



**Agenda**  
**Minnetonka Economic Development Authority**  
**Monday, Jan. 24, 2022**  
**Following the 6:30 p.m. regular meeting**  
**WebEx**

1. Call to Order
2. Roll Call: Kirk-Schack-Wilburn-Calvert-Schaeppi- Coakley-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
  - A. Jan. 10 meeting minutes
5. Business Items:
  - A. TIF Note and Development Agreement for Overlook on the Creek located at 9731 Minnetonka Blvd  
  
Recommendation: Adopt the resolution (4 votes)
  - B. Items concerning Minnetonka Station located at 10400 Bren Road East  
  
Recommendation: Adopt the resolution (4 votes)
6. Adjourn

**Minutes**  
**Minnetonka Economic Development Authority**  
**Monday, January 10, 2022**

**1. Call to Order**

Wiersum called the meeting to order at 9:22 p.m.

**2. Roll Call**

Commissioners Kissy Coakley, Brian Kirk, Rebecca Schack, Kimberly Wilburn, Deb Calvert, Bradley Schaeppi and President Brad Wiersum were present.

**3. Approval of Agenda**

Calvert moved, Coakley seconded a motion to approve the agenda, as presented.

All voted "yes". Motion carried.

**4. Approval of Minutes:**

**A. Dec. 6, 2021 EDA meeting**

Calvert moved, Coakley seconded a motion to approve the minutes, as presented.

All voted "yes". Motion carried.

**5. Business Items:**

**A. Elect Officers for 2022 EDA**

Schack moved, Calvert seconded a motion to elected officers for 2022.

All voted "yes". Motion carried.

**6. Adjournment**

Calvert moved, Kirk seconded a motion to adjourn the meeting at 9:26 p.m.

All voted "yes". Motion carried.

Respectfully submitted,

Becky Koosman  
City Clerk



**Economic Development Authority  
Agenda Item #5A  
Meeting of Jan. 24, 2022**

**Title:** Overlook on the Creek at 9731 Minnetonka Blvd  
**Report From:** Alisha Gray, EDFP, Economic Development and Housing Manager  
**Submitted through:** Mike Funk, Acting Executive Director  
Julie Wischnack, AICP, Community Development Director

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**Action Requested:**  Motion     Informational     Public Hearing  
**Form of Action:**     Resolution     Ordinance     Contract/Agreement     Other     N/A  
**Votes needed:**     4 votes     5 votes     N/A     Other

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**Summary Statement**

Overlook on the Creek, LLC (formally Tonka on the Creek, LLC) is requesting a collateral assignment of the Tax Increment Financing Note to refinance the project with Wells Fargo/Fannie Mae in February 2022.

**Recommended Action**

Adopt the resolution approving the execution of a collateral assignment of development agreement and TIF note.

**Strategic Profile Relatability**

- |  |  |
|--|--|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input type="checkbox"/> Safe & Healthy Community                      |
| <input type="checkbox"/> Sustainability & Natural Resources          | <input checked="" type="checkbox"/> Livable & Well-Planned Development |
| <input type="checkbox"/> Infrastructure & Asset Management           | <input type="checkbox"/> Community Inclusiveness                       |
| <input type="checkbox"/> N/A   |  |

Statement: The Overlook on the Creek contributed to the city's affordable housing goals.

**Financial Consideration**

Is there a financial consideration?     No     Yes [Enter estimated or exact dollar amount]  
Financing sources:     Budgeted     Budget Modification     New Revenue Source  
    Use of Reserves     Other [Enter]

Statement: Overlook on the Creek, LLC is refinancing.

**Background**

On Feb. 10, 2014, the city council and economic development authority approved the contract for private development and tax increment financing with Tonka on the Creek, LLC (for the Overlook on the Creek), located at 9731 Minnetonka Blvd. Overlook on the Creek is now seeking to refinance the project with Wells Fargo and Fannie Mae. As a condition of the refinancing, the lender requires that the developer assign the interest of the development agreement and related documents and TIF note to the lender as collateral for the security of the loan. The collateral agreement also subordinates the city and EDA rights in the development agreement; however, the city and EDA maintain the rights and remedies under the development agreement.

The resolution authorizes the EDA to execute and deliver all documents necessary to facilitate the collateral assignment to the developer. The council must approve a similar action to approve the request.

**Attachments:**

Resolution  
Collateral Assignment

## COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT AND TIF NOTE

This Collateral Assignment of Development Agreement and TIF Note (“**Collateral Assignment**”) is dated as of February , 2022, by and among **TONKA ON THE CREEK LLC**, a Minnesota limited liability company (“**Assignor**”) and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (together with its successors and assigns, “**Lender**”), and the **ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA**, a body corporate and politic under the laws of Minnesota, and the **CITY OF MINNETONKA, MINNESOTA** (collectively, the “**Authority**”).

### Recitals

A. Assignor is the owner of certain improved real property located in the County of Hennepin, State of Minnesota, as more particularly described on Exhibit A attached hereto (“**Property**”).

B. Assignor is a party to a Contract for Private Development dated as of June 11, 2014 with the Authority and recorded on June 27, 2014 in the land records of Hennepin County as Instruments No. T05180344 and A10091503 (the “**Development Agreement**”). Pursuant to the Development Agreement, the Property was subjected to certain restrictions by the Authority in connection with the prior development or rehabilitation of the Property.

C. The Authority executed a Tax Increment Revenue Note Series 2014 to Assignor in the original principal amount of \$2,283,000.00 (the “**TIF Note**”).

D. In connection with the refinance of the Property by Assignor, Lender is making a loan to Assignor in the original principal amount of \$17,500,000.00 (“**Loan**”) pursuant to a Multifamily Loan and Security Agreement between Lender and Assignor (as supplemented or amended from time to time, the “**Loan Agreement**”) and evidenced by an Amended and Restated Multifamily Note by Assignor to Lender (as supplemented or amended from time to time, the “**Note**”). The Loan is to be secured by an Amended and Restated Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing that will be recorded in the Official Records of Hennepin County (as supplemented or amended from time to time, the “**Mortgage**”) (the Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the “**Loan Documents**”).

E. As a condition of the Loan, Assignor has agreed to assign its rights and interests under the Development Agreement and the TIF Note to Lender for the purpose of securing certain obligations for which Assignor may become personally liable under the Loan Agreement.

Now therefore, in consideration of their mutual undertakings, and intending to be legally bound hereby, Lender and Assignor agree as follows:

1. For the purpose of securing the Loan, Assignor hereby transfers and collaterally assigns to Lender, and grants to the Lender a security interest in, all of Assignor’s right, title and interest in and to the Development Agreement and the TIF Note. Assignor hereby authorizes Lender to file any financing statements, continuation statements, termination statements and amendments as Lender may require in order to protect and preserve Lender’s lien priority and security interest in this Collateral Assignment (and to the extent Lender has filed any such financing statements,

continuation statements or amendments prior to the Effective Date, such filings by Lender are hereby authorized and ratified by Assignor).

2. Assignor shall not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of (a) the Development Agreement, (b) the TIF Note, (c) this Collateral Assignment, or (d) any of the rights created by the aforementioned documents in the foregoing subparagraphs (a) – (c). Assignor covenants and agrees to comply strictly with the terms of the Development Agreement and all other requirements of the Authority with respect thereto, and Assignor covenants and agrees to continue to perform all of its obligations under the Development Agreement. Assignor shall provide Lender with copies of all certificates, reports, reviews, notices, correspondence, records and other written communications received from, or sent to, the Authority, no later than five (5) days following the receipt or sending thereof by Assignor, as the case may be.

3. Assignor represents and warrants to Lender that: (a) Assignor has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Collateral Assignment shall remain in effect, any of its right, title or interest in or under the Development Agreement and/or the TIF Note to anyone other than Lender (and Assignor agrees that any such existing or further assignment or pledge is void), and that it will not, except upon the prior written consent of Lender and upon the terms and conditions, if any, specified in any such consent, enter into any agreement amending or supplementing the Development Agreement and/or the TIF Note, or settle or compromise any claim against the maker of the TIF Note; (b) Assignor's right, title and interest in and to the TIF Note is not now subject to any lien, encumbrance or security interest; (c) to Assignor's knowledge, the Development Agreement and/or the TIF Note are in all respects in full force and effect and enforceable in accordance with their terms; and (d) to Assignor's knowledge, no default exists under the Development Agreement and/or the TIF Note as of the date of this Collateral Assignment.

4. This Collateral Assignment shall be binding upon Assignor, its heirs, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

5. To the extent permitted by applicable law, Assignor waives all claims, damages and demands it may acquire against Lender arising out of the exercise by it of any rights hereunder, except for the Lender's gross negligence or willful misconduct. If any notice of a proposed sale or other disposition of the TIF Note shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition.

6. All rights and remedies afforded to Lender by reason of this Collateral Assignment and any other Loan Document, or by law, are separate and cumulative and not alternative to the exercise of any other of such rights or remedies. No delay or omission by Lender in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any right or remedy hereunder, and no modification or amendment hereof, shall be deemed made by Lender unless in writing and duly signed by an expressly authorized officer of Lender. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of Lender, and no single or partial exercise of any right or remedy hereunder shall preclude other or further exercise thereof or of any other right or remedy.

7. Any provision of this Collateral Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Collateral Assignment or affecting the validity or enforceability of such provision in any other jurisdiction.

8. This Collateral Assignment shall be governed by, and construed in accordance with, the laws of the State of Minnesota. Assignor waives personal service of any process and consents that such process shall be made by pursuant to the notice provisions of Section 15.02 of the Loan

Agreement, and service so made shall be deemed to be complete when such notice is deemed given pursuant to Section 15.02(a)(3) of the Loan Agreement.

9. From and after the date hereof, and for so long as this Collateral Assignment shall remain in full force and effect, Assignor, for itself, its successors and assigns, covenants and agrees to do all acts and execute and deliver all documents reasonably necessary to assist Lender in obtaining the rights, benefits and privileges granted pursuant to this Collateral Assignment.

10. Assignor shall have the right to receive all payments under the TIF Note until such time as Lender shall deliver to the Authority written notice that Assignor is in default under the Loan Documents. Following receipt of such notice, the Authority and Assignor hereby acknowledge and agree that Lender (i) shall have control of all payments that Assignor is entitled to receive with respect to the TIF Note, and (ii) shall have the right and power to instruct and direct the Authority, pursuant to a written notice from Lender to the Authority and without any further consent of Assignor, to make all payments that Assignor is entitled to receive with respect to the TIF Note directly to Lender, or as Lender may otherwise instruct and direct in writing to the Authority upon delivery of the original TIF Note in escrow to the Authority for re-registration in the name of the Lender, all in accordance with the provisions of the TIF Note and Development Agreement. The affidavit or written statement of an officer, agent or attorney of Lender stating that Lender is exercising its right to payments under the TIF Note or this Assignment shall constitute conclusive evidence thereof, and the Authority or other persons are authorized and directed to rely thereon. The Assignor hereby irrevocably directs the Authority to make TIF Note payments to or at the direction of the Lender upon the Authority's receipt of the notice described herein. To the extent such sums are paid to the or at the direction of the Lender, the Assignor acknowledges and agrees that the Authority shall have no further liability to the Assignor for the same. The receipt by the Lender or its designee of any sums shall be in discharge and release of that portion of any amount owed by the Authority. The Authority is intended to be and shall be the beneficiary of the foregoing acknowledgment.

11. The Authority hereby consents, subject to receipt of an Investment Letter executed by the Lender as of the date hereof, to the Assignor's collateral assignment of the Development Agreement and the TIF Note to Lender pursuant to the terms and conditions of this Collateral Assignment. The Authority also confirms that it has not declared an event of default under the TIF Note and Development Agreement, and that Lender shall have the right, but not the obligation, to cure any default by Assignor under the TIF Note and Development Agreement on Assignor's behalf.

12. Section 15.01 (Governing Law; Consent to Jurisdiction and Venue), Section 15.02 (Notice) Section 15.03 (Successors and Assigns Bound; Sale of Mortgage Loan), Section 15.04 (Counterparts), Section 15.07 (Severability; Entire Agreement; Amendments), and Section 15.18 (WAIVER OF TRIAL BY JURY) of the Loan Agreement are each hereby incorporated herein, mutatis mutandis, as if fully set forth in the body of this Agreement.

**[THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGE FOLLOWS]**

Executed the day and year first set forth above.

**ASSIGNOR:**

**TONKA ON THE CREEK LLC**, a Minnesota  
limited liability company

By: \_\_\_\_\_  
Todd B. Urness  
Chief Manager



**LENDER:**

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**, a national banking  
association

By: \_\_\_\_\_  
Christian Adrian  
Managing Director

**AUTHORITY:**

**ECONOMIC DEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF MINNETONKA,  
MINNESOTA**, a body corporate and politic  
under the laws of Minnesota

By: \_\_\_\_\_  
Name: Brad Wiersum  
Title: President

By: \_\_\_\_\_  
Name: Mike Funk  
Title: Acting Executive Director

**AUTHORITY:**

**CITY OF MINNETONKA, MINNESOTA**

By: \_\_\_\_\_  
Name: Brad Wiersum  
Title: Mayor

By: \_\_\_\_\_  
Name: Mike Funk  
Title: Acting City Manager

**EXHIBIT A**  
**REAL PROPERTY**

[Legal description to be included at closing]

## EDA Resolution No. 2022-

### Resolution approving the execution of a collateral assignment of development agreement and TIF note

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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 Authority and the City of Minnetonka (the "City") have created the Tonka on the Creek Housing Tax Increment Financing District (the "TIF District") within the Tonka on the Creek Redevelopment Project in the City (the "Redevelopment Project") and have adopted a tax increment financing plan for the purpose of financing certain improvements within the Redevelopment Project.
- 1.02. The Authority, the City, and Tonka on the Creek LLC, a Minnesota limited liability company (the "Developer"), entered into a Contract for Private Development, dated June 11, 2014 (the "Contract"), pursuant to which the Developer agreed to construct an approximately 100-unit rental housing facility on certain property located in the City (the "Minimum Improvements") and the Authority agreed to issue a tax increment revenue note (the "TIF Note") in the maximum principal amount of \$2,283,000 to reimburse the Developer for land acquisition costs and certain site improvements.
- 1.03. The Authority issued the TIF Note to the Developer, and the Developer assigned the payments to be made by the Authority to Bridgewater Bank, a Minnesota banking corporation, pursuant to an Assignment of Payments under Tax Increment Revenue Note, dated August 13, 2014.
- 1.04. Wells Fargo Bank, National Association, a national banking association (the "Lender"), has agreed to make a loan to the Developer in the principal amount of \$17,500,000 to refinance the Minimum Improvements. As a condition to providing the Loan to the Developer, the Lender requires that the Developer assign its rights to and interests in the Contract and the TIF Note to the Lender and that the Authority and the City consent to the assignment thereof.
- 1.05. There has been presented before the Board a form of Collateral Assignment of Development Agreement and TIF Note (the "Collateral Assignment") to be executed by the Developer, the Authority, the City, and the Lender, which sets forth the terms of the Developer's assignment of its rights and interest in the Contract and the TIF Note to the Lender and the consent of the Authority and the City to such assignment.

#### Section 2. Board Action.

- 2.01. The President and the Executive Director are hereby authorized and directed to execute and deliver the Collateral Assignment. All of the provisions of the Collateral Assignment, 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 Collateral Assignment 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.

- 2.02. The President and Executive Director are authorized and directed to execute any documents or certificates necessary to carry out the transactions described in the Collateral Assignment or herein.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on Jan. 24, 2022.

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Brad Wiersum, President

Attest:

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Becky Koosman, 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 meeting held on Jan. 24, 2022.

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Becky Koosman, Secretary



**Economic Development Authority  
Agenda Item #5B  
Meeting of Jan. 24, 2022**

**Title:** Minnetonka Station – 10400 Bren Road East

**Report From:** Alisha Gray, EDFP, Economic Development and Housing Manager

**Submitted through:** Mike Funk, Acting Executive Director  
Julie Wischnack, AICP, Community Development Director

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**Action Requested:**  Motion     Informational     Public Hearing  
**Form of Action:**     Resolution     Ordinance     Contract/Agreement     Other     N/A  
**Votes needed:**     4 votes     5 votes     N/A     Other

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**Summary Statement**

Minnetonka Station, located at 10400 Bren Road East, requests a collateral assignment and assumption of the contract for private development and declaration of restrictive covenants. The developer is requesting to assign the contract to VREC III LSI Minnetonka Station SPE LLC. The assignee is an affiliate of Minnetonka Multifamily 1 LLC retains Scott Richardson as the developer for the project.

**Recommended Action**

Adopt the resolution approving the execution of a collateral assignment of the contract for private development and restrictive covenant.

**Strategic Profile Relatability**

- |  |  |
|--|--|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input type="checkbox"/> Safe & Healthy Community                      |
| <input type="checkbox"/> Sustainability & Natural Resources          | <input checked="" type="checkbox"/> Livable & Well-Planned Development |
| <input type="checkbox"/> Infrastructure & Asset Management           | <input type="checkbox"/> Community Inclusiveness                       |
| <input type="checkbox"/> N/A   |  |

Statement: Minnetonka Station will contribute to the city's affordable housing goals.

**Financial Consideration**

Is there a financial consideration?     No     Yes [Enter estimated or exact dollar amount]  
Financing sources:     Budgeted     Budget Modification     New Revenue Source  
    Use of Reserves     Other [Enter]

Statement: Minnetonka Station is assigning a new affiliate for the project.

### **Background**

On [March 8, 2021](#), the city council and economic development authority approved the contract for private development and tax increment financing with Minnetonka Multifamily 1 LLC for Minnetonka Station located at 10400 Bren Road East. The developer is now seeking to assign the contract for private development and declaration of restrictive covenants to an affiliate, VREC III LSI MINNETONKA STATION SPE LLC. The new affiliate retains Scott Richardson as the developer for the project.

The resolution authorizes the EDA to execute and deliver all documents necessary to facilitate the collateral assignment to the developer.

### **Attachments:**

Resolution  
Assignment and Assumption Agreement



## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Assignment**”), dated effective as of January \_\_, 2022 (the “**Effective Date**”), is made by MINNETONKA MULTIFAMILY 1 LLC, a Minnesota limited liability company having an address at 808 Penn Ave., Suite 300, Pittsburgh, PA 15222 (“**Assignor**”) to VREC III LSI MINNETONKA STATION SPE LLC, a Minnesota limited liability company, having an address at 808 Penn Ave., Suite 300, Pittsburgh, PA 15222 (“**Assignee**”), and is acknowledged by and consented to by 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 “**Economic Development Authority**”).

### **Agreement**

1. Assignor and Assignee, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, Assignor hereby ASSIGNS, BARGAINS, GIVES, SETS OVER, TRANSFERS and CONVEYS to Assignee all of Assignor’s rights, title, interest, obligations, and duties under that certain (i) Contract for Private Development between the Economic Development Authority and Assignor, dated March 16, 2021 and recorded in the Office of the County Recorder of Hennepin County, Minnesota (the “**Hennepin Recorder**”) on July 29, 2021 as Document No. 10996267 (the “**Contract for Private Development**”) and (ii) Declaration of Restrictive Covenants dated March 16, 2021 and given by the Assignor in favor of the Economic Development Authority, recorded in the Hennepin County Recorder’s Office on July 29, 2021 as Document No. 10996268 (the “**Declaration**”).

2. Section 8.2(b) of the Contract for Private Development permits the Assignor to transfer the Development Property legally described in Exhibit A attached hereto and in the Contract for Private Development and the Declaration (the “**Development Property**”) to an affiliate of the Assignor if (a) the proposed transferee has the qualifications and financial responsibility, in the reasonable judgment of the Economic Development Authority, necessary and adequate to fulfill the obligations undertaken in the Contract for Private Development by the Assignor; (b) any proposed transferee expressly assumes all of the obligations of the Assignee under the Contract for Private Development and agrees to be subject to all the conditions and restrictions to which the Assignor is subject; and (c) the Economic Development Authority consents to the transfer. The Assignor and the Assignee represent and warrant that the Assignee is an affiliate of the Assignor and has satisfied the requirements of Section 8.2(b) relating to the

assignment by the Assignor and the assumption by the Assignor of the Development Property and the Developer's rights and obligations under the Contract.

3. From and after the date of this Assignment, Assignor hereby assigns, and Assignee hereby accepts, all of Assignor's rights, title, interest, obligations, and duties under the Contract for Private Development and Declaration, and the Assignee agrees to be bound by their terms.

4. From and after the date of this Assignment, all notices, certificates or communications provided to the developer under the Contract for Private Development and the Declaration shall be delivered to the Assignee as follows:

Assignee:

VREC III LSI MINNETONKA STATION SPE LLC  
808 Penn Ave., Suite 300  
Pittsburgh, PA 15222  
Attention: Scott W. Richardson

5. This Assignment shall inure to the benefit of and be binding upon the successors and assigns of Assignor and Assignee.

6. Assignor and Assignee each warrant that it is duly authorized to execute this Assignment.

7. This Assignment shall be construed under and enforced in accordance with the laws of the State of Minnesota. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

8. This Assignment may be executed by one or more parties to this Assignment in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

9. This Assignment shall be recorded in the Hennepin Recorder's Office.

***[SIGNATURES ON FOLLOWING PAGE]***

IN WITNESS WHEREOF, the Assignor and the Assignee have executed this Assignment as of the date first written above by and through their duly authorized representatives.

**ASSIGNOR:**

MINNETONKA MULTIFAMILY 1 LLC, a  
Minnesota limited liability company

By: \_\_\_\_\_  
Scott Richardson, Authorized Signatory

**ASSIGNEE:**

VREC III LSI MINNETONKA STATION SPE  
LLC, a Minnesota limited liability company

By: \_\_\_\_\_  
Scott Richardson, Authorized Signatory

[NOTE: add notary acknowledgments for both Assignor and Assignee]

This document was drafted by:

Husch Blackwell

[Address]

Telephone: \_\_\_\_\_

The undersigned Economic Development Authority does hereby execute this Assignment and Assumption Agreement for the sole purpose of acknowledging and consenting to the Assignment and Assumption Agreement.

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

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its Acting Executive Director

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Brad Wiersum, the President of 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, on behalf of the Economic Development Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Michael Funk, the Acting Executive Director of 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, on behalf of the Economic Development Authority.

\_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

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

## EDA Resolution No. 2022-

### **Resolution approving the execution and delivery of an assignment and assumption agreement with Minnetonka Multifamily 1 LLC and VREC III LSI Minnetonka Station SPE LLC**

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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. Recitals.

- 1.01. The Authority and Minnetonka Multifamily 1 LLC, a Minnesota limited liability company (the "Assignor"), entered into a Contract for Private Development, dated March 16, 2021 (the "Contract"), and a Declaration of Restrictive Covenants, dated March 16, 2021 (the "Declaration"), with respect to certain property located in the City of Minnetonka, Minnesota (the "Development Property").
- 1.02. Pursuant to the Contract and the Declaration, the Assignor, as "Developer," agreed to construct and develop on the Development Property an approximately 275-unit rental housing development, including 28 units subject to affordability requirements set forth in the Contract and the Declaration.
- 1.03. The Assignor has proposed to transfer the Development Property to VREC III LSI Minnetonka Station SPE LLC, a Minnesota limited liability company (the "Assignee"), and to assign the rights and obligations of the Assignor as the "Developer" under the Contract and the Declaration to the Assignee.
- 1.04. In accordance with Section 8.2(b) of the Contract, the Assignor is required to assign in writing the rights and obligations of the Developer under the Contract to the Assignee, and the Assignee is required to assume in writing the rights and obligations of the Developer under the Contract, all in a form acceptable to the Authority.
- 1.05. There has been presented before the City Council a form of Assignment and Assumption Agreement (the "Assignment and Assumption Agreement") between the Authority, the Assignor, and the Assignee, pursuant to which the Assignor will assign to the Assignee all of the rights and obligations as the Developer under the Contract and the Declaration, and the Assignee will assume such duties and obligations as the Developer.

#### Section 2. Approval.

- 2.01. The President and the Acting Executive Director are hereby authorized and directed to execute and deliver the Assignment and Assumption Agreement. All of the provisions of the Assignment and Assumption 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 Assignment and Assumption 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 Acting Executive Director, in their discretion, shall determine, and the execution thereof by the President and the Acting Executive Director shall be conclusive evidence of such determination.

2.02. The President and the Acting Executive Director are hereby authorized to execute and deliver any and all documents deemed necessary to carry out the intentions of this resolution and the Assignment and Assumption Agreement.

Section 3. Effective Date.

3.01. This resolution shall be effective upon adoption.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on Jan. 24, 2022.

\_\_\_\_\_  
Brad Wiersum, President

Attest:

\_\_\_\_\_  
Becky Koosman, 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 meeting held on Jan. 24, 2022.

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Becky Koosman, Secretary