

## **COLLATERAL ASSIGNMENT OF TIF NOTE**

THIS COLLATERAL ASSIGNMENT OF TIF NOTE (“Assignment”) is made and entered into as of the [1st] day of [February], 2021, by and between SILVER LEAF DEVELOPER, INC. a [South Dakota] corporation (the “Borrower”), SILVER LEAF GROUP, LLC, a South Dakota limited liability company (the "Company"), SILVER LEAF LODGING GROUP, LLC, a South Dakota limited liability company (the “Developer”), and GLENWOOD STATE BANK, a Minnesota banking corporation (the “Lender”).

### **RECITALS**

A. The Company, the Developer and the City of Waite Park, Minnesota (the “City”) entered into that certain Development Agreement dated as of February 1, 2016, a First Amendment to Development Agreement dated as of July 18, 2016 and a Second Amendment to Development Agreement dated as of [February 1], 2021 (collectively, the "Development Agreement") regarding certain real property located in the City (the "Development Property") which property is legally described on Exhibit A of the Second Amendment to Development Agreement. At all relevant times that Developer owned and owns the Development Project.

B. Section 3.3 of the Development Agreement provides certain reimbursements from the City to the Developer, or its permitted assignee, for some of the project costs related to the Development Project using tax increment which such rights are evidenced by that certain Tax Increment Revenue Note (Silver Leaf Project), dated November 28, 2016 issued by the City to Silver Developer, Inc., a [South Dakota] corporation, and registered in the name of the Borrower, for a principal amount not to exceed \$4,260,000 (the “TIF Note”). The Company and Developer assigned their respective rights to the reimbursements to the Borrower.

C. The Company and the Developer have requested and the City has agreed to modify and reduce the minimum market value of the Development Property and such modification is memorialized in that certain Amended and Restated Assessment Agreement dated [February 1, 2021], which, as and exhibit to the Development Agreement, modifies the Development Agreement as memorialized in the Second Amendment to Development Agreement dated as of [February 1], 2021.

E. At the request of the Borrower, Company and Developer, the Lender has agreed to extend certain financial accommodations to the Borrower for the Development Property pursuant to the terms of that certain [Loan Agreement] dated on or about the date of this Assignment (the “Loan Agreement”). In accordance with the Loan Agreement, the Borrower executed and delivered to the Lender that certain Promissory Note of even date with the Loan Agreement, in the original principal amount of [\$3,450,000] (the “Note”). As a condition precedent of the financing, MetaBank, the existing collateral assignee of the TIF Note will

surrender or contractual agree to surrender its interest in the TIF Note to the City and MetaBank has agreed to deliver the TIF Note to the Lender.

F. The obligations of the Borrower under the Note and Loan Agreement are secured by, in addition to a Security Agreement of even date with the Loan Agreement securing all personal property of the Borrower (the "Security Agreement").

G. In order to further secure performance by the Company of its obligations under the Note, the Borrower has agreed to make a collateral assignment to Lender of all of the Borrower's right, title and interest in and to the TIF Note.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

**1. Collateral Assignment of TIF Note.** As additional security for performance by the Borrower of its obligations under the Loan Agreement, the Borrower does hereby grant, bargain, sell, assign and set over unto the Lender, for so long as any indebtedness pursuant to the Loan Agreement shall remain outstanding, all of the Borrower's right, title and interest in and to the TIF Note. This Assignment shall constitute a first and priority perfected, absolute and present assignment, provided that Lender shall have no right to exercise its rights under this Section 1 until the occurrence of an Event of Default as defined in the Loan Agreement or under any related instrument, document or agreement, including without limitation the Note. Upon the occurrence of any such default, Lender may, without affecting any of its rights or remedies against Borrower under any other instrument, document or agreement, exercise its rights under this Assignment as Borrower's attorney-in-fact in any manner permitted by law, and in addition, Lender shall have and possess, without limitation, any and all rights and remedies of a secured party under the Minnesota Uniform Commercial Code or otherwise provided by law. For purposes of exercising any available rights and remedies of a secured party, ten (10) days written notice shall constitute commercially reasonable notice where such is required by the Minnesota Uniform Commercial Code.

**2. Collection and Payment.** The Borrower, Company and Developer hereby authorize and direct the City to pay all TIF Note payments directly to the Lender following City's receipt of written notice from the Lender that an Event of Default has occurred under the Loan Agreement. The City has no duty to verify the existence of said default(s) and shall rely upon Lender's notice alone to establish that an Event of Default has occurred enabling Lender to receive the TIF Note payments directly from the City. The Lender may request and receive said TIF Note payments without assuming performance of the Development Agreement, it being understood by the parties that in any event the TIF Note payments shall only be payable by the City in accordance with the terms and conditions of the Development Agreement. Unless and until the City receives said notice of default from the Lender, the City shall pay the TIF Note

payments to the Lender for the benefit of the Borrower and to be applied as a scheduled payment by the Borrower on the Note.

**3. No Assumption of Liability by Lender.** The Borrower, Company and Developer agree that the Lender does not assume any of the obligations or duties of the Borrower, Company and Developer under or with respect to the Development Agreement unless and until the Lender shall have given to the City written notice that it has affirmatively exercised its right to exercise the collateral assignment effected by this Assignment and to assume performance under the Development Agreement.

**4. Continuing Authorization; Indemnification.** The Borrower's, Company's and Developer's authorization to the City contained in this Assignment, including Sections 2 and 3, above, is absolute and irrevocable. The Borrower, Company and Developer hereby indemnifies and holds the City harmless from and against any claims or liabilities arising or purporting to arise from the City's performance of its obligations under this Assignment.

**5. Cure of Events of Default.** The Lender may at its absolute discretion, but shall not be required, to cure any default by the Company and Developer under the Development Agreement. The Borrower hereby agrees that any monies advanced by the Lender in furtherance of any cure under the Development Agreement shall be an additional amount secured by and payable under the Note and Mortgage given by the Borrower to the Lender.

**6. Miscellaneous Provisions.** The following miscellaneous provisions are a part of this Assignment:

- a. Accuracy of Recitals. The recitals set forth at the beginning of this Assignment are deemed incorporated herein, and the parties hereto represent they are true and correct.
- b. Caption Headings. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.
- c. Amendments. This Assignment may not be amended or modified except in a writing executed by all parties hereto.
- d. Counterparts. It is understood and agreed that this Assignment may be executed in several counterparts, each of which shall, for all purposes, be deemed an original, and all of such counterparts, taken together, shall constitute one and the same Assignment, even though all of the parties hereto may not have executed the same counterpart of this Assignment.
- e. Choice of Law, Severability. This Assignment is made in the State of Minnesota and shall be construed in accordance with the laws thereof. If any provision

hereof is in conflict with any statute or rule of law of the State of Minnesota and is otherwise unenforceable, such provisions shall be deemed null and void only to the extent of such conflict or unenforceability, and shall be deemed separate from and shall not invalidate any other provision of this Assignment.

- f. Time is of the Essence. Time is of the essence in the performance of this Assignment.
- g. Notices. All notices required to be given under this Assignment shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown below:

City: City of Waite Park  
Attn: City Administrator  
19 13<sup>th</sup> Avenue North  
Waite Park, MN 56387

Lender: Glenwood State Bank  
Attn. Matt R. Hodsdon  
5 E Minnesota Avenue  
PO Box 197  
Glenwood, MN 56334

Borrower: Silver Leaf Developer, Inc.  
205 6th Avenue SE  
Suite 300  
Aberdeen, SD 57401

Company: Silver Leaf Group, LLC  
700 Main Avenue  
Suite 20  
Fargo, ND 58103

Developer: Silver Leaf Lodging Group, LLC  
205 6<sup>th</sup> Avenue SE  
Suite 300  
Aberdeen, SD 57401

Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

- h. Amendments. This Assignment constitutes the entire understanding and

agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

- i. Successors and Assigns. This Assignment shall bind the Company, Developer, Borrower, Lender and the City and the successors and assigns of each.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Collateral Assignment of TIF Note as of the day and year first above written.

**BORROWER:**

SILVER LEAF DEVELOPER, INC. a  
[South Dakota] corporation

By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

**LENDER:**

GLENWOOD STATE BANK, a Minnesota  
banking corporation

By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

**COMPANY:**

SILVER LEAF GROUP, LLC, a South  
Dakota limited liability company

By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

**DEVELOPER:**

SILVER LEAF LODGING GROUP, LLC,  
a South Dakota limited liability company

By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

**ACKNOWLEDGMENT, CONSENT AND AGREEMENT OF CITY**

The City of Waite Park (the “City”), hereby acknowledges the above Collateral Assignment of TIF Note, consents to such assignment to the Lender, and agrees to be bound by the above Assignment and to comply with the Lender’s instructions with respect to the TIF Note payments. In particular, and without limiting the generality of the foregoing, the undersigned acknowledges and agrees that: (i) the Borrower is the register owner and holder of the TIF Note, (ii) the City has not declared an event of default on the Development Agreement as of the effective date below, and (iii) the assignment effected by the above is approved by the City and is made in full compliance with the provisions of Section 6.9 of the Development Agreement and the TIF Note.

Without limiting the foregoing, the City hereby: (i) consents to the foregoing assignment of the TIF Note payments by Borrower, Company and Developer to Lender; (ii) agrees that the Lender does not assume any of the obligations or duties of the Company and Developer under or with respect to the Development Agreement unless and until the Lender shall have given to the City written notice that it has affirmatively exercised its right to exercise the collateral assignment effected by the Development Agreement and to assume performance under the Development Agreement; and (iii) agrees that, notwithstanding the foregoing, the Lender may, without assuming performance of the Development Agreement, request and receive from the City the TIF Note payments.

The City shall give the Lender a copy of any notice of event of default under the Development Agreement. The City shall accept any cure of a default by the Lender in accordance with the Development Agreement as performance by the Company or Developer under the Development Agreement; provided, however, that nothing in the foregoing Collateral Assignment of TIF Note will extend the deadline for curing defaults or otherwise limit the City’s rights to exercise its remedies as provided in the Development Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Acknowledgment, Consent and Agreement of City to be duly executed effective as of February [1], 2021.

CITY OF WAITE PARK

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its City Administrator