



Agenda
Minnetonka Economic Development Authority
Monday, May 22, 2023
Following the 6:30 p.m. regular meeting
Council Chambers

1. Call to Order
2. Roll Call: Wilburn-Calvert-Schaeppi-Coakley-Kirk-Schack-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
 - A. May 1, 2023 EDA meeting minutes
5. Business Items:
 - A. Cedar Hills – Blooming Cedars Apartments, LLC, Financing Request
Recommendation: Adopt the resolution (4 votes)
 - B. Marsh Run II redevelopment
Recommendation: Adopt the resolutions (4 votes)
6. Adjourn

Minutes
Minnetonka Economic Development Authority
Monday, May 1, 2023

1. Call to Order

Wiersum called the meeting to order at 9:54 p.m.

2. Roll Call

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

3. Approval of Agenda

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

All voted "yes". Motion carried.

4. Approval of Minutes:

A. Jan. 9, 2023 EDA meeting minutes

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

All voted "yes". Motion carried.

5. Business Items:

A. Minnetonka down-payment/ closing cost and Pathways to Homeownership assistance programs

Community Development Director Julie Wischnack discussed the item.

Wilburn moved, Kirk seconded a motion to approve Res. 2023-001.

All voted "yes". Motion carried.

6. Adjournment

Kirk moved, Calvert seconded a motion to adjourn the meeting at 9:55 p.m.

All voted "yes". Motion carried.

Respectfully submitted,

Becky Koosman
City Clerk



**Economic Development Authority
Agenda Item 5A
Meeting of May 22, 2023**

Title: Cedar Hills – Blooming Cedars Apartments, LLC, Financing Request

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

Submitted through: Mike Funk, Executive Director
Julie Wischnack, AICP, Community Development Director
Darin Nelson, Assistant Treasurer

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

Summary Statement

Blooming Cedars Apartments, LLC, is seeking financing assistance to rehabilitate Cedar Hills Townhomes at 10860 Cedar Bend.

Recommended Action

Adopt the resolution approving a loan to Blooming Cedar Apartments, LLC and the execution of documents in connection therewith.

Strategic Profile Relatability

- | | |
|--|--|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input checked="" 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 checked="" type="checkbox"/> Community Inclusiveness |
| <input type="checkbox"/> N/A | |

Statement: The proposed financing will be utilized to complete additional repairs at Cedar Hills Townhomes, reinvesting in the condition of the affordable units.

Financial Consideration

- Is there a financial consideration? No Yes \$1,000,000
- Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other Affordable Housing Trust Fund

Statement: The proposed source of funding is the city's Affordable Housing Trust Fund.

Background

Blooming Cedars Apartments, LLC has a contract to purchase Cedar Hills Townhomes. Cedar Hills Townhomes, built in 1983, consists of five townhome buildings with 30 family-sized units. The unit mix includes 20 two-bedroom units, nine three-bedroom units, and one four-bedroom unit. The property currently serves very low-income families. Blooming Cedars Apartments, LLC's interest in purchasing the property is to maintain long-term affordability and complete substantial renovations.

There are a number of layers of contractual obligations required of the property. Blooming Cedars Apartments, LLC, intends to assume the Section 8 Housing Assistance Payment (HAP) contract until 2033. The HAP assistance ensures that households only pay 30% of their income towards rent. Additionally, the project formerly received Low-Income Housing Tax Credits (LIHTCs) that provide additional affordability restrictions through 2037 and will remain in place following the sale of the property. The city's requirement increases the affordability restrictions through 2053.

Bond Financing Request (City Council)

Blooming Cedars Apartments, LLC intends to acquire and rehabilitate the Cedar Hills Townhomes and Blooming Glen Townhomes and is requesting that the city issue one or more series of taxable or tax-exempt bonds in the amount of \$16 million to purchase the properties. At the May 22 meeting, the council will be asked to hold the public hearing and consider the resolution to provide approval for the project, issuance of the notes, and execution of the loan documents related to both the Minnetonka and Bloomington projects. The notes will be private activity bonds and will not affect the city's ability to issue and designate up to \$10 million in tax-exempt obligations (bank-qualified bonds) for calendar year 2023. The borrower will also pay the out-of-pocket expenses with the transaction and the city's administrative fee.

Loan Request (Economic Development Authority Consideration)

Blooming Cedars Apartments, LLC plans to acquire the property and complete nearly \$2 million in improvements (\$64,714 per unit) to remedy high-priority improvements to the property. Blooming Cedars Apartments, LLC is requested an additional \$1,000,000 to assist with improvements that will increase the living conditions within the individual units. Repairs include replacing windows and trim, appliances, furnaces, water heaters, A/C, and adding LED light fixtures. These improvements will not necessarily reduce costs for residents as they are only required to pay 30% of their income towards housing. It will reduce energy and water consumption for the overall building. The proposed scope of work for Blooming Cedars Apartments, LLC, and city-assisted improvements is attached.

Ehlers reviewed this request with staff and recommended the following structure for assistance:

- Provide \$1,000,000 structured as a 4% interest 30-year loan through the city's Affordable Housing Trust Fund
 - Owner pays interest only on the loan until the deferred developer fee is paid off
 - After the development fee is paid off, principal payments begin on the loan (with interest)
 - The owner pays the loan with 25% of available cash flow after debt service on the first mortgage

- The owner would repay the loan in full with interest at:
 - End of term (if not repaid in full within the 23-year projected repayment term)
 - Refinance and/or syndication
 - Sale of project
- The 30-year affordability term coincides with the city's affordability requirement.

EDAC Feedback

The EDAC reviewed the request for assistance at its [Jan. 26, 2023, meeting](#). The commissioners voted unanimously to approve up to \$1,011,830 pending final underwriting review and prepare loan documents in association with the loan for the improvements. The commissioners also requested that the owner seek out practices to reduce energy use and utilize energy efficiency rebates where applicable.

Acquisition Timeline

On [Dec. 19, 2022](#), the city council supported the application for tax-exempt private activity bonds through the state. In January 2023, the State of MN notified the city that Blooming Cedars Apartments, LLC was preliminarily approved for an allocation to purchase and rehabilitate the Cedar Hills Townhomes and the Blooming Glen Townhomes in Bloomington.

Blooming Cedars Apartments, LLC, is under contract to acquire Cedar Hills Townhomes in 2023, and will apply for 4% Low-Income Housing Tax Credits through MHFA.

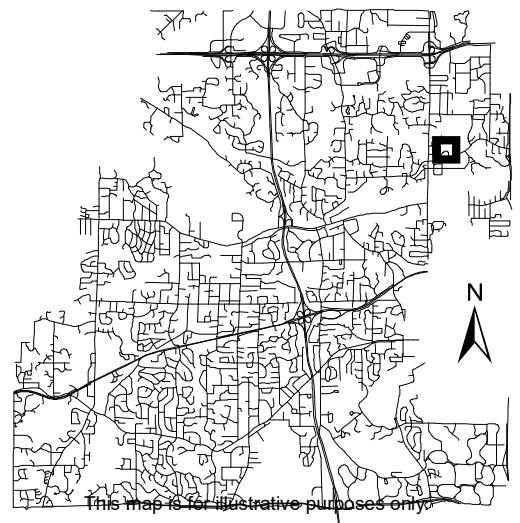
Attachments

Location Map
Borrower funded improvements scope of work
Borrower's city assistance requested scope of work
Ehlers Memo
Julie Eddington Memo
Draft Loan Agreement
Draft Declaration of Restrictive Covenants
Draft Mortgage
Draft Note



Location Map

Location: Cedar Hills Townhomes
 Address: 10860 Cedar Bend



This map is for illustrative purposes only.

DevCo- Planned Improvements for Cedar Hills



Budgeting Cost Proposal Scopes of Work

Number Units: **30**

Project: **Cedar Hills Townhomes**
 Location: **Minnetonka, MN**
 Estimator: **Mike Szurek**

Date: **1/18/2023**

1	Needs Ass. #	Site Work	Quantity	Unit	Budget	Alternates
13		Replace 75% of concrete garage aprons			\$10,882	
14		Repair CMU foundation walls at garages (allowance)			\$69,071	
16		Replace corroded foundation wall of laundry building with poured in place foundation wall			\$24,587	
19		Replace Monument Sign			\$12,000	
TOTAL SITEWORK					\$116,540	\$0

2	Needs Ass. #	Building Exterior	Quantity	Unit	Budget	Alternates
31		Replace shingle roofing			\$375,416	
		Repair/Caulk Siding			\$40,000	
38		Repair Decks			\$100,000	
TOTAL EXTERIOR					\$515,416	\$0

3	Needs Ass. #	Common Areas	Quantity	Unit	Budget	Alternates
TOTAL INTERIOR COMMON AREA WORK					\$0	\$0

4	Needs Ass. #	Unit Interiors	Quantity	Unit	Budget	Alternates
42		Move Tenants Belongings			\$24,115	
45		Replace flooring (Carpet in living/bedroom, sheet vinyl in kitchens and bathrooms) Vinyl base. Replace flooring (LVP in kit and bath only) = \$153,123			\$394,087	
47		Replace cabinets and tops			\$216,478	
48		Repair squeaky floors in upper level of units			\$2,387	
49		Replace window sills			\$26,394	
50		Interior unit painting (Full = \$132,000 - Kitchen and bath only = \$16,114)			\$132,000	
51		Replace corroded foundation walls at unit entry areas with poured in place foundation walls			\$96,456	
TOTAL UNIT INTERIORS					\$891,917	\$0

5	Needs Ass. #	Mechanical/Electrical	Quantity	Unit	Budget	Alternates
61		Replace tubs/surrounds with fiberglass			\$148,500	
TOTAL MECHANICAL/ELECTRICAL					\$148,500	\$0

Hard Cost Subtotal					\$1,672,373	
Hard Cost Subtotal (Per Unit)					\$55,746	

78		General Conditions		6%	\$100,342	
79		Overhead		2%	\$33,447	
80		Profit		6%	\$100,342	
81		Performance Bond			\$16,842	
82		Building Permit			\$18,075	
Grand Total Base Cost					\$1,941,422	
Cost Per unit					\$64,714	

DevCo Additional Improvements - Seeking City Assistance



Budgeting Cost Proposal Scopes of Work

Number Units: **30**

Project: Cedar Hills Townhomes
 Location: Minnetonka, MN
 Estimator: Mike Szurek

Date: 1/18/2023

1	Needs Ass. #	Site Work	Quantity	Unit	Budget	Alternates
		TOTAL SITEWORK			\$0	\$0

2	Needs Ass. #	Building Exterior	Quantity	Unit	Budget	Alternates
12		Replace windows and trim with Pella Encompass Include extension jambs			\$288,876	
		TOTAL EXTERIOR			\$288,876	\$0

3	Needs Ass. #	Common Areas	Quantity	Unit	Budget	Alternates
		TOTAL INTERIOR COMMON AREA WORK			\$0	\$0

4	Needs Ass. #	Unit Interiors	Quantity	Unit	Budget	Alternates
4		Replace appliances			\$67,089	
		TOTAL UNIT INTERIORS			\$67,089	\$0

5	Needs Ass. #	Mechanical/Electrical	Quantity	Unit	Budget	Alternates
12		Replace furnaces (has some transite ducting) Thermostats			\$308,154	
14		Replace water heaters			\$114,351	
21		All of the existing line sets for the A/C run along the floor to the exterior and are hidden with fin tube covers. Most of the covers are destroyed. Replace			\$51,360	
22		Replace light fixtures with LED			\$50,023	
		TOTAL MECHANICAL/ELECTRICAL			\$523,888	\$0

Alternate Cost Subtotal					\$879,853	
Alternate Cost Subtotal (Per Unit)					\$29,328	

27		General Conditions		6%	\$52,791	
28		Overhead		2%	\$17,597	
29		Profit		6%	\$52,791	
30		Performance Bond			\$9,269	
31		Building Permit			\$11,199	
		Grand Total Base Cost			\$1,023,501	
		Cost Per unit			\$34,117	

MEMORANDUM

TO: Alisha Gray – Economic Development and Housing Manager
FROM: Schane Rudlang & Stacie Kvilvang - Ehlers
DATE: May 16, 2023
SUBJECT: AHTF Loan and 42M Analysis – Blooming Cedar Apartments, LLC (DevCo - Townhomes)

The City of Minnetonka (the “City”) received a request from Blooming Cedar Apartments, LLC (the “Developer”), a private developer of rental housing to issue tax-exempt multifamily housing revenue bonds and for a loan of \$1 million from the City/EDA’s Affordable Housing Trust Fund (AHTF) for the purchase and renovation of 80 townhomes for rent in Minnetonka and Bloomington. Thirty of the townhomes (Cedar Hills) are located at 10860 Cedar Bend in the City and 50 townhomes (Blooming Glen) are located at 724 Southglen Drive in Bloomington, Minnesota (collectively, the “Project”). The Project will qualify for federal low-income housing tax credits (known as 4% credits or simply tax credits) by virtue of an allocation of tax-exempt bond authority from the State of Minnesota.

As part of the tax-exempt bonding process, the State of Minnesota requires a letter from the City, as issuer of the bonds, to meet an Internal Revenue Service requirement that a public body make a finding the tax credits are necessary to make the Project financially feasible. This letter is known as a 42M letter. Kennedy and Graven, as the City’s Bond Counsel, indicates such a letter is reasonable to issue once the City conducts due diligence on the finances of the Project. This memorandum is intended to serve as the necessary due diligence for issuance of the 42M letter and for the analysis of the need for the \$1 million loan from the AHTF. We are not aware of any guidance from the IRS as to the form or level of detail of such due diligence.

We approached our review of the Project from the same perspective as we would any other private developer requesting financial assistance. This memorandum is only a review of the financial structure. It is not an appraisal, a feasibility study, or a document intended to assist in the offering of the bonds proposed to be issued for the Project. Our only client in this transaction is the City and we are not aware of any conflicts of interest. We are not serving as a Municipal Advisor to the City, or to the Developer, on the bond transaction.

Ehlers is in receipt of the following information on the Project: appraisals, mortgage lender commitment/LOI, market study, evidence of site control, syndication commitment/LOI, and financial proforma.

The analysis of the proforma is based on the Developer’s Multifamily Application Workbook submitted to Minnesota Housing, which details sources and uses, as well as the operating proforma for the Project. Ehlers conducted a review of the Workbook based on industry standards for project costs, affordable rental rates and operating expenses, developer fees, available funding sources, underwriting and financing criteria, and project cash flow. The anticipated sources and uses are as follows:

SOURCES			
	Amount	Pct.	Per Unit
First Mortgage	14,600,000	51%	182,500
City of Minnetonka Loan	1,000,000	4%	12,500
Equity	1,350,100	5%	16,876
Tax Credits	9,404,266	33%	117,553
Deferred Developer Fee (73% of Total Fee)	2,177,933	8%	27,224
TOTAL SOURCES	28,532,299	100%	356,654

USES			
	Amount	Pct.	Per Unit
Acquisition Costs	16,899,000	59%	211,238
Construction Costs	6,131,644	21%	76,646
Professional Services	454,433	2%	5,680
Financing Costs	1,656,904	6%	20,711
Developer Fee	2,998,317	11%	37,479
Cash Accounts/Escrows/Reserves	392,001	1%	4,900
TOTAL USES	28,532,299	100%	356,654

Project and Pro Forma Analysis:

Generally, the Project meets the expectations of a low-income housing tax credit development with regards to the financing structure, projected revenues, on-going operational costs, and developer fee. The findings of this analysis include:

- Acquisition Costs:** The proposed acquisition cost of the land and building is \$16,899,000 or approximately \$211,238 per unit. The appraisal for the Minnetonka property is \$9 million (\$300,000 per unit) and \$9.7 million for Bloomington (\$194,000 per unit) yielding a blended average of the appraised value of \$233,750. The proposed acquisition price appears to be representative of the fair market value for in-place townhomes of this age and quality.
- Construction/Rehabilitation Costs:** These costs are approximately \$6.1 million. This equates to approximately \$76,600 per unit. Based upon the age of the structures and review of the construction estimates, the costs appear reasonable under current market conditions.
- Rental Income:** Proposed contract rents range between \$1,520 to \$2,045 for a 2-bedroom unit, \$1,940 to \$2,350 for a 3-bedroom unit, and \$2,260 to \$2,265 for a 4-bedroom unit. All units for the project are restricted to 60% area median income (AMI) rents for Hennepin County, MN. The proposed contract rents are subsidized by a HAP Contract to bring down the rents to the 60% AMI level.
- Operating Expenses:** The operating costs are projected at \$5,933 per unit before management fees, property taxes, and replacement reserves. Operating expenses typically range between \$3,500 and \$4,500 per unit for apartment projects; it is not unreasonable to assume the operating costs for townhomes of this age to have

higher operating costs. The management costs are projected at 5.5% of effective gross income (EGI), which is within the typical market range of 3% to 6% of EGI.

5. **Reserves:** Replacement reserves are proposed at \$300 per unit, which is comparable to the \$250 to \$450 per unit commonly found within the housing market.
6. **Mortgage:** The Project contains a first mortgage of \$14,600,000 from Merchants Capital utilizing the Freddie Mac Targeted Affordable Housing Immediate Tax-Exempt Loan Program (the “Freddie Mac TEL Program”) with an interest rate of approximately 5.25%, amortized over 40 years, and a term of 15 years. Based on the anticipated financing terms, the project has maximized its potential debt from this source.
7. **City Loan:** Pending approval, the project would receive a \$1,000,000 loan from the AHTF for the Cedar Hills portion of the Project. This loan will be interest only at 4% until the deferred developer fee is paid in full. After that it will be repaid from 25% of the annual cashflow and positioned ahead of (senior to) to the Owner Soft Note (detailed below). The loan is required to be paid in full at the time of sale, refinance and/or re-syndication. The loan is anticipated to be paid off in 23 years.
8. **Tax Credits:** The project received a tax credit price of \$0.875 for every \$1.00 of available tax credits from U.S. Bancorp Community Development Corporation, which is calculated to generate approximately \$9,404,268 of proceeds for the Project. Tax credit pricing on many current projects is between \$0.85 and \$0.90. Annually, the Project will generate \$1,074,881 of tax credits. This is below the maximum annual tax credit allocation approved through Minnesota Housing but is maximized based on the qualified credit basis of the Project. The price per credit is favorable under current market conditions.
9. **Developer Fee and Deferred Developer Fee:** The developer fee of \$2,998,317 is 10.5% of total development costs and is consistent with Minnesota Housing underwriting requirements and other projects using 4% low-income housing tax credits. The Developer will defer \$2,177,933 or 73% of its fee to close the remaining financial gap. The remaining fee will be paid out of available cashflow over 11 years. This partial deferral and the timeline for full payment is typical of tax credit projects.
10. **Owner Soft Note:** The project contains a \$1.35 million soft note by the owner. This functions as a 3.4% simple interest loan to the project. Interest accrues until the deferred developer fee is paid off, at which time the note is paid back with interest.

Recommendation:

Based upon our analysis of the information provided in the development pro forma and financing structure, the project demonstrates a need for approximately \$1,074,881 of annual low-income housing tax credits projected to generate a total of approximately \$9,404,268 in tax credit equity. The project does not appear to be requesting more credits than necessary to achieve financial feasibility. The \$1 million loan from the AHTF is also necessary for the project to achieve market rate financial returns.



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May 15, 2023

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

Re: Resolution approving the issuance of revenues notes by the City of Minnetonka for the benefit of
Blooming Cedar Apartments, LLC

Dear Alisha,

Blooming Cedar Apartments, LLC, a Washington limited liability company (the "Borrower"), is proposing to finance the (i) acquisition, rehabilitation, and equipping of approximately 30 existing affordable townhome units and facilities functionally related and subordinate thereto located at 10860 Cedar Bend in the City for occupancy by individuals and families of low and moderate income, known as Cedar Hills Townhomes (the "Minnetonka Project"); and (ii) the acquisition, rehabilitation, and equipping of approximately 50 existing affordable townhome units and facilities functionally related and subordinate thereto located at 724 Southglen Drive, Bloomington, Minnesota, for occupancy by individuals and families of low and moderate income, known as Blooming Glen Townhomes (the "Bloomington Project," and together with the Minnetonka Project, the "Project").

To finance the Project, the Borrower is requesting that the City of Minnetonka (the "City") issue one or more series of taxable or tax-exempt revenues notes (the "Notes") in the estimated principal amount not to exceed \$16,000,000 and loan the proceeds thereof to the Borrower.

The Notes will be issued in accordance with Minnesota Statutes, Chapters 462C and 474A, as amended (the "Act"), and Minnesota Statutes, Sections 471.59 and 471.656, as amended (the "Joint Powers Act"). In order to issue the Notes, the City is required to conduct a public hearing in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 462C.04, subdivision 2 of the Act. The public hearing will be held during the City Council's meeting on May 22, 2023. Following the public hearing, the City Council will be asked to consider the enclosed resolution, which provides approval for the housing program prepared in accordance with the Act, the issuance of the Notes, and the execution of loan documents and related documents, including a Cooperative Agreement with the City of Bloomington, Minnesota (the "City of Bloomington"). On February 27, 2023, the City of Bloomington, as the municipality in which the Bloomington Project is located, authorized the execution of the Cooperative Agreement with the City and consented to the issuance of the Notes by the City to finance, in part, the Bloomington Project, in accordance with the requirements of the Joint Powers Act.

The Notes will evidence a funding loan (the “Funding Loan”) made by Merchants Capital Corp., an Indiana corporation (the “Initial Funding Lender”), pursuant to a Funding Loan Agreement. The City will loan the proceeds of the Note (the “Project Loan”) to the Borrower to finance the Project, pursuant to a Project Loan Agreement. The Borrower will provide U.S. Bank Trust Company, National Association (the “Fiscal Agent”) with a mortgage lien on the Project. To ensure compliance with certain rental and occupancy restrictions imposed by the City and required by the Act and Section 142(d) of the Code, the Borrower will execute and deliver separate Regulatory Agreements for each of the Minnetonka Project and the Bloomington Project. Freddie Mac has committed to purchasing the Funding Loan upon the satisfaction of certain conditions described in the commitment referenced in the Funding Loan Agreement, and the Initial Funding Lender will assign its interests in the Note, the Funding Loan Agreement, and other documents to Freddie Mac at that time.

The Notes will not constitute a general or moral obligation of the City and will not be secured by or payable from any property or assets of the City (other than the interests of the City in the loan agreements) and will not be secured by any taxing power of the City. The Notes will not be subject to any debt limitation imposed on the City, and the issuance of the Notes will not have any adverse impact on the credit rating of the City, even in the event that the Borrower encounters financial difficulties with respect to the Project to be financed with the proceeds of the Notes.

The Notes will be “private activity bonds” within the meaning of Section 141(a) of the Code but will be “exempt facility bonds” the net proceeds of which are to be used to provide a “qualified residential rental project” within the meaning of Sections 142(a)(7) and 143(d) of the Code and will not affect the City’s ability to issue and designate up to \$10,000,000 in tax-exempt bonds as “qualified tax-exempt obligations” (or “bank-qualified bonds”) for calendar year 2023.

The Borrower will pay the out-of-pocket expenses of the City with respect to this transaction as well as the City’s administrative fee.

I will attend the City Council meeting on May 22, 2023 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie A. Eddington

**Second Draft
May 15, 2023**

**LOAN AGREEMENT
(AFFORDABLE HOUSING TRUST FUND)**

THIS LOAN AGREEMENT is made this ___ day of June, 2023 (the “Loan Agreement”), between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic of the State of Minnesota (the “Lender”), and BLOOMING CEDAR APARTMENTS, LLC, a Washington limited liability company (the “Borrower”).

RECITALS

WHEREAS, the City of Minnetonka, Minnesota (the “City”) has established, and the Lender administers, an Affordable Housing Trust Fund, and funds within the Affordable Housing Trust Fund are authorized to be used for making grants, loans, and loan guarantees for development, rehabilitation or financing of housing or providing matches for other federal, state, or private resources for housing projects; and

WHEREAS, the Borrower has proposed to (i) acquire, rehabilitate, and equip approximately 30 existing affordable townhome units and facilities functionally related and subordinate thereto located at 10860 Cedar Bend in the City for occupancy by individuals and families of low and moderate income, known as Cedar Hills Townhomes (the “Minnetonka Project”); and (ii) acquire, rehabilitate, and equip approximately 50 existing affordable townhome units and facilities functionally related and subordinate thereto located at 724 Southglen Drive, Bloomington, Minnesota, for occupancy by individuals and families of low and moderate income, known as Blooming Glen Townhomes (the “Bloomington Project”); and

WHEREAS, the Lender has proposed to make a deferred loan to the Borrower in the principal amount of \$1,000,000 (the “Loan”) from the Affordable Housing Trust Fund in order to make the Minnetonka Project more economically feasible and to maintain and improve affordable housing in the City; and

WHEREAS, the Borrower will agree to maintain certain affordability requirements for the Minnetonka Project pursuant to a Declaration of Restrictive Covenants of even date herewith (the “Declaration”) between the Borrower and the Lender; and

WHEREAS, to evidence and secure the Borrower’s repayment obligations with respect to the Loan, the Borrower will execute and deliver to the Lender a Promissory Note of even date herewith (the “Note”) and a Mortgage of even date herewith (the “Mortgage”); and

ACCORDINGLY, to induce the Lender to make the Loan to Borrower, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

“AHTF Loan Documents” means the Loan Agreement, the Declaration, the Mortgage, and the Note.

“AHTF Loan” means the Affordable Housing Loan Fund Loan of \$1,000,000 provided by the Lender to the Borrower for the Minnetonka Project.

“Bridge Lender” means U.S. Bank National Association, a national banking association, and its successors and assigns.

“Bridge Loan” means the loan of \$_____ to the Borrower from the Bridge Lender.

“Deferred Development Fee” means the deferred development fee of the Borrower in the amount of \$2,177,933.

“Investor Member” means U.S. Bancorp Community Development Corporation, a Minnesota corporation.

“Project” means, collectively, the Minnetonka Project and the Bloomington Project.

“Senior Lender” means Merchants Capital Corp., an Indiana corporation, and its successors and assigns.

“Senior Loans” means the Bonds and the Bridge Loan.

“Surplus Cash” means one hundred percent (100%) of the cash remaining annually after all necessary and reasonable expenses of the Project (including the deferred developer’s fees, investor’s asset management fees, operational expenses, debt payments, funding reserves, developer fees, and all other obligations of the Project) have been paid or funds have been set aside for such payment. Other than with respect to the payment that shall be due pursuant to subsection 3(c) above, the failure to pay the principal of and interest on the Loan when Surplus Cash is not available shall not constitute an Event of Default pursuant to Section 5 hereof.

2. The Loan Amount. Subject to and upon the terms and conditions of this Loan Agreement, the Lender agrees to make the Loan to the Borrower in the amount of One Million and 00/100ths Dollars (\$1,000,000.00), or so much thereof as is disbursed to Borrower in accordance with this Loan Agreement. The Loan shall be evidenced by the Note, which Note shall be secured by the Mortgage.

3. Repayment of Loan. Other than the payment that shall be due pursuant to subsection 3(c) hereof, the Loan shall be payable from Surplus Cash of the Project. The Loan shall be repaid as follows:

(a) Interest on the Loan shall accrue at the rate of four percent (4%) per annum. Interest only on the Loan shall be payable from Surplus Cash annually on _____ of each year until the Deferred Development Fee of the Borrower is paid in full. Interest on the Loan shall be paid after the principal and interest on the Senior Loans are paid and prior to the Deferred Developer Fee being paid.

(b) Once the Deferred Developer Fee of the Borrower is paid in full, payments of principal and interest shall be payable annually from 25% of Surplus Cash on _____ until the principal of and interest on the Loan is paid in full. The Loan shall mature on June 1, 2053 (the “Maturity Date”), subject to subsection (c) below.

(c) The entire unpaid balance of principal and interest shall be due and payable in full on the earliest of the following: (i) the Maturity Date; (ii) the refinancing of the Minnetonka Project; or (iii) the sale or transfer of the Minnetonka Project.

(d) The Borrower shall have the right to prepay the Note in full or in part at any time without penalty; provided, however, that so long as the Senior Loans provided by the Senior Lender to the Borrower is outstanding and the Bridge Loan from the Bridge Lender is outstanding, the Borrower must obtain written consent of the Senior Lender and the Bridge Lender for such prepayment. Any partial prepayment shall be applied first to any unpaid, accrued interest with the balance, if any, applied to principal.

4. Payment of Deferred Development Fee with Surplus Cash. Upon completion of the rehabilitation of the Minnetonka Project and the payment in full of the Deferred Development Fee, the Borrower shall commence paying the Loan with twenty-five percent (25%) of Surplus Cash. The Borrower shall notify the Lender when the Deferred Developer Fee is paid in full.

5. Disbursement of Loan Proceeds.

(a) The Loan proceeds shall be paid to the Borrower on the date hereof or such other date as the parties hereto agree (the "Loan Closing Date").

(b) The following events shall be conditions precedent to the payment of the Loan proceeds to the Borrower on the Loan Closing Date:

(i) the Borrower having provided evidence of sufficient financing for the acquisition of the Project to the Lender;

(ii) the Borrower having executed and delivered, or having caused to be executed and delivered, to the Lender on or prior to the Loan Closing Date, without expense to the Lender, executed copies of the AHTF Loan Documents; and

(iii) the Borrower having paid all attorneys' fees, costs, and expenses incurred by the Lender in connection with this Loan Agreement, the Declaration, the Mortgage, and the Note.

6. Representations and Warranties. The Borrower represents and warrants to the Lender that:

(a) The Borrower is a limited liability company duly organized and existing in good standing under the laws of the State of Washington and authorized to do business in the State of Minnesota.

(b) The Borrower is duly authorized and empowered to execute, deliver, and perform the requirements of the AHTF Loan Documents and to borrow money from the Lender.

(c) The execution and delivery of this Loan Agreement, and the performance by the Borrower of its obligations hereunder, do not and will not violate or conflict with any provision of law or the partnership agreement of the Borrower and do not and will not violate or conflict with, or cause any default or event of default to occur under, any agreement binding upon the Borrower.

(d) The execution and delivery of this Loan Agreement has been duly approved by all necessary action of the Borrower, and this Loan Agreement has in fact been duly executed and delivered by the Borrower and constitutes its lawful and binding obligation, legally enforceable against it.

(e) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the receipt and disbursements of Loan proceeds and that any duly authorized representative of the Lender shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower respecting the Loan until the completion of all closeout procedures and the final settlement and conclusion of all issues arising out of this Loan.

(f) The Borrower warrants that it has fully complied with all applicable state and federal laws pertaining to its business and will continue said compliance throughout the term of this Loan Agreement. If at any time the Borrower receives notice of noncompliance from any governmental entity, the Borrower agrees to take any necessary action to comply with the state or federal law in question.

7. Event of Default by Borrower. The following shall be “Events of Default” under this Loan Agreement:

(a) the Borrower’s failure to comply with the Lender’s required affordability restrictions set forth in the Declaration;

(b) the Borrower’s failure to pay principal of and interest on the Loan when Surplus Cash is available to be used pursuant to this Agreement or when due; or

(c) the Borrower’s failure to provide the Lender with the Borrower’s annual financial information.

8. Lender’s Remedies upon Borrower’s Default. Upon an Event of Default by the Borrower and after receipt of written notice from the Lender, the Lender shall, subject to the terms of the Note, have the right to exercise any or all of the following remedies (and any other rights and remedies available to it):

(a) in the event of a default caused by the Borrower’s failure to comply with the Lender’s required affordability restrictions set forth in the Declaration, declare the principal amount of the Loan and any accrued interest thereon to be immediately due and payable upon providing written notice to Borrower;

(b) suspend its performance under this Loan Agreement;

(c) take any action provided for at law to enforce compliance by the Borrower with the terms of this Loan Agreement or the Mortgage; and

(d) in the event of a default caused by the Borrower’s failure to pay principal of and interest on the Loan when Surplus Cash is available or when payment is due pursuant to the terms hereof, declare the principal amount of the Loan and any accrued interest thereon to be immediately due and payable upon providing written notice to Borrower if the Senior Lender provides written consent, which consent may be given in Senior Lender’s sole and absolute discretion, or the loan provided by the Senior Lender is paid in full.

9. Lender's Costs of Enforcement of Loan Agreement. If an Event of Default has occurred as provided herein, then upon demand by the Lender, the Borrower will pay or reimburse the Lender for all expenses, including all reasonable fees and disbursements of legal counsel, incurred by the Lender in connection with the enforcement of this Loan Agreement, or in connection with the protection or enforcement of the interests of the Lender in any litigation or bankruptcy or insolvency proceeding or in any action or proceeding relating in any way to the transactions contemplated by this Loan Agreement.

10. Miscellaneous.

(a) Waiver. The performance or observance of any promise or condition set forth in this Loan Agreement may be waived only in writing. No delay in the exercise of any power, right or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right or remedy.

(b) Assignment. This Loan Agreement shall be binding upon the Borrower and its successors and assigns and shall inure to the benefit of the Lender and its successors and assigns. All rights and powers specifically conferred upon the Lender may be transferred or delegated by the Lender to any of its successors and assigns. The Borrower's rights and obligations under this Loan Agreement may be assigned only when such assignment is approved in writing by the Lender. Nothing in this Loan Agreement shall limit or restrict the ability of the Investor Member to transfer, sell, or assign its ownership interest in the Borrower, from time to time, without the consent of the Lender, provided that said Investor Member remains liable for payment of any then unpaid capital contributions to the Borrower, as and when payable, as set forth in the Borrower's Operating Agreement, notwithstanding any such transfer, sale, or assignment. In particular, the Lender hereby consents to any transfers, sales, or assignments of investor membership interests in the Borrower to any affiliate of the Investor Member or any entity in which the Investor Member, or an affiliate, is the manager or managing member and agrees that such transfers shall not constitute defaults under this Loan Agreement.

(c) Law Governing; Other Matters. This Loan Agreement shall be governed by the substantive laws of the State of Minnesota. If any provision or application of this Loan Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Loan Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Loan Agreement or in any other agreement between the Borrower and the Lender shall survive the execution, delivery and performance of this Loan Agreement and the creation and payment of any indebtedness to the Lender. The Borrower waives notice of the acceptance of this Loan Agreement by the Lender.

(d) Notice. All notices required hereunder shall be given by depositing in the U.S. mail, postage prepaid, certified mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

To the Lender: Economic Development Authority in and for the
City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attention: Executive Director

To the Borrower: Blooming Cedar Apartments, LLC
c/o Devco LLC
P.O. Box 4108 (mailing)
10900 NE Eighth Street, Suite 1200 (Physical)
Seattle, WA 98004
Attention: _____

With copies to: Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attention: John D. Nolde, Esq.

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
USB Project No.: _____
Attention: Director of Asset Management
Phone: 314-335-2600

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Jill Goldstein, Esq.

11. Indemnification. The Borrower shall and does hereby agree to indemnify against and to hold the Lender, and its officers, agents, and employees, harmless of and from any and all liability, loss, or damage which it may or might incur by reason of or arising from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained herein. Should the Lender, or its officers, agents, or employees incur any such liability or be required to defend against any such claims or demands, or should a judgment be entered against the Lender, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall bear interest thereon at the rate then in effect on the Note, shall be added to the Loan, and the Borrower shall reimburse the Lender for the same immediately upon demand, and upon the failure of the Borrower so to do, the Lender may declare the Loan immediately due and payable.

12. Cure Rights. Any member or partner of the Borrower shall have the right, but not the obligation, to cure any Event of Default by the Borrower under this Loan Agreement or any default under the Note or the related AHTF Loan Documents, and the Lender shall accept performance by the member or partner of the Borrower of any obligation of the Borrower thereunder as though tendered by the Borrower itself, provided such performance by the member or partner of the Borrower has occurred during the applicable cure period, if any, provided to the Borrower thereunder with respect to such default or Event of Default. The Lender agrees to give the Investor Member written notice of any and all defaults by the Borrower under the AHTF Loan Documents associated with the Loan, and an opportunity, at the Investor Member's option, to cause the cure of such default within the cure periods set forth below, prior to exercising any remedies under the AHTF Loan Documents. The Lender agrees that the Investor Member will have ten (10) days after the Investor Member's receipt of notice of such default to cure, or cause the cure of a monetary default under the AHTF Loan Documents, and thirty (30) days (or such longer period as is set forth in the AHTF Loan Documents) after the Investor Member's receipt of such notice to cure any non-monetary defaults under the AHTF Loan Documents, or, as to non-monetary

defaults, such longer period as is reasonably necessary for the Investor Member to cause cure, provided that cure is commenced within the above cure period and diligently prosecuted, including without limitation such time period as is necessary to remove the Borrower's managing member, if necessary in order to effect a cure.

13. Fees. All attorneys' fees and other fees due and payable in connection with the Loan, including but not limited to the fees associated with the recording of the Mortgage, shall be paid by the Borrower and shall not be included in the principal amount of the Loan.

14. Subordination. The Lender agrees that the Borrower's obligation to repay the Loan shall be subordinate to the Borrower's obligation to repay the Senior Loans from the Senior Lender and the Bridge Loan from the Bridge Lender. The Lender will execute a subordination agreement agreeing that, other than the payment that shall be due pursuant to Section 3(c) hereof, any payments shall be paid from twenty-five percent (25%) of Surplus Cash. Prior to the payment in full of the Senior Loans and the Bridge Loan, the Lender agrees that it will not exercise any rights or remedies under the Note, the Mortgage, this Loan Agreement, or any other document executed in connection therewith.

15. Amendments. Any subordination agreements with the Senior Lender and all amendments to this Loan Agreement and the related AHTF Loan Documents must be approved by the Board of Commissioners of the Lender. So long as the Senior Loans and/or the Bridge Loan is outstanding, this Loan Agreement shall not be amended without the prior written consent of the Senior Lender and the Bridge Lender.

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

IN WITNESS WHEREOF, the undersigned officers of the Lender and the Borrower have executed this Loan Agreement 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

Execution page of Borrower to the Loan Agreement, dated as of the date and year first written above.

BLOOMING CEDAR APARTMENTS, LLC

By _____
Its _____

MN140-243 (JAE)
873811v2

**Second Draft
May 15, 2023**

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this ____ day of June, 2023 (the “Declaration”), by BLOOMING CEDAR APARTMENTS, LLC, a Washington limited liability company (the “Owner”), for the benefit of the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic of the State of Minnesota (the “Authority”).

RECITALS

WHEREAS, the City of Minnetonka, Minnesota (the “City”) has established, and the Authority administers, an Affordable Housing Trust Fund, and funds within the Affordable Housing Trust Fund are authorized to be used for making grants, loans, and loan guarantees for development, rehabilitation or financing of housing or providing matches for other federal, state, or private resources for housing projects; and

WHEREAS, the Owner has proposed to (i) acquire, rehabilitate, and equip approximately 30 existing affordable townhome units and facilities functionally related and subordinate thereto located at 10860 Cedar Bend in the City for occupancy by individuals and families of low and moderate income, known as Cedar Hills Townhomes (the “Minnetonka Project”) on the property legally described in EXHIBIT A attached hereto (the “Property”); and (ii) acquire, rehabilitate, and equip approximately 50 existing affordable townhome units and facilities functionally related and subordinate thereto located at 724 Southglen Drive, Bloomington, Minnesota, for occupancy by individuals and families of low and moderate income, known as Blooming Glen Townhomes (the “Bloomington Project”); and

WHEREAS, the Authority has proposed to make a deferred loan to the Owner in the principal amount of \$1,000,000 (the “Loan”) from the Affordable Housing Trust Fund in order to make the Minnetonka Project more economically feasible and to maintain and improve affordable housing in the City; and

WHEREAS, the Owner 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 Owner; and

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 Owner agrees as follows:

1. Term of Restrictions.

(a) Occupancy Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof shall commence on the date the Owner receives a certificate of occupancy from the City for all rental units on the Property (the “Rental Housing Units”). 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 Owner 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 Owner 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 Owner 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 Owner shall permit any duly authorized representative of the Authority or the City to inspect the books and records of the Owner pertaining to the income of Qualifying Tenants residing in the Minnetonka Project.

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, all 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 one or more occupants of a unit who are determined from time to time by the Owner 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.

(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 Owner 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 Owner with respect to each Qualifying Tenant who resides in a Rental Housing Unit or resided therein during the immediately preceding calendar year.

(iii) Lease. The form of lease to be utilized by the Owner in renting any Rental Housing Unit 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 Owner covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT C attached hereto, executed by the Owner, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants, including the percentage of the Rental Housing Units 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 Minnetonka 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 Owner was not otherwise in default under this Declaration during such year.

(v) Notice of Non-Compliance. The Owner will promptly notify the Authority if at any time during the term of this Declaration the Rental Housing Units 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 Owner shall not adopt any policies that prohibit or in any way exclude 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. Additionally, the Owner shall not adopt policies that have the effect of making it difficult for 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, to rent units within the Minnetonka Project (for example, policies that require income of more than two times the rent to be paid for a unit).

4. [Reserved].

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

shall deliver the Assumption Agreement to the Authority prior to the Transfer. Nothing in this Declaration shall limit or restrict the ability of the Owner's investor member, U.S. Bancorp Community Development Corporation, a Minnesota corporation (the "Investor Member"), to transfer, sell, or assign its ownership interest in the Owner, from time to time, without the consent of the Authority, provided that said Investor Member remains liable for payment of any then unpaid capital contributions to the Owner, as and when payable, as set forth in the Owner's Operating Agreement, notwithstanding any such transfer, sale, or assignment. In particular, the Authority hereby consents to any transfer, sales, or assignments of investor membership interests in the Owner to any affiliate of the Investor Member or any entity in which the Investor Member, or an affiliate, is the manager or managing member and agrees that such transfers shall not constitute defaults under this Declaration. Further, amendments to the Owner's Operating Agreement entered into in order to effect transfers or assignments of the Investor Member's interest pursuant to this section shall not require the consent or approval of the Authority.

6. Notice of Sale. The Owner agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Minnetonka Project.

7. Property Management Covenant. The Owner shall cause its property manager to operate the Minnetonka Project 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 Owner agrees and understands that the following procedures shall apply:

(a) After a first Violation regarding any unit in the Minnetonka Project, the City police department will send notice to the Developer and the property manager requiring the Owner 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 Owner and the property manager of the second Violation. Within ten (10) days after receiving such notice, the Owner 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 Owner and the property manager of the third Violation. Within ten (10) days after receiving such notice, the Owner or the property manager shall commence termination of the tenancy of all occupants of that unit. The Owner 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 Owner 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 Owner and the property manager directing attendance at a meeting to determine the cause of the continuing Violations in the Minnetonka Project and provide an opportunity for the Owner and the property manager to explain their failure to comply with the procedures in this Section.

(e) If the Owner and property manager fail to respond to the written notice under subsection (d) above, then the Authority may direct the Owner to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Owner but approved by the Authority. The parties agree and understand that appointment of any replacement manager may also be subject to consent by the holder of one (1) or more loans on the Property.

8. Enforcement.

(a) The Owner 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 Owner regarding the Minnetonka Project with respect to the incomes of Qualifying Tenants.

(b) The Owner 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 Owner 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 law.

9. Indemnification. The Owner 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 Owner to comply with the terms of this Declaration, or on account of any representation or warranty of the Owner contained herein being untrue.

10. 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 Owner of any such agency appointment by written notice.

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

12. 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 Owner 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, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attention: Executive Director

To the Borrower: Blooming Cedar Apartments, LLC
c/o Devco LLC
P.O. Box 4108 (mailing)
10900 NE Eighth Street, Suite 1200 (Physical)
Seattle, WA 98004
Attention: _____

With copies to: Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attention: John D. Nolde, Esq.

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
USB Project No.: _____
Attention: Director of Asset Management
Phone: 314-335-2600

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Jill Goldstein, Esq.

13. 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.

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

15. Declaration Binding. This Declaration and the covenants contained herein shall run with the real property comprising the Minnetonka Project and shall bind the Owner and its successors and assigns and all subsequent owners of the Minnetonka 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.

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

IN WITNESS WHEREOF, the Owner 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.

BLOOMING CEDAR APARTMENTS, LLC

By _____
 Its _____

STATE OF WASHINGTON)
) SS.
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of Blooming Cedar Apartments, LLC, a Washington limited liability company, on behalf of the Mortgagor.

 Notary Public

This document was drafted by:
 KENNEDY & GRAVEN, CHARTERED (JAE)
 150 South Fifth Street, Suite 700
 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 ____ day of _____, 2023,
by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka,
Minnesota, a public body corporate and politic of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023,
by Michael Funk, the Executive Director of the Economic Development Authority in and for the City of
Minnetonka, Minnesota, a public body corporate and politic of the State of Minnesota, on behalf of the
Authority.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Lot 4, Block 1, Cedar Hills 3rd Addition.

Hennepin County, Minnesota
Torrens Property

DRAFT

EXHIBIT B

CERTIFICATION OF TENANT ELIGIBILITY

Project: 10860 Cedar Bend, Minnetonka, Minnesota

Owner: Blooming Cedar Apartments, LLC

Unit Type: _____ Studio _____ 1 BR _____ 2 BR _____ [etc.]

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 Minnetonka 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.

BLOOMING CEDAR APARTMENTS

By _____
Its _____

EXHIBIT C

**CERTIFICATE OF
CONTINUING PROGRAM COMPLIANCE**

Date: _____, _____.

The following information with respect to the project located at 10860 Cedar Bend, Minnetonka, Minnesota (the “Minnetonka Project”), is being provided by Blooming Cedar Apartments, LLC, a Washington limited liability company (the “Owner”), to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), pursuant to that certain Declaration of Restrictive Covenants, dated June ___, 2023 (the “Declaration”), with respect to the Minnetonka Project:

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

Studio Units:

1 BR Units:

2 BR Units:

[etc.]

(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 City by the Owner:

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:

		Name of Tenant	Number of Persons				Rent

	Unit Number		Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
etc.							

(E) The Owner 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 Owner in its records with respect to the Minnetonka 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 City by the Owner.

(F) In renting the residential units in the Minnetonka Project, the Owner 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 Minnetonka 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 Owner 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 Minnetonka Project is in continuing compliance with the Declaration.

(I) The Owner certifies that as of the date hereof all of the residential dwelling units in the Minnetonka 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 Owner, on _____, 20__.

BLOOMING CEDAR APARTMENTS, LLC

By _____
Its _____

MN140-243 (JAE)
873995v3

**Second Draft
May 15, 2023**

THIS MORTGAGE IS EXEMPT FROM REGISTRATION TAX PURSUANT TO MINNESOTA STATUTES, SECTION 287.04(6).

**MORTGAGE
(AFFORDABLE HOUSING TRUST FUND)**

THIS MORTGAGE is made this ____ day of June, 2023 (the "Mortgage"), by BLOOMING CEDAR APARTMENTS, LLC, a Washington limited liability company, with an address of c/o Devco LLC, 10900 NE Eighth Street, Suite 1200, Seattle, Washington 98004 (the "Mortgagor"), in favor of the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic of the State of Minnesota, with an address of 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345 (the "Mortgagee").

WITNESSETH:

That the Mortgagor, in consideration of the sum of One Million and 00/100ths Dollars (\$1,000,000.00) and other good, valuable and sufficient consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the Mortgagee, its successors and assigns, forever, all the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota and legally described in EXHIBIT A attached hereto (the "Land").

To have and to hold the same, together with the hereditaments and appurtenances thereto belonging to the Mortgagor, its successors and assigns, forever; and the Mortgagor, for itself, and its successors and assigns, does covenant with the Mortgagee, its successors and assigns, as follows: That it is lawfully seized of said premises and has good right to sell and convey the same; that the same are free from all encumbrances, save and except reservations, restrictions and easements set forth on EXHIBIT B attached hereto; that the Mortgagee, its successors and assigns, shall quietly enjoy and possess the same; and that the Mortgagor will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted; and

Provided, nevertheless, that if the Mortgagor, its successors and assigns, shall keep and perform each and every one of its obligations under and pursuant to that certain Promissory Note of even date herewith (the "Note"), given by the Mortgagor in favor of the Mortgagee, and shall keep and perform all the covenants and agreements herein contained, then this deed to be null and void, and to be released at the Mortgagor's expense.

This Mortgage secures a principal debt in the amount of One Million and 00/100ths Dollars (\$1,000,000.00) payable by the Mortgagor to the Mortgagee under the terms of the Note and the Loan

Agreement of even date herewith (the "Loan Agreement") between the Mortgagor and the Mortgagee, which Note matures on _____, 2053, or such earlier date provided in the Note. This Mortgage matures no later than _____, 2053.

Notwithstanding the provisions of this Mortgage or any other document, the Mortgagor and its members or partners shall not be personally liable for payment of the indebtedness evidenced by the Note, and the Mortgagee's sole recourse for payment of such indebtedness upon the occurrence of an Event of Default (hereinafter defined) shall be to pursue the security provided by this Mortgage and other instruments securing payment of the Note. Nothing in this Section shall affect, limit or impair (i) the security provided by this Mortgage or any other document; (ii) the right to seek monetary judgment against the Mortgagor or any owner of the mortgaged property to the extent necessary to permit foreclosure of this Mortgage by action (except that the Mortgagor shall not be personally liable for payment of any such judgment to the extent that the judgment is for payment of the indebtedness evidenced by the Note and no deficiency judgment will be sought or obtained against the Mortgagor for payment of the indebtedness evidenced by the Note); (iii) the enforcement by the Mortgagee of any other legal or equitable rights or remedies or any other provision of any instrument by which the Note is secured; or (iv) the personal liability of the Mortgagor for the failure to observe or perform any of the covenants or obligations of the Mortgagor and other instruments securing payment of the Note other than the obligation to pay the indebtedness evidenced by the Note.

1. The Mortgagor, for itself, and its successors and assigns, does hereby covenant and agree with the Mortgagee, its successors and assigns, to perform its obligations as above specified, to pay all taxes and assessments now due or that may hereafter become liens against said premises at least ten (10) days before penalty attaches thereto; to pay, when due, both principal and interest of all prior liens or encumbrances, if any, above mentioned and to keep said premises free and clear of all other prior liens or encumbrances; to commit or permit no waste on said premises and to keep them in good repair; to complete forthwith any improvements which may hereafter be under course of construction thereon, and to pay any other expenses and attorneys' fees incurred by the Mortgagee, its successors or assigns, by reason of litigation with any third party for the protection of the lien of this Mortgage.

2. The Mortgagor does further covenant and agree that if any lien for labor, skill or material shall be filed for record during the life of this Mortgage, upon or against the premises hereby mortgaged, the Mortgagor will, within thirty (30) days after the date of its filing for record, either pay off the lien and secure its satisfaction of record, or will protect the Mortgagee against any loss or damage growing out of its enforcement, by furnishing a bond for the same amount in the form and with the sureties to be approved by the Mortgagee or a cash escrow in an amount acceptable to the Mortgagee.

3. In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorneys' fees as above specified, or to insure said buildings and deliver the policies as aforesaid, the Mortgagee, its successors or assigns, may pay such taxes, assessments, prior liens, expenses and attorneys' fees and interest thereon, or effect such insurance, and the sums so paid shall bear interest at the rate of four percent (4%) per annum or, if less, the highest rate permitted by law from the date of such payment, shall be impressed as an additional lien upon said premises, and be immediately due and payable from the Mortgagor, its successors or assigns, to the Mortgagee, its successors or assigns, and this Mortgage shall from date thereof secure the repayment of such advance with interest.

4. Upon the occurrence of an event of default under the Loan Agreement (an "Event of Default"), subject to the remedies provided in the Loan Agreement, the Mortgagor confers upon the Mortgagee the option, of declaring a default and hereby authorizes and empowers the Mortgagee, its successors and assigns, to foreclose this Mortgage by judicial proceedings or to sell said premises at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out

of the money arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorneys' fee permitted by law, which costs, charges and fees the Mortgagor herein agrees to pay.

5. Any member or partner of the Mortgagor shall have the right, but not the obligation, to cure any Event of Default by the Mortgagor under this Mortgage, the Note, or the Loan Agreement, and the Mortgagee shall accept performance by the member or partner of the Mortgagor of any obligation of the Mortgagor thereunder as though tendered by the Mortgagor itself, provided such performance by the member or partner of the Mortgagor has occurred during the applicable cure period, if any, provided to the Mortgagor thereunder with respect to such default or Event of Default. Under the terms of the Loan Agreement, the Mortgagee agrees to give the Mortgagor's Investor Member written notice of any and all defaults by the Mortgagor under the Loan Documents and an opportunity, at the Investor Member's option, to cause the cure of default within the cure periods set forth below, prior to exercising any remedies under the Loan Documents. Pursuant to the Loan Agreement, the Mortgagee agrees that the Investor Member will have ten (10) days after the Investor Member's receipt of notice of such default to cure, or cause the cure of a monetary default under the Loan Documents, and thirty (30) days (or such longer period as is set forth in the Loan Documents) after the Investor Member's receipt of such notice to cure any non-monetary defaults under the Loan Documents, or, as to non-monetary defaults, such longer period as is reasonably necessary for the Investor Member to cause cure, provided that cure is commenced within the above cure period and diligently prosecuted, including without limitation such time period as is necessary to remove the Mortgagor's managing member, if necessary to effect a cure.

6. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Loan Agreement.

7. This Mortgage is exempt from mortgage registration tax imposed by Minnesota Statutes, Section 287.035, pursuant to Minnesota Statutes, Section 287.04(6), because the principal amount of the loan referred to herein is made under a low- and moderate-income or other affordable housing program and the Mortgagee is the Economic Development Authority in and for the City of Minnetonka, Minnesota, which is a public body corporate and politic of the State of Minnesota.

8. The Mortgagee agrees that this Mortgage shall be subordinate to any mortgages provided by the Mortgagor to the senior lenders described below in connection with the Minnetonka Project, including the following:

(a) Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing of even date herewith by the Mortgagor, as mortgagor, in favor of the City of Minnetonka, Minnesota, as mortgagee (the "City"), recorded concurrently herewith in the Office of Registrar of Titles of Hennepin County, Minnesota, securing the principal amount of \$14,600,000.00, as the City's interest was assigned to U.S. Bank Trust Company, National Association, a national banking association (the "Fiscal Agent"), pursuant to an Assignment of Mortgage of even date herewith, recorded concurrently herewith in the Office of Registrar of Titles of Hennepin County, Minnesota.

[(b) list additional mortgages].

(c) Notwithstanding anything herein to the contrary, if the Mortgagee takes title to the Minnetonka Project (as defined in the Loan Agreement) through foreclosure or deed in lieu of foreclosure, the Minnetonka Project shall remain subject to the provisions of Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended (the "Code"), or any similar successor provision of the Code. This Section shall apply notwithstanding the order of recording

of any of the Loan Documents (as defined in the Loan Agreement) and the Extended Use Commitment (as defined in _____) executed in connection with the allocation of federal low income housing tax credits to the Mortgagor for the Minnetonka Project pursuant to Section 42 of the Code.

(d) Notwithstanding anything herein to the contrary, if the Mortgagee takes title to the Minnetonka Project (as defined in the Loan Agreement) through foreclosure or deed in lieu of foreclosure, the Minnetonka Project shall remain subject to the provisions of Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended (the "Code"), or any similar successor provision of the Code. This Section shall apply notwithstanding the order of recording of any of the Loan Documents (as defined in the Loan Agreement) and the Extended Use Commitment (as defined in _____) executed in connection with the allocation of federal low income housing tax credits to the Mortgagor for the Minnetonka Project pursuant to Section 42 of the Code.

9. The Mortgagor's Investor Member, and its successors and assigns, is a third-party beneficiary of the rights of the Mortgagor under this Mortgage and the remaining Loan Documents applicable to the Loan.

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

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage as of the date and year first written above.

BLOOMING CEDAR APARTMENTS, LLC

By _____
Its _____

STATE OF WASHINGTON)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of Blooming Cedar Apartments, LLC, a Washington limited liability company, on behalf of the Mortgagor.

Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, MN 55402-1299
612-337-9300

EXHIBIT A

DESCRIPTION OF LAND

Lot 4, Block 1, Cedar Hills 3rd Addition.

Hennepin County, Minnesota
Torrens Property

EXHIBIT B
PERMITTED ENCUMBRANCES

[Insert permitted encumbrances]

MN140-243 (JAE)
873810v2

Second Draft
May 15, 2023

PROMISSORY NOTE
(AFFORDABLE HOUSING TRUST FUND)

\$1,000,000

June __, 2023

BLOOMING CEDAR APARTMENTS, LLC, a Washington limited liability company (the “Borrower”), for value received, hereby promises to pay to the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic of the State of Minnesota (the “Lender”), or its assigns (the Lender and any assigns are hereinafter referred to as the “Holder”), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of One Million and 00/100ths Dollars (\$1,000,000.00), or so much thereof as may be advanced under this Note, with interest as hereinafter provided, in any coin or currency which at the time or times of payment is legal tender for the payment of private debts in the United States of America. All terms capitalized herein and not defined have the definitions given such terms in the Loan Agreement of even date herewith (the “Loan Agreement”) between the Borrower and the Lender.

1. Interest on the Loan shall accrue at the rate of four percent (4%) per annum. Interest only on the Loan shall be payable from Surplus Cash annually on _____ of each year until the Deferred Development Fee (as defined in the Loan Agreement) of the Borrower is paid in full. Interest on the Loan shall be paid after the principal and interest on the Senior Loans (as defined in the Loan Agreement) are paid and prior to the Deferred Developer Fee being paid.

2. Once the Deferred Developer Fee of the Borrower is paid in full, payments of principal and interest shall be payable annually from 25% of Surplus Cash on _____ of each year until the principal of and interest on the Loan is paid in full. The Loan shall mature on June 1, 2053 (the “Maturity Date”), subject to subsection (c) below.

3. The entire unpaid balance of principal and interest shall be due and payable in full on the earliest of the following: (i) the Maturity Date; (ii) the refinancing of the Minnetonka Project; or (iii) the sale or transfer of the Minnetonka Project.

4. Other than the payment that shall be due pursuant to Section 3 hereof, all payments of principal and interest shall be payable solely from twenty-five percent (25%) of Surplus Cash. For the purposes of this Note, “Surplus Cash” means one hundred percent (100%) of the cash remaining after all necessary and reasonable expenses of the Project (including deferred developer’s fees, investor’s asset management fees, operational expenses, debt payments, funding reserves, developer fees, and all other obligations of the Project) have been paid or funds have been set aside for such payment. Other than with respect to the payment that shall be due pursuant to Section 3 hereof, the failure to pay the principal of and interest on this Note when Surplus Cash is not available shall not constitute an Event of Default under this Note.

5. The Borrower shall have the right to fully or partially prepay this Note at any time without penalty; provided, however, that so long as the loan provided by the Senior Lender to the Borrower is outstanding, the Borrower must obtain written consent of the Senior Lender to such prepayment. Any partial prepayment shall be applied first to any unpaid, accrued interest with the balance, if any, applied to principal.

6. This Note is given pursuant to the Loan Agreement, as the same may be amended from time to time, and is secured by a Mortgage of even date herewith (the "Mortgage") by the Borrower in favor of the Lender, covering certain real property located in the City of Minnetonka, Hennepin County, Minnesota and legally described in the Mortgage (the "Property"). All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement and the Mortgage are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note.

7. If an Event of Default occurs under the Loan Agreement or the Declaration with respect to the Borrower's failure to comply with the Lender's required affordability restrictions under the Loan Agreement or the Declaration, then the Holder of this Note may, at its right and option, declare immediately due and payable the principal balance of this Note and interest accrued thereon, without notice, demand or presentment for payment to the Borrower. The remedies of the Holder, as provided herein and in the Loan Agreement and the Mortgage, shall be cumulative and concurrent, may be pursued singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur.

8. The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder of this Note and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

9. If any Event of Default occurs, and if the Holder engages legal counsel or others in connection with advice to the Holder or the Holder's rights and remedies under the Loan Agreement or this Note, the Borrower shall pay all reasonable expenses incurred by the Holder for such persons, irrespective of whether any suit or other proceeding has been or is filed or commenced. Any such expenses, costs and charges shall constitute additional principal, payable upon demand, and subject to this Note, the Loan Agreement, the Declaration, or the Mortgage.

10. Except as otherwise provided in this Note, the Loan Agreement, the Declaration, or the Mortgage, the Borrower hereby (a) waives demand, presentment for payment, notice of nonpayment, protest, notice of protest, and all other notice; (b) agrees to any substitution, exchange, addition, or release of any party or person primarily or secondarily liable hereon; (c) agrees that the Holder shall not be required first to institute any suit or to exhaust its remedies against the Borrower or any other person or party in order to enforce payment of this Note; and (d) consents to any extension, rearrangement, renewal, or postponement of time or payment of this Note and to any other indulgence with respect hereto without notice, consent, or consideration to any of them.

11. If any term of this Note, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

12. It is intended that this Note is made with reference to and shall be construed as a Minnesota contract and governed by the laws thereof.

13. The indebtedness evidenced by this Note is also subordinate in right of payment to the prior payment in full of the indebtedness evidenced by (i) a Multifamily Note with designation as the

Multifamily Housing Revenue Note (Blooming Glen and Cedar Hills Project), Series 2023, of even date herewith in the original aggregate principal amount of \$14,600,000, issued by the City of Minnetonka, Minnesota, the proceeds of which were loaned to the Borrower; and (ii) a Promissory Note of even date herewith in the principal amount of \$_____, issued by the Borrower in favor of U.S. Bank National Association, a national banking association.

14. IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

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

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed as of the date and year first written above.

BLOOMING CEDAR APARTMENTS, LLC

By _____
Its _____

MN140-243 (JAE)
873808v3

EDA Resolution No. 2023-

Resolution approving a loan to Blooming Cedar Apartments, LLC and the execution and delivery of documents in connection therewith

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 City of Minnetonka, Minnesota (the "City") has established, and the Authority administers, an Affordable Housing Trust Fund. Funds within the Affordable Housing Trust Fund are authorized to be used for making grants, loans, and loan guarantees for development, rehabilitation or financing of housing or providing matches for other federal, state, or private resources for housing projects.
- 1.02. Blooming Cedar Apartments, LLC, a Washington limited liability company (the "Borrower"), has proposed to (i) acquire, rehabilitate, and equip approximately 30 existing affordable townhome units and facilities functionally related and subordinate thereto located at 10860 Cedar Bend in the City for occupancy by individuals and families of low and moderate income, known as Cedar Hills Townhomes (the "Minnetonka Project"); and (ii) acquire, rehabilitate, and equip approximately 50 existing affordable townhome units and facilities functionally related and subordinate thereto located at 724 Southglen Drive, Bloomington, Minnesota, for occupancy by individuals and families of low and moderate income, known as Blooming Glen Townhomes (the "Bloomington Project").
- 1.03. The Authority has proposed to make a deferred loan to the Borrower in the principal amount of \$1,000,000 (the "Loan") from the Affordable Housing Trust Fund in order to make the Minnetonka Project more economically feasible and to maintain and improve affordable housing in the City pursuant to the terms of a Loan Agreement (the "Loan Agreement") between the Authority and the Borrower. To set forth the affordability covenants for the Minnetonka Project, the Borrower and the Authority intend to enter into a Declaration of Restrictive Covenants (the "Declaration").
- 1.04. To evidence and secure the Borrower's repayment obligations with respect to the Loan, the Borrower will execute and deliver to the Authority a Promissory Note (the "Note") and a Mortgage (the "Mortgage"). Forms of the Loan Agreement, the Declaration, the Note, and the Mortgage (collectively, the "Loan Documents") are on file with the Authority.
- 1.05. The City intends to issue one or more series of taxable or tax-exempt revenue notes (the "Obligations") in the estimated principal amount not to exceed \$16,000,000 and loan the proceeds thereof to the Borrower to provide senior financing for the Minnetonka Project and the Bloomington Project (together, the "Project").
- 1.06. The Loan will be payable from surplus cash flow from the Project, and the repayment obligations of the Borrower will be subordinate to the Borrower's obligation to repay the loan with respect to the City's Obligations and other loans

provided by Merchants Capital Corp., Freddie Mac, and/or other lenders of alternative permanent financing.

Section 2. Approvals.

2.01. The Loan is hereby approved and repayment of the Loan shall be made as provided by the terms of the Loan Agreement.

2.02. The Loan Documents are hereby in all respects authorized, approved, and confirmed, and the President and the Executive Director of the Authority are hereby authorized and directed to execute the Loan Documents to which the Authority is a party for and on behalf of the Authority in substantially the forms now on file with the Authority but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2.03. The President and the Executive Director are hereby authorized to execute and deliver any and all documents deemed necessary to carry out the intentions of this resolution, including subordination and/or intercreditor agreements, so long as staff and Kennedy & Graven, Chartered, as bond counsel to the City and the Authority, approve the forms thereof.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on May 22, 2023.

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 duly authorized meeting held on May 22, 2023.

Becky Koosman, Secretary

MN140-243 (JAE)
873812v2



**Economic Development Authority
Agenda Item 5B
Meeting of May 22, 2023**

Title: Marsh Run II redevelopment

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

Submitted through: Mike Funk, Executive Director
Julie Wischnack, AICP, Community Development Director
Darin Nelson, Assistant Treasurer

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

Summary Statement

Minnetonka Marsh, LLC (formerly Doran RE Partners, LLC) is seeking assistance for the redevelopment of 11816 Wayzata Blvd.

Recommended Action

Adopt the resolutions:

- 1) Approving a tax increment financing plan for the Marsh II Tax Increment Financing District and modified development program for Development District 1.
- 2) Approving contract for private development with Minnetonka Marsh, LLC and the issuance of a tax increment revenue note.
- 3) Authorizing an interfund loan for advance of certain costs in connection with the Marsh II Tax Increment Financing District.

Strategic Profile Relatability

- | | |
|--|--|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input checked="" 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 checked="" type="checkbox"/> Community Inclusiveness |
| <input type="checkbox"/> N/A | |

Statement: The proposed action approves funding for affordable housing.

Financial Consideration

Is there a financial consideration? No Yes \$4.6 million
Financing sources: Budgeted Budget Modification New Revenue Source

Use of Reserves Other [Enter]

Statement: The proposed finding source is a new tax increment financing redevelopment district.

Current Proposal

The proposed project would include a six-story apartment building with 197 units (40 affordable units). The units would be a mix of studio, one, two, and three-bedroom units. The developer is proposing to provide 20 affordable units at 60% AM and 20 affordable units at 80% AMI, with the following unit mix:

# of Units	Type	Rent Type	Rent
2	Studio (673sf)	Market	\$1,675
		60% AMI	\$1,233
12	1-BR (765sf)	Market	\$1,825
		60% AMI	\$1,320
6	2BR (1,179sf)	Market	\$2,700
		60% AMI	\$1,584
2	Studio (673sf)	Market	\$1,675
		80% AMI	\$1,644
10	1-BR (765sf)	Market	\$1,825
		80% AMI	\$1,761
6	2BR (1,179sf)	Market	\$2,700
		80% AMI	\$2,112
2	3BR (1745sf)	Market	\$3,850
		80% AMI	\$2,440

Market-rate rents on the remaining 157 units range from approximately \$1,675 to \$3,850 per month.

EDAC Feedback – April 27, 2023

The Economic Development Advisory Commission (EDAC) reviewed the Contract for Private Development on April 27, 2023. Below is a summary of the questions and feedback.

- There was a question regarding the cost of parking for the residents and if staff could work with the developer to reduce the cost. The draft contract stated that the underground parking would be initially set at \$100 per stall and would not exceed the 10% of the base rent.
 - Staff renegotiated the parking requirement with the developer so the parking fee will not exceed the base of \$100 with the current Consumer Price Index (CPI) in measure for that year.
- There was a question about the structure of the entity that would own and manage the property.
 - Ryan Johnson of Doran Companies responded to inform the commission that the members of the special purpose entity or LLC would be Anne Behrendt, Tony Kuechle, and Ryan Johnson.
- Commissioners present voted in favor of approving the financing request and contract

with the modification to the parking language.

Contract for Private Development

Redeveloper

- Minnetonka Marsh, LLC, a Minnesota Limited Liability Company

Construction Commencement and Completion

- Construction commencing by Dec. 31, 2023

Affordability Compliance

- The developer will make 40 units (20% of the total unit mix) affordable to households:
 - 20 units at or below 60% AMI (defining unit mix in the contract)
 - 20 units at or below 80% AMI (defining unit mix in the contract)
 - The city's policy requires a minimum of 30 years of affordability
- One unit will be reserved as a transitional housing unit. HisHouse (the city's contracted homelessness intervention provider) will enter into a lease with Doran for the unit.
- The rent on the affordable units is anticipated to be between \$1,223 and \$2,440 per month (depending on the unit size) and based on projected income limits for the year of occupancy.
- Parking rates would not exceed \$100 per month initially, then will not exceed the Consumer Price Index (CPI) for that year.
- Language prohibiting practices that discriminate against Section 8 voucher holders or indirectly prohibit tenants from renting a unit (requiring a tenant to have more than two times the applicable rent to qualify for an affordable unit).

Property Management Covenant

- Outlines the process for disorderly conduct violations at the property.

Financial Assistance

Ehler's analysis found that the affordable units created a gap of \$3.8 million. In addition, poor soil conditions requiring demolition, dewatering, and geo-piers/piling created an additional gap of \$800,000. The proposed source of financing to fill the \$4.6 million gap is the establishment of a new tax increment financing redevelopment district. Shane Rudlang and Stacie Kvilvang from Ehlers reviewed this request and prepared the attached memo that includes an analysis of the request and a recommendation.

The assistance requested from the developer would result in a per-unit cost of approximately \$3,833 per year over a 30-year affordability period based on total assistance of \$4.6 million. The

per-unit assistance on previously approved housing redevelopment projects ranges from \$500 per unit/per year to \$4,571 per unit/per year.

Lookback Provision

Upon stabilization, the amount of the tax increment assistance provided pursuant to this agreement will be subject to adjustment based on a cumulative return on the cost of 6.2% from the date of the permanent certificate of occupancy. Within sixty (60) days of stabilization, the developer must deliver to the authority's consultant evidence of its cumulative return on cost return.

If the return on cost exceeds 6.2%, then the principal amount of the TIF Note issued to the redeveloper will be reduced to an amount that shows a stabilized return on cost return of 6.2% over the new term of the TIF Note, including a reduction to \$0.00. The redeveloper shall deliver the TIF Note in exchange for a new TIF Note in the adjusted principal amount upon the authority's written request.

A representative from Ehlers, the city's financial consultant, will be present at the meeting to answer any questions.

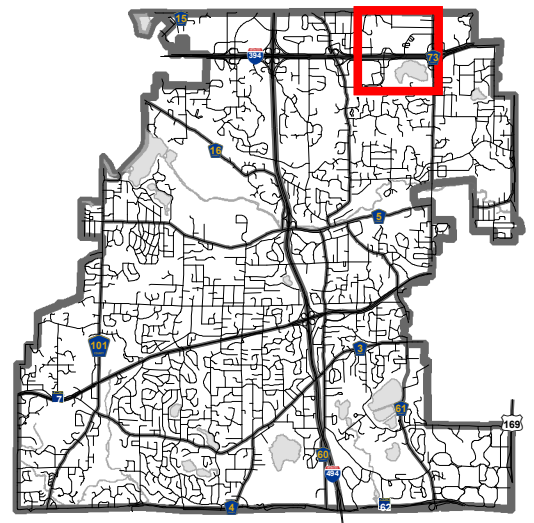
Attachments

- Location Map
- Doran Memo
- Ehlers Memo
- Unofficial EDAC Meeting Minutes – April 27, 2023
- Affordable Housing Production Summary
- [Affordable Housing Policy](#)
- Marsh II TIF Plan
- Draft Contract for Private Development



Location Map

Project: Marsh Run II redevelopment
 Address: 11816 Wayzata Blvd



DORAN

DEVELOPMENT

January 17, 2023

City of Minnetonka
Planning Department
Attention: Alisha Gray
14600 Minnetonka Blvd
Minnetonka, MN 55345

Dear Ms. Gray,

Doran RE Partners, LLC would like to submit a formal application for Tax Increment Financing (TIF) to support a proposed redevelopment located at 11816 Wayzata Blvd. In October 2022, the Doran Development team had an initial meeting with City staff to discuss goals for redevelopment of the existing three-story office building and associated parking. The discussion included suitable uses for redevelopment, site layout considerations, and challenges with redevelopment given the sites current condition. After initial staff feedback, the Development Team produced plans and hosted a neighborhood meeting on November 29, 2022. Feedback from neighbors was taken into consideration when further developing concept plans that were submitted to the City Planning Department on December 16, 2022. The concept plans for redevelopment include a six-story, 197-unit apartment building with two levels of podium enclosing parking (one level below grade) and five levels of wood frame construction.

To make the Development economically feasible, Doran is requesting the city consider providing \$4.6 million in redevelopment TIF for a term of 12 years. The proposed project income is assuming 80% of the units to be priced at market rates with the other 20% of the units to be affordable (40 total units). 10% of the units will be affordable to households earning up to 60% of the Area Median Income (AMI) and the other 10% of the units affordable to households earning up to 80% AMI. The affordability limits on these units are proposed to remain for at least 30 years. The affordability mix was strategically targeted to provide housing that meets what the development team believes the affordability gaps are in this specific area.

The total development costs for the project are estimated to be \$68.5 million. The costs are based on current construction conditions, land acquisition and site preparation costs. Residential income modeled for the project assumes market rates based on current in-place rents from the adjacent Birke Apartments, along with the affordability limits on 20% of the units. Due to extraordinary costs associated with redevelopment and decreased rental income from the affordable units, there project model shows insufficient cash flow to provide a sufficient rate of return, pay operating expenses, and service the debt. Therefore, Doran has modeled a TIF request that would make this redevelopment feasible.

DORAN

DEVELOPMENT

We look forward to continued conversations regarding the requested TIF assistance. Please let me know if you have any questions or concerns.

Sincerely,



Jacquell Hajder
Director of Development
Doran Development, LLC
952-641-9423
Jacquell.Hajder@dorancompanies.com

MEMORANDUM

TO: Julie Wischnack – Community Development Director
 Alisha Gray – Economic Development and Housing Manager
 FROM: Stacie Kvilvang & Schane Rudlang - Ehlers
 DATE: January 17, 2023
 SUBJECT: Marsh Run II - Doran Development Analysis of Financial Request

The City of Minnetonka (the “City”) received a financial assistance request from Doran Companies (the “Developer”) seeking tax increment financing (TIF) for their proposed redevelopment of 11816 Wayzata Blvd. The Developer has proposed to construct a 197-unit, mixed-income, multi-family apartment consisting of studio, 1, 2, and 3-bedroom units. Construction would commence in Q3 of 2023 and is anticipated to cost approximately \$67.3 million or \$341,000 per unit. The Developer cited a financial gap in their financial projections for the project (“proforma”) and requested 15 years of TIF at a present value they estimated at \$8.25 million (2% inflation figured in).

Affordability and Unit Mix

As currently proposed, the developer plans to include 20% of the units affordable at 60% Area Median Income (AMI) and 80% AMI as shown in the tables below:

Unit Mix				
	Market	60% AMI	80% AMI	Total
Studio	32	2	2	36
1-BR	86	12	10	108
2-BR	31	6	6	43
3-BR	8		2	10
Total	157	20	20	197

Affordability By Unit Type			
Type	# of Units	# affordable	% Affordable
Studio	36	4	11%
1-BR	108	22	20%
2-BR	43	12	28%
3-BR	10	2	20%
Total	197	40	20%

Financial Analysis – Affordability and Extraordinary Costs

Providing affordable and workforce housing has a cost that can be quantified. We calculated the differential between market rate rents and rents for the 60% AMI and 80% AMI units. We amortized this over 30 years (per the City’s policy on term for affordability) and discounted it at 5% which is the Developers anticipated rate of permanent financing. This equates to a present value cost of \$3.8 million as further noted in the table below:

Affordability Costs		Years: 30	
Units	Total	Per Unit	Per Year
40	\$3,816,672	\$95,417	\$3,181

In addition, the project has \$800,000 in extraordinary costs as shown in the table on the following page:

Extraordinary Costs			
Project Cost	Amount	% of Cost	Per Unit
Demolition	\$200,000	0.4%	
Dewatering	\$100,000	0.2%	
Geopiers/Piles	\$500,000	0.9%	
TOTAL	\$800,000	1.5%	\$20,000

Added together, the cost to provide the affordable and workforce housing units and extraordinary costs is \$4.6 million.

Based on previous policy discussion and similar recent projects, we understand that the City is willing to consider TIF, provided that the amount of assistance does not exceed what is necessary to make the project financially feasible. Ehlers sized the need for TIF assistance by taking the aforementioned issues into consideration as well as analyzing the Developer’s project budget and projections, generally known as a pro forma. We reviewed the project based on industry standards for construction, land, and project costs; rental rates; operating expenses; developer fees; underwriting and financing criteria; and, cash flow / return on investment. The table below depicts the Developer’s proposed sources and uses for the project.

SOURCES			
	Amount	Pct.	Per Unit
First Mortgage	41,501,905	62%	210,580
TIF Note	4,600,000	7%	23,340
Equity	21,167,145	31%	107,402
TOTAL SOURCES	67,269,050	100%	341,323

USES			
	Amount	Pct.	Per Unit
Acquisition Costs	5,122,000	8%	25,989
Construction Costs	49,982,341	74%	253,610
Contractor Fee	1,370,699	2%	6,955
Environmental Abatement/Soil Correction	1,250,000	2%	6,342
Professional Services	3,693,000	5%	18,738
Financing Costs	3,847,260	6%	19,521
Developer Fee	2,003,750	3%	10,167
TOTAL USES	67,269,050	100%	341,323

The analysis shows that \$4.6 million in TIF assistance results in financial returns that makes the project financially feasible and the returns are within market industry standards.

Recommendation

Based on our review, we’ve concluded that the development would not reasonably be expected to proceed without \$4.6 million in TIF assistance over 12 years. We recommend that a term sheet and development agreement include a lookback as with past projects to ensure that the actual financial returns on the project are not in excess of normal market returns.

Please contact either of us at 651-697-8500 with any questions.

**Unapproved
Minnetonka
Economic Development Advisory Commission
Minutes**

April 27, 2023

1. Call to Order

Chair Yunker called the meeting to order at 6 p.m.

2. Roll Call

EDAC commissioners Maram Falk, Lee Jacobsohn, Melissa Johnston, Steven Tyacke and Charlie Yunker were present. Ann Duginske Cibulka and Jay Hromatka were absent.

Staff present: Community Development Director Julie Wischnack, Economic Development and Housing Manager Alisha Gray and Community Development Coordinator Rob Hanson.

Consultants present: Attorney Julie Eddington of Kennedy and Graven and financial consultant Keith Dahl of Ehlers and Associates.

Councilmember Deb Calvert was present.

3. Approval of the EDAC Jan. 26, 2023 Meeting Minutes

Tyacke moved, Falk seconded, a motion to approve the Sept. 8, 2022 meeting minutes as submitted. Falk, Tyacke and Yunker voted in favor of passing the motion. Jacobsohn and Johnstohn abstained. Duginske Cibulka and Hromatka were absent. Motion carried.

4. Marsh II - Doran Financing Request

Chair Yunker introduced the item and called for the staff report.

Gray provided the staff report. Staff recommends commissioners review the contract for private development and make a recommendation.

Attorney Julie Eddington of Kennedy and Graven was available by phone.

Jacobsohn thought that a little more control on the cost of a parking stall for a resident of an affordable unit would be good to prevent the cost of parking from being a significant part of their budget.

In response to Tyacke's question, Ryan Johnson of Doran Companies explained that the members of the special purpose entity that would be named in the contract would be Anne Behrendt, Tony Kuechle and Ryan Johnson.

In response to Tyacke's question, Wischnack confirmed that the maximum amount of financial assistance from the city would be capped at \$4.6 million.

Jacobsohn moved, seconded by Johnston, to recommend that the city council approve the financial assistance request for the Marsh II as provided in the staff report with a modification to tighten up the cost charged to affordable housing residents for a parking stall.

Falk, Jacobsohn, Johnston, Tyacke and Yunker voted in favor of passing the motion. Duginske Cibulka and Hromatka were absent. Motion carried.

This item is scheduled to be reviewed by the city council at its meeting on May 22, 2023.

5. 2024-2028 Economic Improvement Program (EIP)

Gray provided the staff report. Staff recommended commissioners review and make comments on the draft of the 2024-2028 EIP.

Jacobsohn likes how the EIP gets easier to understand each year. He suggested identifying the items that do not have funds allocated to them from items that have allocated money to cover their cost from a specific fund.

Jacobsohn confirmed with Gray that Homes Within Reach typically purchases one to two houses a year. There have also been years when no house was purchased. It depends on the housing market.

Jacobsohn asked if it would be possible to allow public employees such as teachers and first responders who work in Minnetonka and meet income restrictions to be given a better chance at securing an affordable-housing unit. Wischnack explained that the Fair Housing Act prohibits preferential treatment to a group of people. Marketing the units locally could be done.

Jacobsohn asked about the vacancy rate in Minnetonka. Wischnack answered that the vacancy rate is very low and underserved in rental units in Minnetonka and the surrounding southwest area even with the inclusion of apartments currently being constructed.

Gray continued the staff report.

Falk asked for more information on workforce collaboration. Gray explained that the initiative aims to provide better communication with the business community regarding opportunities on how to attract a work force including access to portals for employers trying to attract employees and utilizing partnerships between schools and communities. A new staff person at Hennepin County is working to implement these techniques.

Gray continued the staff report.

Minnetonka Affordable Housing Production Summary

Name of Project	Number of Affordable Units	Number of Market Rate Units	Total Assistance (for affordable units)	Years of Affordability	Assistance per Unit, per Year	Affordability Level
Doran (Marsh II)	40 units (20% of units)	157	\$4.6M (\$3.8M for afford. and \$800k site improv.)	30	\$3,833	10% at 60% AMI and 10% at 80% AMI
Doran (Birke)	35 (20% of units)	175	\$4,800,000	30	\$4,571	50% AMI
Linden Street (10400 Bren Rd)	28	247	\$553,000	30	\$1,315	10% at 50% AMI
Doran (5959 Shady Oak)	54	302	\$280,000	30	\$491	5%@50%, 5%@60%, 5%@80%
Wellington Management	68	155	\$2,400,000	30	\$1,716	10%@50% AMI, 20% @80% AMI
United Properties (The Pointe)	19	167	\$400,000	30	\$701	9@ 50% AMI, 9@ 60% AMI
Dominium	482	0	\$7,809,000	30	\$540	60% AMI
Homes Within Reach (2004-2020 grant years)	59	0	\$2,981,435	99	\$510	80% AMI
The Ridge	52	0	\$1,050,000	30	\$673	60% AMI
Shady Oak Crossing	52	23	\$1,900,000	30	\$2,753	60%AMI
West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)	185	0	\$8,514,000	30	\$1,534	<i>Crown Ridge—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI</i>
Beacon Hill (apartments)	62	48	\$2,484,000	25	\$1,602	50% AMI
Ridgebury	56	163	\$3,243,000	30	\$1,930	Initially--80% AMI, Now no income limit
Glen Lake (St. Therese, Exchange)	43	119	\$4,800,000	30	\$3,721	60% AMI
Cedar Point Townhomes	9	143	\$512,000	15	\$3,792	50% AMI
Tonka on the Creek (Overlook)	20	80	\$2,283,000	30	\$3,805	50% AMI
At Home - The Chase at 9 Mile	21	106	\$2,500,000	30	\$3,968	50% AMI
Applewood Pointe	9	80	\$1,290,000	Initial Sale/Ongoing maximum %	\$4,777	80% AMI

updated 01/18/2023

Adoption Date: May 22, 2023

Economic Development Authority in and for the City of Minnetonka, Minnesota

**City of Minnetonka, Hennepin County,
Minnesota**

MODIFICATION TO THE DEVELOPMENT PROGRAM

Development District No. 1

&

Tax Increment Financing (TIF) Plan

Establishment of Marsh Run II
Tax Increment Financing District
(a redevelopment district)



Prepared by:

Ehlers
3060 Centre Pointe Drive
Roseville, Minnesota 55113

BUILDING COMMUNITIES. IT'S WHAT WE DO.

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Modification to the Development Program for Development District No. 1

FOREWORD

The following text represents a Modification to the Development Program for Development District No. 1. This modification represents a continuation of the goals and objectives set forth in the Development Program for Development District No. 1. Generally, the substantive changes include the establishment of the Marsh Run II Tax Increment Financing District.

For further information, a review of the Development Program for Development District No. 1, is recommended. It is available from the Economic Development and Housing Manager of the City of Minnetonka, Minnesota. Other relevant information is contained in the tax increment financing plans for the tax increment financing districts located within Development District No. 1.

Tax Increment Financing Plan for the Marsh Run II Tax Increment Financing District

FOREWORD

The City of Minnetonka, Minnesota (the “City”) and the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “EDA”) staff and consultants have prepared the following information to expedite the Establishment of the Marsh Run II Tax Increment Financing District (the “District”), a redevelopment tax increment financing district, located in Development District No. 1.

STATUTORY AUTHORITY

Within the City, there exist areas where public involvement is necessary to cause development or redevelopment to occur. To this end, the EDA and City have certain statutory powers pursuant to *Minnesota Statutes (“M.S.”), Sections 469.124 - 469.133*, inclusive, as amended, and *M.S., Sections 469.174 to 469.1794*, inclusive, as amended (the “TIF Act”), to assist in financing public costs related to this project.

This section contains the Tax Increment Financing Plan (the “TIF Plan”) for the District. Other relevant information is contained in the Modification to the Development Program for Development District No. 1.

STATEMENT OF OBJECTIVES

The District currently consists of two (2) parcels of land and adjacent roads and internal rights-of-way. The District is being created to facilitate the construction of approximately 297 units of mixed income apartments in two phases in the City. The EDA anticipates entering into an agreement with Doran Companies or an affiliate, successor, or assign (collectively, the “Developer”), and construction is anticipated to begin in early to mid-2023. This TIF Plan is expected to achieve many of the objectives outlined in the Development Program for Development District No. 1.

The activities contemplated in the Modification to the Development Program and the TIF Plan do not preclude the undertaking of other qualified development or redevelopment activities. These activities are anticipated to occur over the life of Development District No. 1 and the District.

DEVELOPMENT PROGRAM OVERVIEW

Pursuant to the Development Program and authorizing state statutes, the City and EDA are authorized to undertake the following activities in the District:

- 1. Property to be Acquired - Selected property located within the District may be acquired by the EDA or City and is further described in this TIF Plan.
- 2. Relocation - Relocation services, to the extent required by law, are available pursuant to *M.S., Chapter 117* and other relevant state and federal laws.
- 3. Upon approval of a developer’s plan relating to the project and completion of the necessary legal requirements, the EDA or City may sell to a developer selected properties that it may acquire within the District or may lease land or facilities to a developer.
- 4. The EDA or City may perform or provide for some or all necessary acquisition, construction, relocation, demolition, and required utilities and public street work within the District.

DESCRIPTION OF PROPERTY IN THE DISTRICT AND PROPERTY TO BE ACQUIRED

The District encompasses all property and adjacent road rights-of-way and abutting roadways identified by the parcels listed below.

Parcel number	Address	Owner
0211722130063	11816 Wayzata Blvd	Carpenter Land Co.
0211722130061	11800 Wayzata Blvd	Carpenter Land Co.

Please also see the map in Appendix A for further information on the location of the District.

The EDA or City may acquire any parcel within the District including interior and adjacent street rights-of-way. Any properties identified for acquisition will be acquired by the EDA or City only in order to accomplish one or more of the following: construct storm sewer improvements; provide land for needed public streets, utilities and facilities; and carry out land acquisition, site improvements, clearance and/or development to accomplish the uses and objectives set forth in this plan. The EDA or City may acquire property by gift, dedication, condemnation or direct purchase from willing sellers in order to achieve the objectives of this TIF Plan. Such acquisitions will be undertaken only when there is assurance of funding to finance the acquisition and related costs.

The EDA or City does not own any property to be included in the District.

DISTRICT CLASSIFICATION

The EDA and City, in determining the need to create a tax increment financing district in accordance with the TIF Act, finds that the District, to be established, is a redevelopment district pursuant to *M.S., Section 469.174, Subd. 10(a)(1)*.

- The District is a redevelopment district consisting of two (2) parcels.
- An inventory shows that parcels consisting of more than 70% of the area in the District are occupied by buildings, streets, utilities, paved or gravel parking lots or other similar structures.
- An inspection of the buildings located within the District finds that more than 50% of the buildings are structurally substandard as defined in the TIF Act. (See Appendix D).

Pursuant to *M.S., Section 469.176, Subd. 7*, the District does not contain any parcel or part of a parcel that qualified under the provisions of *M.S., Section 273.111, 273.112, or 273.114 or Chapter 473H* for taxes payable in any of the five calendar years before the filing of the request for certification of the District.

DURATION & FIRST YEAR OF DISTRICT'S TAX INCREMENT

Pursuant to *M.S., Section 469.175, Subd. 1, and Section 469.176, Subd. 1*, the duration and first year of tax increment of the District must be indicated within the TIF Plan. Pursuant to *M.S., Section 469.176, Subd. 1b*, the duration of the District will be 25 years after receipt of the first increment by the EDA (a total of 26 years of tax increment). The EDA elects to receive the first tax increment in 2025, which is no later than four years following the year of approval of the District.

Thus, it is estimated that the District, including any modifications of the TIF Plan for subsequent phases or other changes, would terminate after 2050, or when the TIF Plan is satisfied. The EDA or City reserves the right to decertify the District prior to the legally required date.

ORIGINAL TAX CAPACITY, TAX RATE & ESTIMATED CAPTURED NET TAX CAPACITY VALUE/INCREMENT & NOTIFICATION OF PRIOR PLANNED IMPROVEMENTS

Pursuant to *M.S., Section 469.174, Subd. 7 and M.S., Section 469.177, Subd. 1*, the Original Net Tax Capacity (ONTC) as certified for the District will be based on the market values placed on the property by the assessor in 2022 for taxes payable 2023.

Pursuant to *M.S., Section 469.177, Subds. 1 and 2*, the County Auditor shall certify in each year (beginning in the payment year 2025) the amount by which the original value has increased or decreased as a result of:

1. Change in tax exempt status of property;
2. Reduction or enlargement of the geographic boundaries of the District;
3. Change due to adjustments, negotiated or court-ordered abatements;
4. Change in the use of the property and classification;
5. Change in state law governing class rates; or
6. Change in previously issued building permits.

In any year in which the current Net Tax Capacity (NTC) value of the District declines below the ONTC, no value will be captured and no tax increment will be payable to the EDA or City.

The original local tax rate for the District will be the local tax rate for taxes payable 2023, assuming the request for certification is made before June 30, 2023. The final tax rates for 2023 were used in the calculations. The ONTC and the Original Local Tax Rate for the District appear in the table below.

Pursuant to *M.S., Section 469.174 Subd. 4 and M.S., Section 469.177, Subds. 1, 2, and 4*, the estimated Captured Net Tax Capacity (CTC) of the District, within Development District No. 1, upon completion of the projects within the District, will annually approximate tax increment revenues as shown in the table below. The EDA requests that 100% of the available increase in tax capacity be used for repayment of the obligations of the City or EDA and current expenditures, beginning in the tax year payable 2025. The Project Tax Capacity (PTC) listed is an estimate of values when the projects within the District are completed.

Project Tax Capacity		
Project estimated Tax Capacity upon completion	\$1,977,739	
Original estimated Net Tax Capacity	38,563	
Fiscal Disparities	0	
Estimated Captured Tax Capacity	\$1,939,176	
Original Local Tax Rate	101.8550%	Pay 2023
Estimated Annual Tax Increment	\$1,975,148	
Percent Retained by the City	100%	

Note: Tax capacity includes a 3% inflation factor for the duration of the District. The tax capacity included in this chart is the estimated tax capacity of the District in year 26. The tax capacity of the District in year one is estimated to be \$167,820.

Pursuant to *M.S., Section 469.177, Subd. 4*, the EDA or City shall, after diligent search, accompany its request for certification to the County Auditor or its notice of the District enlargement pursuant to *M.S., Section 469.175, Subd. 4*, with a listing of all properties within the District or area of enlargement for which building permits have been issued during the eighteen (18) months immediately preceding approval of the TIF Plan by the municipality pursuant to *M.S., Section 469.175, Subd. 3*. The County Auditor shall increase the original net tax capacity of the District by the net tax capacity of improvements for which a building permit was issued.

The City has reviewed the area to be included in the District and no building permits have been issued during the 18 months immediately preceding approval of the TIF Plan by the EDA and City that cause an increase in market value.

SOURCES OF REVENUE/BONDS TO BE ISSUED

The total estimated tax increment revenues for the District are shown in the table below:

SOURCES	
Tax Increment	\$ 34,686,145
Interest	3,468,615
TOTAL	\$ 38,154,760

The costs outlined under the Uses of Funds will be financed primarily through the annual collection of tax increments. The EDA or City reserves the right to issue bonds (as defined in the TIF Act) or incur other indebtedness as a result of the TIF Plan. As presently proposed, the projects within the District will be financed by pay-as-you-go notes and interfund loans. Any refunding amounts will be deemed a budgeted cost without a formal modification to this TIF Plan. This provision does not obligate the EDA or City to incur debt. The EDA or City will issue bonds or incur other debt only upon the determination that such action is in the best interest of the EDA or City.

The EDA or City may issue bonds secured in whole or in part with tax increments from the District in a maximum principal amount of \$24,209,007. Such bonds may be in the form of pay-as-you-go notes, revenue bonds or notes, general obligation bonds, or interfund loans. This estimate of total bonded indebtedness is a cumulative statement of authority under this TIF Plan as of the date of approval.

USES OF FUNDS

Currently under consideration for the District is a proposal to facilitate the construction of approximately 297 units of mixed income apartments in two phases. The EDA and City have determined that it will be necessary to provide assistance to the projects for certain District costs, as described herein.

The EDA has studied the feasibility of the development or redevelopment of property in and around the District. To facilitate the establishment and development or redevelopment of the District, this TIF Plan authorizes the use of tax increment financing to pay for the cost of certain eligible expenses. The estimate of public costs and uses of funds associated with the District is outlined in the following table.

USES	
Land/Building Acquisition	\$ 6,658,600
Site Improvements/Preparation	1,560,000
Utilities	325,000
Other Qualifying Improvements	12,196,792
Administrative Costs (up to 10%)	3,468,615
PROJECT COSTS TOTAL	\$ 24,209,007
Interest	13,945,753
PROJECT AND INTEREST COSTS TOTAL	\$ 38,154,760

The total project cost, including financing costs (interest) listed in the table above does not exceed the total projected tax increments for the District as shown in the Sources of Revenue section.

Estimated costs associated with the District are subject to change among categories without a modification to the TIF Plan. The cost of all activities to be considered for tax increment financing will not exceed, without formal modification, the budget above pursuant to the applicable statutory requirements. Pursuant to *M.S., Section 469.1763, Subd. 2*, no more than 25% of the tax increment paid by property within the District will be spent on activities related to development or redevelopment outside of the District but within the boundaries of Development District No. 1 (including administrative costs, which are considered to be spent outside of the District) subject to the limitations as described in the TIF Plan.

FISCAL DISPARITIES ELECTION

Pursuant to *M.S., Section 469.177, Subd. 3*, the City may elect one of two methods to calculate fiscal disparities.

The City will choose to calculate fiscal disparities by clause b (inside).

ESTIMATED IMPACT ON OTHER TAXING JURISDICTIONS

The estimated impact on other taxing jurisdictions assumes that the redevelopment contemplated by the TIF Plan would occur without the creation of the District. However, the EDA has determined that such development or redevelopment would not occur "but for" tax increment financing and that, therefore, the fiscal impact on other taxing jurisdictions is \$0. The estimated fiscal impact of the District would be as follows if the "but for" test was not met.

Impact on Tax Base			
Entity	2022/Pay 2023 Total Net Tax Capacity	Estimated Captured Tax Capacity (CTC) upon completion	Percent of CTC to Entity Total
Hennepin County	2,478,633,845	1,939,176	0.0782%
City of Minnetonka	133,743,112	1,939,176	1.4499%
ISD 270 (Hopkins)	160,133,777	1,939,176	1.2110%

Impact on Tax Rates				
Entity	Pay 2023 Extension Rate	Percent of Total	CTC	Potential Taxes
Hennepin County	34.5420%	33.91%	1,939,176	\$ 669,830
City of Minnetonka	34.3600%	33.73%	1,939,176	666,301
ISD 270 (Hopkins)	25.0060%	24.55%	1,939,176	484,910
Other	7.9470%	7.80%	1,939,176	154,106
	101.8550%	100.00%		\$1,975,148

The estimates listed above display the captured tax capacity when all construction is completed. The tax rate used for calculations is the Final Pay 2023 rate. The total net capacity for the entities listed above are based on Final Pay 2023 figures. The District will be certified under the Final Pay 2023 rates.

Pursuant to *M.S., Section 469.175, Subd. 2(b)*:

- (1) Estimate of total tax increment. It is estimated that the total amount of tax increment that will be generated over the life of the District is \$34,686,145;
- (2) Probable impact of the District on city provided services and ability to issue debt. An impact of the District on police protection is expected. With any addition of new residents or businesses, police calls for service will be increased. New developments add an increase in traffic, and additional overall demands to the call load. The City does not expect that the proposed development, in and of itself, will necessitate new capital investment in vehicles or facilities.

The probable impact of the District on fire protection is not expected to be significant. Typically new buildings generate few calls, if any, and are of superior construction. The existing buildings located at the site, which will be eliminated by the new development, were built under an outdated building code. The City does not expect that the proposed development, in and of itself, will necessitate new capital investment in vehicles or facilities.

The impact of the District on public infrastructure is expected to be minimal. The development is not expected to significantly impact any traffic movements in the area. The current infrastructure for sanitary sewer, storm sewer and water will be able to handle the additional volume generated from the proposed development. Based on the development plans, there are no additional costs associated with street maintenance, sweeping, plowing, lighting and sidewalks.

It is not anticipated that there will be any general obligation debt issued in relation to this project; therefore there will be no impact on the City's ability to issue future debt or on the City's debt limit.

- (3) Estimated amount of tax increment attributable to school district levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to school district levies, assuming the school district's share of the total local tax rate for all taxing jurisdictions remained the same, is \$8,515,652;
- (4) Estimated amount of tax increment attributable to county levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to county levies, assuming the county's share of the total local tax rate for all taxing jurisdictions remained the same, is \$11,763,083;
- (5) Additional information requested by the county or school district. The City is not aware of any standard questions in a county or school district written policy regarding tax increment financing districts and impact on county or school district services. The county or school district must request additional information pursuant to *M.S., Section 469.175, Subd. 2(b)* within 15 days after receipt of the tax increment financing plan.

No requests for additional information from the county or school district regarding the proposed development for the District have been received.

SUPPORTING DOCUMENTATION

Pursuant to *M.S., Section 469.175, Subd. 1 (a), clause 7*, this TIF Plan must contain identification and description of studies and analyses used to make the determination set forth in *M.S., Section 469.175, Subd. 3, clause (b)(2)*, and the findings are required in the resolution approving the District.

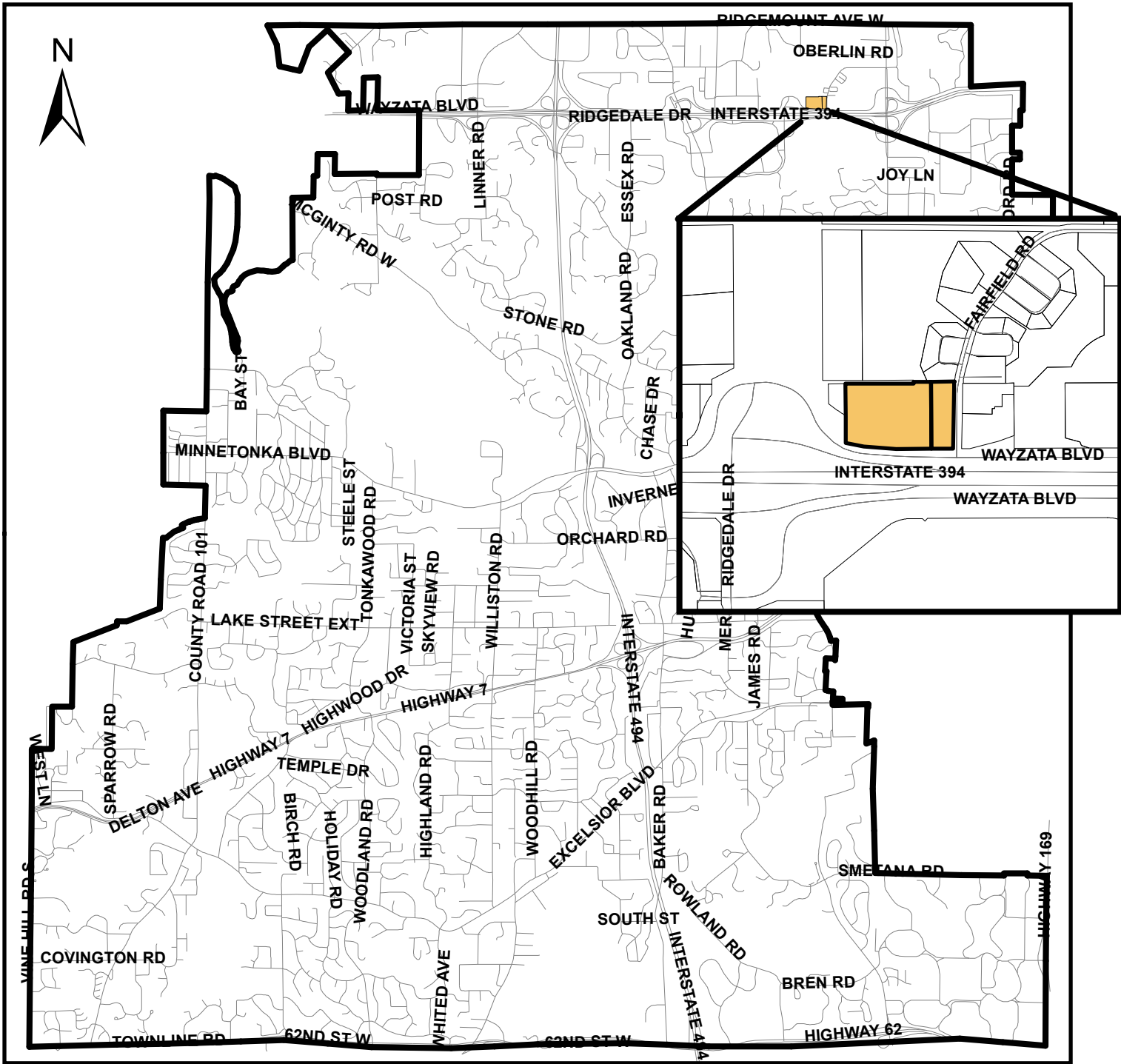
- (i) In making said determination, reliance has been placed upon (1) written representation made by the Developer to such effects, (2) review of the Developer's proforma; and (3) City staff awareness of the feasibility of developing the project site within the District, which is further outlined in the City Council resolution approving the establishment of the District and Appendix C.

- (ii) A comparative analysis of estimated market value both with and without establishment of the District and the use of tax increments has been performed. Such analysis is included with the cashflow in Appendix B and indicates that the increase in estimated market value of the proposed development (less the indicated subtractions) exceeds the estimated market value of the site absent the establishment of the District and the use of tax increments.

DISTRICT ADMINISTRATION

Administration of the District will be handled by the Economic Development and Housing Manager of the City.

Appendix A: Map of Development District No. 1 and the TIF District



Marsh Run II TIF Redevelopment District



Development District No. 1

Appendix B: Estimated Cash Flow for the District

Marsh Run II (Doran)
 City of Minnetonka, MN
 297 Unit Mixed Income Apartments



ASSUMPTIONS AND RATES

District Type:	Redevelopment
District Name/Number:	
County District #:	
First Year Construction or Inflation on Value	2023
Existing District - Specify No. Years Remaining	
Inflation Rate - Every Year:	3.00%
Interest Rate:	4.00%
Present Value Date:	1-Aug-24
First Period Ending	1-Feb-25
Tax Year District was Certified:	Pay 2023
Cashflow Assumes First Tax Increment For Development:	2025
Years of Tax Increment	26
Assumes Last Year of Tax Increment	2050
Fiscal Disparities Election [Outside (A), Inside (B), or NA]	Inside(B)
Incremental or Total Fiscal Disparities	Incremental
Fiscal Disparities Contribution Ratio	37.3452% Pay 2023
Fiscal Disparities Metro-Wide Tax Rate	133.6670% Pay 2023
Maximum/Frozen Local Tax Rate:	101.855% Pay 2023
Current Local Tax Rate: (Use lesser of Current or Max.)	101.855% Pay 2023
State-wide Tax Rate (Comm./Ind. only used for total taxes)	33.0030% Pay 2023
Market Value Tax Rate (Used for total taxes)	0.15186% Pay 2023

Tax Rates		
Exempt Class Rate (Exempt)		0.00%
Commercial Industrial Preferred Class Rate (C/I Pref.)		
First \$150,000		1.50%
Over \$150,000		2.00%
Commercial Industrial Class Rate (C/I)		2.00%
Rental Housing Class Rate (Rental)		1.25%
Affordable Rental Housing Class Rate (Aff. Rental)		
First \$100,000		0.75%
Over \$100,000		0.25%
Non-Homestead Residential (Non-H Res. 1 Unit)		
First \$500,000		1.00%
Over \$500,000		1.25%
Homestead Residential Class Rate (Hmstd. Res.)		
First \$500,000		1.00%
Over \$500,000		1.25%
Agricultural Non-Homestead		1.00%

BASE VALUE INFORMATION (Original Tax Capacity)

Map ID	PID	Owner	Address	Land Market Value	Building Market Value	Total Market Value	Percentage Of Value Used for District	Original	Tax Year	Property	Current	Class	After	Area/ Phase
								Market Value	Original Market Value	Tax Class	Original Tax Capacity	Conversion	Conversion Orig. Tax Cap.	
1	0211722130063	Carpenter Land Co.	11816 Wayzata Blvd	2,168,000	60,000	2,228,000	100%	2,228,000	Pay 2023	C/I Pref.	43,810	Rental	27,850	1
2	0211722130061	Carpenter Land Co.	11800 Wayzata Blvd	825,000	32,000	857,000	100%	857,000	Pay 2023	C/I	17,140	Rental	10,713	
				2,993,000	92,000	3,085,000		3,085,000			60,950		38,563	

Note:

1. Base values are for pay 2023 based upon review of County website on 1-27-23.
2. Located in SD # 270 and WS 7.

Marsh Run II (Doran)
City of Minnetonka, MN
297 Unit Mixed Income Apartments



PROJECT INFORMATION (Project Tax Capacity)														
Area/Phase	New Use	Estimated Market Value Per Sq. Ft./Unit	Taxable Market Value Per Sq. Ft./Unit	Total Sq. Ft./Units	Total Taxable Market Value	Property Tax Class	Project Tax Capacity	Project Tax Capacity/Unit	Percentage Completed 2023	Percentage Completed 2024	Percentage Completed 2025	Percentage Completed 2026	First Year Full Taxes Payable	
1	Apartments	272,600	272,600	197	53,702,256	Rental	671,278	3,408	25%	75%	100%	100%	2027	
2	Apartments	272,600	272,600	100	27,260,029	Rental	340,750	3,408	0%	25%	75%	100%	2028	
TOTAL					80,962,285		1,012,029							
Subtotal Residential					297		80,962,285							
Subtotal Commercial/Ind.					0		0							

Note:

- Market values are based upon review of neighboring property the Birke (aka Marsh Run I).

TAX CALCULATIONS									
New Use	Total Tax Capacity	Fiscal Disparities Tax Capacity	Local Tax Capacity	Local Property Taxes	Fiscal Disparities Taxes	State-wide Property Taxes	Market Value Taxes	Total Taxes	Taxes Per Sq. Ft./Unit
Apartments	671,278	0	671,278	683,730	0	0	81,552	765,283	3,884.68
TOTAL	671,278	0	671,278	683,730	0	0	81,552	765,283	

Note:

- Taxes and tax increment will vary significantly from year to year depending upon values, rates, state law, fiscal disparities and other factors which cannot be predicted.

WHAT IS EXCLUDED FROM TIF?	
Total Property Taxes	765,283
less State-wide Taxes	0
less Fiscal Disp. Adj.	0
less Market Value Taxes	(81,552)
less Base Value Taxes	(39,278)
Annual Gross TIF	644,453

Appendix C: Findings Including But/For Qualifications

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan (the “TIF Plan”) for the Marsh Run II Tax Increment Financing District (the “District”), as required pursuant to *Minnesota Statutes (M.S.), Section 469.175, Subd. 3* are as follows:

1. *Finding that Marsh Run II Tax Increment Financing District is a redevelopment district as defined in M.S., Section 469.174, Subd. 10.*

The District consists of two (2) parcels with plans to redevelop the area for the construction of approximately 297 units of mixed income apartments over two phases. Parcels consisting of 70% of the area of the District are occupied by buildings, streets, utilities, paved or gravel parking lots or other similar structures and more than 50% of the buildings in the District, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance. (See Appendix D of the TIF Plan.)

2. *Finding that the proposed development, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future and that the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of Marsh Run II Tax Increment Financing District permitted by the TIF Plan.*

The proposed development, in the opinion of the EDA and City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future: This finding is supported by the fact that the redevelopment proposed in the TIF Plan meets the EDA’s and City’s objectives for redevelopment. Due to the high cost of redevelopment on the parcels currently occupied by substandard buildings, the cost of financing the proposed improvements and the inclusion of affordable units, this project is feasible only through assistance, in part, from tax increment financing. The Developer was asked for and provided a letter and a pro forma as justification that the Developer would not have gone forward without tax increment assistance.

The increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the District permitted by the TIF Plan: This finding is justified on the grounds that the cost of site improvements and addition of affordable units add to the total redevelopment cost. Historically, construction costs, site improvements costs and the inclusion of affordable units in this area have made redevelopment infeasible without tax increment financing assistance. The City reasonably determines that no other redevelopment of similar scope is anticipated on this site without substantially similar assistance being provided to the development.

Therefore, the City concludes as follows:

- a. The City's estimate of the amount by which the market value of the entire District will increase without the use of tax increment financing is \$0.
 - b. If the proposed development occurs, the total increase in market value will be \$77,877,285.
 - c. The present value of tax increments from the District for the maximum duration of the district permitted by the TIF Plan is estimated to be \$19,260,201.
 - d. Even if some development other than the proposed development were to occur, the City Council finds that no alternative would occur that would produce a market value increase greater than \$58,617,084 (the amount in clause b less the amount in clause c) without tax increment financing assistance.
3. *Finding that the TIF Plan for the District conforms to the general plan for the development or redevelopment of the municipality as a whole.*

The City Council reviewed the TIF Plan and found that the TIF Plan conforms to the general development plan of the City.

4. *Finding that the TIF Plan for Marsh Run II Tax Increment Financing District will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of Development District No. 1 by private enterprise.*

The project to be assisted by the District will result in increased employment in the City and the State of Minnesota, the renewal of substandard properties, increased tax base of the State, and add a high-quality development to the City.

Through the implementation of the TIF Plan, the EDA and City will increase the availability of safe and decent life-cycle housing in the City.

Appendix D: Redevelopment Qualifications for the District

To be added to prior to the public hearing

**CONTRACT
FOR
PRIVATE REDEVELOPMENT**

between

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

and

MINNETONKA MARSH, LLC

Dated: May 22, 2023

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402
Telephone: 612-337-9300

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CONTRACT FOR PRIVATE REDEVELOPMENT

THIS CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the ____ day of _____, 2023 (the “Agreement”), 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”), and MINNETONKA MARSH, LLC, a Minnesota limited liability company (the “Redeveloper”).

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 of Minnetonka, Minnesota (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 project known as Development District No. 1 (the “Development District”) in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended; and

WHEREAS, the City and the Authority have established the Marsh Run II Tax Increment Financing District (the “TIF District”), a redevelopment district within the Development District, and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate development of certain property in the Development District and promote the development of affordable housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, the Redeveloper proposes to acquire certain property described in EXHIBIT A attached hereto (the “Redevelopment Property”) within the TIF District and construct a mixed-income apartment complex with approximately 197 units, including 40 affordable units (20 units at 60% area median income and 20 units at 80% area median income), including a parking garage and surface parking; and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Redeveloper to construct, the Authority is prepared to reimburse the Redeveloper for a portion of the land acquisition costs and certain site improvement costs related to the Minimum Improvements; and

WHEREAS, the Authority believes that the development and redevelopment of the Redevelopment Property 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 under which the Development District has been undertaken and is being assisted; 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:

ARTICLE I

Definitions

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

“Administrative Costs” means the costs described in Section 3.5 hereof.

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

“Assessor” means the assessor of the City.

“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’s Consultant” means the Authority’s municipal advisor.

“Authority Representative” means the Executive Director of the Authority.

“Available Tax Increment,” means, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Redevelopment Property and paid to the Authority by the County in the six (6) months preceding the Payment Date. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement; provided, however, once an Event of Default is cured, any Tax Increment previously withheld shall be deemed Available Tax Increment on the next Payment Date.

“Board” means the Board of Commissioners of the Authority.

“Certificate of Completion” means the certification provided to the Redeveloper pursuant to Section 4.4 hereof.

“City” means the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision organized and existing under its Charter and the constitution and laws of the State.

“City Representative” means the City Manager or person designated in writing by the City Manager to act as the City Representative of the City.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Redeveloper on the Redevelopment Property, including the Minimum Improvements, which (a) must be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City; and (b) must include at least the following: (1) site plan; (2) foundation plan; (3) floor plan for each floor; (4) cross-sections of each floor plan (length and width); (5) elevations (all sides, including a building materials schedule); (6) landscape and grading plan; and (7) other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Hennepin County, Minnesota.

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

“Development District” means the real property located within the boundaries of the Development District No. 1.

“Development District Plan” means the Amended and Restated Development Plan for the Development District approved and adopted by the Board of the Authority and the City Council of the City.

“EDA Act” means Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

“Event of Default” means an action by the Redeveloper or the Authority, as applicable, listed in Article IX hereof.

“Holder” means the owner of a Mortgage.

“HRA Act” means Minnesota Statutes, Sections 469.001 through 469.047, as amended.

“Material Change” means a change in the Construction Plans that adversely affects generation of tax increment or changes the number of units of rental housing. Any increase in units or a decrease of more than five units will be considered a Material Change. A decrease in units of five or less units will not be considered a Material Change.

“Maturity Date” means the date that the TIF Note has been paid in full or terminated, whichever is earlier.

“Minimum Assessment Agreement” means the Minimum Assessment Agreement establishing a Minimum Market Value of the Redevelopment Property and the Minimum Improvements substantially in the form attached hereto as EXHIBIT G.

“Minimum Improvements” means the development on the Redevelopment Property, which will include (i) a six-story, approximately 197-unit apartment building subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof; and (ii) approximately 264 underground parking spaces and approximately 40 surface parking spaces.

“Minimum Market Value” means a minimum market value for real estate tax purposes with respect to the Development Property and the Minimum Improvements of \$53,700,000 on either (a) January 2, 2026 for taxes payable beginning in 2027 through the Maturity Date, if the Redeveloper commences construction prior to December 31, 2023; or (b) January 2, 2027, for taxes payable beginning in 2028 through the Maturity Date, if the Redeveloper commences construction after December 31, 2023.

“Mortgage” means any mortgage made by the Redeveloper which is secured, in whole or in part, with the Redevelopment Property and which is a permitted encumbrance pursuant to the provisions of Article VII hereof.

“Net Proceeds” means the gross proceeds from an insurance claim remaining after payment of all expenses (including attorneys’ fees and any expenses of the Redeveloper) incurred in the collection of such gross proceeds.

“Qualified Costs” has the meaning given such term in Section 3.4(a) hereof.

“Qualified Improvements” means the improvements to be constructed by the Redeveloper described in Section 3.4(a) hereof.

“Redeveloper” means Minnetonka Marsh, LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“Redevelopment Property” means the real property described in EXHIBIT A attached hereto.

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

“Stabilization” means the Minimum Improvements are at least ninety-five percent (95%) leased.

“State” means the State of Minnesota.

“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 Marsh Run II Tax Increment Financing District, a redevelopment district within the Development District.

“Tax Increment Plan” or “TIF Plan” means the Tax Increment Financing Plan, as approved by the City Council of the City on May 22, 2023, 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 district court, the tax court of the State, or the State Supreme Court.

“TIF Note” means a Tax Increment Revenue Note, substantially in the form attached hereto as EXHIBIT B, to be delivered by the Authority to the Redeveloper pursuant to Section 3.4 hereof, and any obligation issued to refund the TIF Note.

“Transitional Unit” means the unit within the Minimum Improvements that is described in Section 4.6.

“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 strikes, lockouts or other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, State or local governmental unit (other than the Authority in properly exercising its rights under this Agreement) which directly result in delays, unavailability or shortage of supply of construction materials or construction labor, other than by reason of non-payment of the costs for such supplies or labor. Unavoidable Delays shall not include delays experienced by the Redeveloper in obtaining permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required by Section 4.3 hereof.

“Yield on Cost” means annual net operating income (including Tax Increment), divided by the total development costs.

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ARTICLE II

Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations:

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

(b) The Authority proposes to assist in financing certain land acquisition costs, site improvement costs, and the costs of constructing affordable housing necessary to facilitate the construction of the Minimum Improvements in accordance with the terms of this Agreement to further the objectives of the Development District Plan.

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

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, 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 Authority is a party or by which the Authority 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 Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority 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 Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

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

(a) The Redeveloper is a Minnesota limited liability company duly organized and in good standing under the laws of the State and authorized to do business within the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Redeveloper will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Development District Plan and all local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations) that are applicable to the Redevelopment Property and all improvements constructed thereon.

(c) The Redeveloper has received no notice or communication from any local, State or federal official that the activities of the Redeveloper or the Authority in the Development District may be

or will be in violation of any environmental law or regulation. As of the date of this Agreement, the Redeveloper is not aware of any facts that would cause the Redeveloper to be in violation of or give any person a valid claim under any local, State or federal environmental law, regulation or review procedure.

(d) The Redeveloper will construct the Minimum Improvements in accordance with all local, State or federal laws or regulations that are in effect at the time of construction.

(e) The Redeveloper will use commercially reasonable efforts to 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. The Redeveloper did not obtain a building permit for any portion of the Minimum Improvements before May 22, 2023, the date of approval of the TIF Plan for the TIF District.

(f) 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 corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Redeveloper is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(g) The proposed development by the Redeveloper hereunder would not occur but for the tax increment financing assistance and other assistance being provided by the Authority hereunder.

(h) The Redeveloper will promptly advise the Authority in writing of all litigation or claims materially affecting the operation of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the operation of the Minimum Improvements or materially affecting Redeveloper or its business which may delay or require Material Changes in construction of the Minimum Improvements.

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ARTICLE III

Tax Increment Assistance

Section 3.1. Status of Redevelopment Property. The Redeveloper has entered into a purchase contract for the acquisition of the Redevelopment Property. The Authority has no obligation to acquire any portion of the Redevelopment Property.

Section 3.2. Environmental Conditions.

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

(b) Without limiting its obligations under Section 8.3 hereof, the Redeveloper further agrees that it will indemnify, defend, and hold harmless the Authority and its 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 Redevelopment Property as a result of the actions or omissions of the Redeveloper, 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 Authority under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02, as amended.

Section 3.3. Reimbursement of Certain Redeveloper Costs. The Authority is authorized to acquire real property and convey real property to private entities at a price determined by the Authority in order to facilitate development of the property. The Authority has determined that, in order to make development of the Minimum Improvements and the Qualified Improvements financially feasible, it is necessary to reduce the cost of acquisition of the Redevelopment Property and certain site improvements necessary for the Minimum Improvements. The Authority has also determined that, in light of potential liability that could be incurred by the Authority if the Authority takes title to the Redevelopment Property, it is in the best interest of the Authority for the Redeveloper to acquire the Redevelopment Property directly. The Authority will reimburse the Redeveloper for a portion of the actual cost of acquiring the Redevelopment Property and the actual cost of the Qualified Improvements in accordance with the terms of this Agreement.

Section 3.4. Issuance of Pay-As-You-Go Note.

(a) In consideration of the Redeveloper constructing the Minimum Improvements and the Qualified Improvements and to finance the reimbursement of the land acquisition, site preparation costs, and any other expenditures eligible to be reimbursed with Tax Increment incurred by the Redeveloper, the Authority will issue and the Redeveloper will purchase the TIF Note in the principal amount of up to \$4,600,000 in substantially the form set forth in the EXHIBIT B attached hereto. The interest on the TIF Note shall be 5.00% or the redeveloper's actual rate of financing, whichever is less. The Authority and the Redeveloper agree that the consideration from the Redeveloper for the purchase of the TIF Note will consist of the Redeveloper's payment of a portion of the costs of land acquisition, demolition, site preparation, remediation, underground parking, and any other improvements that are constructed within

the TIF District and are eligible for reimbursement with tax increment (collectively, the “Qualified Costs”), which are incurred by the Redeveloper in at least the principal amount of the TIF Note. The Redeveloper will be reimbursed for such costs in the following maximum amounts, in the individual or the aggregate:

Type of Cost	Maximum Amount
Demolition	\$200,000
Dewatering	\$100,000
Geopiers	\$500,000
Underground Parking	\$3,800,000
Total	\$4,600,000

The Authority shall issue the TIF Note within forty-five (45) days of receiving from the Redeveloper satisfactory evidence of Qualified Costs and upon satisfaction of the following conditions:

- (i) the Redeveloper has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority (the Authority has approved the Construction Plans);
- (ii) the Redeveloper has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof; and
- (iii) the Redeveloper has delivered to the Authority an investment letter in substantially the form set forth in EXHIBIT C attached hereto or another form reasonably satisfactory to the Authority.

The TIF Note shall not be delivered to the Redeveloper if the Redeveloper has not delivered the executed Declaration and Minimum Assessment Agreement to the Authority in recordable form.

(b) The Redeveloper understands and acknowledges that the Authority makes no representations or warranties regarding the amount of Available Tax Increment, or that revenues pledged to the TIF Note will be sufficient to pay the principal of and interest on the TIF Note. Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the TIF District or this Agreement are for the benefit of the Authority, and are not intended as representations on which the Redeveloper may rely.

(c) The Authority acknowledges that the Redeveloper may assign the TIF Note to a lender that provides the financing for the acquisition of the Redevelopment Property or the construction of the Minimum Improvements. The Authority consents to this type of assignment, conditioned upon receipt of an investment letter from the lender in a form reasonably acceptable to the Authority. If the Authority is required to execute any documents related to an assignment of the TIF Note, such documents must be approved by the Board of the Authority.

Section 3.5. Payment of Administrative Costs. The Authority acknowledges that the Redeveloper has deposited with the Authority \$25,000. The Authority will use such deposit to pay “Administrative Costs,” which term means third-party, out-of-pocket costs incurred by the Authority, 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 Redevelopment Property. At the Redeveloper’s request, but no more often than monthly, the Authority will provide the Redeveloper 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 determines that the deposit is insufficient to pay Administrative Costs, the Redeveloper is obligated to pay such shortfall within thirty (30) days after receipt of a written notice from the Authority 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 Redeveloper; provided that Redeveloper remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by the Redeveloper. Upon termination of this Agreement in accordance with its terms, the Redeveloper remains obligated under this section for Administrative Costs incurred through the effective date of termination.

Section 3.6. Records. Prior to the Maturity Date, the Authority and its representatives will have the right at all reasonable times during normal business hours after reasonable notice to inspect and examine all books and records of Redeveloper relating to the development and construction of the Minimum Improvements and the costs for which the Redeveloper has been reimbursed with Tax Increment.

Section 3.7. Purpose of Assistance. The parties agree and understand that the purpose of the Authority's financial assistance to the Redeveloper is to facilitate development of housing and is not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

Section 3.8. Look Back and Reduction of Tax Increment Assistance. The financial assistance to be provided to the Redeveloper pursuant to this Agreement is based on certain assumptions regarding the projected costs and expenses associated with constructing the Minimum Improvements (as provided in the Pro Forma attached hereto as EXHIBIT H and the Qualified Costs). The Authority and the Redeveloper agree that those assumptions will be reviewed at the time of completion of construction of the Minimum Improvements, upon stabilization, and at the time of any sale or refinancing of the Minimum Improvements as follows:

(a) At the time of issuance of the permanent certificate of occupancy, if the aggregate amount of Qualified Costs incurred is less than \$4,600,000, the amount of the tax increment financing assistance for Qualified Costs will be reduced on a dollar for dollar basis in the amount of such deficiency and the principal amount of the TIF Note will be adjusted accordingly.

(b) Upon Stabilization, the amount of the tax increment assistance provided pursuant to this Agreement will be subject to adjustment based on a cumulative Yield on Cost of 6.2% from the date of the permanent certificate of occupancy. Within sixty (60) days of Stabilization, the Redeveloper must deliver to the Authority's Consultant evidence of its cumulative Yield on Cost. The return on cost return shall be calculated by the Authority's Consultant based on the Redeveloper's pro forma financial statement submitted to the Authority's Consultant (to be calculated in a manner comparable to the sample attached as EXHIBIT H (annual net operating income including tax increment divided by the total development costs)).

If the cumulative return on cost exceeds 6.2%, then the principal amount of the TIF Note issued to the Redeveloper will be reduced to an amount that shows a stabilized Yield on Cost of 6.2% over the new term of the TIF Note, including a reduction to \$0.00. The Redeveloper shall deliver the TIF Note in exchange for a new TIF Note in the adjusted principal amount upon the Authority's written request.

(c) If the Redeveloper sells the Minimum Improvements to an unrelated third party or refinances (provided, however, the placement of permanent debt on the Minimum Improvements and the Redevelopment Property will not constitute a refinance giving rise to the review as described in this subsection (c)) during the first ten (10) years after the issuance of a certificate of occupancy by the City,

the Redeveloper agrees to provide to the Authority's Consultant reasonable background documentation related to the Minimum Improvements income and expenses for the period from the date certificate of occupancy through such anticipated sale or refinance date (provided that the Redeveloper and the Authority agree that the calculation will occur prior to the actual transfer). If the Authority's Consultant determines, based on such review, that the actual cash flows realized by the Redeveloper have exceeded a cumulative Yield on Cost of 6.2%, then the TIF Note shall be reduced by 50% of the excess amount of such actual cash flows, including a reduction to \$0.00. Such reduction will be effective upon delivery to Redeveloper of a written notice stating the amount of such excess profit as determined by the Authority in accordance with this paragraph (c), accompanied by the Authority's Consultant's report.

(d) If the TIF Note is paid in full prior to the tenth year of the TIF Note, the sale lookback provision set forth in Section 3.8(c) will not be required.

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ARTICLE IV

Construction and Maintenance of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. Subject to Unavoidable Delays, the Redeveloper agrees that it will construct the Minimum Improvements on the Redevelopment Property substantially in accordance with the approved Construction Plans. The Redeveloper further agrees that, at all times prior to the Maturity Date, it will operate and maintain, preserve and keep the Minimum Improvements or cause the Minimum 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 Redeveloper 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 Development District 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 Development District 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 Redeveloper from all sources (including the Redeveloper'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 Redeveloper of the obligation to comply with the terms of this Agreement or of the Development District 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 Redeveloper 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 Redeveloper must submit new or corrected Construction Plans within twenty (20) days after written notification to the Redeveloper 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 Redeveloper desires to make any Material Change in the Construction Plans after their approval by the Authority, the Redeveloper 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 Redeveloper 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 Redeveloper, setting forth in detail the reasons therefor.

Any rejection must be made within twenty (20) days after receipt of the notice of such change. 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 and the vacation of existing tenants from the Redevelopment Property, the Redeveloper must commence construction of the Minimum Improvements by December 31, 2024. If Redeveloper commences construction of the Minimum Improvements prior to December 31, 2023, Redeveloper will substantially complete construction of the Minimum Improvements by December 31, 2025. If Redeveloper commences construction of the Minimum Improvements after December 31, 2023, Redeveloper will substantially complete construction of the Minimum Improvements by December 31, 2026. Construction is considered to be commenced upon the beginning of grading on the site.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Redeveloper on the Redevelopment Property must be in substantial conformity with the Construction Plans as submitted by the Redeveloper and approved by the Authority. The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Redevelopment Property, or any part thereof, that the Redeveloper, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Redevelopment Property through the construction of the Minimum Improvements thereon, and that, subject to Unavoidable Delays, the construction will in any event be commenced and completed within the period specified in subdivision (a) above. Until construction of the Minimum Improvements has been completed, the Redeveloper will make reports, in the detail and at the times as may reasonably be requested by the Authority, as to the actual progress of the Redeveloper with respect to the construction.

Section 4.4. Certificate of Completion.

(a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement, the Authority will furnish the Redeveloper with a Certificate of Completion in substantially the form attached as EXHIBIT E. The certification by the Authority will be a conclusive determination of the satisfaction and termination of the agreements and covenants in the Agreement with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. The certification and the determination will not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper 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 will be in the form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Redevelopment Property. If the Authority refuses or fails to provide any certification in accordance with the provisions of this Section 4.4, the Authority will, within fifteen (15) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper 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 Redeveloper to take or perform in order to obtain the certification.

(c) The construction of the Minimum Improvements will be considered substantially complete when the Redeveloper has received a final (or temporary with conditions reasonably acceptable to the Authority) certificate of occupancy from the City for all Rental Housing Units.

Section 4.5. Affordability Covenants. The Redeveloper agrees that the Minimum Improvements are subject to the following affordability covenants:

(a) As of the date hereof, the Redeveloper expects that the Minimum Improvements will include the mix of Rental Housing Units found in EXHIBIT F attached hereto. As of the date of execution of this Agreement, the Redeveloper expects that the Rental Housing Units with income restrictions will include the following:

<u>Type of Unit</u>	<u>Area Median Income</u>	<u>Number of Units</u>
Alcove	60%	2
One-Bedroom	60%	12
Two-Bedroom	60%	6

<u>Type of Unit</u>	<u>Area Median Income</u>	<u>Number of Units</u>
Alcove	80%	2
One-Bedroom	80%	10
Two-Bedroom	80%	6
Three-Bedroom	80%	2

Such restrictions shall remain in effect for the thirty (30) year period described in the Declaration. The Redeveloper shall deliver the executed Declaration to the Authority in recordable form.

(b) The Redeveloper intends to rent parking spaces to tenants of the Minimum Improvements for approximately \$100 per parking space per month initially. The Redeveloper agrees that fees related to each garage parking stall for the affordable Rental Housing Units will not exceed ten percent (10%) of the base rent permitted by the then published area median income rental rates, and shall not be increased more than the cumulative annual Consumer Price Index or a cumulative Consumer Price Index. The Redeveloper intends to charge for other applicable fees such as pet fees and storage fees as well as separate utilities. The Redeveloper agrees that parking fees and any other fees or utility charges which are separate from base rent charged to Qualifying Tenants shall be consistent with or less than those charged to non-Qualifying Tenants.

(c) During the term of the Declaration, the Redeveloper shall not adopt any policies that the Redeveloper knows or should know prohibit or in any way exclude 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. Additionally, the Redeveloper shall not adopt policies that the Redeveloper knows or should know will have the effect of making it difficult for 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, to rent units within the Minimum Improvements (for example, policies that require income of more than two times the rent to be paid for a unit).

(d) The Redeveloper will promptly notify the Authority if at any time during the term of the Declaration the number of Rental Housing Units in the Minimum Improvements occupied by Qualifying Tenants (as defined in the Declaration) or held vacant and available for occupancy by Qualifying Tenants pursuant to the Declaration is less than the number required by the terms of the Declaration.

(e) In consideration for the issuance of the TIF Note, the Redeveloper agrees to provide the Authority with at least ninety (90) days' notice of any proposed sale of the Minimum Improvements.

(f) The Authority and its representatives will have the right at all reasonable times during normal business hours while the covenants in this Section are in effect, after reasonable notice to inspect and examine all books and records of the Redeveloper and its successors and assigns relating to the covenants described in this Section and in the Declaration.

(g) Pursuant to Section 4.7, the Redeveloper must submit evidence of tenant incomes, showing that the Minimum Improvements meet the income requirements set forth in the Declaration. The Authority will review the submitted evidence related to the income restrictions required by Section 469.1761 of the TIF Act on an annual basis to determine that the TIF District remains a housing district under the TIF Act.

(h) If the Authority determines, based on the reports submitted by the Redeveloper or if the Authority receives notice from the State Department of Revenue, the State Auditor, any Tax Official or any court of competent jurisdiction that the TIF District does not qualify as a “housing district” due to action or inaction of the Redeveloper, this type of event will be deemed an Event of Default of the Redeveloper under this Agreement; provided, however, that the Authority may not exercise any remedy under this Agreement so long as the determination is being contested and has not been finally adjudicated. In addition to any remedies available to the Authority under Article IX hereof, the Redeveloper will indemnify, defend and hold harmless the Authority for any damages or costs resulting therefrom.

Section 4.6. Transitional Unit. The Redeveloper has agreed to lease one of the three-bedroom units at 60% AMI to a nonprofit organized under Section 501(c)(3) of the Internal Revenue Code, which shall be the tenant of the Transitional Unit (the “Transitional Unit Tenant”), that will be fully furnished and reserved for temporary housing for persons or families experiencing homelessness (the “Transitional Unit”). His House Foundation, a nonprofit organized under Section 501(c)(3) of the Internal Revenue Code, has agreed to be the initial tenant of the Transitional Unit and manage leasing the Transitional Unit pursuant to the terms of a lease agreement to be reasonably negotiated by the Redeveloper and His House Foundation prior to occupancy. At any time that His House Foundation can no longer manage the Transitional Unit, the Redeveloper shall promptly notify the Authority and the Authority shall have three (3) months from the date of receipt of the notice to try to find another organization to manage the Transitional Unit. Any replacement non-profit organization shall lease the Transitional Unit pursuant to the terms of a lease agreement to be reasonably negotiated between the Redeveloper and the organization. If the Authority cannot find a new entity to manage the Transitional Unit and the Authority is unable to manage the Transitional Unit, the Authority will agree to allow the Redeveloper to rent the unit as a regular affordable Rental Housing Unit subject to the AMI maximum and other provisions of this Agreement and the Declaration to a qualifying tenant until the qualifying tenant vacates the unit. The Redeveloper will provide notice to the Authority when the unit is vacated and the Authority shall have the option to have two (2) months to find a new non-profit organization to manage the Transitional Unit pursuant to a lease agreement reasonably negotiated by the Redeveloper and the organization. At any time, the Authority may waive the requirements of this Section 4.6 and return the unit to the control of the Redeveloper, at which time the Redeveloper may lease the Transitional Unit as a regular affordable Rental Housing Unit subject to the AMI maximum and other provisions of this Agreement and the Declaration applicable to affordable Rental Housing Units, or to another nonprofit which will be a Transitional Unit Tenant. Notwithstanding the foregoing, during any period of time that the Transitional Unit is subject to a lease agreement with a Transitional Unit Tenant, the Redeveloper shall not be required to submit the above-required information with respect to any occupant(s) of the Transitional Unit. The Authority may require that the Redeveloper submit a copy of the lease with the Transitional Unit Tenant.

Section 4.7. 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 Redeveloper shall provide a report to the Authority evidencing that the Redeveloper 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 any similar form). The Authority may require the Redeveloper to provide additional information reasonably necessary to assess the accuracy of such certification. Unless excused by the Authority, the Redeveloper shall send affordable housing reports to the Authority until the Declaration terminates.

Section 4.8. Property Management Covenant. The Redeveloper 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 Redeveloper 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 Redeveloper and the property manager requiring the Redeveloper and the property manager to take reasonable 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 Redeveloper and the property manager of the second Violation. Within ten (10) days after receiving such notice, the Redeveloper 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 Redeveloper and the property manager of the third Violation. Within ten (10) days after receiving such notice, as and to the extent permitted under the tenant’s lease and applicable law, the Redeveloper or the property manager shall commence termination of the tenancy of all occupants of that unit (or, if possible under the lease and applicable law, only the at-fault occupants of that unit). The Redeveloper 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 Redeveloper 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 Redeveloper and the property manager directing attendance at a meeting to determine the cause of the continuing Violations and provide an opportunity for the Redeveloper and the property manager to explain their failure to comply with the procedures in this Section.

(e) If the Redeveloper and property manager fail to respond to the written notice under paragraph (d) above, or at least two (2) additional Violations occur with respect to the same tenancy within the next twelve (12) month period after the date of the notice under paragraph (d) above, then the Authority may direct the Redeveloper to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Redeveloper but approved by the Authority.

Section 4.9. Fees. The Redeveloper 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 Redeveloper will owe approximately \$985,000 in park dedication fees (assuming that the Minimum

Improvements include 197 Rental Housing Units). The park dedication fee is calculated at a rate of \$5,000 per unit.

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ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Redeveloper or the general contractor engaged by the Redeveloper 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 must 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). The Authority must be listed as an additional insured on the policy.

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

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Redeveloper must maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority will 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 the risks as are ordinarily insured against by similar businesses.

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), 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 must be endorsed to show the Authority as an additional insured.

(iii) Other insurance, including workers' compensation insurance respecting all employees, if any, of the Redeveloper, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Redeveloper may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V must be taken out and maintained in responsible insurance companies selected by the Redeveloper which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Redeveloper will deposit annually with the Authority policies evidencing all the insurance, or a certificate or certificates or binders of the respective insurers stating that the insurance is in force and effect. Unless otherwise provided in this Article V each

policy must contain a provision that the insurer will 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 Redeveloper and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Redeveloper may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Redeveloper will 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 Redeveloper agrees to notify the Authority immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event this type of damage or destruction occurs, the Redeveloper will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing the damage and, to the extent necessary to accomplish the repair, reconstruction and restoration, the Redeveloper will apply the Net Proceeds of any insurance relating to the damage received by the Redeveloper to the payment or reimbursement of the costs thereof.

The Redeveloper will complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by the Redeveloper is sufficient to pay for the same. Any Net Proceeds remaining after completion of the repairs, construction and restoration will be the property of the Redeveloper.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of \$100,000 and the Redeveloper fails to complete any repair, reconstruction or restoration of the Minimum Improvements within twenty-four (24) months from the date of damage (or another timeline agreed to by the Redeveloper and the Authority), the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, the termination will constitute the Authority's sole remedy under this Agreement as a result of the Redeveloper's failure to repair, reconstruct or restore the Minimum Improvements. Thereafter, the Authority will have no further obligations to make any payments under the TIF Note.

(f) The Redeveloper and the Authority agree that all of the insurance provisions set forth in this Article V will terminate upon the Maturity Date.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance will, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII hereof.

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ARTICLE VI

Tax Increment; Taxes; Minimum Assessment Agreement

Section 6.1. Right to Collect Delinquent Taxes. The Redeveloper acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Redeveloper understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Redevelopment Property, which taxes must be promptly and timely paid. To that end, the Redeveloper 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 Redevelopment Property and the Minimum Improvements. The Redeveloper acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Redeveloper 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 this type of suit, the Authority will also be entitled to recover its costs, expenses and reasonable attorney fees. Nothing in this Agreement in any way limits or prevents the Redeveloper from contesting the assessor's proposed market values for the Redevelopment Property or the Minimum Improvements, but the Redeveloper recognizes that the action may affect the amount of Available Tax Increment.

Section 6.2. Minimum Assessment Agreement.

(a) At the time of execution of this Agreement, the Authority and the Redeveloper shall execute the Minimum Assessment Agreement for the Redevelopment Property and Minimum Improvements. The Assessment Agreement shall specify the Minimum Market Value, notwithstanding any failure to start or complete the Minimum Improvements on the Redevelopment Property by the Maturity Date or any failure to reconstruct the Minimum Improvements after damage or destruction before the Maturity Date.

(b) Nothing in the Minimum Assessment Agreement shall limit the discretion of the Assessor to assign a market value to the Minimum Improvements or the Redevelopment Property in excess of the Minimum Market Value or prohibit the Redeveloper from seeking through the exercise of legal or administrative remedies a reduction in the market value established pursuant to subsection (a) above; provided, however, that the Redeveloper shall not seek a reduction of such market value below the Minimum Market Value set forth in the Minimum Assessment Agreement in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect until the Maturity Date; provided that, if at any time before the Maturity Date, the Minimum Assessment Agreement is found to be terminated or unenforceable by any Tax Official or court of competent jurisdiction, the Minimum Market Value described in this Section 6.2 shall remain an obligation of the Redeveloper or its successors and assigns (whether or not such value is binding on the Assessor), it being the intent of the parties that the obligation of the Redeveloper to maintain, and not seek reduction of, the Minimum Market Value specified in this Section 6.2 is an obligation under this Agreement as well as under the Minimum Assessment Agreement, and is enforceable by the Authority against the Redeveloper, its successors and assigns, in accordance with the terms of this Agreement and the Minimum Assessment Agreement. Notwithstanding anything contained in this Agreement or the Minimum Assessment Agreement to the contrary, the Redeveloper shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Redevelopment Property, or any substantial portion thereof, is acquired by a public entity through eminent domain prior to the Maturity Date.

Section 6.3. Reduction of Taxes. The Redeveloper agrees that prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Redevelopment Property through: (a) willful destruction of the Redevelopment Property or any part thereof (except for any demolition required for the construction of the Minimum Improvements); or (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Redeveloper also agrees that it will not, prior to the Maturity Date, apply for a deferral of property tax on the Redevelopment Property pursuant to any law, or transfer or permit transfer of the Redevelopment Property to any entity whose ownership or operation of the Redevelopment Property would result in the Redevelopment Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the Authority in accordance with this Agreement).

The Redeveloper 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 Redevelopment Property reduced. Prior to seeking a reduction in the estimated market value, the Redeveloper must provide the Authority with written notice indicating its intention to do so. The Redeveloper acknowledges and understands that this type of action will result in less Tax Increment being disbursed by the Authority for payment of the principal of and interest on the TIF Note.

Upon receiving notice from the Redeveloper of its intentions to cause the reduction of the estimated market value of the Redevelopment Property, or otherwise learning of the Redeveloper's intentions, the Authority may suspend or reduce payments due under the TIF Note, until the actual amount of the reduction in market value is determined, whereupon the Authority will make the suspended payments less any amount that the Authority is required to repay the County as a result any retroactive reduction in market value of the Redevelopment Property. During the period that the payments are subject to suspension, the Authority will make partial payments on the TIF Note, from the amounts subject to suspension, if it determines, in its reasonable discretion, that the amount retained will be sufficient to cover any repayment which the County may require.

The Authority's suspension of payments on the TIF Note pursuant to this Section will not be considered a default under Section 9.1 hereof.

Section 6.4. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon transfer of the Redevelopment Property to another person or entity, the Redeveloper will no longer be obligated under Sections 6.1 and 6.2 hereof, unless the transfer is made in violation of the provisions of Section 8.2 hereof.

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ARTICLE VII

Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Redeveloper must submit to the Authority evidence of one or more commitments for financing which, together with committed equity for the construction, is sufficient for payment of the cost of the Minimum Improvements. The commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, mezzanine financing, 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 subdivision (a) above, then the Authority will notify the Redeveloper in writing of its approval. The approval will not be unreasonably withheld and either approval or rejection will be given within ten (10) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to the evidence of financing will be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it will do so in writing specifying the basis for the rejection. In any event the Redeveloper will submit adequate evidence of financing within ten (10) days after any rejection.

Section 7.2. Authority's Option to Cure Default on Mortgage. In the event that any portion of the Redeveloper's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to Article VII hereof, the Redeveloper will cause the Authority to receive copies of any notice of default received by the Redeveloper from the holder of the Mortgage. Thereafter, the Authority will have the right, but not the obligation, to cure any Mortgage default on behalf of the Redeveloper within the cure periods as are available to the Redeveloper under the Mortgage documents.

Section 7.3. Modification; Subordination. In order to facilitate the Redeveloper obtaining financing for the development of the Minimum Improvements, the Authority agrees to subordinate its rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing or any subsequent financing, under terms and conditions reasonably acceptable to the Authority. If the Authority is required to execute any documents related to the subordination of the Authority's rights under this Agreement, such documents must be approved by the Board of the Authority.

Section 7.4. Assignment to Lender. In order to facilitate the Redeveloper obtaining financing for the development of the Minimum Improvements, the Authority agrees to consent to the Redeveloper making a collateral assignment of this Agreement to the lender or lenders securing construction or permanent financing or any subsequent financing, under terms and conditions reasonably acceptable to the Authority. If the Authority is required to execute any collateral assignment agreement, such documents must be approved by the Board of the Authority.

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ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

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

Section 8.2. Prohibition Against Redeveloper's Transfer of Property and Assignment of Agreement. The Redeveloper represents and agrees that prior to issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the Redevelopment Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Redeveloper 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 the Agreement or the Redevelopment Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant or nonprofit entity pursuant to Section 4.6 hereof), without the prior written approval of the Authority unless the Redeveloper remains liable and bound by this Agreement in which event the Authority's approval is not required. Any transfer of this type will be subject to the provisions of this Agreement.

(b) In the event the Redeveloper, upon transfer or assignment of the Redevelopment Property seeks to be released from its obligations under this Agreement, the Authority will be entitled to require, except as otherwise provided in this Agreement, as conditions to any release that:

(i) Any proposed transferee will have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper.

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records, will, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Redevelopment Property, or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, and will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Redevelopment Property 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 Redevelopment Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the Authority would have had, had there been no transfer or change.

In the absence of specific written agreement by the Authority to the contrary, no transfer or approval by the Authority thereof will be deemed to relieve the Redeveloper, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

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

In the event the foregoing conditions are satisfied then the Redeveloper will be released from its obligation under this Agreement.

After issuance of the Certificate of Completion for the Minimum Improvements, the Redeveloper may transfer or assign the Redevelopment Property or the Redeveloper's interest in this Agreement without the prior written consent of the Authority. The Redeveloper shall provide to the Authority notice of any such transfer or assignment. Any transferee or assignee is bound by all the Redeveloper's obligations hereunder. The Redeveloper must submit to the Authority written evidence of any transfer or assignment, including the transferee or assignee's express assumption of the Redeveloper's obligations under this Agreement. If the Redeveloper fails to provide evidence of transfer and assumption, the Redeveloper will remain bound by all its obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants.

(a) The Redeveloper releases from and covenants and agrees that the Authority and its governing body members, officers, agents, servants and employees thereof will not be liable for and agrees to indemnify and hold harmless the Authority and its 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 any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Redeveloper agrees to protect and defend the Authority and its governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid 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, maintenance and operation of the Minimum Improvements.

(c) The Authority and its governing body members, officers, agents, servants and employees thereof will not be liable for any damage or injury to the persons or property of the Redeveloper or its officers, agents, servants or employees or any other person who may be about the Redevelopment Property or Minimum Improvements due to any act of negligence of any person.

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

ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, 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 the 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) Failure by the Redeveloper or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement.

(b) The Redeveloper:

(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.

(c) Prior to the Maturity Date, the Redeveloper appeals or challenges the Minimum Market Value of the Redevelopment Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof.

(d) The Redeveloper fails to comply with the requirements of the Declaration.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs and is continuing, 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:

(a) Suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement.

(b) For any Event of Default described in Section 9.1(b), cancel and rescind or terminate this Agreement.

(c) Upon an Event of Default by the Redeveloper, the Authority may suspend payments under the TIF Note or terminate the TIF Note and the TIF District, subject to the provisions of Section 9.3 hereof.

(d) 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.

Section 9.3. Termination or Suspension of TIF Note. After the Authority has issued its Certificate of Completion for the Minimum Improvements, the Authority may exercise its rights under Section 9.2(c) hereof only upon and during the continuance of the following Events of Default:

(a) The Redeveloper fails to pay real estate taxes or assessments on the Redevelopment Property or any part thereof when due, and the taxes or assessments have not been paid, or provision satisfactory to the Authority made for their payment; provided that, upon the Redeveloper's failure to pay real estate taxes or assessments on the Redevelopment Property or any part thereof when due, if uncured after thirty (30) days' written notice to the Redeveloper of the failure, the Authority may only suspend payments under the TIF Note until the Redeveloper complies with said obligations; if the Redeveloper fails to comply with said obligations for a period of eighteen (18) months, the Authority may terminate the TIF Note and the TIF District;

(b) the Redeveloper fails to comply with Redeveloper's obligation to 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, pursuant to Sections 4.1 and 5.1(c) hereof; provided that, upon Redeveloper's failure to comply with Redeveloper's obligations under Section 4.1 or 5.1(c) hereof, if uncured after thirty (30) days' written notice to the Redeveloper of the failure, the Authority may only suspend payments under the TIF Note until the Redeveloper complies with said obligations; if the Redeveloper fails to comply with said obligations for a period of eighteen (18) months, the Authority may terminate the TIF Note and the TIF District; or

(c) the Redeveloper fails to comply with the income restrictions or to deliver annual income reports as provided in Section 4.7 hereof and the Declaration; provided that, upon the Redeveloper's failure to provide annual reports, if uncured after thirty (30) days' written notice to the Redeveloper of the failure, the Authority may only suspend payments under the TIF Note until the Redeveloper delivers said reports; if the Redeveloper fails to deliver income reports for a period of six (6) months following the date the reports are due after written notice to the Redeveloper of the failure, the Authority may terminate the TIF Note and the TIF District.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Redeveloper is intended to be exclusive of any other available remedy or remedies, but each and every remedy will be cumulative and will 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 will impair any right or power or will be construed to be a waiver thereof, but any right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it will not be necessary to give notice, other than the notices already required in Sections 9.2 and 9.3 hereof.

Section 9.5. 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, the waiver will be limited to the particular breach so waived and will not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.6. Attorneys' Fees. Whenever any Event of Default occurs and if 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 Redeveloper under this Agreement, and the Authority prevails in the action, the Redeveloper agrees that it will, within ten days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

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ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Redeveloper, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority has any personal interest, direct or indirect, in the Agreement, nor has any member, official, or employee participated 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 will be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Redeveloper or successor or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Redeveloper, 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 Redeveloper agrees that, prior to the Maturity Date, the Redeveloper, and its successors and assigns, will use the Redevelopment Property solely for the development of residential rental housing in accordance with the terms of this Agreement, and will 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 Redevelopment 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 will be merged by reason of any deed transferring any interest in the Redevelopment Property and any deed will 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 will 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 will be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Redeveloper, is addressed to or delivered personally to the Redeveloper at 7803 Glenroy Road, Suite 200, Bloomington, Minnesota 55439, Attention: Legal Department;

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

or at any other address with respect to any 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 will constitute one and the same instrument.

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

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

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

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

Section 10.12. Dates. If the final day of a period or a date of performance under this Agreement falls on a Saturday, Sunday, or legal holiday, then the final day of any such period or any such date of performance will be deemed to fall on the next day which is not a Saturday, Sunday, or legal holiday.

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IN WITNESS WHEREOF, the Authority and the Redeveloper have caused this Contract for Private Redevelopment to be duly executed in their respective name and behalf, all as of the date first above written.

**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 ____ day of _____, 2023, 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 ____ day of _____, 2023, by Michael Funk, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

Execution page of the Redeveloper to the Contract for Private Redevelopment, dated the date and year first written above.

MINNETONKA MARSH, LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023,
by _____, the _____ of Minnetonka
Marsh, LLC, a Minnesota limited liability company, on behalf of the Redeveloper.

Notary Public

EXHIBIT A

DESCRIPTION OF REDEVELOPMENT PROPERTY

Lots 9, 10, 11, 12 and 13, Block 3, Boulevard Gardens, Hennepin County, Minnesota, except the South 10 feet of said Lots 9, 10, 11, 12 and 13 and except that part of said Lots 11, 12 and 13 that is designated and delineated as Parcel 10C on the Minnesota Department of Transportation Right-of-Way plat No 27-37.

EXHIBIT B

FORM OF TIF NOTE

UNITED STATE OF AMERICA
STATE OF MINNESOTA
HENNEPIN COUNTY
ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE
CITY OF MINNETONKA

No. R-1

\$ _____

TAX INCREMENT REVENUE NOTE
SERIES 20____

Rate

Date
of Original Issue

[5.00% or the redeveloper’s actual rate of financing, whichever is less]

_____, 20__

The Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), for value received, certifies that it is indebted and hereby promises to pay to Minnetonka Marsh, LLC, a Minnesota limited liability company, or registered assigns (the “Owner”), the principal sum of \$ _____ and to pay interest thereon at the rate of _____% per annum, as and to the extent set forth herein.

1. Payments. Principal and interest (the “Payments”) will be paid on August 1, 2025, and each February 1 and August 1 thereafter, to and including February 1, 2037 (the “Payment Dates”), in the amounts and from the sources set forth in Section 3 herein. Payments will be applied first to accrued interest, and then to unpaid principal.

Payments are payable by mail to the address of the Owner or any other address as the Owner may designate upon thirty (30) days’ written notice to the Authority. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Interest at the rate stated herein will accrue on the unpaid principal, commencing on the date of original issue. Interest shall accrue on a simple basis and will not be added to principal. Interest will be computed on the basis of a year of three hundred sixty (360) days and charged for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from Available Tax Increment. “Available Tax Increment” means, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Redevelopment Property and paid to the Authority by Hennepin County, Minnesota in the six (6) months preceding the Payment Date, all as the terms are defined in the Contract for Private Redevelopment, dated _____, 2023 (the “Agreement”), between the Authority and the Owner. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default (as defined in the Agreement) under the Agreement; provided, however, once an Event of Default

is cured, any Tax Increment previously withheld shall be deemed Available Tax Increment on the next Payment Date.

The Authority will have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date will not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of Available Tax Increment. The Authority will have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment on February 1, 2037.

4. Optional Prepayment. The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment will affect the amount or timing of any other regular payment otherwise required to be made under this Note.

5. Termination. At the Authority's option, this Note will terminate and the Authority's obligation to make any payments under this Note will be discharged upon the occurrence of an Event of Default on the part of the Redeveloper as defined in Section 9.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 9.2 of the Agreement.

6. Nature of Obligation. This Note is one of an issue in the total principal amount of \$ _____ all issued to aid in financing certain public development costs and administrative costs of a Development District undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Board of Commissioners of the Authority on _____, 2023, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof will be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

8. Registration and Transfer. This Note is issuable only as a fully registered note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the Community Development Director of the City of Minnetonka, Minnesota, by the Owner hereof in person or by the Owner's attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the Authority, duly executed by the Owner. Upon the transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the Authority with respect to the transfer or exchange, there will be issued in the name of the transferee a

new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

This Note will not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Owner or a certificate of the transferor, in a form satisfactory to the Authority, that the transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, has caused this Note to be executed with the manual signatures of its President and Executive Director, all as of the Date of Original Issue specified above.

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

Executive Director

President

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the Authority's Executive Director, in the name of the person last listed below.

Date of Registration

Registered Owner

Signature of Executive Director

Minnetonka Marsh, LLC
Federal ID # _____

EXHIBIT C

FORM OF INVESTMENT LETTER

To: Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”)
Attention: Executive Director

Date: _____, 20__

Re: Tax Increment Revenue Note, Series 20__, in the original aggregate principal amount of
\$ _____

The undersigned, as owner (the “Owner”) of \$ _____ in principal amount of the above-captioned Note (the “Note”) pursuant to a resolution of the Authority adopted on _____, 2023 (the “Resolution”), hereby represents to you as follows:

1. We understand and acknowledge that the TIF Note is delivered to the Owner as of this date pursuant to the Resolution and the Contract for Private Redevelopment, dated _____, 2023 (the “Contract”), between the Authority and the Owner.

2. We understand that the TIF Note is payable as to principal and interest solely from Available Tax Increment as defined in the TIF Note and the provisions of the Contract.

3. We understand that the TIF Note accrues interest as provided in the TIF Note.

4. We further understand that any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District, the Contract or the TIF Note are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

5. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the above-stated principal amount of the TIF Note.

6. We acknowledge that no offering statement, prospectus, offering circular or other comprehensive offering statement containing material information with respect to the Authority and the TIF Note has been issued or prepared by the Authority, and that, in due diligence, we have made our own inquiry and analysis with respect to the Authority, the TIF Note and the security therefor, and other material factors affecting the security and payment of the TIF Note.

7. We acknowledge that we have either been supplied with or have access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the TIF Note and the security therefor, and that as a reasonable investor we have been able to make our decision to purchase the above-stated principal amount of the TIF Note.

8. We have been informed that the TIF Note (i) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, or under federal securities laws

or regulations, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

9. We acknowledge that neither the Authority nor Kennedy & Graven, Chartered has made any representations as to the status of interest on the TIF Note for state or federal income tax purposes.

10. All capitalized terms used herein have the meaning provided in the Contract unless the context clearly requires otherwise.

11. The Owner's federal tax identification number is _____.

12. We acknowledge receipt of the TIF Note as of the date hereof.

MINNETONKA MARSH, LLC

By _____
Its _____

EXHIBIT D

FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, dated _____, 2023 (the “Declaration”), is by Minnetonka Marsh, LLC, a Minnesota limited liability company (the “Redeveloper”), in favor of the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

RECITALS

WHEREAS, the Authority and the Redeveloper entered into that certain Contract for Private Redevelopment of even date herewith (the “Contract”); and

WHEREAS, pursuant to the Contract, the Redeveloper is obligated to cause construction of approximately 197 units of rental housing (the “Project”) 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, in consideration of the financial assistance provided to the Redeveloper by the Authority for the Project, Section 4.5 of the Contract requires that the Redeveloper 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 Redeveloper intends, declares, and covenants that the restrictive covenants set forth herein shall be and are covenants running with the Property during the Qualified Project Period (as defined herein) and binding upon all subsequent owners of the Property for such period, and are not merely personal covenants of the Redeveloper; 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 Redeveloper agrees as follows:

1. Term of Restrictions.

(a) Occupancy Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof shall commence on the date the Project receives a certificate of occupancy from the City of Minnetonka, Minnesota. The period from commencement to termination is the “Qualified Project Period.”

(b) Termination of Declaration. This Declaration shall automatically 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 Redeveloper 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 Redeveloper 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 Qualifying Tenant status from the Redeveloper 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 Redeveloper shall permit during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect the books and records of the Redeveloper pertaining to the income of Qualifying Tenants residing in the Project.

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, except as otherwise provided herein, at least 40 of the housing units (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 one or more occupants of a unit who are determined from time to time by the Redeveloper to have combined adjusted income that does not exceed sixty percent (60%) or eighty percent (80%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year, subject to the following: (1) at least 20 of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed sixty percent (60%) of the Metro Area median income for the applicable calendar year; and (2) at least 20 of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed eighty percent (80%) of the Metro Area median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit will 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 are Qualifying Tenants shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined 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 Next Available Unit will not continue to be treated as a Qualifying Unit. The annual recertification and Next Available Unit Rule requirements of this paragraph 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 Qualifying Tenants.

(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 Redeveloper 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 that he or she is a Qualifying Tenant. In addition, such person shall be required to provide whatever other information, documents, or certifications are reasonably 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 Redeveloper 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 Redeveloper in renting any Rental Housing 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 Redeveloper covenants and agrees that during the Qualified Project Period, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Redeveloper, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the number of the Rental Housing Units 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 Redeveloper was not otherwise in default under this Declaration during such year.

(v) Notice of Non-Compliance. The Redeveloper will promptly notify the Authority if at any time during the term of this Declaration the number of Rental Housing Units required to be occupied by Qualifying Tenants are not occupied by or are not available for occupancy by Qualifying Tenants as required by the terms of this Declaration.

(b) Rental Housing Units Rents. The maximum gross rent, exclusive of utilities, parking, pet, storage, and similar fees, for the Rental Housing Units occupied by Qualifying Tenants, shall be equal to or less than the maximum gross rents published by the Minnesota Housing Finance Agency for that year for Hennepin County for low-income housing tax credit projects.

(c) Section 8 Housing. During the term of this Declaration, the Redeveloper shall not adopt any policies that the Redeveloper knows or should know will prohibit or in any way exclude 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. Additionally, the Redeveloper shall not adopt policies that the Redeveloper knows or should know will have the effect of making it difficult for 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, to rent units within the Minimum Improvements (for example, policies that require income of more than two times the rent to be paid for a unit).

(d) Transitional Unit. The Redeveloper has agreed to lease one of the three-bedroom units at 60% AMI to a nonprofit organized under Section 501(c)(3) of the Internal Revenue Code, which shall be the tenant of the Transitional Unit (the “Transitional Unit Tenant”), that will be fully furnished and reserved for temporary housing for persons or families experiencing homelessness (the “Transitional Unit”). His House Foundation, a nonprofit organized under Section 501(c)(3) of the Internal Revenue Code, has agreed to be the initial tenant of the Transitional Unit and manage leasing the Transitional Unit pursuant to the terms of a lease agreement to be reasonably negotiated by the Redeveloper and His House Foundation prior to occupancy. At any time that His House Foundation can no longer manage the Transitional Unit, the Redeveloper shall promptly notify the Authority and the Authority shall have three (3) months from the date of receipt of the notice to try to find another organization to manage the Transitional Unit. Any replacement non-profit organization shall lease the Transitional Unit pursuant to the terms of a lease agreement to be reasonably negotiated between the Redeveloper and the organization. If the Authority cannot find a new entity to manage the Transitional Unit and the Authority is unable to manage the Transitional Unit, the Authority will agree to allow the Redeveloper to rent the unit as a regular affordable Rental Housing Unit subject to the AMI maximum and other provisions of this Agreement and the Declaration to a qualifying tenant until the qualifying tenant vacates the unit. The Redeveloper will provide notice to the Authority when the unit is vacated and the Authority shall have the option to have two (2) months to find a new non-profit organization to manage the Transitional Unit pursuant to a lease agreement reasonably negotiated by the Redeveloper and the organization. At any time, the Authority may waive the requirements of this Section 4.6 and return the unit to the control of the Redeveloper, at which time the Redeveloper may lease the Transitional Unit as a regular affordable Rental Housing Unit subject to the AMI maximum and other provisions of this Agreement and the Declaration applicable to affordable Rental Housing Units, or to another nonprofit which will be a Transitional Unit Tenant. Notwithstanding the foregoing, during any period of time that the Transitional Unit is subject to a lease agreement with a Transitional Unit Tenant, the Redeveloper shall not be required to submit the above-required information with respect to any occupant(s) of the Transitional Unit. The Authority may require that the Redeveloper submit a copy of the lease with the Transitional Unit Tenant.

4. Notice of Sale. In consideration for the tax increment assistance provided for the Project, the Redeveloper agrees to provide the Authority with at least ninety (90) days’ notice of any proposed sale of the Minimum Improvements.

5. Transfer Restrictions. The Redeveloper covenants and agrees that the Redeveloper will cause or require as a condition precedent to any conveyance, transfer, assignment, or any other disposition of the Project prior to the termination of the Occupancy Restrictions provided herein (the “Transfer”) 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 Redeveloper under this Declaration, including this Section 5, in the event of a subsequent Transfer by the transferee prior to expiration of the Occupancy Restrictions provided herein (the “Assumption Agreement”). The Redeveloper shall deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [Reserved].

7. Enforcement.

(a) The Redeveloper 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 Redeveloper regarding the Project with respect to the incomes of Qualifying Tenants.

(b) The Redeveloper 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 Redeveloper acknowledges that the primary purpose for requiring compliance by the Redeveloper 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 Redeveloper, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Project on the Property, hereby agrees and consents that the Authority shall be entitled, upon any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Redeveloper of its obligations under this Declaration in a state court of competent jurisdiction. The Redeveloper hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Redeveloper 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 Redeveloper 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 Redeveloper to comply with the terms of this Declaration, or on account of any representation or warranty of the Redeveloper 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 Redeveloper 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 must 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 Redeveloper 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 Boulevard
Minnetonka, MN 55345
Attention: Community Development Director

To the Redeveloper: Minnetonka Marsh, LLC
7803 Glenroy Road, Suite 200
Bloomington, MN 55439

Attention: Legal Department

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. Whenever any Event of Default occurs and if the Authority employs attorneys or incurs 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 Redeveloper under this Agreement, and the Authority prevails in the action, the Redeveloper agrees that it will, within ten days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

14. Declaration Binding. This Declaration and the covenants contained herein shall run with the real property comprising the Project and shall bind the Redeveloper 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.

Drafted by:

Kennedy & Graven Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402

IN WITNESS WHEREOF, the Redeveloper 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.

MINNETONKA MARSH, LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, the _____ of Minnetonka Marsh, LLC, a Minnesota limited liability company, on behalf of the Redeveloper.

Notary Public

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 ____ day of _____, 2023,
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 ____ day of _____, 2023,
by Michael Funk, 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

Lots 9, 10, 11, 12 and 13, Block 3, Boulevard Gardens, Hennepin County, Minnesota, except the South 10 feet of said Lots 9, 10, 11, 12 and 13 and except that part of said Lots 11, 12 and 13 that is designated and delineated as Parcel 10C on the Minnesota Department of Transportation Right-of-Way plat No 27-37.

EXHIBIT B
to Declaration of Restrictive Covenants

Certification of Tenant Eligibility

Project: 11816 Wayzata Boulevard

Redeveloper: Minnetonka Marsh, LLC

Unit Type: _____ Alcove _____ 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%] [80%] of median income for the area in which the Project is located, as defined in the Declaration. [60%] [80%] is necessary for status as a "Qualifying Tenant" under Section 3(a) of the Declaration.

3. Number of apartment unit assigned: _____.

4. 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%] [80%] of Median Income in the area.

5. 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.

MINNETONKA MARSH, LLC

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 11816 Wayzata Boulevard, Minnetonka, Minnesota (the "Project"), is being provided by Minnetonka Marsh, LLC, a Minnesota limited liability company (the "Redeveloper") to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated _____, 2023 (the "Declaration"), with respect to the Project:

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

Alcove 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 Redeveloper:

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
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
etc.						

(E) The Redeveloper 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 Redeveloper 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 Redeveloper.

(F) In renting the residential units in the Project, the Redeveloper 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.

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and the Redeveloper has no actual knowledge 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 Redeveloper 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.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Redeveloper,
on _____, 20__.

MINNETONKA MARSH, LLC

By _____
Its _____

EXHIBIT E

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Minnetonka Marsh, LLC, a Minnesota limited liability company (the “Redeveloper”), has fully complied with its obligations under Article IV of the Contract for Private Redevelopment, dated _____, 2023 (the “Agreement”), between the Economic Development Authority in and for the City of Minnetonka, Minnesota and the Redeveloper, filed on _____, 20____ in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota as Document No. _____, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Redeveloper is released and forever discharged from its obligations with respect to construction of the Minimum Improvements under Article IV of the Agreement.

Dated: _____, 20____.

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

By _____
Its Executive Director

COUNTY OF HENNEPIN) SS.
)

The foregoing instrument was acknowledged before me this _____ day of _____, 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 drafted by:

Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402

EXHIBIT F

RENTAL HOUSING UNITS BY UNIT TYPE

<u>Unit Type</u>	<u>Number of Units in Minimum Improvements</u>
Alcoves:	31 units
One Bedroom	113 units
Two Bedroom	44 units
Three Bedroom	9 units

EXHIBIT G

FORM OF MINIMUM ASSESSMENT AGREEMENT

MINIMUM ASSESSMENT AGREEMENT

and

ASSESSOR'S CERTIFICATION

between

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

MINNETONKA MARSH, LLC,

and

CITY ASSESSOR FOR THE CITY OF MINNETONKA, MINNESOTA

This Document was drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402
(612) 337-9300

MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ____ day of _____, 2023 (the “Minimum Assessment 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”), and MINNETONKA MARSH, LLC, a Minnesota limited liability company, its successors and assigns (the “Owner”).

WITNESSETH:

WHEREAS, the Authority and the Owner have entered into a Contract for Private Redevelopment of even date herewith (the “Agreement”) concerning the property legally described on EXHIBIT A attached hereto (the “Redevelopment Property”); and

WHEREAS, pursuant to the Agreement, the Owner will construct on the Redevelopment Property a mixed-income apartment complex with approximately 197 units, including underground parking and surface parking (the “Minimum Improvements”); and

WHEREAS, the Authority and the Owner desires to establish a minimum market value for the Redevelopment Property and the Minimum Improvements to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, subdivision 8; and

WHEREAS, the Authority and the City Assessor for the City of Minnetonka, Minnesota have reviewed the plans for the Minimum Improvements which the Owner has agreed to construct on the Redevelopment Property pursuant to the Agreement; and

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made herein and in the Agreement by each to the other, do hereby agree as follows:

1. The minimum market value which shall be assessed for ad valorem tax purposes for the Redevelopment Property, together with the Minimum Improvements constructed thereon, shall not be less than \$53,700,000 on either (a) January 2, 2026 for taxes payable beginning in 2027 through the Maturity Date, if the Redeveloper commences construction prior to December 31, 2023; or (b) January 2, 2027, for taxes payable beginning in 2028 through the Maturity Date, if the Redeveloper commences construction after December 31, 2023, notwithstanding the progress of construction by such date, and as of each January 2 thereafter until termination of this Minimum Assessment Agreement under Section 3 hereof.

2. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date (as defined in the Agreement). Following an event that terminates this Minimum Assessment Agreement, upon request by the Owner, the Authority shall execute a certificate in recordable form that terminates this Minimum Assessment Agreement and provide such certificate to the Owner for recording.

3. This Minimum Assessment Agreement shall be promptly recorded by the Owner with a copy of Minnesota Statutes, Section 469.177, subdivision 8 set forth in EXHIBIT B attached hereto. The Owner shall pay all costs of recording this Minimum Assessment Agreement.

4. Neither the preambles nor the provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Agreement. Unless the context

indicates clearly to the contrary, the terms used in this Minimum Assessment Agreement shall have the same meaning as the terms used in the Agreement.

5. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

6. Each of the parties has authority to enter into this Minimum Assessment Agreement and to take all actions required of it and has taken all actions necessary to authorize the execution and delivery of this Minimum Assessment Agreement.

7. In the event any provision of this Minimum Assessment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Redevelopment Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

9. Except as provided in Section 8 hereof, this Minimum Assessment Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

10. This Minimum Assessment Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

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

IN WITNESS WHEREOF, the Authority and the Owner have executed this Minimum Assessment Agreement 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 ____ day of _____, 2023, 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 ____ day of _____, 2023, by Michael Funk, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

Execution page of the Owner to the Minimum Assessment Agreement, dated the date and year first written above.

MINNETONKA MARSH, LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023,
by _____, the _____ of MINNETONKA
MARSH, LLC, a Minnesota limited liability company, on behalf of the Owner.

Notary Public

CERTIFICATION BY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, and being of the opinion that the minimum market value contained in the foregoing Agreement appears reasonable, hereby certify as follows: The undersigned Assessor being legally responsible for the assessment of the described property, hereby certifies that the market values assigned to such land and improvements are reasonable.

City Assessor for Minnetonka, Minnesota

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, the City Assessor, City of Minnetonka, Hennepin County, Minnesota.

Notary Public

EXHIBIT A
to Minimum Assessment Agreement

LEGAL DESCRIPTION

The Redevelopment Property is legally described as follows:

Lots 9, 10, 11, 12 and 13, Block 3, Boulevard Gardens, Hennepin County, Minnesota, except the South 10 feet of said Lots 9, 10, 11, 12 and 13 and except that part of said Lots 11, 12 and 13 that is designated and delineated as Parcel 10C on the Minnesota Department of Transportation Right-of-Way plat No 27-37.

EXHIBIT B
to Minimum Assessment Agreement

Section 469.177, subd. 8. Assessment Agreements. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the Maturity Date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable.

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under Section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully

executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.

EXHIBIT H

REDEVELOPER'S PRO FORMA

[Redeveloper's pro forma is on file with the Authority]

MN140-242 (JAE)
852003v5

EDA Resolution No. 2023-

Resolution approving a tax increment financing plan for the Marsh Run II Tax Increment Financing District and a modified development program for Development District No. 1

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 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 adopted by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City").
- 1.02. The City previously established and the Authority administers Development District No. 1 (the "Development District") located within the City, pursuant to Minnesota Statutes, Sections 469.124 through 469.134, as amended, and has caused to be created a Development Program (the "Development Program") therefor.
- 1.03. The Authority and the City have determined to modify the Development Program and approve a new tax increment financing plan (the "TIF Plan") for the Marsh Run II Tax Increment Financing District (the "TIF District"), a redevelopment district within the Development District, pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the "TIF Act"), all as described in a plan document presented to the Board on this date.
- 1.04. Certain written reports (the "Reports") relating to the modified Development Program and the TIF Plan and to the activities contemplated therein have heretofore been prepared by staff and consultants and submitted to the Board and/or made a part of the Authority files and proceedings on the modified Development Program and the TIF Plan. The Reports include data, information and/or substantiation constituting or relating to the basis for the other findings and determinations made in this resolution. The Board hereby confirms, ratifies and adopts the Reports, which are hereby incorporated into and made as fully a part of this resolution to the same extent as if set forth in full herein.
- 1.05. Notice of the proposed TIF District was presented to the commissioner of Hennepin County, Minnesota (the "County") representing the area included in the TIF District in accordance with Section 469.175, subdivision 2a of the TIF Act, at least thirty (30) days prior to the publication of a notice of public hearing regarding the establishment of the TIF District.
- 1.06. Pursuant to Section 469.175, subdivision 2 of the TIF Act, the proposed TIF Plan and the estimates of the fiscal and economic implications of the TIF Plan were presented to the Clerk of the Board of Education of Independent School District No. 270 and to the Auditor/Treasurer of the County at least thirty (30) days prior to the date of the public hearing.

1.07. This Board has reviewed the contents of the modified Development Program and the TIF Plan, and on this date the Council conducted a duly noticed public hearing on the adoption of the modified Development Program and the TIF Plan.

Section 2. Board Action.

2.01. The modified Development Program is hereby approved in substantially the form now on file with the Board.

2.02. The creation of the TIF District and the TIF Plan therefor are hereby approved.

2.03. Authority staff and consultants are authorized to take all actions necessary to implement the modified Development Program and the TIF Plan.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on May 22, 2023.

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 May 22, 2023.

Becky Koosman, Secretary

EDA Resolution No. 2023-

Resolution approving contract for private redevelopment with Minnetonka Marsh, LLC and the issuance of a tax increment revenue note

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 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 adopted by the City Council of the City of Minnetonka, Minnesota (the "City").
- 1.02. 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.
- 1.03. In order to facilitate the development of affordable housing within the City, the City and the Authority intend to establish the Marsh Run II Tax Increment Financing District (the "TIF District"), a redevelopment district with Development District No. 1 in the City pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended.
- 1.04. Minnetonka Marsh, LLC, a Minnesota limited liability company, or an affiliate, successor, or assign (collectively, the "Redeveloper"), proposes to acquire certain property (the "Redevelopment Property") within the TIF District and construct a mixed-income apartment complex with approximately 197 units, including 40 affordable units (20 units at 60% area median income and 20 units at 80% area median income), including a parking garage and surface parking (the "Minimum Improvements"). The Authority and the Redeveloper propose to enter into a Contract for Private Redevelopment (the "Contract") to set forth the terms of the redevelopment of the Minimum Improvements.
- 1.05. In order to make the Minimum Improvements economically feasible for the Redeveloper to construct, the Authority proposes to reimburse the Redeveloper for a portion of the land acquisition costs and certain site improvements costs related to the Minimum Improvements with tax increment revenue generated from the Redevelopment Property. The Authority intends to issue to the Redeveloper a Tax Increment Revenue Note (the "TIF Note") in the maximum principal amount of \$4,600,000 to reimburse the Redeveloper for qualified costs of the Minimum Improvements.

Section 2. Approvals.

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

execute and deliver the Contract. All of the provisions of the Contract, 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 Contract 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 the Executive Director are hereby authorized to execute and deliver to the Redeveloper any and all documents deemed necessary to carry out the intentions of the Contract.

2.03. The execution of all documents deemed necessary to carry out the intentions of the Contract by the appropriate officers of the Authority herein authorized shall be conclusive evidence of the approval of such documents. This resolution shall not constitute an offer and the documents shall not be effective until the date of execution thereof.

Section 3. The TIF Note.

3.01. The Authority hereby approves and authorizes the President and Executive Director to execute the TIF Note. The Authority authorizes the Executive Director to issue the TIF Note upon the satisfaction of the conditions to issuance of the TIF Note set forth in the Contract.

3.02. The TIF Note shall be in substantially the form set forth in the Contract, with the blanks to be properly filled in and the principal amount and payment schedule adjusted as of the date of issue.

3.03. The TIF Note shall be issued as a single typewritten note numbered R-1. The TIF Note shall be issuable only in fully registered form. Principal of the TIF Note shall be payable by check or draft issued by the registrar described herein. Principal of the TIF Note shall be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date (as defined in the Contract), whether or not such day is a business day.

3.04. The Authority hereby appoints the Executive Director to perform the functions of registrar, transfer agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the Authority and the Registrar with respect thereto shall be as follows:

(a) The Registrar shall keep at its office a bond register in which the Registrar shall provide for the registration of ownership of the TIF Note and the registration of transfers and exchanges of the TIF Note.

(b) Upon surrender for transfer of the TIF Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall

authenticate and deliver, in the name of the designated transferee or transferees, a new TIF Note of a like aggregate principal amount and maturity, as requested by the transferor. Notwithstanding the foregoing, the TIF Note shall not be transferred to any person other than an affiliate, or other related entity, of the Redeveloper unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Redeveloper or a certificate of the transferor, in a form satisfactory to the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

- (c) The TIF Note surrendered upon any transfer shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the Authority.
- (d) When the TIF Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such TIF Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.
- (e) The Authority and the Registrar may treat the person in whose name the TIF Note is at any time registered in the bond register as the absolute owner of the TIF Note, whether the TIF Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of such TIF Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such TIF Note to the extent of the sum or sums so paid.
- (f) For every transfer or exchange of the TIF Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.
- (g) In case the TIF Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new TIF Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated TIF Note or in lieu of and in substitution for such TIF Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such TIF Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed TIF Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new TIF Note prior to payment.

3.05. The TIF Note shall be prepared under the direction of the Executive Director and shall be executed on behalf of the Authority by the signatures of its President and Executive Director. In case any officer whose signature shall appear on the TIF Note shall cease to be such officer before the delivery of the TIF Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the TIF Note has been so executed, it shall be delivered by the Executive Director to the Redeveloper in accordance with the Contract.

Section 4. Security Provisions of the TIF Note.

4.01. The Authority hereby pledges to the payment of the principal of the TIF Note all Available Tax Increment (as defined in the Contract). Available Tax Increment shall be applied to payment of the principal of and interest on the TIF Note in accordance with the terms of the form of TIF Note.

4.02. Until the date the TIF Note is no longer outstanding and no principal or interest on the TIF Note (to the extent required to be paid pursuant to this resolution) remains unpaid, the Authority shall maintain a separate and special "Bond Fund" to be used for no purpose other than the payment of the principal of the TIF Note. The Authority irrevocably agrees to appropriate to the Bond Fund in each year Available Tax Increment, subject to the terms of the Contract. Any Available Tax Increment remaining in the Bond Fund shall be transferred to the Authority's account for the TIF District upon the payment of all principal to be paid with respect to the TIF Note.

Section 5. Miscellaneous.

5.01. The staff of the Authority are hereby authorized and directed to prepare and furnish to the Redeveloper certified copies of all proceedings and records of the Authority, and such other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the TIF Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the Authority as to the facts recited therein.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on May 22, 2023.

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 May 22, 2023.

Becky Koosman, Secretary

EDA Resolution No. 2023-

Resolution authorizing an interfund loan for advance of certain costs in connection with the Marsh Run II Tax Increment Financing District

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, Minnesota (the "City") and the Authority intend to establish the Marsh Run II Tax Increment Financing District (the "TIF District"), a redevelopment district within Development District No. 1 in the City, pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the "TIF Act"), pursuant to resolutions to be considered on the date hereof.
- 1.02. The Authority may incur certain costs related to the TIF District, which costs may be financed on a temporary basis from available Authority or City funds.
- 1.03. Under Section 469.178, subdivision 7 of the TIF Act, the Authority is authorized to advance or loan money from any fund from which such advances may be legally made in order to finance expenditures that are eligible to be paid with tax increments under the TIF Act.
- 1.04. The Authority has determined to pay for certain costs related to the proposed TIF District, including but not limited to engineering and design costs, costs of establishing and administering the TIF District, costs for necessary reports for the TIF District, infrastructure costs, and land acquisition costs (collectively, the "Qualified Costs"), which costs may be financed on a temporary basis from Authority or City funds available for such purposes.
- 1.05. In order to finance the Qualified Costs, the Authority has determined to use funds within its Development Fund.
- 1.06. The Authority intends to reimburse itself for all or a portion of the Qualified Costs from tax increments derived from the property within the TIF District (the "Interfund Loan") in accordance with the terms of this resolution.

Section 2. Terms of Interfund Loan.

- 2.01. The Authority shall reimburse itself for the Qualified Costs in the amount of up to \$100,000, together with interest at the rate stated below. Interest accrues on the principal amount from the date of each advance. The maximum rate of interest permitted to be charged is limited to the greater of the rates specified under Minnesota Statutes, Section 270C.40 and Section 549.09 as of the date the loan or advance is authorized, unless the written agreement states that the maximum interest rate will fluctuate as the interest rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 are from time to time adjusted. The interest rate shall be 5.0% and will not fluctuate.

- 2.02. Principal and interest (the "Payments") on this Interfund Loan shall be paid semiannually on each February 1 and August 1 (each a "Payment Date"), commencing on the first Payment Date on which the Authority has Available Tax Increment (hereinafter defined), or on any other dates determined by the Executive Director of the Authority, through the date of last receipt of tax increment from the TIF District.
- 2.03. Payments on this Interfund Loan are payable solely from "Available Tax Increment," which shall mean, on each Payment Date, tax increment available after other obligations have been paid, or as determined by the Executive Director of the Authority, generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the Authority by Hennepin County, Minnesota, all in accordance with the TIF Act. Payments on this Interfund Loan may be subordinated to any outstanding or future bonds or notes issued by the Authority and secured in whole or in part with Available Tax Increment. This Interfund Loan shall be paid prior to any pay-as-you-go notes or contracts secured in whole or in part with Available Tax Increment, and any other outstanding or future interfund loans secured in whole or in part with Available Tax Increment; provided, however, that this Interfund Loan shall be repaid with Available Tax Increment on a parity basis with future interfund loans for the payment of additional administrative costs and grants to private developers for the development of housing within the TIF District.
- 2.04. The principal sum and all accrued interest payable under this Interfund Loan are prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Interfund Loan.
- 2.05. This Interfund Loan is evidence of an internal borrowing by the Authority in accordance with Section 469.178, subdivision 7 of the TIF Act, and is a limited obligation payable solely from Available Tax Increment pledged to the payment hereof under this resolution. This Interfund Loan and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Interfund Loan or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Interfund Loan or other costs incident hereto. Neither the Authority nor the City shall have any obligation to pay any principal amount of this Interfund Loan or accrued interest thereon, which may remain unpaid after the final Payment Date.
- 2.06. The Authority may at any time make a determination to forgive the outstanding principal amount and accrued interest on this Interfund Loan to the extent permissible under law.
- 2.07. The Authority may from time to time amend the terms of this resolution to the extent permitted by law, including without limitation amendment to the payment schedule and the interest rate; provided, however, that the interest rate may not

be increased above the maximum specified in Section 469.178, subdivision 7 of the TIF Act.

2.08. This resolution shall be in full force and effect upon its adoption.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on May 22, 2023.

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 May 22, 2023.

Becky Koosman, Secretary