the City's regulatory authority.

20. Governing Law, Jurisdiction, Venue and Waiver of Trial by Jury. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by, interpreted and determined in accordance with the laws of the state of Minnesota without regard to its conflict and choice of law provisions. Any litigation arising out of this Agreement shall be venued exclusively in Ramsey County District Court, Second Judicial District, state of Minnesota and shall not be removed therefrom to any other federal or state court. The Parties hereby consent to personal jurisdiction and venue in the foregoing court. The Parties hereby waive trial by jury for any litigation arising out of this Agreement.

21. Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

22. Force Majeure. Whenever performance is required of any Party hereunder, such Party shall use all due diligence to perform and take all necessary measures in good faith to timely perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of (i) war, invasion, rebellion, revolution, insurrection, riots or civil war; (ii) acts of government in its sovereign capacity; (iii) earthquakes, hurricanes, tidal waves, or any operation of the forces of nature as reasonable foresight and ability on the part of the affected party could not reasonably provide against; (iv) casualty; (v) strikes, lockouts, or other significant employee disturbances; (vi) litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays; (vii) epidemic or pandemic (and expressly including the COVID-19 (Coronavirus) pandemic), and (viii) events beyond the reasonable control of the Person claiming the existence of a Force Majeure event, other than a shortage of funds or lack of reasonable diligence on the part of such Party (each a "**Force Majeure Event**" and collectively "**Force Majeure Events**"), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section 22 shall not operate to excuse any Party from the prompt payment of any monies required by this Agreement.

[Signature pages follow]

**SIGNATURE PAGE
TO
AMENDED AND RESTATED
EASEMENT, MANAGEMENT AND MAINTENANCE AGREEMENT**

**CITY OF SAINT ANTHONY VILLAGE,
MINNESOTA**
a Minnesota statutory city

By: _____
Its Mayor

By: _____
Its City Clerk

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____ and _____, the Mayor and City Clerk, respectively, of the City of Saint Anthony Village, Minnesota, a Minnesota statutory city, on behalf of the city.

Notary Public

**SIGNATURE PAGE
TO
AMENDED AND RESTATED
EASEMENT, MANAGEMENT AND MAINTENANCE AGREEMENT**

APACHE PARK OWNER:

SVAP III SILVER LAKE APACHE PARK, LLC, a Delaware limited liability company

By: Sterling Value Add Investments III, LLC, a Delaware limited liability company
Its: Sole Member

By: SVAP III GP, LLC, a Delaware limited liability company
Its: Manager

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2021, by _____, as _____ of SVAP III GP, LLC, a Delaware limited liability company, the Manager of Sterling Value Add Investments III, LLC, a Delaware limited liability company, which in turn is the sole Member of SVAP III Silver Lake Apache Park, LLC, a Delaware limited liability company, on behalf of such entities, and such person is personally known to me or has produced a _____ as identification.

Notary Public

**SIGNATURE PAGE
TO
AMENDED AND RESTATED
EASEMENT, MANAGEMENT AND MAINTENANCE AGREEMENT**

SHOPPING CENTER OWNER:

SVAP III SILVER LAKE VILLAGE, LLC, a Delaware limited liability company

By: Sterling Value Add Investments III, LLC, a Delaware limited liability company
Its: Sole Member

By: SVAP III GP, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2021, by _____, as _____ of SVAP III GP, LLC, a Delaware limited liability company, the Manager of Sterling Value Add Investments III, LLC, a Delaware limited liability company, which in turn is the sole Member of SVAP III Silver Lake Village, LLC, a Delaware limited liability company, on behalf of such entities, and such person is personally known to me or has produced a _____ as identification..

Notary Public

**SIGNATURE PAGE
TO
AMENDED AND RESTATED
EASEMENT, MANAGEMENT AND MAINTENANCE AGREEMENT**

SALO PARK OWNER:

DORAN SLV III, LLC, a Minnesota limited liability company

By: _____
Name: Kelly J. Doran
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)
)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Kelly J. Doran, the Chief Manager of Doran SLV III, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

The Authority hereby executes this Amended and Restated Easement, Management and Maintenance Agreement for the sole purpose of acknowledging and consenting to the amendment and restatement of the Original Agreement as stated in the Recitals to this Agreement:

HOUSING AND REDEVELOPMENT AUTHORITY OF ST. ANTHONY VILLAGE, MINNESOTA, a public body corporate and politic and political subdivision of the State of Minnesota

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____ and _____ the Chair and Executive Director of the Housing and Redevelopment Authority of St. Anthony Village, Minnesota, a public body corporate and politic and political subdivision of the State of Minnesota, on behalf of the Authority.

Notary Public

THIS DOCUMENT WAS PREPARED BY:

City of St. Anthony Village, Minnesota
3301 Silver Lake Rd NE,
St Anthony, MN 55418

ACKNOWLEDGMENT AND CONSENT

RGA REINSURANCE COMPANY, as the holder of a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated March 10, 2020, filed with the Ramsey County Recorder’s Office on March 18, 2020, as Document No. A04802691 encumbering Lot 1, Block 1, and Lot 3, Block 2, Silver Lake Village; Lots 1 and 2, Block 1, Silver Lake Village 2nd Addition; Lots 1 and 6, Block 1, and Outlot B, Silver Lake Center, and Lot 3, Block 1, Silver Lake Center; Outlot A, Silver Lake Village and Outlot A, Silver Lake Center, Ramsey County, Minnesota, hereby consents and agrees to the foregoing Amended and Restated Easement, Management and Maintenance Agreement.

RGA REINSURANCE COMPANY, a Missouri corporation

By: _____

Its: _____

STATE OF MISSOURI)
) SS
COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of RGA Reinsurance Company, a Missouri corporation, on behalf of the corporation.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF SALO PARK PROPERTY

Outlot B, Silver Lake Village, according to the recorded plat thereof, Ramsey County, Minnesota.

EXHIBIT B

LEGAL DESCRIPTION OF APACHE PARK PROPERTY

Outlot A, Silver Lake Village according to the recorded plat thereof, and Outlot A, Silver Lake Center according to the recorded plat thereof, Ramsey County, Minnesota

EXHIBIT C
REMEDIATION PLAN

SIDEWALK REPLACEMENT LOCATIONS					
2021.501	MOBILIZATION	LS	1	\$ 7,200.00	\$ 7,200.00
2104.518	REMOVE CONCRETE WALK	S F	4300	\$ 5.00	\$ 21,500.00
2521.518	4" CONCRETE WALK	S F	4300	\$ 10.00	\$ 43,000.00
2563.601	TRAFFIC CONTROL	LS	1	\$ 500.00	\$ 500.00
2573.501	STABILIZED CONSTRUCTION EXIT	LS	1	\$ 500.00	\$ 500.00
2573.503	SEDIMENT CONTROL LOG TYPE STRAW	LF	1000	\$ 3.00	\$ 3,000.00
2574.507	COMMON TOPSOIL BORROW	CY	10	\$ 50.00	\$ 500.00
2575.501	TURF ESTABLISHMENT	LS	1	\$ 500.00	\$ 500.00
2575.523	WATER	M GALLONS	10	\$ 55.00	\$ 550.00
2575.604	BLOWN COMPOST SEEDING	S Y	300	\$ 5.00	\$ 1,500.00
					\$ 78,750.00
MISC. CONCRETE REPLACEMENT LOCATIONS					
2021.501	MOBILIZATION	LS	1	\$ 4,900.00	\$ 4,900.00
2104.518	REMOVE CONCRETE WALK	S F	2400	\$ 5.00	\$ 12,000.00
2521.518	6" CONCRETE WALK	S F	2400	\$ 15.00	\$ 36,000.00
2563.601	TRAFFIC CONTROL	LS	1	\$ 500.00	\$ 500.00
2573.501	STABILIZED CONSTRUCTION EXIT	LS	1	\$ 500.00	\$ 500.00
					\$ 53,900.00

EXHIBIT D

SHOPPING CENTER ACCESS AREAS



The plan and its contents are furnished for informational purposes only and are intended only as a general description (but not represented, covenanted or warranted). The size and location of the project, the identity or nature of any occupant and all features, matters and other information included herein are subject to change without notice and should not be relied upon by any party. No representation or warranty, express or implied, is made as to the accuracy or reliability of this plan or its contents.

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EXHIBIT D-1

LEGAL DESCRIPTION

Lot 1, Block 1 and Lot 3, Block 2, Silver Lake Village, according to the recorded plat thereof, Ramsey County, Minnesota.

Lots 1 and 2, Block 1, Silver Lake Village 2nd Addition, according to the recorded plat thereof, Ramsey County, Minnesota.

Lots 1 and 6, Block 1 and Outlot B, Silver Lake Center, according to the recorded plat thereof, Ramsey County, Minnesota.

Lot 3, Block 1, Silver Lake Center, according to the recorded plat thereof, Ramsey County, Minnesota.