



**Agenda**  
**Minnetonka Economic Development Authority**  
**Monday, Feb. 7, 2022**  
**Following the 6:30 p.m. regular meeting**  
**WebEx**

1. Call to Order
2. Roll Call: Schack-Wilburn-Calvert-Schaeppi-Coakley-Kirk-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
  - A. Jan. 24, 2022 meeting minutes
5. Business Items:
  - A. Minnetonka Station (10400 Bren Road)
    - Recommendation: Adopt the resolution (4 votes)
6. Adjourn

**Minutes**  
**Minnetonka Economic Development Authority**  
**Monday, January 24, 2022**

**1. Call to Order**

Wiersum called the meeting to order at 9:23 p.m.

**2. Roll Call**

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

**3. Approval of Agenda**

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

All voted "yes". Motion carried.

**4. Approval of Minutes:**

**A. Jan. 10 meeting minutes**

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

All voted "yes". Motion carried.

**5. Business Items:**

**A. TIF Note and Development Agreement for Overlook on the Creek located at 9731 Minnetonka Boulevard**

Community Development Director Julie Wischnack gave a report on the item.

Schack moved, Kirk seconded a motion to adopt EDA Res. 2022-001 approving the execution of a collateral assignment and development agreement and TIF note for Overlook on the Creek at 9731 Minnetonka Boulevard.

All voted "yes". Motion carried.

**B. Items concerning Minnetonka Station located at 10400 Bren Road East**

Wischnack gave a report on the item.

Kirk moved, Schack seconded a motion to adopt EDA Res. 2022-002 approving the execution of a collateral assignment of the contract for private development and restrictive covenant for Minnetonka Station at 10400 Bren Road East.

All voted "yes". Motion carried.

**6. Adjournment**

Calvert moved, Wilburn seconded a motion to adjourn the meeting at 9:30 p.m.

All voted "yes". Motion carried.

Respectfully submitted,

Becky Koosman  
City Clerk



**Economic Development  
Authority Agenda Item 5A  
Meeting of Feb. 7, 2022**

**Title:** Minnetonka Station (10400 Bren Road)  
**Report From:** Alisha Gray, 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**

The developer of Minnetonka Station located at 10400 is requesting a subordination of the development contracts.

**Recommended Action**

Motion to adopt the resolution.

**Strategic Profile Relatability**

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

Statement: N/A

**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: N/A

**Background**

The developer of Minnetonka Station is requesting the subordination (second in position with respect to the overall financing) of the development contracts as a condition of obtaining the construction loan for the project. The attached resolution approves the execution and delivery of the subordination agreement.

**Attachments:**

Memo from Julie Eddington, Kennedy & Graven  
Subordination agreement



Offices in 150 South Fifth Street  
Suite 700  
Minneapolis Minneapolis, MN 55402  
(612) 337-9300 telephone  
Saint Paul (612) 337-9310 fax  
www.kennedy-graven.com  
St. Cloud Affirmative Action, Equal Opportunity Employer

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**JULIE A. EDDINTON**  
Attorney at Law  
Direct Dial (612) 337-9213  
Email: [jeddington@kennedy-graven.com](mailto:jeddington@kennedy-graven.com)

February 1, 2022

Alisha Gray  
Economic Development and Housing Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502

Re: LindenStreet Development

Dear Alisha,

The Economic Development Authority in and for the City of Minnetonka (the “Authority”) and Minnetonka Multifamily 1 LLC, a Minnesota limited liability company (the “Original Developer”), 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 a development that will provide approximately 275 units of housing, ten percent (10%) of which will be available to individuals and their families with income at or below fifty percent (50%) of the area median income (the “Project”). In order to assist the Original Developer to provide affordable housing units, the Authority provided a grant to the Original Developer in the amount of \$553,000.

The Contract and the Declaration have been assigned to and assumed by the VREC III LSI Minnetonka Station SPE LLC, a Minnesota limited liability company (the “Borrower”) pursuant an Assignment and Assumption of Contract for Private Development, dated January 24, 2022, by and between the Original Developer, as assignor, and Borrower, as assignee.

Bank OZK (the “Lender”), has agreed to provide a construction loan to the Borrower in the principal amount of up to \$45,675,400.00 (the “Loan”) to finance a portion of the Project, pursuant to a loan agreement, by and between the Borrower and the Lender (the “Loan Agreement”). The Lender has required, as a condition to making the Loan, that the Borrower assign all of its rights under the Development Contract to the Lender and the rights of the Authority under the Development Contract be subordinated to the Mortgage and the Assignment of Rents. Notwithstanding the subordinated rights and remedies detailed in the Subordination Agreement, nothing within the Subordination Agreement limits the Authority’s ability to exercise its rights and remedies under the Development Contract, including, but not limited to its remedies under Sections 9.2 and 9.3 of the Development Contract.

Please contact me with any questions.

Sincerely,  
Julie Eddington

## SUBORDINATION OF DEVELOPMENT CONTRACTS

THIS SUBORDINATION OF DEVELOPMENT CONTRACTS (the “Agreement”) is made and entered into as of February 7, 2022, by and among 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”), and BANK OZK, an [Arkansas banking corporation], and its successors and assigns (the “Lender”).

### WITNESSETH:

WHEREAS, **VREC III LSI MINNETONKA STATION SPE LLC**, a Minnesota limited liability company (the “Borrower”) is the owner of certain real property located in Hennepin County, Minnesota, legally described on Exhibit A attached hereto (the “Land”); and

WHEREAS, Minnetonka Multifamily 1 LLC, a Minnesota limited liability company (the “Original Developer”) and the Authority entered into that certain Contract for Private Development dated March 16, 2021, filed of record in the office of the Hennepin County Recorder on July 29, 2021, as Document No. 10996267, as has been assigned to and assumed by Borrower pursuant to that certain Assignment and Assumption of Contract for Private Development dated January 24, 2022 by and between Original Developer, as assignor, and Borrower, as assignee, filed of record in the office of the Hennepin County Recorder on \_\_\_\_\_, 2022, as Document No. \_\_\_\_\_ (collectively and together with any amendment thereto approved by Lender, the “Development Contract”); and

WHEREAS, the Authority is the owner and holder of certain rights under the Development Contract, including, without limitation, certain covenants made by the Original Developer pursuant to that certain Declaration of Restrictive Covenants dated March 16, 2021, filed of record in the office of the Hennepin County Recorder on July 29, 2021, as Document No. 10996268 (the “Declaration”); and

WHEREAS, pursuant to a certain Construction Loan Agreement dated as of February [\_\_\_], 2022 by and between Borrower and Lender (“Loan Agreement”), the Lender has agreed to make a construction loan available to Borrower in the principal amount of up to \$45,675,400.00 (the “Loan”) to finance a portion of the costs of constructing certain improvements on the Land in accordance with the terms of the Loan Agreement (the Land and the improvements to be constructed thereon are hereinafter at times collectively referred to as the “Project”). The Construction Loan is evidenced by that certain Promissory Note dated as of February [\_\_\_], 2022, executed and delivered by Borrower and payable to the order of the Lender in the original principal

face amount of \$45,675,400.00 (the "Note") and is secured, inter alia, by (i) a certain Mortgage, Security Agreement and Fixture Financing Statement dated as of February [\_\_\_\_], 2022 from Borrower in favor of Lender encumbering the Project (together with all renewals, amendments, modifications, increases and extensions thereof, the "Mortgage"), filed of record in the office of the Hennepin County Recorder on \_\_\_\_\_, 2022, as Document No. \_\_\_\_\_; (ii) a certain Assignment of Leases and Rents dated as of February [\_\_\_\_], 2022 from Borrower in favor of Lender encumbering the Project (together with all renewals, amendments, modifications, increases and extensions thereof, the "Assignment of Rents"), filed of record in the office of the Hennepin County Recorder on \_\_\_\_\_, 2022, as Document No. \_\_\_\_\_; and (iii) certain other instruments (such other documents evidencing or securing the Loan, together with the Note, the Loan Agreement, the Mortgage and the Assignment of Rents, as the same may be amended, modified, replaced or restated from time to time, are hereinafter collectively referred to as the "Loan Documents"). Unless the context otherwise indicates, capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Loan Agreement; and

WHEREAS, the Lender has required, as a condition to making the Loan, that (a) the Borrower assign all of its rights under the Development Contract to the Lender to secure the obligations of the Borrower to the Lender under the Loan Documents pursuant to that certain Pledge and Collateral Assignment of Economic Incentives dated as of February [\_\_\_\_], 2022 between Borrower and Lender (the "Assignment"), filed of record in the office of the Hennepin County Recorder on \_\_\_\_\_, 2022, as Document No. \_\_\_\_\_, (b) the rights of the Authority under the Development Contract be subordinated to the Mortgage and the Assignment of Rents, and (c) the Authority agree to certain other matters, all as more fully contained herein.

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

1. Assignment. The Assignment constitutes a present and absolute assignment to Lender of Borrower's rights under the Development Contract; provided, however, Lender confers on Borrower the right to enforce the terms of the Development Contract so long as no Event of Default (as defined in any of the Loan Documents) has occurred and is continuing under any of the Loan Documents. Upon the occurrence of an Event of Default under any of the Loan Documents, Lender may, in Lender's sole discretion, give notice to the parties to the Development Contract of its intent to enforce the rights of Borrower under the Development Contract, and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Nothing in this Agreement or in the Assignment shall give Lender a greater right than Borrower to enforce the Development Contract. Nothing in this Agreement or the Assignment shall be deemed an assignment by Borrower or an assumption by Lender of Borrower's obligations, duties, covenants or representations under the Development Contract.

2. Reserved.

3. Reserved.



4. Reserved.

5. Reserved.

6. Event of Default; Remedies. Subject to the provisions set forth in this Paragraph 6, upon the occurrence of an Event of Default (as that term is defined in any of the Loan Documents), the Lender may, without affecting any of its rights or remedies against the Borrower under any other instrument, document or agreement, exercise its rights under this Agreement as the Borrower's attorney-in-fact in any manner permitted by law and, in addition, the Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Minnesota. If notice to the Borrower of any intended disposition of collateral or of any intended action is required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) calendar days prior to the intended disposition or other action. Furthermore, upon the occurrence and during the continuance of an Event of Default (as that term is defined in any of the Loan Documents), Lender shall have the right (but not the obligation), upon written notice to the Authority, to assume all obligations of Borrower under the Development Contract. Nothing herein contained shall be deemed to affect or impair any rights which Lender may have under the Loan Documents.

7. Consent; Representations and Warranties of the Authority. The Authority acknowledges that the Lender is making the Loan to the Borrower and consents to the same. The Authority also consents to and approves the assignment of the Development Contract by the Borrower to the Lender as collateral for the Loan; provided, however, that this consent shall not deprive the Authority of or otherwise limit any of the Authority's rights or remedies under the Development Contract and shall not relieve the Borrower of any of its obligations under the Development Contract.

The Authority further represents and warrants to the Lender that (a) the Authority has the corporate power and authority to perform its obligations under the Development Contract and the Declaration, (b) the Development Contract and the Declaration are valid agreements enforceable in accordance with their respective terms, are in full force and effect and have not been amended, modified, altered, cancelled or surrendered, (c) the Authority is not in default under the Development Contract or the Declaration and all covenants, conditions, agreements and payments have been performed as required therein, except those not to be performed until after the date hereof, (d) except for this Agreement, the Authority has not received any notice of a sale, transfer, assignment, hypothecation, encumbrance or pledge of the Development Contract, and (e) to the actual knowledge of the Authority, the Borrower is not in default under the Development Contract or the Declaration.

8. Approval of Construction Plans. The Authority hereby acknowledges and agrees that pursuant to Section 4.2 of the Development Contract, the Authority has approved the Construction Plans (as that term is defined in the Development Contract) in connection with the construction of the Project.

9. Subordination. The Authority hereby agrees that the rights and remedies of the Authority under the Development Contract are and shall remain at all times completely and

unconditionally subject and subordinate to the liens, rights and security interest created by the Mortgage, the Assignment of Rents and the other Loan Documents and to any and all amendments, modifications, extensions, replacements or renewals of the Mortgage, the Assignment of Rents and the other Loan Documents; provided, however, that nothing herein shall be construed as subordinating the requirements contained in the Development Contract that the Project be used in accordance with the provisions of Section 10.3 of the Development Contract. Notwithstanding the foregoing, nothing herein limits the Authority's ability to exercise its rights and remedies under the Development Contract, including but not limited to its remedies under Sections 9.2 and 9.3 of the Development Contract.

10. Approval of Financing. Pursuant to Section 7.1 of the Development Contract, the Authority hereby approves the financing of the Project as contemplated by the Loan Documents.

11. Notice to the Authority. The Lender agrees to use commercially reasonable efforts to provide the Authority with all default notices sent to the Borrower pursuant to the Loan Documents.

12. No Assumption. The Authority acknowledges that the Lender is not a party to the Development Contract, and by executing this Agreement does not become a party to the Development Contract, and specifically does not assume and shall not be bound by any obligations of the Borrower to the Authority under the Development Contract and that the Lender shall incur no obligations whatsoever to the Authority as expressly provided herein. The Assignment is given only as collateral security, and the Lender shall not be obligated to perform or discharge any obligation or liability of the Borrower under the Development Contract.

13. Notice from the Authority; Lender Right to Cure and Perform. So long as the Development Contract remains in effect, the Authority agrees to use commercially reasonable efforts to provide the Lender copies of notices of any default or event of default given to the Borrower under the Development Contract and the Declaration. Prior to any termination of the Development Contract or the Declaration, Lender shall have an opportunity to cure such default within a reasonable time. Furthermore, regardless of whether a default or event of default has occurred under the Development Contract and/or the Declaration, the Authority agrees to accept from Lender any performance tendered under any of the Development Contract and/or the Declaration by Lender as if the same were tendered by Borrower; provided however that it is understood and agreed (a) that by tendering performance under any of said agreements, Lender does not assume any of the obligations or duties of Borrower under or with respect to the Development Contract unless Lender expressly assumes the Development Contract in writing as provided in Paragraph 6 above, and (b) Lender shall not be obligated to cure any defaults of Borrower under the Development Contract and/or the Declaration.

14. Amendments. The Authority hereby represents and warrants to Lender for the purpose of inducing Lender to make advances to Borrower under the Loan Documents that it will not agree to any amendment or modification to the Development Contract and/or the Declaration that in any way affects the Project without the Lender's written consent.

15. Waiver. This Agreement can be waived, modified, amended, terminated or discharged only explicitly in writing signed by the parties hereto. A waiver by the Lender shall be

effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and may be exercised singularly or concurrently at the Lender's option, and any and exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

16. Headings. The descriptive headings for the several sections of this Agreement are inserted for convenience only and not to confine or limit any of the terms or provisions hereof.

17. Addresses for Notice. Any notice from, request, demand or communication hereunder shall be deemed fully given if delivered or served by depositing the same with the United States Postal Service, postage prepaid, certified or registered, addressed to the parties as set forth below:

If to the Authority: Economic Development Authority in and for the City of  
Minnetonka  
Attn: Executive Director  
14600 Minnetonka Blvd  
Minnetonka, MN 55345-1502

If to the Lender: Bank OZK  
1 Rockefeller Plaza, Suite 400  
New York, New York 10020  
Attn: [\_\_\_\_\_]

with a copy to:

Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, TX 75201  
Attn: Nam D. Tran, Esq.

18. Transfer of Title to the Lender. The Authority agrees that in the event the Lender, a transferee of Lender, or a purchaser at foreclosure sale, acquires title to the Project pursuant to a foreclosure, or a deed in lieu thereof, the Lender, transferee, or purchaser shall not be bound by the terms and conditions of the Development Contract except as expressly provided in this Agreement. Further, the Authority agrees that in the event the Lender, a transferee of Lender, or a purchaser at foreclosure sale acquires title to the Project pursuant to a foreclosure sale or a deed in lieu thereof, then the Lender, transferee, or purchaser (provided such party has elected to assume the Development Contract pursuant to Paragraph 6 hereof) shall be entitled to all rights conferred upon the Borrower under the Development Contract provided that no condition of default exists and remains uncured beyond applicable cure periods in the obligations of the Borrower under the Development Contract; Further, Lender, or a transferee of Lender, shall have the right to treat the

Development Contract as prior to the lien of the Loan Documents and may further assign Borrower's rights under the Development Contract to a purchaser of the Project at the foreclosure or to any purchaser from Lender (or its affiliate) following the acquisition of the Project at the foreclosure or to any purchaser from Lender (or its affiliate) following the acquisition of the Project by a deed in lieu of foreclosure, provided that no condition of default exists and remains uncured beyond applicable cure periods in the obligations of the Borrower under the Development Contract.

19. Successors. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any person who acquires title to the Project through the Lender of a foreclosure of Mortgage.

20. Severability. The enforceability or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

21. Governing Law. This Agreement is made in and shall be construed in accordance with the laws of the State of Minnesota.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**





## 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 a subordination agreement for 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. VREC III LSI Minnetonka Station SPE LLC, a Minnesota limited liability company (the “Borrower”), is the owner of certain real property located in the City of Minnetonka, Minnesota (the “Development Property”).
- 1.02. The Authority and Minnetonka Multifamily 1 LLC, a Minnesota limited liability company (the “Original Developer”), 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 the Development Property.
- 1.03. The Contract and the Declaration have been assigned to and assumed by the Borrower pursuant an Assignment and Assumption of Contract for Private Development, dated January 24, 2022, by and between the Original Developer, as assignor, and Borrower, as assignee (the “Development Contract”).
- 1.04. Bank OZK (the “Lender”), has agreed to provide a construction loan to the Borrower in the principal amount of up to \$45,675,400.00 (the “Loan”) to finance a portion of the costs of constructing certain improvements on the Development Property, pursuant to a loan agreement, by and between the Borrower and the Lender (the “Loan Agreement”).
- 1.05. The Loan is evidenced by a Promissory Note and is secured by (i) a Mortgage, Security Agreement and Fixture Financing Statement (the “Mortgage”); (ii) an Assignment of Leases and Rents (the “Assignment of Rents”).
- 1.06. The Lender has required, as a condition to making the Loan that (a) the Borrower assign all of its rights under the Development Contract to the Lender, (b) the rights of the Authority under the Development Contract be subordinated to the Mortgage and the Assignment of Rents, and (c) the Authority agree to certain other matters, all as more fully contained in the Subordination of Development Contracts (the “Subordination Agreement”) between the Authority and the Lender.
- 1.07. Notwithstanding the subordinated rights and remedies detailed in the Subordination Agreement, nothing within the Subordination Agreement limits the Authority’s ability to exercise its rights and remedies under the Development Contract, including, but not limited to its remedies under Sections 9.2 and 9.3 of the Development Contract.



1.08. There has been presented before the Authority the Subordination Agreement and the Authority finds that the execution thereof by the Authority and performance of the Authority's obligations thereunder are in the best interest of the City and its residents.

Section 2. Approval.

2.01. The President and the Acting Executive Director are hereby authorized and directed to execute and deliver the Subordination Agreement. All of the provisions of the Subordination 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 Subordination 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 Subordination 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 Feb. 7, 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 Feb. 7, 2022.

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Becky Koosman, Secretary