

Agenda

Minnetonka Economic Development Authority

Monday, Nov. 26, 2018

Following the Regular Meeting

Council Chambers

1. Call to Order
2. Roll Call: Bergstedt-Ellingson-Acomb-Happe-Schack-Calvert-Wiersum
3. Approval of Agenda
4. Approval of Minutes: July 23, Aug. 27 and Sept. 17, 2018 EDA meetings
5. Business Items:
 - A. Resolution approving a contract for private development with the City of Minnetonka and Mariner Affordable Apartments Limited Partnership

Recommendation: Adopt the resolution
6. Adjourn

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Minutes
Minnetonka Economic Development Authority
Monday, July 23, 2018

1. Call to Order

President Brad Wiersum called the meeting to order at 9:21 p.m.

2. Roll Call

Commissioners Mike Happe, Deb Calvert, Bob Ellingson, Patty Acomb and Wiersum were present. Tim Bergstedt was excused.

3. Approval of Agenda

Acomb moved, Ellingson seconded a motion to accept the agenda, as presented. All voted "yes." Motion carried.

4. Approval of Minutes: December 4 and December 18, 2017 EDA minutes

Acomb moved, Ellingson seconded a motion to approve the December 4, 2017 and December 18, 2017 minutes. Ellingson, Acomb and Wiersum voted "yes." Calvert and Happe abstained. Motion carried.

5. Business Items:

A. Items concerning a multi-family residential development by Dominion, at 11001 Bren Road East:

Community Development Director Julie Wischnack gave the staff report.

Calvert moved, Acomb seconded a motion to adopt Resolution 2018-001 Establishing the Dominion Tax Increment Financing District within the Opus Redevelopment Project by adopting a redevelopment plan, establishing a tax increment financing district and adopting a tax increment financing plan; Resolution 2018-002 approving contracts for private redevelopment between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Minnetonka Leased Housing Associates II and III, LLLP for Senior and Workforce Housing and issuance of a tax increment revenue notes.. voted "yes." Motion carried.

6. Adjournment

Acomb moved, Calvert seconded a motion to adjourn the meeting at 9:25 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk

Minutes
Minnetonka Economic Development Authority
Monday, Aug. 27, 2018

1. Call to Order

President Brad Wiersum called the meeting to order at 12:08p.m.

2. Roll Call

Commissioners Bob Ellingson, Rebecca Schack, Patty Acomb, Mike Happe, Deb Calvert, Tim Bergstedt, and Wiersum were present.

3. Approval of Agenda

Calvert moved, Schack seconded a motion to accept the agenda, as presented. All voted "yes." Motion carried.

4. Approval of Minutes: None

5. Business Items:

**A. Resolutions concerning a multi-family residential development by
Dominium at 11001 Bren Road East**

Calvert moved, Schack seconded a motion to adopt Resolution 2018-003 approving the execution and delivery of documents in connection with a senior housing development, and authorize the EDA president and Executive Director of the EDA to approve non-substantive changes to the documents and Resolution 2018-004 approving the execution and delivery of documents in connection with a workforce housing development, and authorize the EDA president and Executive Director of the EDA to approve non-substantive changes to the documents. All voted "yes." Motion carried.

6. Adjournment

Acomb moved, Calvert seconded a motion to adjourn the meeting at 12:10 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk

Minutes
Minnetonka Economic Development Authority
Monday, Sept. 17, 2018

1. Call to Order

President Brad Wiersum called the meeting to order at 9:59 p.m.

2. Roll Call

Commissioners Rebecca Schack, Patty Acomb, Tim Bergstedt, Bob Ellingson, and Wiersum were present. Mike Happe and Deb Calvert were excused.

3. Approval of Agenda

Acomb moved, Schack seconded a motion to accept the agenda, as presented. All voted "yes." Motion carried.

4. Approval of Minutes: None

5. Business Items:

A. 2019 Preliminary HRA Levy

City Manager Geralyn Barone gave the staff report.

Acomb moved, Schack seconded a motion to adopt Resolution 2018-006 approving a 2019 preliminary HRA budget of \$300,000 and a 2019 HRA budget of \$300. voted "yes." Motion carried.

6. Adjournment

Acomb moved, Schack seconded a motion to adjourn the meeting at 10:03 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk

**Economic Development Authority (EDA) Agenda Item #5A
Meeting of Nov. 26, 2018**

Brief Description Resolution approving a contract for private development with the City of Minnetonka and Mariner Affordable Apartments Limited Partnership

Recommendation Adopt the resolution

Background

In 2017, Newport Midwest formally requested gap financing to assist with providing 55 affordable units within the redevelopment project at 10400, 10500, and 10550 Bren Road East. An Economic Development Advisory Commission (EDAC) subcommittee and the EDAC both reviewed the request and recommended that the city council approve the financing request. The details of the request are outlined in this report.

The developer formally submitted applications for redevelopment of the site that will be considered by council at the Nov. 26, 2018 city council meeting.

Financing Request

The developer is requesting gap assistance of up to \$556,179 from the city's TIF Pooling Fund. Staff and the city's financial advisor have reviewed this request and are proposing that the assistance be structured as a note with a 4% interest rate that would be repayable from available surplus cash over a minimum term of 14 years and a maximum of 30 years. If a capital improvement was necessary during the 14 year term, the developer could access the cash flow to make any necessary improvements. Additional information regarding this request is included in the attached memo from Ehlers.

In addition to the request for city funding, the developer secured the following grants to assist with the development gap and continued affordability:

- Hennepin County Transit Oriented Design - \$450,000
- Metropolitan Council – Livable Communities Demonstration Account funding - \$1,876,500
- Metropolitan Council – Affordable Housing Investment Fund - \$400,000
- Metropolitan Council - Local Housing Incentives Account Grant - \$210,500

After detailed review of the development proposal, establishment of a TIF district for this project does not seem to be appropriate because of the scale of the affordability in this project. Instead, staff believes use of TIF pooling funds (from Boulevard Gardens) is more appropriate. As noted in the city's 2018 TIF Management Report, by 2022, a total of \$4,961,930 million in TIF pooling funds will be available for tax-credit eligible affordable housing developments after accounting for the Mariner project (\$556,179) and for Shady Oak Crossings (\$1.2 million). To date, \$1.025 million has been used for The Ridge project. The attached Council Policy 2.14 provides further guidance on the use of TIF pooling funds. Uses of the funds are intended to be strategically allocated to projects that provide affordable housing.

Prior Meeting Review and Summary

May 15, 2017 EDAC Subcommittee Review and May 25, 2017 EDAC Review

On May 15, EDAC Commissioners Isaacson, Yunker, and Jacobsohn met as a subcommittee to review the assistance request, using Council Policy 2.14 on TIF pooling as a guide. The EDAC subcommittee expressed that the request for assistance was reasonable and concluded that it met the following criteria:

- The project is compatible with the Comprehensive Guide Plan as a proposed mixed-use development;
- The project would not occur “but for” the assistance;
- The project is in a high priority “village area” as identified in the Comprehensive Guide Plan;
- The project includes affordable housing units, which meets the city’s affordable housing standards;
- The proposed project amenities will benefit a larger area than identified in the development; and
- The project will maximize and leverage the use of other financial resources.

In addition, the EDAC subcommittee provided feedback on items to consider including in the contract for private development. The commissioners suggested capping the assistance as a percentage of the total development costs. If the total development costs came in lower, the city assistance would be lower, proportionately. In addition, the commissioners advised to secure the cash flow note in second position after the first mortgage and add a deadline for use of the city assistance in the event that the project does not begin on schedule.

At the EDAC meeting on May 25, 2017 the commissioners recommended that the city council adopt the resolution of support committing up to \$556,179 in TIF pooling assistance to support the MHFA tax credit application due June 15. The city assistance would be considered “gap assistance” and the last source of funding into the project.

EDAC Review – Aug. 9, 2018

On Aug. 9, the EDAC further reviewed the draft Contract for Private Development and provided the following feedback.

- Commissioner Hromatka inquired about how the demonstrated gap was determined.
 - Staff clarified that assistance was needed to bridge the gap of the cost of providing affordable units.
 - The city’s financial consultant, Stacie Kvilvang at Ehlers, confirmed that she had reviewed the developer’s development pro forma and confirmed that the assistance of \$556,179 was an appropriate level of assistance needed to fill the project gap.
- Commissioners recommended updating the affordable housing chart to include both the affordable and market rate units in the chart.

-
- Commissioner Knickerbocker inquired about how this financing request differs from previous projects and if there are any outstanding issues.
 - Kvilvang confirmed that the city benefits from the project including both market rate and affordable units and confirmed that the TIF funds are structured as a repayable loan and can be reused for future projects.
 - Kvilvang commented that she was not aware of any outstanding issues.
 - Commissioner Knickerbocker asked for clarification about the term "income averaging" in the contract.
 - Gina Fiorini, the city's legal counsel at Kennedy & Graven, confirmed that the federal tax law allows for income averaging. Minnesota Housing Finance Agency, which oversees low income housing tax credit allocation in Minnesota, has not yet adopted this policy but could do so in future years. The language in the contract allows flexibility if income averaging should be allowed.
 - Commissioner Knickerbocker inquired about the property management clause in the contract.
 - Staff confirmed that this language is common and included in all contracts.
 - Staff clarified the affordability level and income limits. There are 55 units affordable to households earning up to 60% of the area median income (AMI). Additionally, rents for those households are capped at 50% of the AMI based on the tenant's income for the initial 5-10 year period, then rents can be raised to 60% from 10-20 years under the tax credit program rules.

The EDAC recommended the city council approve the contract for private development.

Contract for Private Development Overview

The city's legal counsel, Julie Eddington at Kennedy & Graven, drafted the attached Contract for Private Development that was developed based upon the requests for city assistance by the developer with feedback from the EDAC and city council.

Highlights of the Contract for Private Development are listed below:

Declaration of Restrictive Covenants

- Given that the developer is requesting TIF assistance and utilizing tax credit financing through the MHFA, there are certain income and rent restriction requirements the developer must follow. The developer is proposing to make all 55 units affordable to households earning 60% AMI or less (\$45,300 for a two person household). In addition, rent limits on those affordable units may not exceed 50% of the income calculated for that unit. (Rents will range from \$826 to \$1,226 in the workforce units.)
- The declaration requires a minimum of 30 years of affordability for the 55 workforce units.

Tax Increment Financing (TIF) Pooling Assistance

- The developer requested assistance of up to \$556,179 from the city's TIF Pooling Fund. The assistance is structured as a note with a 4% interest rate, repayable over a maximum of 30 years from 100% of the surplus cash, as defined in the agreement. It is anticipated that the note would be repaid within 14 years. If a capital improvement was necessary during the estimated 14-year term, the developer could access the same cash flow to make any necessary improvements.
- Prior to disbursement of the TIF loan, the city's municipal advisor will review the project finances. If the advisor determines that all or a portion of the TIF loan is not needed to cover the gap, the TIF loan will be reduced to the amount necessary to cover the remaining gap in order to construct the project.

Grants

- In 2018, the city was awarded a Local Housing Incentives Account (LHIA) Grant in the amount of \$210,500 from Metropolitan Council. These funds can be used for property/structure acquisition, demolition, site preparation (such as water, sewer, roads), general construction, interior and exterior finishing, roofing, electrical, plumbing, heating and ventilation, as more fully described in the LHIA Grant Agreement that was approved by council on August 6, 2018. This is considered a pass-through grant and is disbursed to the developer as project costs are incurred and documented.
- In 2018, the city also was awarded a Livable Communities Demonstration Account (LCDA) Grant in the amount of \$1,876,500 from Metropolitan Council. The grant can be used for site acquisition, site preparation, (grading and demolition), stormwater management, and a sidewalk along Bren Road. The subrecipient agreement for the grant was approved at the August 6, 2018 city council meeting. This grant is also considered a pass-through grant and is disbursed to the developer as project costs are incurred and documented.
- In 2017 and 2018, Hennepin County awarded Affordable Housing Incentive Funds to the Mariner program totaling \$400,000 in loans to Newport Midwest, LLC to fund the development of 55 affordable rental units. These funds are awarded directly to the developer to assist with providing long term affordability. On August 6, 2018 the council approved a resolution authorizing the utilization of these funds as required under the terms of the funding.
- In 2018, Hennepin County also awarded \$450,000 in Transit Oriented Design funding to the developer. These funds can be used to assist with acquisition and infrastructure work and are awarded directly to the developer.

Minimum Improvements

- Construction of a multifamily housing development with approximately 55 rental housing units with 46 underground parking spaces and 16 surface parking spaces.

Commencement and Completion of Construction

- The minimum improvements must be commenced on or around July 1, 2019 and completed by August 30, 2020. Construction is considered to be commenced upon the physical improvements beyond grading.

Recommendation

The project concept by Newport Midwest will help meet the city’s affordable housing goals outlined in the draft 2040 Comprehensive Guide Plan, the city’s 2011-2020 affordable housing goals, and new housing construction needs identified in the Southwest Corridor Housing Strategy.

Staff recommends the EDA adopt the resolution approving the contract for private development with the City of Minnetonka and Mariner Affordable Apartments Limited Partnership and authorize staff to approve non-substantive changes to the contract for private development.

Submitted through:

Julie Wischnack, AICP, Community Development Director
Geraldyn Barone, City Manager
Merrill King, Finance Director

Originated by:

Alisha Gray, EDFP, Economic Development and Housing Manager

Additional Information

Contract for Private Development

Location Map

Memo from Ehlers

TIF Pooling Policy 2.14

History of Affordability and Assistance

Minnetonka Housing Action Plan (2011-2020 Affordable Housing Goals)

[March 6, 2017 City Council Staff Report](#)

[Feb. 16, 2017 Planning Commission Report](#)

[Aug. 6, 2018 – City Council Meeting](#)

[Aug. 9, 2018 – EDAC Meeting Southwest](#)

[LRT Corridor Housing Strategy Southwest](#)

[LRT Housing Gaps Analysis](#)

EDA Resolution No. 2018-

Resolution approving contract for private development with City of Minnetonka and Mariner Affordable Apartments Limited Partnership

Be it resolved by the Board of Commissioners (the "Board") of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority") as follows:

Section 1. Background.

- 1.01. The City of Minnetonka ("City") and the Authority have established Redevelopment Tax Increment Financing District No. 2 (Boulevard Gardens) (the "TIF District") within a larger development district known as Development District No. 1 (the "Development District") and adopted a financing plan (the "TIF Plan") for the TIF District in order to facilitate redevelopment of certain property in the Development District, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended. The TIF Plan provides for pooling tax increment for housing projects outside the TIF District if the housing project meets certain affordability requirements.
- 1.02. In order to facilitate development of affordable rental housing in the City, the City and the Authority have caused to be prepared a Contract for Private Development (the "Contract") between the City, the Authority and Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership (the "Developer"). Pursuant to the Contract, the Developer will construct on certain property located within the City (the "Development Property") a multifamily housing development with approximately 55 Rental Housing Units, 4 of which will be considered permanent supportive housing, subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof, and 46 underground parking spaces and 16 surface parking spaces (the "Minimum Improvements"). The Developer has proposed connecting the Minimum Improvements to a market-rate rental housing building to be constructed on the Development Property with approximately 191 units and the two buildings will be connected by a bridge with shared amenities, such as rooftop deck spaces, a playground, an urban courtyard, a bike repair station, bike paths and green spaces surrounding the property.
- 1.03. In order to assist in financing the Minimum Improvements, the Authority has proposed to provide a loan of tax increment derived from property within the TIF District (the "TIF Loan").
- 1.04. There has been presented before this Board a Contract for Private Development (the "Agreement") proposed to be entered into between the Authority, the City, and the Developer setting forth the terms of the development of the Minimum Improvements and the provision of the TIF Loan.

Section 2. The Agreement.

- 2.01. The Board approves the Agreement in substantially the form on file in City Hall. The President and Executive Director are hereby authorized and directed to

execute and deliver the Agreement. All of the provisions of the Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Agreement shall be substantially in the form on file with the Authority which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the President and the Executive Director, in their discretion, shall determine, and the execution thereof by the President and the Executive Director shall be conclusive evidence of such determination.

Section 3. The TIF Loan.

3.01. The Authority hereby approves and authorizes the TIF Loan to the Developer pursuant to the terms provided in the Agreement.

Section 4. Effective Date.

4.01. This resolution shall be effective upon full execution of the Agreement.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on Nov. 26, 2018.

Brad Wiersum, President

ATTEST:

David E. Maeda, Secretary

Action on this resolution:

- Motion for adoption:
- Seconded by:
- Voted in favor of:
- Voted against:
- Abstained:
- Absent:
- Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on Nov. 26, 2018.

Secretary

**Seventh Draft
November 20, 2018**

**CONTRACT
FOR
PRIVATE DEVELOPMENT**

between

**ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF MINNETONKA, MINNESOTA,
CITY OF MINNETONKA, MINNESOTA,**

and

MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP

Dated _____, 2018

This document was drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 337-9300

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CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made on or as of the ____ day of _____, 2018 (the “Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), the CITY OF MINNETONKA, MINNESOTA (the “City”), a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, and MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership (the “Developer”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development district known as Development District No. 1 (the “Project”) in the City, pursuant to Minnesota Statutes, Sections 469.124 through 469.134, as amended; and

WHEREAS, by Resolution No. 93-9649, the City transferred control, authority and operation of the Project from the City to the Authority; and

WHEREAS, the City and the Authority have established Redevelopment Tax Increment Financing District No. 2 (the “TIF District”) within the Project and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate redevelopment of certain property in the Project, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the “TIF Act”); and

WHEREAS, pursuant to Section 469.1763, subdivision 2(d) of the TIF Act, the Authority and the City modified the TIF Plan for the TIF District in order to increase the amount of Tax Increment (defined hereinafter) that may be spent outside the boundaries of the TIF District from twenty-five percent (25%) to thirty-five percent (35%), provided that such pooled Tax Increment is used solely to assist the development of rental housing that meets the requirements for federal low income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Developer has proposed a development of an affordable rental housing facility described further herein as the “Minimum Improvements” on certain property (the “Development Property”) located in the Project, which facility is expected to receive federal low income tax credits; and

WHEREAS, the Developer has proposed to connect the Minimum Improvements to a market-rate rental housing building to be constructed on the Development Property with approximately 191 units and the two buildings will be connected by a bridge with shared amenities, such as rooftop deck spaces, a playground, an urban courtyard, a bike repair station, bike paths and green spaces surrounding the property; and

WHEREAS, the Authority has proposed to provide the Developer with a loan of Tax Increment from the TIF District to assist in financing the acquisition and construction of the Minimum Improvements on the Development Property; and

WHEREAS, the Authority and the City believe that the development of the Minimum Improvements pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements; and

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:

(The remainder of this page is intentionally left blank.)

ARTICLE I

Definitions

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

“Act” means the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

“Affiliate” means (a) any corporation, partnership, corporation or other business entity or person controlling, controlled by or under common control with the Developer; and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words “controlling,” “controlled by,” and “under common control with” shall mean, with respect to any corporation, partnership, corporation or other business entity, the ownership of fifty percent (50%) or more of the voting interests in such entity, possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether ownership of voting securities or by contract or otherwise.

“Agreement” means this Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Authority” means the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State, or any successor or assign.

“Authority Representative” means the Executive Director of the Authority, or any person designated by the Executive Director to act as the Authority Representative for the purposes of this Agreement.

“Business Day” means any day except a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

“Business Subsidy Act” means Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

“Certificate of Completion” means the certification to be provided the Developer, pursuant to Section 4.4 hereof and substantially in the form attached hereto as EXHIBIT B.

“City” means the City of Minnetonka, Minnesota.

“City Representative” means the City Manager of the City, or any person designated by the Executive Director to act as the Authority Representative for the purposes of this Agreement.

“Closing” has the meaning provided in Section 3.3(b) hereof.

“Code” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed on the Development Property (including the Minimum Improvements)

which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following for each building: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross-sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such other plans or supplements to the foregoing plans as the Authority may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means the County of Hennepin, Minnesota.

“Declaration” means the Declaration of Restrictive Covenants attached hereto as EXHIBIT C.

“Developer” means Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership, its successors and assigns.

“Developer Surplus Cash Note” means the Developer Surplus Cash Note set forth in EXHIBIT E and payable with surplus cash of the Developer.

“Development Plan” means the Development Program for the Project.

“Development Property” means the property legally described in EXHIBIT A attached hereto.

“Event of Default” means an action by a party described in Section 9.1 hereof.

“Holder” means the owner or mortgagee of a Mortgage.

“Market Rate Apartments” means the construction by the Developer on the Development Property of a market rate multifamily housing development with approximately 191 units.

“Material Change” means any change which would (i) cause the Construction Plans to fail to conform with the terms and conditions of this Agreement, the goals and objectives of the Redevelopment Plan and/or all applicable federal, State, and local laws, ordinances and regulations; or (ii) would materially alter the design and/or construction of the Minimum Improvements.

“Minimum Improvements” means the construction on the Development Property of a multifamily housing development with approximately 55 Rental Housing Units, 4 of which will be considered permanent supportive housing, subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof, and 46 underground parking spaces and 16 surface parking spaces.

“Mortgage” means any mortgage made by the Developer in favor of one of the Other Lenders which is secured, in whole or in part, with the Development Property, and which is a permitted encumbrance pursuant to the provisions of Article VIII hereof.

“Other Lenders” means any entities (other than the Authority and the Tax Credit Investor) that provide grants or loans to the Developer in order to finance a portion of the cost of the Minimum Improvements.

“Other Loans” means a construction loan to be obtained by the Developer for the construction of the Minimum Improvements, a permanent first mortgage loan to be obtained by the Developer for permanent financing of the Minimum Improvements, and any other loan financing obtained by the Developer and related to the construction of the Minimum Improvements.

“Project” means the Authority’s Development District No. 1.

“Rental Housing Units” means the rental housing units constructed as part of the Minimum Improvements.

“State” means the State of Minnesota.

“Surplus Cash” means the annual cash flow of the Developer, calculated pursuant to the partnership agreement of the Developer as total cash receipts of the Developer from ordinary operations of the Minimum Improvements less the total cash disbursements of the Developer associated with the Minimum Improvements, such as but not limited to (1) operating expenses, (2) costs of repair or restoration, (3) management fees, (4) financing fees or other requirements of any lender to the Developer, (5) interest and principal repayments of the Other Loans, as the same may be refinanced, to the extent such amounts are due and payable under the applicable loan documents associated with the Other Loans, (6) amounts paid in connection with the establishment or maintenance of reserves required for the Minimum Improvements, (7) payments to the Tax Credit Investor for Asset Management Fees, (8) payments of unpaid Developer Fees, and (9) payments of Limited Partner Asset Management Fees and General Partner Asset Management Fees (collectively capped at a maximum amount of \$10,000), all as defined in the partnership agreement of the Developer.

“Tax Credit Investor” means the entity that purchases tax credits awarded for the Minimum Improvements under the Tax Credit Law.

“Tax Credit Law” means Section 42 of the Code.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the Authority as tax increment pursuant to the Tax Increment Act.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“Tax Increment District” or “TIF District” means the Authority’s Redevelopment Tax Increment Financing District No. 2.

“Tax Increment Plan” or “TIF Plan” means the Authority’s Tax Increment Financing Plan for the TIF District, as most recently modified by the Authority and City on December 20, 2010, and as it may be amended from time to time.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal court including the tax court of the State.

“Termination Date” means the later of the date the TIF Loan is paid in full in accordance with its terms, or the date of termination of the “Qualified Project Period” as defined in the Declaration.

“TIF Loan” has the meaning provided in Section 3.3(a) hereof.

“Transfer” has the meaning set forth in Section 8.2(a) hereof.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of war, terrorism, strikes, other labor troubles, fire

or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the City or the Authority in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer's obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 hereof, unless (a) the Developer has timely filed any application and materials required by the City for such permit or approvals, and (b) the delay is beyond the reasonable control of the Developer.

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ARTICLE II

Representations and Warranties

Section 2.1. Representations and Covenants by the Authority.

(a) The Authority is an economic development authority duly organized and existing under the laws of the State. Under the provisions of the Act and the TIF Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The Authority will use its best efforts to facilitate development of the Minimum Improvements, including but not limited to cooperating with the Developer in obtaining necessary administrative and land use approvals and construction and/or permanent financing pursuant to Section 7.1 hereof.

(c) The activities of the Authority are undertaken for the purpose of fostering the development of affordable rental housing, which will also revitalize this portion of the Project and increase the City's tax base.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of charter or statutory limitation or any indebtedness, agreement or instrument of whatever nature to which the Authority is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(e) The Authority shall promptly advise the Developer in writing of all litigation or claims affecting any part of the Minimum Improvements.

Section 2.2. Representations by the City. The City makes the following representations:

(a) The City is a home rule city duly organized and existing under its Charter and the laws of the State. Under the provisions of the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for Qualifying Tenants of low or moderate income and their families.

(c) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the City, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which the City or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the City or its officers or its resolutions.

(d) There is not pending, nor to the best of the City's knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions

contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforcement of this Agreement.

Section 2.3. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited partnership organized and in good standing under the laws of the State, is not in violation of any provisions of its organization documents, or, to the best of its knowledge, the laws of the State, is duly authorized to transact business in the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its partners.

(b) The Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Construction Plans, and all applicable local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations) in all material respects.

(c) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will 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 constructed.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any partnership or company restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(e) The Developer shall promptly advise the Authority and the City in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting the Developer or its business, which may delay or require changes in construction of the Minimum Improvements.

(f) The proposed redevelopment on the Development Property hereunder would not occur but for the financial assistance being provided by the Authority hereunder.

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ARTICLE III

Tax Increment Assistance

Section 3.1. Status of the Property. As of the date of this Agreement, the Developer has entered into a purchase agreement to acquire the Development Property. Neither the Authority nor the City has an obligation to acquire the Development Property or any portion thereof.

Section 3.2. Environmental Conditions.

(a) The Developer acknowledges that the Authority and the City make no representations or warranties as to the condition of the soils on the Development Property or the fitness of the Development Property for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property, and that the assistance provided to the Developer under this Agreement neither implies any responsibility by the Authority or the City for any contamination of the Development Property or poor soil conditions nor imposes any obligation on such parties to participate in any cleanup of the Development Property or correction of any soil problems.

(b) Without limiting its obligations under Section 8.3 hereof, the Developer further agrees that it will indemnify, defend, and hold harmless the Authority, the City, and their respective governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants on the Development Property as a result of the actions or omissions of the Developer, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the indemnitees. Nothing in this Section will be construed to limit or affect any limitations on liability of the City or Authority under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02.

Section 3.3. Tax Increment Assistance.

(a) *TIF Loan.* In order to make development of the Minimum Improvements financially feasible, the Authority will make a loan to the Developer in an amount of \$556,179 (the "TIF Loan"). The amount of the TIF Loan is subject to reduction as described in paragraphs (b) and (c) below, and the proceeds of the TIF Loan shall be disbursed in accordance with said paragraph (b). The unpaid balance of the TIF Loan shall bear interest at the rate of 4.0% per annum, and interest shall accrue on a simple basis and will not be added to principal.

(b) *Disbursement of TIF Loan.* Notwithstanding anything to the contrary herein, if the total costs of developing the Minimum Improvements required to be financed as of the closing date for the construction financing for the Minimum Improvements (the "Closing Date") are reduced below the amounts estimated as of the date of this Agreement due to additional financing for the Minimum Improvements from other sources (except for the grants described in Section 3.4 hereof and the Affordable Housing Investment Fund grant in the amount of \$400,000) or a reduction in anticipated total development costs, such reduction shall be applied first to reduce the amount of the TIF Loan, prior to reducing any other funding sources; provided that if the Developer demonstrates to the Authority's reasonable satisfaction that such reduction in the TIF Loan will impair the Developer's eligibility to receive the full amount of tax credits awarded for the Minimum Improvements under the Tax Credit Law, then the TIF Loan reduction amount will be adjusted to a level that prevents such impairment. Subject to the immediately following conditions, the TIF Loan shall be funded in a single disbursement of funds to the Developer on the Closing Date. The Authority's obligation to fund the TIF Loan is subject to satisfaction of the following conditions as of the Closing Date:

(i) the Developer having provided evidence satisfactory to the Authority that the Developer has established a separate accounting system for the Minimum Improvements for the purpose of recording the receipt and expenditure of the TIF Loan proceeds;

(ii) the Authority and the City having approved Construction Plans for the Minimum Improvements in accordance with Article IV hereof;

(iii) the Developer having obtained, and the Authority having approved, financing as described in Article VII hereof;

(iv) the Developer having delivered to the Authority the executed Declaration in accordance with Section 4.5 hereof;

(v) the Developer having delivered to the Authority a list of all sources of funding to be used to develop the Minimum Improvements and evidence of the total costs of developing the Minimum Improvements, in a form reasonably satisfactory to the Authority, evidencing any reduction in the amount TIF Loan as described in this paragraph;

(vi) the Developer has obtained all entitlements for the Market Rate Apartments; and

(vi) there being no uncured Event of Default under this Agreement.

(c) *Reduction of TIF Loan.* Subject to the provisions of paragraph (b) above, if after review of the sources of funds and total costs of developing the Minimum Improvements provided by the Developer pursuant to paragraph (b)(v) above, but prior to disbursement of the TIF Loan to the Developer, the Authority's municipal advisor reasonably determines that all or a portion of the amount of the TIF Loan is not necessary to cover a gap in the amount of funds needed to construct the Minimum Improvements, the TIF Loan will be reduced to the amount necessary to cover the gap in the amount of funds needed to construct the Minimum Improvements.

(d) *Developer Fee.* The Developer further agrees that the aggregate amount paid to the Developer as a developer fee from proceeds of all sources of funding, and from the proceeds of permanent financing entered into upon completion of construction of the Minimum Improvements (but net of any portion of such fee reinvested to pay Minimum Improvements costs) shall not exceed \$1,000,000. Upon completion of the Minimum Improvements (and as a condition to issuance of a Certificate of Completion), the Developer shall provide to the Authority a report from an independent certified public accountant evidencing compliance with this paragraph. Upon request from the Authority from time to time (but no more often than annually), the Developer shall provide to the Authority a report certifying and evidencing compliance with this paragraph.

(e) *Information Regarding Surplus Cash.* Prior to April 1 of each year, the Developer shall submit to the Authority evidence of the Surplus Cash for the Minimum Improvements for the preceding fiscal year. In addition, if requested, the Developer agrees to provide to the Authority any background documentation reasonably related to the financial data, upon written request from the Authority or the Authority's municipal advisor.

(f) *Repayment of TIF Loan.* The Authority and the Developer agree that the principal of and accrued interest, if any, on the TIF Loan will be subject to repayment in full. The TIF Loan will be paid by the Developer over time through payments on the Developer Surplus Cash Note, payment of which shall commence May 1 of the first year in which Surplus Cash is available, with interest at a rate of four

percent (4.0%) per annum accruing on a simple basis and shall continue until all principal of and interest on the Developer Surplus Cash Note is paid in full. Each year, on May 1, the Developer shall repay the principal of and interest on the TIF Loan in an amount equal to one hundred percent (100%) of Surplus Cash. The Developer shall continue to make principal and interest payments on the TIF Loan each year on May 1 until the TIF Loan is repaid in full. The principal of the TIF Loan must be paid in full on the later of (i) thirty (30) years following the Closing Date or (ii) the maturity of any permanent mortgage loan obtained by the Developer to finance the Minimum Improvements.

(g) *Sale of Property.* The Developer shall repay the principal amount and interest, if any, on the TIF Loan in full upon a sale of the Minimum Improvements or refinancing of any mortgage loan obtained by the Developer to finance the Minimum Improvements. However, in the event that any mortgage loan obtained by the Developer is refinanced, the Authority may, in its sole discretion, review the terms of such refinancing and consent to the refinancing without requiring the payment in full of the outstanding principal amount and interest, if any, on the TIF Loan. In addition, the Authority hereby consents to the repayment in full of the Developer's construction financing for the Minimum Improvements, upon the completion of the Minimum Improvements, and the placement of permanent financing on the Development Property and agrees that such actions by the Developer shall not constitute a sale or refinancing requiring approval of the Authority hereunder. Additionally, a conveyance of any membership or partnership interest in the Developer pursuant to the partnership agreement of the Developer shall not constitute a sale of the Development Property.

Section 3.4. Grants.

(a) The City was awarded a Local Housing Incentives Account Grant in the amount of \$210,500 from Metropolitan Council (the "LHIA Grant"). The City has approved the Metropolitan Livable Communities Act Grant Agreement associated with the LHIA Grant (the "LHIA Grant Agreement"). The LHIA Grant may be used for [land/property/structure acquisition, demolition, site preparation (such as water, sewer, roads), general construction, interior and exterior finishing, roofing, electrical, plumbing, heating and ventilation, as more fully described in the LHIA Grant Agreement.] The Developer covenants to comply with all of the requirements of the LHIA Grant Agreement. The City will loan the Developer the proceeds of the LHIA Grant and the Developer will enter into a loan agreement with the City and repayment of the loan will be secured by a promissory note and a subordinate mortgage from the Developer.

(b) The City was awarded a Livable Communities Demonstration Account Grant in the amount of \$1,876,500 from Metropolitan Council (the "LCDA Grant"). The City has approved the Metropolitan Livable Communities Act Grant Agreement associated with the LCDA Grant (the "LCDA Grant Agreement"). The LCDA Grant may be used for site acquisition, site preparation (grading and demolition), stormwater management, and a sidewalk along Bren Road, as more fully described in the LCDA Grant Agreement. The Developer covenants to comply with all of the requirements of the LCDA Grant Agreement applicable to the Minimum Improvements. The Developer covenants to comply with all of the requirements of the LCDA Grant Agreement. The City will loan the Developer and/or an affiliate of the Developer the proceeds of the LCDA Grant and the Developer will enter into a Sub-Recipient Funding Agreement with the City. The LCDA Grant will be split between the Minimum Improvements (receiving 22% of LCDA Grant) and the Market Rate Apartments (receiving 78% of LCDA Grant) unless otherwise agreed to by the City and the Authority.

Section 3.5. Payment of Administrative Costs. The Authority acknowledges that the Developer has deposited with the City and the Authority \$15,000. The City and the Authority will use such deposit to pay "Administrative Costs," which term means out-of-pocket costs

incurred by the Authority together with staff costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Development Property. At the Developer's request, but no more often than monthly, the Authority and the City will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority and the City determine that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice from the Authority and the City containing evidence of the unpaid costs. If any balance of funds deposited remains upon the issuance of the Certificate of Completion pursuant to Section 4.4 hereof, the Authority shall promptly return such balance to the Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by the Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs incurred through the effective date of termination.

Section 3.6. Exemption from Business Subsidy Act. The parties agree and understand that all financial assistance provided by the Authority under this Agreement represents assistance for housing, and accordingly is not subject to the Business Subsidy Act.

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ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property substantially in accordance with the approved Construction Plans. The Developer agrees that, at all times prior to the Maturity Date, it will operate and maintain, preserve and keep the Minimum Improvements or cause the improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority will have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Developer will submit to the Authority the Construction Plans. The Construction Plans must provide for the construction of the Minimum Improvements and must be in substantial conformity with the Redevelopment Plan, this Agreement, and all applicable State and local laws and regulations. The Authority Representative will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer from all sources (including the Developer's equity) for construction of the Minimum Improvements; and (vi) no Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the Authority Representative will relieve the Developer of the obligation to comply with the terms of this Agreement or of the Redevelopment Plan, applicable federal, State, and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority Representative will constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, the Construction Plans will be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. The rejections must set forth in detail the reasons therefor, and must be made within twenty (20) days after the date of their receipt by the Authority. If the Authority Representative rejects any Construction Plans in whole or in part, the Developer must submit new or corrected Construction Plans within twenty (20) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans will continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative's approval will not be unreasonably withheld, delayed or conditioned. Said approval will constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection must be made within twenty (20) days after receipt of the notice of such change prior to the

commencement of construction and within ten (10) days after commencement of construction. The Authority's approval of any Material Change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Minimum Improvements must be constructed in accordance with the following schedule: commence construction on or about July 1, 2019 and complete construction by August 30, 2020. Construction is considered to be commenced upon the beginning of physical improvements beyond grading.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority and the City. 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 promptly begin and diligently prosecute to completion the redevelopment of the Development Property through the construction of the Minimum Improvements thereon, and that, subject to Unavoidable Delays, such construction shall be commenced and completed within the period specified in this Section 4.3. Until construction of the Minimum Improvements has been completed, the Developer shall make reports, in such detail and at such times as may reasonably be requested by the Authority and the City, as to the actual progress of the Developer with respect to such construction.

Section 4.4. Certificate of Completion.

(a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements (including the dates for completion thereof), and delivery of the developer fee evidence described in Section 3.3(e) hereof, the Authority will furnish the Developer with a Certificate of Completion in substantially the form attached hereto as EXHIBIT B. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) The Certificate of Completion provided for in this Section 4.4 shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4, the Authority shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

(c) The construction of the Minimum Improvements will be considered substantially complete when the Developer has received a certificate of occupancy from the City for all Rental Housing Units.

Section 4.5. Affordable Housing Covenants.

(a) The Developer shall cause all fifty-five (55) of the Rental Housing Units in the Minimum Improvements to be rent-restricted and income-restricted in accordance with the Tax Credit Law, all as further described in the Declaration attached hereto as EXHIBIT C. Notwithstanding anything to the contrary in the Tax Credit Law, such restrictions shall remain in effect for the later of (i) the thirty (30) year period described in the Declaration; or (ii) the repayment of the TIF Loan. On or before the Closing Date, the Developer shall deliver the executed Declaration to the Authority in recordable form.

(b) Of the 55 Rental Housing Units that are restricted, between ten (10) and twelve (12) Rental Housing Units must be one-bedroom units; twenty-eight (28) and thirty (30) Rental Housing Units must be two-bedroom units; and between fourteen (14) and sixteen (16) Rental Housing Units must be three-bedroom units. Of the 55 Rental Housing Units, four (4) will be permanent supportive housing units, two (2) two-bedroom units will be available for Section 8 tenants, and two (2) three-bedroom units will be available for Section 8 tenants.

(c) The Authority and its representatives shall have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice, to inspect, examine and copy all books and records of Developer and its successors and assigns relating to the Developer's satisfaction of the covenants described in this Section and in the Declaration.

(d) During the term of the Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant's status as such a certificate/voucher holder.

(e) The Developer will immediately notify the Authority if at any time during the term of the Declaration the dwelling units in the Minimum Improvements are not occupied or available for occupancy as required by the terms of the Declaration.

(f) In consideration for the issuance of the TIF Loan, the Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Minimum Improvements.

(g) This Agreement and the Declaration requires the Developer to cause one hundred percent (100%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT D. Recent Federal legislation has introduced an income-averaging option for the low-income housing tax credit program. This legislation allows projects to accept residents with higher average median incomes as long as the overall average of the income of tenants in the project does not exceed 60% of the area median income, which provides LIHTC projects the ability to serve tenants with a greater range of incomes. Minnesota Housing does not currently allow for income-averaging. However, if in the future Minnesota Housing allows the income-averaging option for the low-income housing tax credit program to be used for the Minimum Improvements, the Developer may opt to use the income-averaging methodology; provided, however, that the Developer must cause at least forty percent (40%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income in order to comply with Section 469.1763, subdivision 3 of the TIF Act. The Developer must provide the Authority at least thirty (30) days' notice before opting into the income-averaging methodology and will cooperate with the Authority to revise this Agreement and the Declaration, if necessary.

Section 4.6. Affordable Housing Reporting. At least annually, no later than April 1 of each year commencing on the April 1 first following the issuance of the Certificate of Completion for the Minimum

Improvements, the Developer shall provide a report to the Authority evidencing that the Developer complied with the income affordability covenants set forth in Section 4.5 hereof during the previous calendar year. The income affordability reporting shall be on the form entitled “Tenant Income Certification” from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable, any similar form. The Authority may require the Developer to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the Developer shall send affordable housing reports to the Authority until the Declaration terminates.

Section 4.7. Records. The Authority, the City, the legislative auditor, and the State auditor’s office, through any authorized representatives, shall have the right after reasonable notice to inspect, examine and copy all books and records of the Developer relating to the construction of the Minimum Improvements. The Developer shall maintain such records and provide such rights of inspection for a period of six (6) years after issuance of the Certificate of Completion for the Minimum Improvements.

Section 4.8. Property Management Covenant. The Developer shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assaultive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a “Violation”), the Developer agrees and understands that the following procedures shall apply:

(a) After a first Violation regarding any unit in the Minimum Improvements, the City police department will send notice to the Developer and the property manager requiring the Developer and the property manager to take steps necessary to prevent further Violations.

(b) If a second Violation occurs regarding the same tenancy within twelve (12) months after the first Violation, the City police department will notify the Developer and the property manager of the second Violation. Within ten (10) days after receiving such notice, the Developer or the property manager must file a written action plan with the Authority and the City police department describing steps to prevent further Violations.

(c) If a third Violation occurs regarding the same tenancy within twelve (12) continuous months after the first Violation, the City police department will notify the Developer and the property manager of the third Violation. Within ten (10) days after receiving such notice, the Developer or the property manager shall commence termination of the tenancy of all occupants of that unit. The Developer shall not enter into a new lease agreement with the evicted tenant(s) for at least one (1) year after the effective date of the eviction.

(d) If the Developer or the property manager fails to comply with any the requirements in this Section, then the Authority may provide at least ten (10) days’ written notice to the Developer and the property manager directing attendance at a meeting to determine the cause of the continuing Violations in the Minimum Improvements and provide an opportunity for the Developer and the property manager to explain their failure to comply with the procedures in this Section.

(e) If the Developer and property manager fail to respond to the written notice under paragraph (d) above, or at least two (2) additional Violations occur within the next twelve (12) month period after the date of the notice under paragraph (d) above, then the Authority may direct the Developer to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Developer but approved by the Authority. The parties agree and understand that appointment of any replacement manager may also be subject to consent by the Tax Credit Investor and the Holder of one (1) or more of the Other Loans on the Development Property.

Section 4.9. Construction of Site Improvements.

(a) In consideration of the assistance provided to the Developer by the Authority, subject to the limitations set forth in Sections 4.9 and 4.10, the Developer agrees that it will install or cause to be installed, in conformance with City standards and specifications, the Site Improvements on the Development Property or adjacent to the Development Property, as applicable, as described in EXHIBIT D attached hereto.

(b) When constructing the Site Improvements, the Developer is responsible for compliance with all conditions outlined in Resolution No. 2018-_____ and Resolution No. 2018-_____.

(c) Building permits for the Site Improvements will be issued only in conformance with conditions in Resolution 2018-_____. Unless otherwise authorized by the City in writing, no certificates of occupancy will be provided until the following is completed:

- (i) Site grading is completed and approved by the City;
- (ii) All public utilities have been tested, approved, and accepted by the City Engineer;
- (iii) All curbing is installed and backfilled;
- (iv) The first lift of bituminous is in place and approved by the City; and
- (v) All required fees have been paid in full.

Upon completion of the Site Improvements, the City shall issue a certificate of occupancy. The receipt of a certificate of occupancy for one or more of the Site Improvements shall confirm that the conditions referred to in this Section 4.8(c) have been met for the applicable Site Improvement unless so stated in the certificate of occupancy.

Section 4.10. Site Improvements Construction Addendum. Prior to the issuance of any permits, the City and the Developer shall enter into a mutually agreeable Construction Addendum containing (i) timeframes for the construction of the Site Improvements; (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; and (vi) final design details.

Section 4.11. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Developer will owe approximately \$5,000 per unit in park dedication fees.

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ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Developer or the general contractor engaged by the Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Workers' compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Termination Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Comprehensive, general public liability insurance, including personal injury liability, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$2,000,000 and shall be endorsed to show the City and Authority as additional insureds.

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, if any, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may

maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding \$250,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

(e) The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements, regardless of whether the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Developer.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the Authority and the obligations of the Developer with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage allowed pursuant to Article VII hereof.

(The remainder of this page is intentionally left blank.)

ARTICLE VI

Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment described in this Agreement. The Developer understands that, while the Development Property itself is not located within the TIF District or any other tax increment financing district, a purpose of the assistance under this Agreement is to increase the property tax base of the City. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority through the Termination Date to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys' fees. Notwithstanding the foregoing, nothing in this Agreement in any way limits or prevents the Developer from contesting the assessor's proposed market values for the Development Property or the Minimum Improvements.

Section 6.2. Review of Taxes. The Developer agrees that prior to the Termination Date, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (A) willful destruction of the Development Property or any part thereof; or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof. The Developer also agrees that it will not, prior to the Termination Date, apply for a deferral of property tax on the Development Property pursuant to any law, or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the property would result in the Development Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the City or Authority in accordance with this Agreement). The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the estimated market value for the Development Property reduced. The Authority and the Developer acknowledge and understand that the Developer intends to seek the "class 4d" property classification rate for affordable rental properties under Minnesota Statutes, Section 273.13 for the Development Property at all times during the term of this Agreement.

Section 6.3. Use of Tax Increment. The parties agree and understand that the Authority expects to finance the TIF Loan under Section 3.3 hereof. However, the Authority may use any funds available to the Authority to fund the TIF Loan, and may also, in its discretion, approve an interfund loan to apply Tax Increment toward repayment of other funds used for those purposes. The Developer does not have any title or interest in Tax Increment, except to the extent the Authority elects to use Tax Increment to fund the TIF Loan. Notwithstanding the foregoing, the Authority shall not finance the TIF Loan with any source which negatively impacts the ability of the Developer to obtain Tax Credits to assist in financing the Minimum Improvements.

(The remainder of this page is intentionally left blank.)

ARTICLE VII

Financing

Section 7.1. Financing.

(a) Before the Closing Date, the Developer shall submit to the Authority evidence of receipt of a reservation of low income tax credits under the Tax Credit Law from the Minnesota Housing Finance Agency, together with commitments for other financing (including without limitation grants the Other Loans) which, together with committed equity for such construction, is sufficient for acquisition of the Development Property construction of the Minimum Improvements. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in paragraph (a) then the Authority shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of financing within ten (10) days after such rejection or such longer period as is reasonably necessary to secure additional financing.

(The remainder of this page is intentionally left blank.)

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Redevelopment. The Developer represents and agrees that its purchase of the Development Property and its other undertakings pursuant to the Agreement are, and will be used, for the purpose of redevelopment of the Development Property by the Developer and not for speculation in land holding.

Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement. The Developer represents and agrees that until the Termination Date:

(a) Except as specifically described in this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a “Transfer”), without the prior written approval of the Authority’s Board of Commissioners and the City Council. The term “Transfer” does not include (i) an assignment of this Agreement and/or the Development Property to a partnership in which the Developer or an entity wholly owned by the Developer is the general partner; (ii) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Developer or any successor in interest to the Development Property or to construct the Minimum Improvements or component thereof; (iii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Minimum Improvements; or (iv) a transfer of any ownership interest in the Developer in accordance with the terms of the Developer’s partnership agreement. The Developer may effect a Transfer of the Development Property to an Affiliate without approval by the Authority and the City provided that the Developer submit to the Authority and the City an assignment and assumption executed by the Affiliate in accordance with paragraph (b)(2) below.

(b) If the Developer seeks to effect a Transfer, the Authority and the City shall be entitled to require as conditions to such Transfer that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority and the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer as to the portion of the Development Property to be transferred; and

(2) Any proposed transferee, by instrument in writing satisfactory to the Authority and the City and in form recordable in the public land records of the County, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority and the City, have expressly assumed all of the obligations of the Developer under this Agreement as to the portion of the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Developer is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority and the City) deprive the Authority and the City of any rights or remedies or controls with respect to the Development Property, the Minimum Improvements or any part thereof or the construction of the Minimum Improvements; it being the

intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally, or practically, to deprive or limit the Authority or the City of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Development Property that the Authority or the City would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority and the City to the contrary, no such transfer or approval by the Authority and the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the Development Property, from any of its obligations with respect thereto; and

(3) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII shall be in a form reasonably satisfactory to the Authority and the City.

(c) If the conditions described in paragraph (b) above are satisfied, then the Transfer will be approved and the Developer shall be released from their obligations under this Agreement, as to the portion of the Development Property that is transferred, assigned, or otherwise conveyed, unless the parties mutually agree otherwise. Notwithstanding anything to the contrary herein, any Transfer that releases the Developer from its obligations under this Agreement (or any portion thereof) shall be approved by the Authority's Board of Commissioners and the City Council, which approval shall not be unreasonably withheld, conditioned, or delayed. If the Developer remains fully bound under this Agreement notwithstanding the Transfer, as documented in the transfer instrument, the Transfer may be approved by the Authority Representative. The provisions of this paragraph (c) apply to all subsequent transferors.

(d) Except as otherwise provided herein, upon the sale of the Minimum Improvements, the principal amount of the TIF Note, and interest, if any, shall be due and payable in full in accordance with Section 3.3(f) hereof.

Section 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Authority and the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and the City and the governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for willful or negligent misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Authority and the City and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties"), now or forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) Except for any negligence of the Indemnified Parties (as defined in paragraph (b) above), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the

Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Minimum Improvements due to any act of negligence of any person.

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

(The remainder of this page is intentionally left blank.)

ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within such thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) The Developer, the City, or the Authority fails to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or

(b) The Developer:

(i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

(ii) makes an assignment for benefit of its creditors;

(iii) admits in writing its inability to pay its debts generally as they become due; or

(iv) is adjudicated as bankrupt or insolvent.

Section 9.2. Remedies on Default.

(a) Whenever any Event of Default referred to in Section 9.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible. The Authority agrees that it will provide notice and an opportunity to cure any Event of Default to the Tax Credit Investor and that it will accept such cure as though it was made by the Developer.

(b) Upon an Event of Default by the Developer, the Authority or the City may (i) demand repayment of the outstanding principal and accrued interest on the TIF Loan from the Developer, and (ii) take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

(c) Upon an Event of Default, the non-defaulting party may take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority, the City, or the Developer is intended to be exclusive of any other available remedy or

remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing 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. In order to entitle the Authority or the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Attorneys' Fees. Whenever any Event of Default occurs and if the City or the Authority employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the City or the Authority prevails in the action, the Developer agrees that it will, within ten (10) days of written demand by the City or the Authority, pay to the City or the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City and the Authority.

(The remainder of this page is intentionally left blank.)

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority and City Representatives Not Individually Liable. The Authority, the City, and the Developer, to the best of their respective knowledge, represent and agree that no board member, city council member, official, or employee of the Authority or the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Authority or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or the City or for any amount which may become due to the Developer or its successors or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, State and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that until the Termination Date, the Developer, and such successors and assigns, shall devote the Development Property to the operation of the Minimum Improvements for uses described in the definition of such term in this Agreement and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any 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.

Section 10.5. 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.

Section 10.6. 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, overnight mail, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at Mariner Affordable Apartments Limited Partnership, 475 Cleveland Avenue North, Suite 325, Saint Paul, MN 55104, Attn: Becky Landon, with a copy to Newport Partners LLC, 9 Cushing, Suite 200, Irvine, CA 92618, Attn: Monique Hastings, with a copy to any permitted assignee pursuant to an approved Transfer, at the address indicated in the Transfer approval, and to the Tax Credit Investor;

(b) in the case of the Authority, is addressed to or delivered personally at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attn: Community Development Director; and

(c) in the case of the City, is addressed to or delivered personally at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attn: City Manager;

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

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The Authority may record this Agreement and any amendments thereto with the County Recorder or Registrar of Titles of the County, as the case may be. The Developer shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement approved by the Authority, the City, and the Developer.

Section 10.10. Authority and City Approvals. Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative and any approval required by the City under this Agreement may be given by the City Representative.

Section 10.11. Termination. This Agreement terminates on the Termination Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Termination Date.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed in its name and behalf on or as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY IN
AND FOR THE CITY OF MINNETONKA,
MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 2018, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 2018, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the City.

Notary Public

**MARINER AFFORDABLE APARTMENTS
LIMITED PARTNERSHIP**, a Minnesota limited
partnership

By: _____
Its: General Partner

By: _____
Its: Chief Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2018, by _____, the Chief Manager of [GENERAL PARTNER], the general partner of Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership, on behalf of the Developer.

Notary Public

EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

Parcel A:

Lots 1 and 3, Block 1, Bren Trail, Hennepin County, Minnesota.

Together with the benefits contained in Declaration of Reciprocal Easements dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Parcel B:

Lot 2, Block 1, Bren Trail, Hennepin County, Minnesota.

Together with the benefits contained in Declaration of Reciprocal Easements dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Abstract Property

EXHIBIT B

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership (the "Developer"), has fully complied with its obligations under Articles III and IV of that document titled "Contract for Private Development," dated _____, 2018 (the "Contract"), between the Economic Development Authority in and for the City of Minnetonka, Minnesota and the Developer, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that the Developer is released and forever discharged from its obligations to construct the Minimum Improvements under Articles III and IV of the Contract, but all other covenants under the Contract remain in full force and effect.

Dated: _____, 20__.

**ECONOMIC DEVELOPMENT AUTHORITY IN
AND FOR THE CITY OF MINNETONKA,
MINNESOTA**

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20__, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

This document was drafted by:

KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 337-9300

EXHIBIT C

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “Declaration”) dated _____, 2018, by MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership (the “Developer”), is given to the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated _____, 2018, filed _____, 20____ in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County as Document No. _____ (the “Contract”), between the Authority and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of 55 housing units of rental housing on the property described in EXHIBIT A attached hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

WHEREAS, Section 4.5 of the Contract requires that the Developer cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.5 of the Contract; and

WHEREAS, the Developer intends, declares, and covenants that the restrictive covenants set forth herein shall be and are covenants running with the Property for the term described herein and binding upon all subsequent owners of the Property for such term, and are not merely personal covenants of the Developer; and

WHEREAS, capitalized terms in this Declaration have the meaning provided in the Contract unless otherwise defined herein.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer agrees as follows:

1. Term of Restrictions.

(a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof and the Rental Restriction set forth in Section 4 hereof shall commence at the end of the first taxable year of the credit period for the Property under the Tax Credit Law for all rental units on the Property. The period from commencement to termination is the “Qualified Project Period.”

(b) Termination of Declaration. This Declaration shall terminate upon the date that is thirty (30) years after the commencement of the Qualified Project Period.

(c) Removal from Real Estate Records. Upon termination of this Declaration, the Authority shall, upon request by the Developer or its assigns, file any document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.

2. Project Restrictions.

(a) The Developer represents, warrants, and covenants that:

(i) All leases of units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) shall contain clauses, among others, wherein each individual lessee:

(1) Certifies the accuracy of the statements made in its application and Eligibility Certification (as defined in Section 3(a)(ii) hereof); and

(2) Agrees that the family income at the time the lease is executed shall be deemed substantial and material obligation of the lessee's tenancy, that the lessee will comply promptly with all requests for income and other information relevant to determining low or moderate income status from the Developer or the Authority, and that the lessee's failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the lessee's tenancy.

(ii) The Developer shall permit any duly authorized representative of the Authority to inspect the books and records of the Developer pertaining to the income of Qualifying Tenants residing in the Project.

3. Occupancy Restrictions.

(a) Tenant Income Provisions. The Developer represents, warrants, and covenants that:

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, one hundred percent (100%) of the Rental Housing Units shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean those persons and families who shall be determined from time to time by the Developer to have combined adjusted income that does not exceed sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the "Next Available Unit Rule") must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Rental Housing Unit will not continue to be treated as a Qualifying Unit. The annual recertification and Next Available Unit Rule requirements of this paragraph 3(a)(i) shall not apply to a given year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. In addition, of the Rental Housing Units held vacant and available for occupancy by Qualifying Tenants, 4 shall be permanent supporting housing units for families who have experienced long-term homelessness.

(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant shall be required annually to sign and deliver to the Developer a Certification of Tenant Eligibility substantially in the form attached as EXHIBIT B hereto, or in such other form as may be approved by the Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, such person shall be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that such tenant continues to be a Qualifying Tenant within the meaning of Section 3(a)(i) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year.

(iii) Lease. The form of lease to be utilized by the Developer in renting any units in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Eligibility Certification.

(iv) Annual Report. The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before January 31 of each year, a certificate substantially in the form of EXHIBIT hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the dwelling units of the Project which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of such certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing such certificate after due inquiry, all such units were rented or available for rental on a continuous basis during such year to members of the general public and that the Developer was not otherwise in default under this Declaration during such year.

(v) Notice of Non-Compliance. The Developer will immediately notify the Authority if at any time during the term of this Declaration the dwelling units in the Project are not occupied or available for occupancy as required by the terms of this Declaration.

(b) Section 8 Housing. During the term of this Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor, because of such prospective tenant’s status as such a certificate/voucher holder.

4. Rental Restrictions. The Developer represents, warrants, and covenants that the maximum gross rent for all units occupied by Qualifying Tenants shall not exceed thirty percent (30%) of the sixty percent (60%) income limitation, all in accordance with the Tax Credit Law.

5. Transfer Restrictions. The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any Transfer (as defined in the Contract) that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Developer under this Declaration, including this Section 5, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the “Assumption Agreement”). The Developer shall deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [Intentionally omitted.]

7. Enforcement.

(a) The Developer shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Developer regarding the Project with respect to the incomes of Qualifying Tenants.

(b) The Developer shall submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial continuing compliance with the provisions specified in this Declaration.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements (as defined in the Contract) on the Property, hereby agrees and consents that the Authority shall be entitled, upon any breach of the provisions of this Declaration and the Developer's failure to cure such breach within the cure periods described in Section 9.1 of the Contract, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Developer understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Contract.

8. Indemnification. The Developer hereby indemnifies, and agrees to defend and hold harmless, the Authority from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by the Developer to comply with the terms of this Declaration, or on account of any representation or warranty of the Developer contained herein being untrue.

9. Agent of the Authority. The Authority shall have the right to appoint an agent to carry out any of its duties and obligations hereunder, and shall inform the Developer of any such agency appointment by written notice.

10. Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

11. Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent. The initial addresses for notices and other communications are as follows:

To the Authority: Economic Development Authority in and for the
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345
Attention: Community Development Director

To the Developer: Mariner Affordable Apartments Limited Partnership
475 Cleveland Avenue North, Suite 325
Saint Paul, MN 55104
Attention: Becky Landon

With a copy to:

Newport Partners LLC
9 Cushing, Suite 200
Irvine, CA 92618
Attention: Monique Hastings

So long as the Tax Credit Investor is a partner in the Developer, with a copy to:

Attention: _____

12. Governing Law. This Declaration shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

13. Attorneys' Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Developer to enforce the provisions of this Declaration, the Developer agrees to pay the reasonable attorneys' fees and other reasonable expenses paid or incurred by the Authority in connection with such action.

14. Declaration Binding. This Declaration and the covenants contained herein shall run with the real property comprising the Project and shall bind the Developer and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits shall inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

15. Relationship to Tax Credit Law Requirements. Notwithstanding anything to the contrary, during any period while at least 55 units in the Property are subject to income and rent limitations under the Tax Credit Law, evidence of compliance with such Tax Credit Law requirements filed with the Authority at least annually will satisfy any requirements otherwise imposed under this Declaration. During any portion of the Qualified Project Period as defined herein when the Tax Credit Law income and rent restrictions do not apply to the Property, this Declaration controls.

16. Notice of Sale. In consideration for the issuance of the TIF Loan, the Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Project.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership

By: _____
Its: General Partner

By: _____
Its: Chief Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2018, by _____, the Chief Manager of [GENERAL PARTNER], the general partner of Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership, on behalf of the Developer.

Notary Public

This document was drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

This Declaration is acknowledged and consented to by:

**ECONOMIC DEVELOPMENT AUTHORITY IN
AND FOR THE CITY OF MINNETONKA,
MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 2018, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 2018, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION

[Insert legal description]

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATION OF TENANT ELIGIBILITY

Project: [Address]

Developer:

Unit Type: _____ 1 BR _____ 2 BR _____ 3 BR

1. I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

Name of Members of the Household	Relationship To Head of Household	Age	Place of Employment
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Income Computation

2. The anticipated income of all the above persons during the 12-month period beginning this date,

(a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but

(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; special pay to a

serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: \$_____.

3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:

(a) the total value of all such assets owned by all such persons: \$_____;

(b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: \$_____; and

(c) the amount of such income which is included in income listed in item 2: \$_____.

4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _____

No _____

(b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes _____

No _____

THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

Head of Household

Spouse

FOR COMPLETION BY OWNER
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

(a) Enter amount entered for entire household in 2 above: \$ _____

(b) If the amount entered in 3(a) above is greater than \$5,000, enter the greater of (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in 3(a): \$ _____

(c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): \$ _____

2. The amount entered in 1(c) is less than or equal to _____ 60% of median income for the area in which the Project is located, as defined in the Declaration. 60% is necessary for status as a "Qualifying Tenant" under Section 3(a) of the Declaration.

3. Rent:

(a) The rent for the unit is \$ _____.

(b) The amount entered in 3(a) is less than or equal to the maximum rent permitted under the Declaration.

4. Number of apartment unit assigned: _____.

5. This apartment unit was ____ was not ____ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to 60% of Median Income in the area.

6. Check as applicable: _____ Applicant qualifies as a Qualifying Tenant (tenants of at least ____ units must meet), or _____ Applicant otherwise qualifies to rent a unit.

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS NO KNOWLEDGE OF ANY FACTS WHICH WOULD CAUSE HIM/HER TO BELIEVE THAT ANY OF THE INFORMATION PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.

NAME OF OWNER, a _____

By _____
Its _____

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATE OF
CONTINUING PROGRAM COMPLIANCE

Date: _____, _____.

The following information with respect to the Project located at _____, Minnetonka, Minnesota (the "Project"), is being provided by Mariner Affordable Apartments Limited Partnership (the "Developer") to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants dated _____, 2018 (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 27. The total number of such units occupied is _____.

(B) The following residential units (identified by unit number) have been designated for occupancy by "Qualifying Tenants," as such term is defined in the Declaration (for a total of _____ units):

1 BR Units:

2 BR Units:

3 BR Units:

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since _____, 20____, the date on which the last "Certificate of Continuing Program Compliance" was filed with the Authority by the Developer:

Unit Number	Previous Designation of Unit (if any)	Replacing Unit Number
_____	_____	_____
_____	_____	_____

(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

	Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	Rent
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
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45							
46							
47							
48							
49							
50							
51							
52							
53							
54							
55							

(E) The Developer has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Developer in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since _____, _____, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer.

(F) In renting the residential units in the Project, the Developer has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (D) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least ___ months.

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and no matters have come to the attention of the Developer which would indicate that any of the information provided herein, or in any “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Developer certifies that as of the date hereof at least ___ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.

(J) The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Developer, on _____, 2018.

**MARINER AFFORDABLE APARTMENTS
LIMITED PARTNERSHIP, a Minnesota limited
partnership**

By: _____
Its: General Partner

By: _____
Its: Chief Manager

EXHIBIT D

SITE IMPROVEMENTS

The following improvements are the Site Improvements required under this Agreement:

- Surveying and staking;
- Surface improvements, including but not limited to streets, curbs, sidewalks and trails;
- Water main;
- Sanitary sewer;
- Storm sewer and stormwater management facilities;
- Lot and block monuments;
- Gas, electric, telephone and cable lines;
- Site grading;
- Landscaping;
- Street lighting;
- Street signs; and
- _____

EXHIBIT E

DEVELOPER SURPLUS CASH NOTE (Project – Mariner Multifamily Housing in Minnetonka, Minnesota)

FOR VALUE RECEIVED, MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership (“**Maker**”) promises to pay to ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (“**Payee**”) the sum of Five Hundred Fifty-Six Thousand One Hundred Seventy-Nine Dollars (\$556,179), that was advanced pursuant to that certain Contract for Private Development, dated _____, 2018 (the “**Development Contract**”), between the Maker and the Payee, with interest at the rate of four percent (4.0%) per annum accruing on a simple basis from _____ and payable annually, commencing May 1, 20____, and thereafter on the first day of May until the entire indebtedness has been paid. Any interest not so paid shall not create any default in the terms of this Developer Surplus Cash Note, but shall accrue on a simple basis and be payable in full on the maturity date hereof. In any event, the balance of principal, if any remaining unpaid, plus accrued interest, shall be due and payable on May 1, 20__ (the “**Maturity Date**”). (The definition of any capitalized term or word used herein but not defined shall have the meaning given such term in that certain _____ (the “**Borrower’s Regulatory Agreement**”), and/or the Borrower’s Security Instrument, as defined below.)

This Developer Surplus Cash Note is subject to the following terms and conditions:

1. By April 1 of each year, beginning April 1, 20__, and continuing until the Maturity Date, the Maker shall deliver to the Payee a certificate signed by an officer of the Maker’s managing member providing the calculation of Surplus Cash available for distribution by the Maker. The Payee requires scheduled payments to be made on each May 1, commencing May 1, 20__ (each a “**Payment Date**”). Payments shall be payable by the Maker on each Payment Date from 100% of Surplus Cash, as provided in Section 3.3 of the Development Contract, and shall continue until principal of and interest on this Note is paid in full.

2. Prior to the Maturity Date, the entire amount due and owing under this Developer Surplus Note shall be due and payable in full on the occurrence of any of the following events: (a) the voluntary or involuntary sale, transfer, or conveyance of any part of the Development Property or the Minimum Improvements (which shall not include liens securing the financing required for the acquisition and construction of the Development Property and the Minimum Improvements); (b) the voluntary or involuntary sale, transfer or conveyance of any part of the Developer (excluding the sale, transfer or conveyance of any part of the Developer to an affiliate of the Developer or a tax credit partner); or (c) the refinancing of the debt incurred to acquire the Development Property and construct the Minimum Improvements.

3. In the event that the maturity date of that certain [Mortgage], dated _____, 20__ in the principal amount of \$_____ made by Maker to _____, a _____ (“**Lender**”), in connection with a loan to Developer made by the _____ Lender in the amount of \$_____ (the “**Loan**”) and insured by [Insurer] for the Project referenced above (the “**Borrower’s Security Instrument**”) is extended and such extension is approved by _____ then in such event the Maturity Date shall automatically be extended to the extended maturity date of the Borrower’s Security Instrument without further consent of Payee.

4. Except as provided in Section 7 below, as long as [Insurer/Lender] is the insurer or holder of the Note secured by the Borrower's Security Instrument, payments due under this Developer Surplus Cash Note shall be payable only from 100% of Surplus Cash. The restriction on payment imposed by this Section shall not excuse any default caused by the failure of Maker to pay the indebtedness evidenced by this Developer Surplus Cash Note.

5. In the event the Loan secured by the Borrower's Security Instrument is paid in full and the Borrower's Security Instrument released of record, then the holder of this Developer Surplus Cash Note may, at its option, declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

6. Maker may pay any part or all of the principal of this Developer Surplus Cash Note on any interest payment date, provided no such prepayment of principal in any amount or any payment of interest shall be made except from 100% of Surplus Cash in accordance with the conditions prescribed in the Borrower's Regulatory Agreement.

7. Notwithstanding the provisions of Sections 4, 6, and 9, Maker may also make payments due hereunder from sources other than income of the Project or Assets.

8. Any unauthorized payments, as determined by [Insurer/Lender], shall be returned to the Project.

9. Except as permitted pursuant to Section 7 hereof, no prepayment of this Developer Surplus Cash Note shall be made until after final endorsement for mortgage insurance by [Insurer/Lender] of the Note, unless such prepayment is made from non-Project Assets.

10. This Developer Surplus Cash Note is non-negotiable.

11. Interest on this Developer Surplus Cash Note shall not be compounded as long as [Insurer] is the insurer or holder of the Note secured by the Borrower's Security Instrument.

12. Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Developer Surplus Cash Note.

13. The terms and provisions of this Developer Surplus Cash Note are also for the benefit of and are enforceable by [Insurer] against any party hereto, their successors and assigns. This Developer Surplus Cash Note shall not be modified or amended without the written consent of [Insurer/Lender].

14. This Developer Surplus Cash Note is not forgivable.

15. This Surplus Cash Note is a special, limited obligation of the Developer and is payable solely from Surplus Cash and any other revenues, funds, and assets available to the Developer to pay the principal of and interest on the Surplus Cash Note. Any recourse for a cause of action under this Note shall be payable solely from the sources of payment pledged hereunder.

IN WITNESS WHEREOF, Maker has executed this Developer Surplus Cash Note on this ____ day of _____, 20__.

MAKER:

**MARINER AFFORDABLE APARTMENTS
LIMITED PARTNERSHIP**

By: _____
Name: _____
Title: _____

Maker and Payee hereby certify that this is a bona fide transaction and that they fully understand all the requirements of this Developer Surplus Cash Note, and that no prepayment of principal or interest shall be made or accepted without evidence that [INSURER] has authorized such prepayment, unless such prepayment is from Surplus Cash or non-Project Assets as described in Sections 4, 6, and 9. If an unauthorized prepayment is made or accepted, the funds shall be returned to the Project immediately upon discovery.

Maker and Payee hereby certify that the statements and representations of fact contained in this instrument and all documents in connection with this transaction are, to the best of their knowledge, true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of [INSURER] in insuring the Loan, and may be relied upon by [INSURER] as a true statement of the facts contained therein.

MAKER:

**MARINER AFFORDABLE APARTMENTS
LIMITED PARTNERSHIP**

By: _____
Name: _____
Title: _____

**ECONOMIC DEVELOPMENT AUTHORITY IN
AND FOR THE CITY OF MINNETONKA,
MINNESOTA**

By _____
Its President

By _____
Its Executive Director



Memo

To: Alisha Gray, Economic Development and Housing Manager
From: Stacie Kvilvang & James Lehnhoff - Ehlers
Date: May 10, 2017
Subject: The Mariner Affordable Housing Project

The City of Minnetonka requested Ehlers to review the development pro forma and \$556,179 funding request from Newport Midwest, LLC for their proposal to construct a new 55-unit affordable housing project called The Mariner.

They are submitting a funding application to the Minnesota Housing Finance Agency (MHFA) in June 2017 to compete for an allocation of 9% Low-income Housing Tax Credits (LIHTC), which would provide nearly 64% of the project's funding needs. The applicant is requesting financial support from the City to close a financial gap and increase their competitiveness for a LIHTC allocation from MHFA. Locally committed funds make funding applications more competitive for MHFA's limited and highly competitive 9% LIHTC resources.

We have reviewed the project based on general industry standards for construction, land, and project costs; affordable rental rates and operating expenses; developer fees; available funding sources; underwriting criteria; and, project cash flow. Based on the submitted project information, the development pro forma assumptions are reasonable and within industry standards. The applicant has maximized the potential private mortgage, 9% tax credits and is seeking out other sources of funding. However, a demonstrated financial gap remains.

The Developer has requested \$556,179 from the City of Minnetonka to help fill the project funding gap. If the City chooses to fund this project, Ehlers recommends structuring the \$556,179 as a cash flow note with a 4% interest rate (based upon the maximum interfund loan rate the City can charge). The project would repay the principle and interest to the City from 100% of available cash flow after operating expenses and debt service on the first mortgage. Based on current projections, the cash flow note may be repaid to the City in approximately 14 years, with the City receiving approximately \$203,000 in interest payments during that period. The cash flow note structure helps the developer to have a competitive application and fill the funding gap while returning proceeds to the City over time that can be utilized for other affordable housing projects.

Please contact me at 651-697-8506 with any questions.

Policy Number 2.14
Tax Increment Financing Pooling Funds

Purpose of Policy: This policy establishes evaluation criteria that guide the city council in consideration of use of tax increment financing pooling funds

Introduction

Under the Minnesota Statutes Chapter 469, at least 75 percent of tax increment in a redevelopment tax increment financing (TIF) district must be spent on eligible activities within the district, leaving up to 25 percent of the funds to be pooled and therefore eligible to be spent outside of the district, but within the project area.

An exception to the pooling funds is for affordable rental housing. The city may allow the pooling allowance to be increased to 35 percent, which can then go to finance certain affordable housing projects. The project may be located anywhere in the city, and not limited to the project area. Each financed project must be rental housing that is eligible for federal low income housing tax credits. The amount of the assistance is also limited to any amount that satisfies tax credit rules.

The council is aware that use of such TIF pooled funds may be of benefit to the city and will consider requests for pooled funds subject to this council policy. The council considers the use of these funds to be a privilege, not a right.

It is the judgment of the council that TIF pooled funds is to be used on a selective basis. It is the applicant's responsibility to demonstrate the benefit to the city, and that they should understand that although approval may have been granted previously by the city TIF pooled funds for a similar project, the council is not bound by that earlier approval.

Evaluation Criteria

The city will use the following criteria when evaluating a development proposal requesting the use of TIF pooled funds:

- The project supports reinvestment in an identified village center and addresses the goals set out in the comprehensive plan for that center.
- Priority will be provided for projects that are within a "regional" village center or support transit areas.
- Weight will be given when the proportion of affordability is greater than what is customary in other tax increment financed projects in the city, overall affordability of 20% of units (usually at 60% AMI for rental).
- The project may request both tax increment financing and pooling dollars as long as the project has provided data that "but for" the additional pooling dollars, this project would not occur.

- If the project is receiving funds from other sources, the pooled dollars would be the last source utilized unless it impacts other sources.

Other Provisions

- A project will not normally be given financing approval until all city planning and zoning requirements have been met. Planning and zoning matters may be considered simultaneously with preliminary approval of the financing.
- The city is to be reimbursed and held harmless for any out-of-pocket expenses related to the TIF pooling funds, but not limited to, legal fees, financial analyst fees, bond counsel fees, and the city's administrative expenses in connection with the application. The applicant must execute a letter to the city undertaking to pay all such expenses.
- The applicant will be required to enter into a development agreement with the city outlining the terms of the use of TIF pooled funds.

Adopted by Resolution No. 2011-039
Council Meeting of May 16, 2011

Name of Project	Number of Affordable Units	Total Assistance (for affordable units)	Years of Affordability	Assistance per Unit, per Year	Affordability Level
Newport Partners (Mariner)	55	\$556,179 (est)	30	\$337	60% AMI
Dominium	482	\$7,809,000	30	\$540	60% AMI
Homes Within Reach (2004-2012 grant years)	35	\$1,740,000	99	\$502	80% AMI
The Ridge	52	\$1,050,000	30	\$673	60% AMI
Shady Oak Redevelopment	49	\$1,209,000 (est)	30	\$822	60%AMI
West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)	185	\$8,514,000	30	\$1,534	<i>Crown Ridge</i> —60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI
Beacon Hill (apartments)	62	\$2,484,000	25	\$1,602	50% AMI
Ridgebury	56	\$3,243,000	30	\$1,930	Initially--80% AMI income limit Now no
Glen Lake (St. Therese, Exchange)	43	\$4,800,000	30	\$3,721	60% AMI
Cedar Point Townhomes	9	\$512,000	15	\$3,792	50% AMI
Tonka on the Creek	20	\$2,283,000	30	\$3,805	50% AMI
At Home (Rowland)	21	\$2,500,000	30	\$3,968	50% AMI
Applewood Pointe	9	\$1,290,000	Initial Sale/Ongoing maximum %	\$4,777	80% AMI

updated 11/1/2018

**MINNETONKA HOUSING ACTION PLAN
FOR THE YEARS 2011-2020
METROPOLITAN LIVABLE COMMUNITIES ACT**

Introduction

In 1995, the Minnesota Legislature created the Livable Communities Act (LCA) to address the affordable and life-cycle housing needs in the Twin Cities metropolitan area. When the LCA was established, Minnetonka was one of the communities to sign up to participate in the program, negotiating a series of affordable and lifecycle housing goals with the Metropolitan Council for 1996-2010.

In August 2010, the Minnetonka City Council passed a resolution electing to continue participating in the LCA for the years 2011-2020. As part of that resolution, the city agreed to the following affordable and lifecycle housing goals:

New Affordable Units (rental and ownership)	246 to 378
New Lifecycle Units	375 to 800

The purpose of this Housing Action Plan is to outline the steps and tools that the city may use between the years 2011-2020 to help meet its LCA goals.

Overview of Minnetonka Housing Trends

Development Conditions

Minnetonka is a desirable community in which to live. Its natural environment, good schools, and homes on large lots contribute to the attraction of Minnetonka as a great place to live, work and play. As such, the demand for these community attributes has led to increased home values that have risen to the point that most single-family homes, despite their age, are not affordable to low and moderate income families. Land values, in particular, have increased substantially, making it difficult for developers to build affordable and mid-priced single-family homes.

Additionally, Minnetonka is a fully developed city with little vacant or underdeveloped land available for new housing development. With the combination of increasing land values and little developable land, most of the affordable homes in the community are rental units and for-sale condominiums and townhomes.

Aging of the Population

One of the biggest demographic shifts affecting this nation is the aging of the “baby boomer” generation (the large generation of people born between 1946 and 1964). This trend is already apparent in Minnetonka, where the median age in 2007 was 52 years old and 44% of the households were age 55 and older. As the population continues to

age, housing location, types, and proximity to public transit or transit alternatives will become increasingly important.

Preservation and Rehabilitation of the Existing Housing Stock

Much of Minnetonka's single-family housing stock was built between 1950 and 1970 while most multi-family housing was built in the 1970s and 1980s. As the housing stock continues to age, additional maintenance and repairs will be needed in order to keep homes in adequate condition and to preserve neighborhood character. Older homes may need to be updated in order to attract younger families to the community. Also, as both Minnetonka's population and housing age, older residents may require increased support through funding and in-kind service programs that will help them to maintain and make necessary repairs to ensure that their homes are safe, accessible, energy efficient, and habitable.

While not all older homes are affordable, older homes tend to be the more affordable housing stock in Minnetonka. The preservation of these homes is critical to providing homeownership opportunities for those who could normally not afford to live in the community.

Current Housing Conditions

In 2007, there were approximately 22,500 housing units in Minnetonka, of which 76.6% are owner-occupied. The housing stock includes a mix of the following types:

- 57% single-family
- 20% condominium/townhome
- 18% general-occupancy rental
- 5% senior (including independent and assisted living facilities)

Land values in Minnetonka continue to greatly influence the cost of housing. In Minnetonka, land accounts for about one-third of a home's total value, thus making up a large proportion of the home value. For a single-family home, the median value is \$326,850, with only about 1% of the single-family homes valued under \$200,000. The median value of Minnetonka's multi-family for-sale homes (i.e. condominiums and townhomes) in 2007 was \$200,000. Multi-family homes contribute to the bulk of the city's affordable for-sale housing stock because they are generally more affordable than Minnetonka's single-family detached homes.

The average monthly rents at Minnetonka's market-rate multi-family apartments are much higher than other market-rate apartments in the metropolitan area. In the 1st Quarter 2007, Minnetonka's average apartment rents were \$1,106 compared to the metropolitan area's average apartment rental rate of \$876. Additionally, only about 20% of Minnetonka rental units are considered affordable under the Metropolitan Council's definition.

Housing Goals

In addition to the city's agreement to add new affordable and lifecycle housing units as set out in the 2011-2020 affordable and lifecycle housing goals with the Metropolitan Council, the city's 2008 Comprehensive Plan update also provides a series of housing goals that the city will be working towards achieving. These goals include:

1. Preserve existing owner-occupied housing stock.
2. Add new development through infill and redevelopment opportunities.
3. Encourage rehabilitation and affordability of existing rental housing and encourage new rental housing with affordability where possible.
4. Work to increase and diversify senior housing options.
5. Continue working towards adding affordable housing and maintaining its affordability.
6. Link housing with jobs, transit and support services.

More details on these goals as well as action steps are provided in the 2008 City of Minnetonka Comprehensive Plan Update.

Tools and Implementation Efforts to Provide Affordable and Lifecycle Housing

Housing Assistance Programs

The purpose of housing assistance programs is to provide renters or homeowners help in obtaining a housing unit. These programs can be federal, state, or local programs. For the years 2011-2020, Minnetonka anticipates the following programs will be available to Minnetonka residents.

Section 8 Voucher Program

The Section 8 Voucher Program is funded by the U.S. Department of Housing and Urban Development (HUD), and administered by the Metro HRA on behalf of the city. The program provides vouchers to low income households wishing to rent existing housing units. The number of people anticipated to be served depends on the number of voucher holders wishing to locate in Minnetonka as well as the number of landlords wishing to accept the vouchers.

Shelter Plus Care

The Shelter Plus Care program is another federal program administered by the Metropolitan Council and sometimes the City of St. Louis Park. This program provides rental assistance and support services to those who are homeless with disabilities. There are a small number of these units (less than 10) in the city currently, and it is unlikely there will be any more added.

Minnesota Housing Finance Agency Programs

The Minnesota Housing Finance Agency (MHFA) offers the Minnesota Mortgage Program and the Homeownership Assistance Fund for people wishing to purchase a

home in Minnetonka. The Minnesota Mortgage Program offers a below market rate home mortgage option, while the Homeownership Assistance Fund provides downpayment and closing cost assistance. It is unknown how many people are likely to use these services as it seems to depend on what the market conditions are.

Homes Within Reach

Homes Within Reach, the local non-profit community land trust, acquires both new construction and existing properties for their program to provide affordable housing in the city. Using a ground lease, it allows the land to be owned by Homes Within Reach and ensures long-term affordability. Additionally, if rehabilitation is needed on a home, Homes Within Reach will rehabilitate the home before selling the property to a qualified buyer (at or less than 80% area median income). It is anticipated that approximately three to five homes per year will be acquired in Minnetonka as part of this program.

City of Minnetonka First Time Homebuyer Assistance Program

In 2010, the city levied for funds to begin a first time homebuyer assistance program. The program is anticipated to begin in 2011. General program details include funds for downpayment and closing costs of up to \$10,000, which would be structured as a 30 year loan and available to those at incomes up to 115% of area median income or those that can afford up to a \$300,000 loan. The number of households to be assisted depends on the amount of funding available for the program. Currently, this program is anticipated to be funded with HRA levy funds.

Employer Assisted Housing

Through employer assisted housing initiatives, Minnetonka employers can help provide their employees with affordable rental or home ownership opportunities. There are several options that employers can use to both increase the supply of affordable housing, as well as to provide their employees with direct assistance by:

- Providing direct down payment and closing cost assistance
- Providing secondary gap financing
- Providing rent subsidies

No employer assisted housing programs have been set up to date; however, it is a tool that the city has identified in the past as an opportunity for those who work in Minnetonka to live in Minnetonka.

Housing Development Programs

Housing development programs provide tools in the construction of new affordable housing units—both for owner-occupied units as well as rental units.

Public Housing

There are currently 10 public housing units, located in two rental communities, which offer affordable housing options for renters at incomes less than 30% of area median income. The Metropolitan Council and Minneapolis Public Housing Authority administer

the public housing program on behalf of the city. It is not anticipated that more public housing units will be added to the city.

HOME Program

HOME funds are provided through Hennepin County through a competitive application process. The city regularly supports applications by private and non-profit developers that wish to apply for such funds. Homes Within Reach has been successful in the past in obtaining HOME funds for work in Minnetonka and suburban Hennepin County.

Other Federal Programs

The city does not submit applications for other federal funding programs such as Section 202 for the elderly or Section 811 for the handicapped. However, the city will provide a letter of support for applications to these programs.

Minnesota Housing Finance Agency Programs

The Minnesota Housing Finance Agency (MHFA) offers a variety of financing programs, mainly for the development of affordable rental housing. Similar to federal programs, the city does not usually submit applications directly to MHFA; however, it will provide letters of support for applications to the programs.

Metropolitan Council Programs

The Metropolitan Council, through participation in the LCA, offers the Local Housing Incentives Account and Livable Communities Demonstration Account programs to add to the city's affordable housing stock. Over the past 15 years, the city has received nearly \$2 million in funds from these programs, and will continue to seek funding for projects that fit into the criterion of the programs.

Twin Cities Habitat for Humanity

The Twin Cities Habitat for Humanity chapter has had a presence in Minnetonka in the past, completing four affordable housing units. At this time there are no projects planned for Minnetonka, as land prices make it significantly challenging unless the land is donated. The city is willing to consider projects with Habitat for Humanity in the future to assist those with incomes at or below 50% of area median income.

Tax Increment Financing

Minnetonka has used tax increment financing (TIF) to offset costs to developers of providing affordable housing in their development projects. The city will continue to use TIF financing, as permitted by law, to encourage affordable housing opportunities. Unless the state statutes provide for a stricter income and rental limit, the city uses the Metropolitan Council's definition of affordable for housing units.

Housing Revenue Bonds

The City has used housing revenue bonds for eight rental projects since 1985. Housing revenue bonds provide tax exempt financing for multi-family rental housing. The bond program requires that 20 percent of the units have affordable rents to low and moderate income persons. The city will continue to use housing revenue bonds for projects that

meet housing goals and provide affordable units meeting the Metropolitan Council's guidelines.

Housing and Redevelopment Authority (HRA) Levy

By law, the city's Economic Development Authority (EDA) has both the powers of an economic development authority and a housing and redevelopment authority (HRA). It can use these powers to levy taxes to provide funding for HRA activities, including housing and redevelopment. The city first passed an HRA levy in 2009 to support Homes Within Reach, and now uses the funds to support its own housing rehabilitation and homeownership activities for those at 100-115% of area median income.

Community Development Block Grant (CDBG) funds

CDBG funds are allocated to the city by HUD each year. Based upon the needs, priorities, and benefits to the community, CDBG activities are developed and the division of funding is determined at a local level. CDBG funds are available to help fund affordable housing.

Livable Communities Fund

In 1997, special legislation was approved allowing the City to use funds remaining from Housing TIF District No. 1 for affordable housing and Livable Communities Act purposes. The city can use these funds to help achieve its affordable housing goals.

Housing Maintenance and Rehabilitation

As the city's housing stock continues to age, a number of programs are already in place to help keep up the properties.

Minnesota Housing Finance Agency Programs--Rental

The Minnesota Housing Finance Agency (MHFA) offers a variety of financing programs, for the rehabilitation of affordable rental housing. The city does not submit applications for these programs as the city does not own any rental housing; however, it will provide letters of support for those wishing to apply.

Minnesota Fix-up Fund

The Minnesota Housing Fix-Up Fund allows homeowners to make energy efficiency, and accessibility improvements through a low-interest loan. Funded by MHFA, and administered by the Center for Energy and Environment, the program is available to those at about 100% of area median income.

Community Fix-up Fund

The Community Fix-Up Fund, offered through Minnesota Housing, is similar to the Fix-Up Fund, but eligibility is targeted with certain criteria. In the city, Community Fix-Up Fund loans are available to Homes Within Reach homeowners, since community land trust properties cannot access the Fix-Up Fund due to the ground lease associated with their property.

Home Energy Loan

The Center for Energy and Environment offer a home energy loan for any resident, regardless of income, wishing to make energy efficiency improvements on their home.

Emergency Repair Loan

Established in 2005, the City's Emergency Repair Loan program provides a deferred loan without interest or monthly payments for qualifying households to make emergency repairs to their home. The amount of the loan is repaid only if the homeowner sells their home, transfers or conveys title, or moves from the property within 10 years of receiving the loan. After 10 years, the loan is completely forgiven. This loan is funded through the City's federal Community Development Block Grant (CDBG) funds in order to preserve the more affordable single-family housing stock by providing needed maintenance and energy efficiency improvements. The program is available to households with incomes at or below 80% of area median income. On average, 10 to 15 loans are completed each year.

City of Minnetonka Home Renovation Program

In 2010, the city levied for funds to begin a home renovation program. The program is anticipated to begin in 2011. This program would be similar to the existing federal community development block program (CDBG) rehabilitation program. The challenge with CDBG funding involves the maximum qualifying household income of 80% of AMI, Use of HRA funds, would allow the City of Minnetonka Home Renovation Program more flexibility to include households up to 115% AMI, which equates to 82% of all Minnetonka households. The program would be geared toward maintenance, green related investments and mechanical improvements. Low interest loans would be offered up to \$7,500 with a five year term.

H.O.M.E. program

The H.O.M.E. program is a homemaker and maintenance program that is designed to assist the elderly. The H.O.M.E. program assists those who are age 60 and older, or those with disabilities with such services as: house cleaning, food preparation, grocery shopping, window washing, lawn care, and other maintenance and homemaker services. Anyone meeting the age limits can participate; however, fees are based on a sliding fee scale. Nearly 100 residents per year are served by this program.

Home Remodeling Fair

For the past 17 years, the city has been a participant in a home remodeling fair with other local communities. All residents are invited to attend this one day event to talk to over 100 contractors about their remodeling or rehabilitation needs. Additionally, each city has a booth to discuss various programs that are available for residents. Approximately 1,200 to 1,500 residents attend each year.

Local Official Controls and Approvals

The city recognizes that there are many land use and zoning tools that can be utilized to increase the supply of affordable housing and decrease development costs. However, with less than two percent of the land currently vacant in the city, most new projects will be in the form of redevelopment or development of under-utilized land. New infill development and redevelopment is typically categorized as a planned unit development (PUD), which is given great flexibility under the current zoning ordinance.

Density Bonus

Residential projects have the opportunity to be developed at the higher end of the density range within a given land use designation. For example, a developer proposing a market rate townhouse development for six units/acre on a site guided for mid-density (4.1-12 units/acre) could work with city staff to see if higher density housing, such as eight units/acre, would work just as well on the site as six units/acre. This is done on a case by case basis rather than as a mandatory requirement, based on individual site constraints.

Planned Unit Developments

The use of cluster-design site planning and zero-lot-line approaches, within a planned unit development, may enable more affordable townhome or single-family cluster developments to be built. Setback requirements, street width design, and parking requirements that allow for more dense development, without sacrificing the quality of the development or adversely impacting surrounding uses, can be considered when the development review process is underway.

Mixed Use

Mixed-use developments that include two or more different uses such as residential, commercial, office, and manufacturing or with residential uses of different densities provide potential for the inclusion of affordable housing opportunities.

Transit Oriented Development (TOD)

TOD can be used to build more compact development (residential and commercial) within easy walking distance (typically a half mile) of public transit stations and stops. TODs generally contain a mix of uses such as housing, retail, office, restaurants, and entertainment. TODs provides households of all ages and incomes with more affordable transportation and housing choices (such as townhomes, apartments, live-work spaces, and lofts) as well as convenience to goods and services.

Authority for Providing Housing Programs

The City of Minnetonka has the legal authority to implement housing-related programs, as set out by state law, through its Economic Development Authority (EDA). The EDA was formed in 1988; however, prior to that time, the city had a Housing and Redevelopment Authority (HRA).