

CITY OF ELGIN
BUSINESS ASSISTANCE POLICY
Adopted January 17, 2012

1. PURPOSE

- 1.01 The purpose of this policy is to provide a guideline for the **City of Elgin** to offer assistance for commercial and housing development and redevelopment projects. The Business Subsidies Statutes are codified as *Minnesota Statutes 116J.993 through 116J.995*.

Minnesota Statutes 116J.993, Subd. 3 defines a Business Subsidy as “a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business.” Appendix A lists forms of financial assistance that are not a business subsidy. This policy shall be used as a guide in processing and reviewing applications requesting business assistance.

- 1.02 The City shall have the option of amending or waiving sections of this policy when determined necessary or appropriate. *Minnesota Statutes 116J.994, Subd. 2*, allows the City to deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to the department.

2. STATUTORY LIMITATIONS

- 2.01 In accordance with the **City of Elgin’s Business Assistance Policy**, assistance requests must comply with applicable State Statutes, including *Minnesota Statutes 116J.993 through 116J.995*.

3. GOALS

- 3.01 As a matter of adopted policy, the City of Elgin will consider using a business assistance tool to assist private developments only in those circumstances in which the proposed private projects show a demonstrated financing gap and meet one of more of the goals listed below, as identified in the City of Elgin’s Development Program for Municipal Development District No. 1 originally adopted September 14, 1998:

- A. Provide for the construction and financing of Public Costs in the Development District, which are necessary for the orderly and beneficial development of the Development District.
- B. Promote and secure the prompt and unified development of certain property in the Development District, such property is not now in productive use or in its highest and best use, with a minimum adverse impact on the environment, and thereby promote and secure the desirable development of other land in the City.
- C. Promote and secure additional employment opportunities within the Development District for residents of the City and the surrounding area, thereby improving living standards and reducing unemployment and the loss of skilled and unskilled labor and other human resources in the City.

- D. Secure the increase of assessed values of property subject to taxation by the City, the County, the School District, and other taxing jurisdictions in order to enable such entities to pay for governmental services and programs that they are required to provide.
- E. Encourage the expansion and improvement of local business and economic development whenever possible.
- F. Encourage and provide assistance for residential development, including single and multi-family housing accommodations for low and moderate-income families.
- G. Encourage orderly development and redevelopment which is sensitive to the historic character of the downtown district.

4. BUSINESS ASSISTANCE PROJECT APPROVAL CRITERIA

- 4.01 All new projects approved by the City of Elgin should meet the following mandatory minimum approval criteria. However, it should not be presumed that a project meeting these criteria will automatically be approved. Meeting these criteria creates no contractual rights on the part of any potential developer.
 - A. The assistance shall be provided within applicable state legislative restrictions, State Auditor interpretation, debt limit guidelines, and other appropriate financial requirements and policies.
 - B. The project should meet one or more of the goals referenced in the City of Elgin's Development Program for Municipal Development District No. 1. See above.
 - C. The project must be in accord with the Comprehensive Plan and Zoning Ordinances, or required changes to the Comprehensive Plan and Zoning Ordinances must be under active consideration by the City at the time of approval.
 - D. The assistance will not be provided to projects that do not state a need. Prior to consideration of a business assistance request, the City may commission an independent review of the project to help ensure that the request for assistance is valid.
 - E. Prior to approval of business assistance, the developer shall provide any required market and financial feasibility studies, appraisals, soil boring, information provided to private lenders for the project, and other information or data that the City or its financial consultants may require in order to proceed with an independent review.
 - F. Any developer requesting business assistance may be asked to demonstrate past successful general development capability as well as specific capability in the type and size of development proposed.
 - G. The developer must retain ownership of the project at least long enough to complete it, to stabilize its occupancy, to establish the project management, and to initiate repayment of the business assistance if required.
 - H. The level of business assistance funding should be reduced to the lowest possible level and least amount of time by maximizing the use of private debt and equity financing first, and

then using other funding sources or income producing vehicles that can be structured into the project financing, prior to using additional business assistance funding.

5. BUSINESS ASSISTANCE PROJECT EVALUATION CRITERIA

5.01 If a business meets the criteria in Section 4 and is eligible for assistance, the following criteria will be used to determine the amount of assistance and type of assistance that may be provided. All projects will be evaluated by the Elgin City Council on the following criteria for comparison with other proposed business assistance projects reviewed by the City, and for comparison with other subsidy standards (where appropriate). It is realized that changes in local markets, costs of construction, and interest rates may cause changes in the amounts of business assistance subsidies that a given project may require at any given time. In applying the criteria to a specific project, the following will apply:

- A. The City may consider the requirements of any other business subsidy received, or to be received, from a grantor other than the City.
- B. If the business subsidy is a guaranty, the amount of the business subsidy may be valued at the principal amount of the guaranteed payment obligation.
- C. If the business subsidy is real or personal property, the amount of the subsidy will be the fair market value of the property as determined by the City.
- D. If the business subsidy is received over time, the City may value the subsidy as it determines is fair and reasonable under the circumstances.

As used herein, "Benefit Date," means the date the business subsidy is received. If the business subsidy involves the purchase, lease, or donation of physical equipment, then the benefit date occurs when the recipient puts the equipment into service. If the business subsidy is for improvements to property, then the Benefit Date refers to the earliest date of either when the improvements are finished for the entire project or when a business occupies the property.

- E. All business assistance projects may be required to meet a "Reasonable Rate of Return." Assistance will not be used unless the need for the City's economic participation is sufficient that, without that assistance the project could not proceed in the manner as proposed. The Reasonable Rate of Return will be based on market standards at the time of the application for assistance.
- F. Business assistance will not be used when the developer's credentials, in the sole judgment of the City, are inadequate due to past track record relating to: completion of projects, general reputation and/or bankruptcy, or other problems or issues considered relevant by the City.
- G. Business assistance funding should not be provided to those projects that fail to meet good public policy criteria as determined by the Council, including: poor project quality; projects that are not in accord with the comprehensive plan, zoning, redevelopment plans, and city policies; projects that provide no significant improvement to surrounding land uses, the neighborhood, and/or the City; projects that do not have significant new, or retained, employment; projects that do not meet financial feasibility criteria established by the City; and projects that do not provide the highest and best desired use for the property.

- H. All projects receiving business assistance under the criteria listed in *Minnesota Statutes 116J.993, Subd. 3* must meet the job and wage goals described below. *Minnesota Statutes 116J.994, Subd. 2* allows the City to deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to the Department of Employment and Economic Development.
1. Except as described in 2 and 3, a business subsidy must result in the creation or retention of jobs, which have a wage/benefit package equal to the Federal Minimum Wage (currently \$7.25/hour). Certain projects may be required to have higher wage/benefit packages. Wage goals will be set forth specifically in the business subsidy agreement. The amount of assistance available to a project will be limited by the amount of proceeds that TIF or other financing tools may support.
 2. Job creation or retention is not required for businesses subsidies as long as the grantor identifies an alternate public purpose in addition to tax base increase. If after a public hearing/council consideration of the alternate public purpose(s) proposed, the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero.
 3. In lieu of job creation or retention, other measurable, specific, and tangible goals shall be established. Examples of tangible goals may include redevelopment, or pollution or soil remediation.
- I. Business assistance will normally be used for projects that address the following land use issues: (1) more compatible with the City's Comprehensive Plan than other permitted uses for property; (2) located on property which needs but is not likely to be developed or redeveloped because of blight or other adverse conditions of the property; and/or include design and/or amenity features not otherwise required by law.
- J. Business assistance will be evaluated on the project's impact on existing and future public investment: (1) whether and to what extent the project will utilize existent public infrastructure capacity and the extent it requires additional publicly funded infrastructure investments; (2) arrangements for the City to receive a direct monetary return on its investment in the project.
- K. Business assistance will normally be used for projects that demonstrate to the satisfaction of the City adequate financing for the project is available and that the project will be completed in a timely fashion.
- L. Business assistance from the City must satisfy all requirements of *Minnesota Statutes 116J.993 through 116J.995*.
- 5.02 Some criteria, by their very nature, must remain subjective. However, wherever possible "benchmark" criteria have been established for review purposes. The fact that a given proposal meets one or more "benchmark" criteria does not mean that it is entitled to funding under this policy, but rather that the City is in a position to proceed with evaluations of (and comparisons between) various business assistance proposals, using uniform standards whenever possible.

Mayor

APPENDIX A

The Business Subsidies Statutes specifically exclude 22 items from the definition. The following are NOT business subsidies:

- A business subsidy of less than \$150,000;
- Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria;
- Public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;
- Redevelopment property polluted by contaminants as defined in *M.S. Section 116J.552, Subd. 3*;
- Assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50% of the total cost;
- Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services;
- Assistance for housing;
- Assistance for pollution control or abatement, including assistance for a tax increment financing hazardous substance sub-district as defined under *M.S. Section 469.174, Subd. 23*;
- Assistance for energy conservation;
- Tax reductions resulting from conformity with federal tax law;
- Workers' compensation and unemployment compensation;
- Benefits derived from regulation;
- Indirect benefits derived from assistance to educational institutions;
- Funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501 (c) (3) of the Internal Revenue Code of 1986, as amended through December 31, 1999;
- Assistance for a collaboration between a Minnesota higher education institution and a business;
- Assistance for a tax increment financing soils condition district as defined under *M.S. Section 469.174, Subd. 19*;
- Redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value;
- General changes in tax increment financing law and other general tax law changes of a principally technical nature;
- Federal assistance until the assistance has been repaid to, and reinvested by, the state or local government agency;
- Funds from dock and wharf bonds issued by a seaway port authority;
- Business loans and loan guarantees of \$150,000 or less; and
- Federal loan funds provided through the United States Department of Commerce, Economic Development Administration.

**EXTRACT OF MINUTES OF A MEETING OF THE
CITY COUNCIL OF THE
CITY OF ELGIN, MINNESOTA**

HELD: January 17, 2012

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Elgin, Wabasha County, Minnesota, was duly held at the City Hall on Tuesday, the 17th day of January, 2012, at 7:00 o'clock p.m. for the purpose, in part, of conducting a public hearing on business subsidy criteria for the City.

The following members of the Council were present: *Rich Hall, Ron Krueger, Quintin Wilhelmson, John Ernst*

and the following were absent: *Craig Ziebell*

Councilmember Quintin Wilhelmson introduced the following resolution and moved its adoption;

RESOLUTION APPROVING THE ELGIN BUSINESS SUBSIDY CRITERIA

WHEREAS, the City of Elgin, Minnesota (the "City") acknowledges the need to provide financial assistance to businesses in the City to further the economic and development objectives of the City; and

WHEREAS, of Minnesota Statutes 116J.993 through 116J.995 requires the City to establish Business Subsidy Criteria before any new business subsidy can be provided; and

WHEREAS, the City has performed all actions required by law to be performed prior to the adoption of the Elgin Business Subsidy Criteria, including the holding of a public hearing upon published notice as required by law.

BE IT RESOLVED by the City Council (the "Council") of the City that The City hereby adopts the Elgin Business Subsidy Criteria as defined in the attached Exhibit A.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Ron Krueger and upon vote being taken thereon, the following voted in favor:

Rich Hall, Ron Krueger, Quintin Wilhelmson, John Ernst

and the following voted against the same: -0-

Whereupon said resolution was declared duly passed and adopted.

STATE OF MINNESOTA)
CITY OF ELGIN) SS.
COUNTY OF WABASHA)

I, the undersigned, being the duly qualified and acting Clerk-Treasurer of the City of Elgin, Minnesota, DO HEREBY CERTIFY that the attached resolution is a true and correct copy of an extract of minutes of a meeting of the City Council of the City of Elgin, Minnesota duly called and held, as such minutes relate to the adoption of the City's business subsidy criteria.

WITNESS my hand this 17th day of January, 2012.



City Clerk-Treasurer

**CONTRACT FOR PRIVATE DEVELOPMENT
ELGIN, MINNESOTA**

THIS AGREEMENT is made on this 24th day of January, 2012 by and between the City of Elgin, a municipal corporation, hereinafter referred to as "City"; and All American Cooperative., a Minnesota cooperative, hereinafter referred to as "Developer".

WHEREAS, the City has all of the powers of a municipal corporation under Minnesota law, and

WHEREAS, as of the date of this Agreement, there has been a proposal that the City provide certain economic development assistance to Developer in return for Developer constructing certain minimum improvements in the City and creating at least one new job in the City, and

WHEREAS, the Developer proposes to construct the said improvements, and

WHEREAS, the City has agreed to provide the assistance on the terms and conditions herein contained, and

WHEREAS, the City believes that the project and fulfillment generally of this Agreement is in the best interests of the City and the health, safety, morals, and welfare of its residents in accordance with the public purposes and provisions of the applicable state and local laws and requirements under which the development plan has been undertaken and is being assisted;

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

**ARTICLE I
DEFINITIONS.**

In this agreement, unless a different meaning clearly appears from the context, the following shall have the definitions assigned to them:

1.1 "Agreement" means this Contract of Private Development by and between the City and the Developer and as the same may be from time to time modified, amended, or supplemented.

1.2 "Articles and Sections" mentioned by number only are the respective articles and sections of this Agreement so numbered.

1.3 "Benefit Date" means the date the minimum improvements are completed, anticipated to be on or around January 1, 2013.

1.4 "City" means the City of Elgin, Minnesota.

1.5 "Concept Plan" shall mean that plan prepared by Developer showing the general concept for the improvements, a copy of which is attached hereto as Exhibit B.

1.6 "County" means the County of Wabasha, Minnesota.

1.7 "Developer" means All American Cooperative, a Minnesota cooperative.

1.8 "Development Property" means the real property described as follows: See Exhibit A attached hereto.

1.9 "Force Majeure" means acts of God, including but not limited to floods, ice storms, blizzards, tornadoes, landslides, lightning, and earthquakes (but not including reasonably anticipated weather conditions for the geographic area); riots, insurrections, war, or civil disorder affecting the performance of work, blockades, power or other utility failures, fires or explosions, labor strikes, and unavailability of land development financing and building materials.

1.10 "Minimum Improvements" means that construction of a one million bushel grain bin, together with all infrastructure improvements within the Development Property, in accordance with all applicable local, state, and federal regulations governing such facilities.

1.11 "Party" means either the Developer or the City.

1.12 "Parties" means the Developer and the City.

1.13 "Project" means the Development Property and the completed minimum improvements.

1.14 "Eligible Costs" means excavations, grading, filling, landscaping, footings and foundations, outdoor lighting, fencing, site concrete, utility improvements, and extensions, and access.

1.15 "State" means the State of Minnesota.

1.16 "Tax Official" means any city or county assessor; county auditor; city, county or state board of equalization; the Commissioner of Revenue of the State of Minnesota; any state or federal district court; the tax court of the state; or the Minnesota Supreme Court.

1.17 "Unavoidable Delays" means delays outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the minimum improvements, litigation commenced by third

parties, which by injunction or other similar judicial action, directly result in delays, or acts of any federal, state, or local governmental unit (other than the City) which directly result in delays.

1.18 "TIF Act" means Minnesota Statutes Sections 469.174 through 469.1799, both inclusive.

ARTICLE II REPRESENTATIONS AND WARRANTIES.

2.1 Representations and Warranties by the City. The City represents and warrants that:

a. The City has all of the powers of a municipal corporation under the laws of the State. The City has the power to enter into this Agreement and carry out its obligations hereunder.

b. The project was created, adopted, and approved in accordance with the terms of the City's plan for the area in which the Development Property is located.

c. The City has examined this Agreement and has determined that its terms and provisions are in accordance with the objectives embodied in the plan and are in the best interests of the City and the health, safety, morals, and welfare of its residents.

d. The City makes no representation or warranty, either expressed or implied, as to the Development Property or its condition or soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

e. The City shall issue a "Pay As You Go Note" in the amount of \$225,000.00, subject to the following terms:

1. The Note shall be issued on or about January 1, 2013 following the Developer's submission to the City of paid invoices or other documentation as required by the City for the costs of site work, grading, excavation, footings, and other foundation work associated with the installation of the grain bin incurred after the approval of the Tax Increment Financing ("TIF") District in a total amount equal to or greater than that of the "Pay As You Go Note."

2. "Pay As You Go Note" payments will be made once per year on February 1 for increments collected the previous year, beginning with February 1, 2015. Final payment shall be made on February 1, 2023 unless the Note is paid off early.

f. The City shall reimburse Developer up to 90% of tax increments generated from the Development Property for eligible costs up to \$225,000.00 plus 6% simple interest on a "Pay As You Go" basis. This is a special limited obligation of the City, not a general obligation pledge. Only tax increments generated by the Development Site within the TIF District No. 1-4 are pledged to payment of this obligation.

g. The Developer will not assign any interest in the "Pay As You Go Note" in part or in whole, without prior written consent of the Elgin City Council.

- h. The City shall process all building permits and other permit requests without undue delay.
- i. The City shall establish Economic Development TIF District 1-4.
- j. The City shall issue the "Pay As You Go Note" as described above.
- k. The City recognizes that additional phases of expansion may take place in the future which may result in the Developer requesting modification of this Agreement and/or the Note at that time. The City makes no representations at this time regarding the approval of those future requests.
- l. The City shall approve the improvements, provided that the Developer complies with all of the terms of this Agreement and all applicable ordinances including zoning ordinances of the City.

2.2 Representations and Warranties by the Developer. The Developer represents and warrants that:

- a. The Developer consists of Minnesota residents that have capacity to enter into this Agreement and to perform the obligations hereunder.
- b. The Developer will provide the minimum improvements in accordance with all local, state, or federal energy conservation laws or regulations, and shall obtain approval of the City for all construction.
- c. Developer agrees to provide a title exam/title opinion, prepared by a licensed attorney in the State of Minnesota, demonstrating that Developer has marketable title of record to the Development Property, subject only to the following restrictions:
 - 1. Building and zoning laws, ordinances, state and federal regulations;
 - 2. Restrictions relating to use or improvement of the real property without effective forfeiture provisions;
 - 3. Reservation of any mineral rights by the State of Minnesota;
 - 4. Utility and drainage easements which do not interfere with existing improvements;
 - 5. Exceptions to title which constitute encumbrances, restrictions, or easements which have been disclosed to City and excepted by City in writing.

Developer warrants that the legal description attached to this Developer's Agreement is in proper form. Developer further warrants that the said legal description meets all the

requirements of Elgin's Zoning Ordinance.

d. The Developer agrees that they will provide the minimum improvements on the Development Property in conformity with the Developer's plans as the same may be submitted to the City from time to time in order to obtain a building permit in accordance with all applicable City building codes and ordinances. The Developer will operate and maintain the minimum improvements upon the Development Property in accordance with the terms of this Agreement, the plan, and all local, state, and federal laws and regulations, including but not limited to environmental, zoning, building code, and public health laws and regulations.

e. The Developer will obtain, in a timely manner, all required permits, licenses, and approvals and meet in a timely manner all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the minimum improvements may be lawfully installed.

f. The Developer will cooperate with the City with respect to any litigation commenced with respect to the Development Property or the minimum improvements.

g. The Developer agrees that it will construct and provide the minimum improvements on the Development Property in accordance with its plans heretofore approved or to be approved by the City, at Developer's sole cost. All infrastructure will be constructed and paid for solely by Developer.

h. Developer shall and does hereby indemnify, defend, and hold the City, its Council, agents, employees, attorneys, and representatives harmless from all infrastructure costs and against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and attorney's fees, that the City incurs or suffers which arise out of, result from, or relate to any of the following: (1) failure by the Developer to observe or perform any covenant, condition, obligation, or agreement on their part, either jointly or severally, to be observed or performed under the terms of this Agreement; (2) failure by the Developer to pay contractors, subcontractors, laborers, or materialmen; (3) failure by the Developer to pay for materials; (4) approval by the City of the final plat plans for the subdivision; (5) failure to obtain the necessary permits and authorizations to construct the minimum improvements; (6) construction of the minimum improvements; (7) all costs and liabilities arising because building permits were issued prior to the completion and acceptance of the minimum improvements, or because there were delays in completion of the minimum improvements caused by the Developer, their contractors, subcontractors, materialmen, agents, employees, or third parties, and (8) all costs related to the TIF plan and this Contract for Private Development.

i. Developer shall submit evidence in a form acceptable to the City that the Developer has commitments to sufficient financial resources to complete all minimum improvements to the project.

- j. Developer shall be responsible for all costs of construction staking.
- k. Developer shall secure a licensed contractor. A pre-construction meeting shall be held prior to the commencement of construction. A minimum of the following shall be notified for attendance: City of Elgin Council, City Engineer if requested by the City, the Public Works Director, Developer's engineer, contractor's representative, and private utility company representative.
- l. The Developer shall certify to the City original employment levels as of the date the business subsidy is approved (January 16, 2012 or such future date as determined by the City). Within two years of the completion of the minimum improvements ("the Benefit Date"), the Developer will cause one existing part-time or seasonal job to become at least one new full-time (one Full-Time Equivalent) job within the TIF District with an average wage/benefit package equaling at least the sum of \$12 per hour.
- m. The Developer will operate (or cause to be operated) the minimum improvements for a period of at least five years after the Benefit Date.
- n. The Developer shall annually report to the City by February 1 of each year during the term of this Agreement the number of jobs created and wages/benefits paid on forms prescribed by the City until all wage/jobs goals are met.
- o. The Developer agrees and recognizes that the type of TIF District being created by the City requires that 85% of the square footage of all buildings in the District be related to the use of manufacturing and/or warehousing/distribution. The Developer agrees not to take any action such as development of new facilities that would cause this provision to be violated.
- p. The Developer shall submit copies of paid invoices for eligible costs, including but not limited to site work, grading, excavation, footings, and other foundation work associated with the construction and installation of the minimum improvements to the City in an amount totaling at least the sum of \$225,000.00.
- q. The Developer agrees to accept all terms and conditions required by the Minnesota Business Subsidy Act.
- r. The Developer agrees that, pursuant to the Business Subsidy Act, failure to adhere to the terms of paragraphs d, g, l, or m above in this section 2.2 will require the Developer to repay all or a portion of the subsidy provided to the Developer plus interest. Repayment can be prorated to the extent goals are met.

**ARTICLE III
PROVIDING MINIMUM IMPROVEMENTS.**

Commencement and Completion of Improvements. Subject to unavoidable delays, the Developer shall complete the minimum improvements not later than December 31, 2012.

The Developer agrees, for itself and every successor in interest to the Development Property or any part thereof, that the Developer and such successors and assigns shall in good faith provide the minimum improvements in accordance with this Agreement, and designated representatives of the City shall be allowed to enter upon the Development Property at reasonable times to inspect any and all such improvements.

The Developer further acknowledges that according to the TIF Act contracts can only be drafted and/or modified within five years of certification of the TIF District. Further, any future contracts and/or modifications can only reimburse eligible expenses incurred during that time frame.

**ARTICLE IV
REAL PROPERTY TAXES.**

4.1 Developer's Obligations. The Developer shall pay all real property taxes payable with respect to the Development Property which shall accrue until the Developer's obligations have been assumed by any other person with the written consent of the City pursuant to the provisions of this Agreement.

4.2 Review Waiver. The Developer agrees:

a. It will not seek administrative review or judicial review of the applicability of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings, including delinquent tax proceedings, all of which would reduce the value of the Development Property to less than that described in Article III above.

b. It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained in the Development Property determined by any tax official to be applicable to the project or the Developer or raise the unconstitutionality of any such tax statute as a defense and any proceedings including delinquent tax proceedings, all of which would reduce the value of the Development Property to less than that described in Article III above.

c. It will not seek any tax deferral or abatement either presently or prospectively authorized under any state or federal law of the taxation of real property contained in the Development Property, other than pursuant to the terms of this Agreement, that would reduce the value of the Development Property to less than that described in Article III above.

**ARTICLE V
CITY REMEDIES UPON DEFAULT**

5.1 Where Developer's default creates an imminent threat to life, safety, or health of the public, the City, without affirmative duty to do so, may proceed immediately to cure the default and thereafter proceed according to the provisions of this paragraph. If a default occurs that is not caused by Force Majeure, the City shall give the Developer formal notice of the default, and the Developer shall have 30 working days to appear before the City Council to discuss the default. If the Developer, after a formal notice to them by the City, does not cure the default with 30 working days after the Council appearance, then the City may avail itself of any remedy afforded by law in any of the following cumulative, non-exclusive remedies:

- a. The City may specifically enforce this contract.
- b. The City may suspend any work, improvement, or obligations to be performed by the City with respect to this Agreement that is affected by the default.
- c. The City may collect on any bond, irrevocable letter of credit or cash deposit or other security applicable to this project affected by the default.
- d. The City may deny building and occupancy permits for buildings on the Development Property affected by the default.
- e. The City may, at its sole option, perform the work or improvements to be performed by the Developer, in which case, the Developer shall within 30 days after written billing by the City, reimburse the City for any costs and expenses incurred by the City. In the alternative, the City may in whole or in part, specially assess any of the costs and expenses incurred by the City; and the Developer hereby waives any and all procedural and substantive objections to the installation and construction of the work, and improvements and the special assessments resulting therefrom, including but not limited to notice and hearing requirements and any claim that the special assessments exceed benefit. With respect to any such special assessments, the Developer hereby waives any appeal rights otherwise available pursuant to Minnesota Statute 429.081.

5.2 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement is breached by the Developer and thereafter waived in writing by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous, or subsequent breaches hereunder. All waivers by the City must be in writing to be effective. No delay or omission to exercise any right or power occurring upon any default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**ARTICLE VI
ADDITIONAL PROVISIONS.**

6.1 Restrictions on Use. The Developer agrees, for itself, its successors, and assigns and every

successor in interest to the Development Property or any part thereof, that the Developer and such successors and assigns shall devote the Development Property to, and only to and in accordance with, the uses specified in the City Code, by this Agreement or by the plan.

6.2 Conflicts of Interest. No member of the City's governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the project, or any contract, agreement, or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member or official participate in any decision relating to the agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested. No member, official, or employee of the City shall be personally liable to the Developer or any successors in interest in the event of any default or breach by the City or for any amount which may become due to the Developer or successor, or on any obligations under the terms of this Agreement.

6.3 Provisions Not Merged with Deed. None of the provisions of this Agreement shall be merged by reason of deed transferring any interest in the Development Property, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

6.4 Titles of Articles and Sections. Any titles of the several parts, articles, and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

6.5 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and:

a. in the case of Developer, is addressed to or delivered personally to All American Cooperative, 1 North Center Avenue, Elgin, MN 55932;

b. in the case of the City, is addressed to or delivered personally to City of Elgin, City Hall, 35 east Main Street, P.O. Box, Elgin, MN 55932;

Either party may, upon written notice to the other party, change the address to which such notices and demands are made.

6.6 Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same agreement and instrument.

6.7 Law Governing. This Agreement will be governed and construed in accordance with the laws of Minnesota.

6.8 Expiration. This Agreement expires upon final completion of the Development Property, except for maintenance obligations which shall survive and continue.

