

Agenda

Minnetonka Economic Development Authority

Monday, March 18, 2019

Following the Regular Meeting

Council Chambers

1. Call to Order
2. Roll Call: Ellingson-Calvert-Schack-Carter-Happe-Bergstedt-Wiersum
3. Approval of Agenda
4. Approval of Minutes: None
5. Business Items:
 - A. Marsh Run (Doran Apartments)

Recommendation: Adopt the resolutions:

 - 1) Modifying a Development Program for Development District No.1, the establishment of the Marsh Run Tax Increment Financing District, and the adoption of a Tax Increment Financing Plan for Marsh Run Apartments at 11706 Wayzata Blvd; and
 - 2) Approving the elimination of parcels from Redevelopment Tax Increment Financing District No. 2 – Boulevard Gardens within Development District No. 1 of the City of Minnetonka, and
 - 3) Authorizing an interfund loan for advance of certain costs in connection with the Marsh Run Tax Increment Financing District; and
 - 4) Approving a contract for private development and a construction addendum with the City of Minnetonka, Minnesota and DC-OV, LLC and the issuance of a tax increment revenue note.
6. Adjourn

Minnetonka Economic Development Authority
Agenda Item #5A
Meeting of March 18, 2019

Brief Description	Marsh Run (Doran Apartments)
Recommendation	Adopt the resolutions: 1) Modifying a Development Program for Development District No. 1, the establishment of the Marsh Run Tax Increment Financing District, and the adoption of a Tax Increment Financing Plan for Marsh Run Apartments at 11706 Wayzata Blvd; and 2) Approving the elimination of parcels from Redevelopment Tax Increment Financing District No. 2 – Boulevard Gardens within Development District No. 1 of the City of Minnetonka, and 3) Authorizing an interfund loan for advance of certain costs in connection with the Marsh Run Tax Increment Financing District; and 4) Approving a contract for private development and a construction addendum with the City of Minnetonka, Minnesota and DC-OV, LLC and the issuance of a tax increment revenue note.

Background

Doran formally submitted an application and plans for the redevelopment of the property at 11650 and 11706 Wayzata Blvd. introduced at the city council meeting on Nov. 5, 2018, and approved at the Dec.17, 2018 meeting. The project includes the removal of the office buildings in order to construct a 175-unit apartment building. The developer also submitted a request for Tax Increment Financing (TIF) for affordable housing.

The developer is requesting that the city consider providing up to \$4.8 million in TIF for a term of 17 years to assist with providing 35 affordable units (a mix of 7 alcove units, 21-one bedroom units, and 7-two-bedroom units). These units will be available to households earning up to 50% of the Area Median Income (AMI). The developer also agreed to keep the units affordable for 30 years.

On Dec. 17, 2018, the council approved the first draft of the contract for private development. At the time, the TIF financing was being considered but was not yet approved. Staff worked with the developer over the past few months and is proposing that the council and EDA consider the revised draft contract along with the establishment of the TIF district. The amount of financing remains the same as approved at the Dec. 17 meeting; the terms of the agreement were updated to reflect TIF conditions.

The public hearing notice for the proposed adoption of a Modification to the Development Program for Development District No. 1 and the establishment of the Marsh Run Tax Increment Financing District and Plan was posted for the Feb. 11 city council meeting; and the hearing was continued to the Feb. 25, 2019 and March 18, 2019 EDA meetings.

The action to expand the boundaries of Development District #1 was a recommendation by the city's financial advisor during the review of the 2018 TIF Management Plan on Oct. 15, 2018. The new boundary of Development District #1 will be coterminous with the corporate boundaries of the city and will be expanded to include seven additional TIF Project Areas. As a part of this action, two parcels are removed from the original TIF district. This change allows for greater use of "pooled dollars" for affordable housing production and flexibility for use of the city 10% administrative fee allotment for tracking of expenditures.

As part of the establishment of the TIF district, staff recommends that the EDA approve an interfund loan for the district up to \$50,000 to cover administrative costs not covered by the developer's escrow, which the city may incur prior to receiving TIF for the project. The city would be reimbursed through the receipt of TIF for any costs incurred through the interfund loan.

Contract for Private Development

In Dec. 2018, the developer agreed to provide 20% of the units affordable at 50% AMI and has requested \$4.8 million in TIF Housing assistance to provide the affordable housing units. The city's financial consultant, Stacie Kvilvang of Ehlers, analyzed the request and prepared the attached memo detailing the analysis of the request for financing.

The city's legal counsel, Julie Eddington of Kennedy & Graven, drafted the attached Contract for Private Development based upon the request for city assistance by the developer with feedback from the EDAC and city council. The attached memo from Ms. Eddington outlines the actions requested for March 18, 2019. Gina Fiorini of Kennedy & Graven will attend the March 18 meeting to answer any questions related to the Contract for Private Development.

Highlights of the Contract for Private Development are listed below:

TIF Housing Assistance

The developer has asked the city to consider a "pay-as-you-go" TIF Note over a term of 17 years in the amount of \$4.8 million to assist with financing the project. The qualified improvements include land acquisition, site preparation, and underground parking. The interest rate on the TIF Note will be set at the lesser of 5% or the developer's actual interest rate.

Commencement and Completion of Construction

The developer must commence construction by Dec. 31, 2019, and substantially complete construction by Dec. 31, 2021.

Declaration of Restrictive Covenants

The developer is proposing to provide 20% of the units affordable to those at 50% AMI or less. It is the city's position to require a minimum of 30 years of affordability.

As an example, rents are anticipated to be \$885 - \$1,061 per month (depending on the size of the unit). When considering what that means for someone who is at 50% AMI, the maximum estimated annual income allowable for one person is approximately \$33,050 (\$15.89/hourly). For a four-person household, the estimated annual income allowable is approximately \$47,150 (\$22.69/hourly). In similar developments in Minnetonka, residents earning these incomes indicated employment in service, retail, administrative, and health professional careers.

Note the above rent structure is specific to TIF and not for tax credit projects, which have different requirements (e.g., Mariner and Dominion).

The declaration also states that the developer cannot adopt any policies specifically prohibiting or excluding rental to tenants holding Section 8 certificates/vouchers during the 30-year affordability period.

The owner must provide a 90-day notification to the renter and the city in the event of a sale.

Look Back and Reduction of TIF Provision

A look back and reduction of tax increment assistance section was added to the contract following the December 2018 meeting. This section of the contract outlines the process for reviewing qualified costs at the time construction is completed and at the time of any sale or refinancing. There are three components of the look back:

- At the completion of the project, staff will review the qualified costs, if the qualified costs are less than anticipated, the TIF Note will be reduced on a dollar for dollar basis.
- At project stabilization, generally one year after occupancy, the TIF assistance will be reviewed based on a cumulative average annual cash on cash return of 10%. If the cash on cash return exceeds 10%, the TIF Note will be adjusted.
- If the developer refinances or sells the property during the first 10 years of the term of the agreement, the city's financial advisor will review the actual project cash flow. If the project has exceeded a 15% internal rate of return during that period, then 50% of the excess amount of actual cash flow would be applied to reduce the TIF Note.

Minimum Improvements

The project consists of construction of a varied three-to-six story building with approximately 175-units (subject to affordability requirements) with approximately 238 underground parking spaces and seven first-floor parking spaces.

Minimum Assessment Agreement

The developer agrees to not cause a reduction on the Minimum Market Value assessed in respect to the minimum improvements.

Qualified Costs

The developer will be eligible for reimbursement for qualified costs for improvements related to land acquisition, site preparation costs (demolition, storm water improvements, remediation, and underground parking) in the amount up to \$4.8 million.

Recommendation

Adopt the resolutions:

1) Modifying a Development Program for Development District No. 1, the establishment of the Marsh Run Tax Increment Financing District, and the adoption of a Tax Increment Financing Plan for Marsh Run Apartments at 11706 Wayzata Blvd; and

2) Approving the elimination of parcels from Redevelopment Tax Increment Financing District No. 2 – Boulevard Gardens within Development District No. 1 of the City of Minnetonka, and

3) Authorizing an interfund loan for advance of certain costs in connection with the Marsh Run Tax Increment Financing District; and

4) Approving a contract for private development and a construction addendum with the City of Minnetonka, Minnesota and DC-OV, LLC and the issuance of a tax increment revenue note; and authorize city officials to approve non-substantive changes to the contract for private development.

Submitted through:

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

Originated by:

Alisha Gray, EDFP, Economic Development and Housing Manager

Additional Information

Location Map

Contract for Private Development

Memo from Julie Eddington – Kennedy and Graven

Memo from Stacie Kvilvang - Ehlers

TIF Policy

2005 EDA Resolution

History of Affordability and Assistance

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

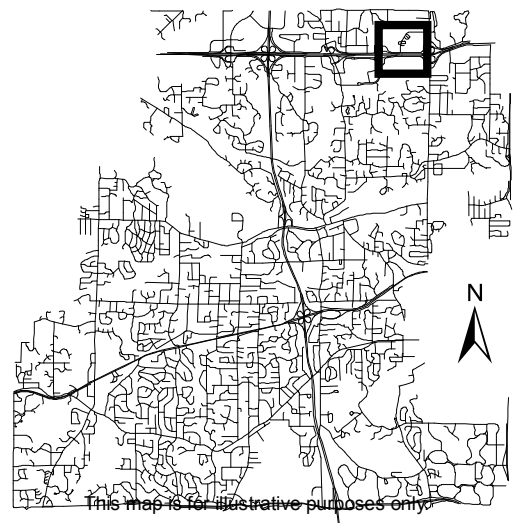
Unapproved Minutes – Nov. 8, 2018 EDAC Meeting (attached)

[December 17, 2018 – City Council Meeting](#)



Location Map

Project: Doran - Marsh Run Apartments
Address: 11650 & 11706 Wayzata Blvd



This map is for illustrative purposes only.



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March 4, 2019

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

Re: Resolutions approving Contract for Private Development between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, and DC-OV Minnetonka, LLC

Dear Alisha,

DC-OV Minnetonka, LLC, a Minnesota limited liability company (the "Developer"), has proposed to develop an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the median income, including underground and structured first-floor parking (the "Development"), within the Marsh Run Tax Increment Financing District (the "TIF District") to be established within Development District No. 1 in the City of Minnetonka (the "City"). In order to make the Development economically feasible, the Economic Development Authority in and for the City of Minnetonka (the "Authority") is contemplating reimbursing the Developer for a portion of the land acquisition costs and certain site improvement costs related to the Development through tax increment generated from property within the TIF District.

Enclosed are resolutions for consideration by the Board of Commissioners of the Authority and the City Council of the City on March 18, 2019, approving the execution and delivery of a Contract for Private Development (the "Agreement") between the Developer, the Authority, and the City, relating to the terms of construction and development of the Development and the issuance of a tax increment revenue note (the "TIF Note") by the Authority to reimburse the Developer for qualified project costs related to the Development, and the execution and delivery of a Construction Addendum (the "Construction Addendum") between the Developer, the Authority, and the City, relating to the construction of certain site improvements described in the Agreement. The resolutions also approve the execution and delivery by the Authority and the City of other documents related to the Agreement and the Construction Addendum.

Upon compliance by the Developer with Section 3.4 of the Agreement, the Board of Commissioners of the Authority will consider a resolution approving the issuance of the TIF Note by the Authority.

Gina Fiorini will be attending the meetings on March 18, 2019 and can answer any questions that may arise during the meetings. Please contact me with any questions you may have prior to the meetings.

Sincerely,

Julie Eddington

Memo

To: Alisha Gray – Economic Development and Housing Manager
From: Stacie Kvilvang - Ehlers
Date: March 18, 2019
Subject: Marsh Run TIF District and TIF Agreement Approval

Doran Companies is proposing to construct a 175-unit apartment complex at 11650 and 11706 Wayzata Boulevard. They intend to provide 20% of the units (35) affordable to persons at or below 50% of AMI. The 2018 income limits (2019 income limits won't be available until April) as calculated by the United States Department of Housing and Urban Development are:

Income Limit by Husehold Size	
Household Size	50% AMI
1	\$33,050
2	\$37,750
3	\$42,450
4	\$47,150

The City will be establishing a Housing TIF District for the project, after consideration at a public hearing on March 18, 2019. The term of the TIF district will be 26 years, with the first TIF expected in 2019, thus terminating on December 31, 2046. Even though the term of the TIF Note expires in year 17, the City Council at that time can decide to keep the TIF district open for the remaining term of the District to provide an on-going source of funding for affordable rental or owner-occupied project (since Doran is required to keep the units affordable for 30 years and document that affordability to the City annually). At this time, it is estimated that the annual TIF available will be approximately \$513,000 (inclusive of the 10% administrative fee) and would provide approximately \$4.6 million by the end of 2046 for the City's affordable housing fund.

As part of establishment of the TIF District, we recommend that the EDA approve an interfund loan for the District for up to \$50,000 (attached in the packet). This is to cover any administrative or other costs not covered by the Developer's escrow, which the EDA may incur prior to the City receiving TIF for the project.

In addition to creation of the TIF District, the City will be expanding the boundaries of Development District No. 1 (the "Project Area") to be coterminous with the corporate boundaries of the City. This Project Area was the first one created for the City and was established in 1983 for the Ridgebury TIF District (decertified) and also includes the Boulevard Gardens TIF District, which is still active. In addition, the City currently has seven (7) additional Project Areas, which coincide with following TIF Districts:

1. Development District No. 2 - Created for the Hedberg Soils District which is now decertified
2. Glen Lake Station Redevelopment district – Created for the Beacon Hill (Housing) and Glenhaven (Redevelopment) TIF Districts

3. Housing Development and Redevelopment Project – Created for the Minnetonka Mills TIF District which is now decertified
4. Tonka on the Creek – Created for Tonka on the Creek Housing TIF District
5. Applewood Point Redevelopment Project – Created for Applewood Point Redevelopment TIF District
6. Rowland Housing Redevelopment Project – Created for Rowland Housing TIF District
7. Opus Redevelopment - Created for the Dominion Housing TIF District

Pooling of TIF Dollars between districts and use of the 10% administrative fee allotment can only happen if they are in the same Project Area. Therefore, we are recommending modifying the Project Area to (i) provide the City maximum flexibility to pool TIF between districts, (ii) provide the City maximum flexibility to use its 10% administrative fee allotment on eligible and documented uses; and (iii) provide for ease of administration of future TIF districts through removal of tracking specific Project Area boundaries and tracking pooling and administrative expenditures within those boundaries.

The second item for consideration by the City Council this evening is the modified TIF Agreement, which was originally approved on December 17, 2018, at the request of the Developer for their financing and closing on the property. As you recall, after review of their development proforma, we recommended providing them a \$4.8 million pay-as-you-go TIF Note for 17 years. Following are the significant changes to the Agreement:

1. **Name of Developer** – Changed from Marsh Development LLC to DC-OV Minnetonka, LLC
2. **Definitions** - Material change was updated to add that a reduction of five (5) units as a material change and that anything under that was not. This also provided that the prior definition, which only included an increase in the number of units, would also need 5 units to be a material change. This is relevant because a material change requires City Council approval.
3. **Section 3.8** - A lookback provision was added that requires:
 - a. Proof of qualified cost in the amount of the TIF Note of \$4.8 million (or lesser amount as documented).
 - b. Upon reaching 90% occupancy, the Developer is required to submit their actual costs, revenues and expenditures for review by the City. If their cumulative cash-on-cash (COC) return (cash flow divided by equity) exceeds 10% then the principal amount of the TIF Note will be reduced to an amount that shows a stabilized COC of 10% over the term of the TIF Note.
 - c. If the Developer sells the property with ten (10) years of the Agreement, then the Developer has to provide to the City documentation of their internal-rate-of-return (IRR), which is cash flow to date, plus any sales proceeds net of sales expenses and payoff of existing debt. To the extent this exceeds 15%, then the TIF note will be reduced by 50% of the excess amount for them to obtain a 15% IRR.
4. **Section 4.3** - Commencement of construction was updated to include demolition and grading and moved from June 30, 2019 to December 31, 2019 and substantial completion was moved from June 30, 2021 to December 31, 2021

Alisha Gray
Marsh Run TIF District and TIF Agreement Approval
March 18, 2019

5. **Section 4.5 (c)** - No discount on parking fees for persons occupying affordable units (everyone pays \$100/stall initially).
6. **Section 6.4** - The Developer is prohibited from applying for 4d tax classification during the term of the TIF Note.
7. **Section 7.4** – City and EDA agree to consenting making a collateral assignment of the Agreement to their construction lender and lender that provides permanent financing.

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

**Eighth Draft
March 6, 2019**

**CONTRACT
FOR
PRIVATE DEVELOPMENT**

between

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

CITY OF MINNETONKA, MINNESOTA,

and

DC-OV MINNETONKA, LLC

Dated: _____, 2019

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

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CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the _____ day of _____, 2019 (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”), the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “City”), and DC-OV Minnetonka, LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

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

WHEREAS, the Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development project known as Development District No. 1 (hereinafter referred to as 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 within the Development District the Marsh Run Tax Increment Financing District (the “TIF 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 Developer proposes to acquire certain property described in EXHIBIT A attached hereto (the “Development Property”) within the TIF District and construct an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking; and

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

WHEREAS, the Authority and the City believe that the development and redevelopment of the Development 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.

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 Development, 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 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 Development 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 Developer 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 Developer on the Development 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.

“Developer” means DC-OV Minnetonka, LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“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.

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

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

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

“Event of Default” means an action by the Developer 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 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 Development Property and the Minimum Improvements substantially in the form attached hereto as EXHIBIT G.

“Minimum Improvements” means the development on the Development Property, which will include (i) a varied three- to six-story, approximately 175-unit apartment building subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof, and (ii) approximately 238 underground parking spaces and approximately 7 first-floor parking spaces.

“Minimum Market Value” means a minimum market value for real estate tax purposes of \$12,863,000 with respect to the Development Property and Minimum Improvements as of January 2, 2020 for taxes payable beginning in 2021 and \$36,750,000 on January 2, 2021 for taxes payable beginning in 2022 through the Maturity Date.

“Mortgage” means any mortgage made by the Developer which is secured, in whole or in part, with the Development 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 Developer) 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 Developer described in Section 3.4(a) hereof.

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

“Site Improvements” means the improvements described in EXHIBIT H.

“Stabilization” means the Minimum Improvements are at least ninety percent (90%) 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 Tax Increment Financing District.

“Tax Increment Plan” or “TIF Plan” means the Marsh Run Tax Increment Financing Plan for Tax Increment Financing District, as approved February 11, 2019, 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 Developer pursuant to Section 3.4 hereof, and any obligation issued to refund the TIF Note.

“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 Developer 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.

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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 by the City. The City makes the following representations:

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

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

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

act, constitution or other proceedings establishing or relating to the establishment of the City or its officers or its resolutions.

(d) There is not pending, nor to the best of the City's knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforcement of this Agreement.

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

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

(b) The Developer 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 Development Property and all improvements constructed thereon.

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer, the City 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 Developer is not aware of any facts that would cause the Developer 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 Developer 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 Developer 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 Developer did not obtain a building permit for any portion of the Minimum Improvements before February 11, 2019, 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 Developer 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 Developer hereunder would not occur but for the tax increment financing assistance and other assistance being provided by the Authority hereunder.

(h) The Developer will promptly advise the City and 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 Developer or its business which may delay or require Material Changes in construction of the Minimum Improvements.

(i) The Developer represents that, during the term of the Declaration, no more than twenty percent (20%) of the square footage of the Minimum Improvements will consist of commercial, retail or other nonresidential use. For purposes of this covenant, the underground parking, the common areas and amenity areas constructed for use by the tenants of the Minimum Improvements constitute residential uses.

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ARTICLE III

Tax Increment Assistance

Section 3.1. Status of Development Property. The Developer has entered into a purchase contract for the acquisition of the Development Property. Neither the Authority nor the City has any obligation to acquire any portion of the Development Property.

Section 3.2. Environmental Conditions.

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

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

Section 3.3. Reimbursement of Certain Developer 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 Development 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 Development Property, it is in the best interest of the Authority for the Developer to acquire the Development Property directly. The Authority will reimburse the Developer for a portion of the actual cost of acquiring the Development 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 Developer 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 Developer, the Authority will issue and the Developer will purchase the TIF Note in the principal amount of up to \$4,800,000 in substantially the form set forth in the EXHIBIT B attached hereto. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note will consist of the Developer'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 Developer in at least the principal amount of the TIF Note. The Developer will be reimbursed for such costs in the following maximum amounts:

Type of Cost	Maximum Amount
Acquisition of Land	\$2,000,000
Demolition, Storm Water Improvements, Remediation, Underground Parking	2,800,000

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

- (i) the Developer 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 Developer has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof; and
- (iii) the Developer 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 Developer if the Developer has not delivered the executed Declaration and Minimum Assessment Agreement to the Authority in recordable form.

(b) The Developer 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 Developer may rely.

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides the financing for the acquisition of the Development 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 and/or the City are 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 Developer has deposited with the City and the Authority \$15,000. The City and the Authority will use such deposit to pay “Administrative Costs,” which term means 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 Development Property. At the Developer’s request, but no more often than monthly, the Authority and the City will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority and the City determine that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within thirty (30) days after receipt of a written notice from the Authority and the City containing evidence of the unpaid costs. If any balance of funds deposited remains upon the issuance of the Certificate of Completion pursuant to

Section 4.4 hereof, the Authority shall promptly return such balance to the Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by the Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs incurred through the effective date of termination.

Section 3.6. 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, examine and copy all books and records of Developer relating to the development and construction of the Minimum Improvements and the costs for which the Developer 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 Developer 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 Developer 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 as Exhibit I and the Qualified Costs). The Authority and the Developer agree that those assumptions will be reviewed at the time of completion of construction of the Minimum Improvements, and at the time of any sale or refinancing of the Minimum Improvements as follows:

(a) At the time of completion of construction of the Minimum Improvements, if the aggregate amount of Qualified Costs incurred is less than the aggregate amount of Qualified Costs projected in Exhibit I, 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 TIF assistance provided pursuant to this Agreement will be subject to adjustment based on a targeted cumulative average annual cash on cash return of 10%. Within sixty (60) days of Stabilization, the Developer must deliver to the Authority's municipal advisor (the "Consultant") evidence of its annual cash on cash return. The cash on cash return shall be calculated by the Authority's Consultant based on the Developer's pro forma financial statement submitted to the Authority's Consultant (to be calculated in a manner comparable to the sample attached as Exhibit I (cumulative cash flow divided by number of years of cash flow, assuming 95% occupancy)).

If the annual cash on cash return exceeds 10%, then the principal amount of the TIF Note issued to the Developer will be reduced to an amount that shows a stabilized cash on cash return of 10% over the new term of the TIF Note, in which case the Developer 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 Developer sells the Minimum Improvements to an unrelated third party or refinances (provided, however, the placement of permanent debt on the Project and the Development Property will not constitute a refinance giving rise to the review as described in this Section 3.8 (c)) during the first 10 years of the term of this Agreement, the Developer 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 of this Agreement through such anticipated sale or refinance date (provided that the Developer and the Authority agree that the calculation will occur prior to the actual transfer). If the Consultant determines, based on such review, that the actual cash flows realized by the Developer has exceeded a 15% internal rate of return during that period of up to 10 years, then 50% of the

excess amount of such actual cash flows over the amounts that would provide for a 15% internal rate of return will be applied to reduce the amount payable under the TIF Note and the principal amount of the TIF Note will be reduced accordingly. Such reduction will be effective upon delivery to Developer of a written notice stating the amount of such excess profit as determined by the Authority in accordance with this Section 3.8(c), accompanied by the Consultant's report.

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ARTICLE IV

Construction and Maintenance of Minimum Improvements and Site Improvements

Section 4.1. Construction of Minimum Improvements. Subject to Unavoidable Delays, the Developer agrees that it will construct the Minimum Improvements on the Development Property substantially in accordance with the approved Construction Plans. The Developer 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 improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The City and the Authority will have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Developer will submit to the Authority the Construction Plans. The Construction Plans must provide for the construction of the Minimum Improvements and must be in substantial conformity with the 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 Developer from all sources (including the Developer's equity) for construction of the Minimum Improvements; and (vi) no Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the Authority Representative will relieve the Developer of the obligation to comply with the terms of this Agreement or of the 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 Developer in writing at the time of submission, the Construction Plans will be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. The rejections must set forth in detail the reasons therefor, and must be made within twenty (20) days after the date of their receipt by the Authority. If the Authority Representative rejects any Construction Plans in whole or in part, the Developer must submit new or corrected Construction Plans within twenty (20) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans will continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative's approval will not be unreasonably withheld, delayed or conditioned. Said approval will constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

The Construction Plans were approved by the City Council in December 2018 and are hereby approved by the Authority.

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve

the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection must be made within twenty (20) days after receipt of the notice of such change. The Authority's approval of any Material Change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Developer must commence construction of the Minimum Improvements by December 31, 2019 and will substantially complete construction of the Minimum Improvements by December 31, 2021. Construction is considered to be commenced upon the beginning of demolition and grading on the site.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property must be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Development 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 Developer 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 Developer 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 Developer 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 Developer, 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 Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) The Certificate of Completion provided for in this Section 4.4 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 Development 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 Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain the certification.

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

Section 4.5. Affordability Covenants; Qualification of the TIF District. Developer agrees that the Minimum Improvements are subject to the following affordability covenants:

(a) As of the date hereof, the Developer expects that the Minimum Improvements will include the mix of Rental Housing Units found in EXHIBIT F attached hereto. The Developer will cause at least twenty percent (20%) of the Rental Housing Units in the Minimum Improvements to be available to families at or below fifty percent (50%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT D. Notwithstanding anything to the contrary in the TIF Act, the restrictions will remain in effect for the thirty (30) year period described in the Declaration. On the date of execution of this Agreement, the Developer will deliver the executed Declaration to the Authority in recordable form.

(b) The Developer agrees to distribute the affordable Rental Housing Units among the different Rental Housing Unit types by setting aside twenty percent (20%) of each unit type or a larger unit as affordable units. For example, based on the mix of Rental Housing Units found in EXHIBIT F attached hereto, of the twenty percent (20%) of the Rental Housing Units that are income and rent-restricted, at least 7 Rental Housing Units must be alcove studio units or larger units; at least 21 Rental Housing Units must be one-bedroom units or larger units; and at least 7 Rental Housing Units must be two-bedroom units.

(c) The Developer intends to rent parking spaces in the underground garage to tenants of the Minimum Improvements for approximately \$100 per parking space per month initially. The Developer agrees that the monthly rental rate charged for each underground parking space will be the same for all tenants of the Minimum Improvements.

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

(e) The Developer will 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 are fewer than the number required by the terms of the Declaration.

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

(g) 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, examine and copy all books and records of the Developer and its successors and assigns relating to the covenants described in this Section and in the Declaration.

(h) Pursuant to Section 4.6, the Developer must submit evidence of tenant incomes, showing that the Minimum Improvements meet the income requirements set forth in the Declaration. The City 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.

(i) If the Authority determines, based on the reports submitted by the Developer or if the Authority or the City 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 Developer, this type of event will be deemed an Event of Default of the Developer under this Agreement; provided, however, that the Authority and the City 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 and the City under Article IX hereof, the Developer will indemnify, defend and hold harmless the Authority and the City for any damages or costs resulting therefrom.

Section 4.6. Affordable Housing Reporting. At least annually, no later than April 1 of each year commencing on the April 1 first following the issuance of the Certificate of Completion for the Minimum Improvements, the Developer shall provide a report to the Authority evidencing that the Developer complied with the income affordability covenants set forth in Section 4.5 hereof during the previous calendar year. The income affordability reporting shall be on the form entitled “Tenant Income Certification” from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable, any similar form. The Authority may require the Developer to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the Developer shall send affordable housing reports to the Authority until the Declaration terminates.

Section 4.7. Property Management Covenant. The Developer shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assaultive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a “Violation”), the Developer agrees and understands that the following procedures shall apply:

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

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

(c) If a third Violation occurs regarding the same tenancy within twelve (12) continuous months after the first Violation, the City police department will notify the Developer and the property manager of the third Violation. Within ten (10) days after receiving such notice, as and to the extent permitted under the tenant’s lease and applicable law, the Developer 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 Developer shall not enter into a new lease agreement with the evicted tenant(s) for at least one (1) year after the effective date of the eviction.

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

(e) If the Developer and property manager fail to respond to the written notice under paragraph (d) above, or at least two (2) additional Violations occur 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 Developer to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Developer but approved by the Authority.

Section 4.8. Construction of Site Improvements.

(a) In consideration of the assistance provided to the Developer by the Authority, subject to the limitations set forth in this Sections 4.8 and Section 4.9, the Developer agrees that it will install or cause to be installed, in conformance with City standards and specifications, the Site Improvements on the Development Property or adjacent to the Development Property, as applicable, as described in EXHIBIT H attached hereto.

(b) When constructing the Site Improvements, the Developer is responsible for compliance with all conditions outlined in Resolution No. 2018-160 and Resolution No. 2018-161.

(c) Building permits for the Site Improvements will be issued only in conformance with conditions in Resolution 2018-160. Unless otherwise authorized by the City in writing, no certificates of occupancy will be provided until the following is completed:

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

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

Section 4.9. Site Improvements Construction Addendum. Prior to the issuance of any permits, the City and the Developer shall enter into a mutually agreeable Construction Addendum containing (i) timeframes for the construction of the Site Improvements; (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; and (vi) final design details.

Section 4.10. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Developer will owe approximately \$875,000 in park dedication fees (assuming that the Minimum Improvements include 175 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 Developer or the general contractor engaged by the Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

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

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

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer 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 City and the Authority as an additional insured.

(iii) Other insurance, including workers' compensation insurance respecting all employees, if any, of the Developer, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer 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 of this Agreement must be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer 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 of this Agreement 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 Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer 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 Developer 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 Developer 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 Developer will apply the Net Proceeds of any insurance relating to the damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer will complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by the Developer 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 Developer.

(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 Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within twenty-four months from the date of damage (or another timeline agreed to by the Developer, the Authority, and the City), 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 Developer'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 Developer 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 Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In 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 Developer from contesting the assessor's proposed market values for the Development Property or the Minimum Improvements, but the Developer 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 Developer shall execute the Minimum Assessment Agreement for the Development 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 Development 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 Development Property in excess of the Minimum Market Value or prohibit the Developer 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 Developer 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 Developer 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 Developer 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 Developer, 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 Developer shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Development 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 Developer 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 Development Property through: (a) willful destruction of the Development 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 Developer also agrees that it will not, prior to the Maturity Date, apply for a deferral of property tax on the Development Property pursuant to any law, or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the Development Property would result in the Development Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the City or Authority in accordance with this Agreement).

The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the estimated market value for the Development Property reduced. Prior to seeking a reduction in the estimated market value, the Developer must provide the Authority with written notice indicating its intention to do so. The Developer 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 Developer of its intentions to cause the reduction of the estimated market value of the Development Property, or otherwise learning of the Developer'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 Development 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. Property Tax Classification. Prior to the Maturity Date, the Developer shall not apply for the "class 4d" property classification rate for rental properties under Minnesota Statutes, Section 273.13, subdivision 25(a).

Section 6.5. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon transfer of the Development Property to another person or entity, the Developer 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 Developer 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 Developer 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 Developer 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 Developer's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to Article VII hereof, the Developer will cause the Authority to receive copies of any notice of default received by the Developer 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 Developer within the cure periods as are available to the Developer under the Mortgage documents.

Section 7.3. Modification; Subordination. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the City and the Authority agree to subordinate their respective 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 and the City. If the Authority and/or the City are required to execute any documents related to the subordination of the Authority's and City's rights under this Agreement, such documents must be approved by the Board of the Authority and the City Council.

Section 7.4. Assignment to Lender. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the City and the Authority agree to consent to the Developer 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 and the City. If the Authority and/or the City are required to execute any collateral assignment agreement, such documents must be approved by the Board of the Authority and the City Council.

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

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

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

Section 8.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. The Developer 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 Developer or any successor in interest to the Development 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 Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development 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), without the prior written approval of the City and the Authority unless the Developer remains liable and bound by this Agreement in which event the City and 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 Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the City and 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 City and the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and 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 City and the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development 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 City and the Authority) deprive the City and the Authority of any rights or remedies or controls with respect to the Development 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 Development 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 City or the Authority of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City or the

Authority would have had, had there been no transfer or change. In the absence of specific written agreement by the City and the Authority to the contrary, no transfer or approval by the City and the Authority thereof will be deemed to relieve the Developer, 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 Development Property governed by this Article VIII, must be in a form reasonably satisfactory to the City and the Authority.

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

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

Section 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Authority, the City and their respective governing body members, officers, agents, servants and employees thereof will not be liable for and agrees to indemnify and hold harmless the Authority, the City and their respective 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 Developer agrees to protect and defend the Authority, the City and their respective 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, the City and their respective 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 Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person.

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

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 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 Developer, the City, 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 Developer:
 - (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;
 - (ii) makes an assignment for benefit of its creditors;
 - (iii) admits in writing its inability to pay its debts generally as they become due; or
 - (iv) is adjudicated as bankrupt or insolvent.
- (c) Prior to the Maturity Date, the Developer appeals or challenges the Minimum Market Value of the Development Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof.
- (d) The Developer 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 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 a default by the Developer, 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 and the City may exercise its rights under Section 9.2(c) hereof only upon and during the continuance of the following Events of Default:

(a) the Developer fails to pay real estate taxes or assessments on the Development 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 Developer's failure to pay real estate taxes or assessments on the Development Property or any part thereof when due, if uncured after thirty days' written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer complies with said obligations. If the Developer fails to comply with said obligations for a period of eighteen months, the Authority may terminate the TIF Note and the TIF District;

(b) the Developer fails to comply with Developer'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 Developer's failure to comply with Developer's obligations under Sections 4.1 or 5.1(c) hereof, if uncured after thirty days' written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer complies with said obligations. If the Developer fails to comply with said obligations for a period of eighteen months, the Authority may terminate the TIF Note and the TIF District; or

(c) the Developer fails to comply with the income restrictions or to deliver annual income reports as provided in Section 4.5 hereof and the Declaration; provided that, upon the Developer's failure to provide annual reports, if uncured after thirty days' written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer delivers said reports. If the Developer fails to deliver income reports for a period of six months following the date the reports are due after written notice to the Developer 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, the City or the Developer 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 City or the Authority employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the City or the Authority prevails in the action, the Developer agrees that it will, within ten days of written demand by the City or the Authority, pay to the City or the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City and the Authority.

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ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, 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 Developer, 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 Developer or successor or on any obligations under the terms of the Agreement.

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

Section 10.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and its successors and assigns, will use the Development 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 Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or will be merged by reason of any deed transferring any interest in the Development 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 Developer, is addressed to or delivered personally to the Developer at DC-OV Minnetonka, LLC, 7803 Glenroy Road, Suite 200, Bloomington, Minnesota 55439, Attention: Legal Department, with a copy to Brian S. McCool, Fredrikson & Byron P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402;

(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;

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

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 Hennepin County recorder. The Developer must pay all costs for recording.

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

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

Section 10.11. Termination. This Agreement terminates on the 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.

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

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed, the City has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed, and the Developer has caused this Agreement to be duly executed in its 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 _____, 2019, 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 _____, 2019, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, on behalf of the City.

Notary Public

(Signature Page of City to the Contract for Private Development)

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: _____
Name: Anne T. Behrendt
Its: President

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Anne T. Behrendt, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer.

Notary Public

(Signature Page of Developer to the Contract for Private Development)

EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]

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 developer’s actual rate of financing, whichever is less] _____

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 DC-OV Minnetonka, 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, 2021, and each February 1 and August 1 thereafter to and including February 1, 2038 (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 Development 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 Development, dated _____, 20____ (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, 2038.

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 Developer 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 Authority on December 17, 2018, 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, 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

DC-OV Minnetonka, LLC
7803 Glenroy Road
Suite 200
Bloomington, MN 55439
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: _____

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 December 17, 2018 (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 Development, dated _____, 20 ____ (the “Contract”), between the Authority, the City of Minnetonka, Minnesota, 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 acknowledge and understand that, if at any time, the Owner fails to meet the housing income restrictions required for a housing tax increment district as set forth in Minnesota Statutes, Section 469.174, subdivision 11 and Section 469.1761, and therefore, the tax increment district will no longer qualify as a housing tax increment district, no further payments will be made under the TIF Note.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. The Owner’s federal tax identification number is _____.

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

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: _____
Name: Anne T. Behrendt
Its: President

EXHIBIT D

FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “Declaration”) dated as of _____, 20___, by DC-OV Minnetonka, LLC, a Minnesota limited liability company (the “Developer”), 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 entered into that certain Contract for Private Development, dated _____, 20___, filed _____, 20___ in the Office of the Registrar of Titles for Hennepin County as Document No. _____ (the “Contract”), between the Authority, the City of Minnetonka, Minnesota (the “City”) and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of approximately 175 housing 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 Developer by the Authority for the Project, Section 4.5 of the Contract requires that the Developer cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.5 of the Contract; and

WHEREAS, the Developer intends, declares, and covenants that the restrictive covenants set forth herein shall be and are covenants running with the Property 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 Developer; and

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

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

1. Term of Restrictions.

(a) Occupancy 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. 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 Developer or its assigns, file any document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.

2. Project Restrictions.

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

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

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

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

(ii) The Developer shall permit during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect the books and records of the Developer pertaining to the income of Qualifying Tenants residing in the Project.

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, at least twenty percent (20%) (i.e., 35) of the rental housing units in the Project ("Rental Housing Units") shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean those persons and families who shall be determined from time to time by the Developer to have combined adjusted income that does not exceed fifty percent (50%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year adjusted for family size. 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 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 Developer a Certification of Tenant Eligibility substantially in the form attached as EXHIBIT B hereto, or in such other form as may be approved by the Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies that he or she is a Qualifying Tenant. In addition, such person shall be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that such tenant continues to be a Qualifying Tenant within the meaning of Section 3(a)(i) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year.

(iii) Lease. The form of lease to be utilized by the Developer in renting any 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 Developer 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 Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, 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 Project or any interest therein; and (c) stating, that to the best knowledge of the person executing such certificate after due inquiry, all such units were rented or available for rental on a continuous basis during such year to members of the general public and that the Developer was not otherwise in default under this Declaration during such year.

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

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

5. Transfer Restrictions. The Developer covenants and agrees that the Developer 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 Developer 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 Developer shall deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [Reserved]

7. Enforcement.

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

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

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the 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 Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

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

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

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

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

11. Notices. All notices to be given pursuant to this Declaration 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 Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent. The initial addresses for notices and other communications are as follows:

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

To the Developer: DC-OV Minnetonka, LLC
7803 Glenroy Road
Suite 200
Bloomington, Minnesota 55439
Attention: Legal Department

with a copy to: Brian S. McCool
Fredrikson & Byron, P.A.
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402

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 Developer under this Agreement, and the Authority prevails in the action, the Developer 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 Developer and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits shall inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

Drafted by:

Kennedy & Graven Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55406

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 _____,
20__, by _____, 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 _____,
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

EXHIBIT A
to Declaration of Restrictive Covenants

Legal Description

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]

EXHIBIT B
to Declaration of Restrictive Covenants

Certification of Tenant Eligibility

Project: _____ Minnetonka Boulevard

Developer: DC-OV Minnetonka, LLC

Unit Type: _____ Alcove Studio _____ 1 BR _____ 2 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 _____ 50% of median income for the area in which the Project is located, as defined in the Declaration. 50% 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 50% 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.

DC-OV MINNETONKA, LLC,
a Minnesota limited liability company

By: Marsh Development, LLC, a Minnesota limited
liability company
Its: Manager

By: _____
Name: Anne T. Behrendt
Its: President

EXHIBIT C
to Declaration of Restrictive Covenants

Certificate of
Continuing Program Compliance

Date: _____, _____.

The following information with respect to the Project located at _____, Minnetonka, Minnesota (the "Project"), is being provided by DC-OV Minnetonka, LLC (the "Developer") to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated _____, 20__ (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 Studio Units:

1 BR Units:

2 BR Units:

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

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

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

	Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy
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						
26						
27						
28						
29						
30						
31						
32						
33						
34						
35						

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

last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer.

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

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and the Developer 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 Developer certifies that as of the date hereof at least _____ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.

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

DC-OV MINNETONKA, LLC,
a Minnesota limited liability company

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: _____
Name: Anne T. Behrendt
Its: President

EXHIBIT E

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that DC-OV Minnetonka, LLC (the "Developer"), has fully complied with its obligations under Article IV of that document titled "Contract for Private Development," dated _____, 20__ (the "Agreement"), between the Economic Development Authority in and for the City of Minnetonka, Minnesota, the City of Minnetonka, Minnesota, and the Developer, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Developer 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 President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, 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 _____, 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)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

EXHIBIT F

RENTAL HOUSING UNITS BY UNIT TYPE

<u>Unit Type</u>	<u>Number of Units in Minimum Improvements</u>
Alcove Studios:	34 units
One Bedroom	103 units
Two Bedroom	38 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,**

DC-OV Minnetonka, LLC,

and

CITY ASSESSOR FOR THE CITY OF MINNETONKA, MINNESOTA

This Document was drafted by:

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

THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ____ day of _____, 20____ (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 DC-OV MINNETONKA, 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 Development, dated _____, 20____ (the “Agreement”), concerning the property legally described on EXHIBIT A attached hereto (the “Development Property”); and

WHEREAS, pursuant to the Agreement, the Owner will construct on the Development Property an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking (the “Minimum Improvements”); and

WHEREAS, the Authority and the Owner desires to establish a minimum market value for the Development 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 Development 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. There shall be no minimum market value for the Development Property and the Minimum Improvements as of January 2, 2019.

2. The minimum market value which shall be assessed for ad valorem tax purposes for the Development Property, together with the Minimum Improvements constructed thereon, shall not be less than \$12,863,000 as of January 2, 2020, notwithstanding the progress of construction by such date, and as of each January 2 thereafter until January 1, 2021.

3. The minimum market value which shall be assessed for ad valorem tax purposes for the Development Property, together with the Minimum Improvements constructed thereon, shall not be less than \$36,750,000 as of January 2, 2021, for taxes payable beginning in 2022, 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.

4. 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.

5. 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.

6. 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.

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

8. 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.

9. 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.

10. 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 Development Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

11. 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.

12. 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.

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

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 _____, 20__, 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 _____, 20__, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

EXHIBIT A
to Minimum Assessment Agreement

The Development Property is legally described as follows:

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]

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

SITE IMPROVEMENTS

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

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

EXHIBIT I

DEVELOPER'S PRO FORMA

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

CONSTRUCTION ADDENDUM TO CONTRACT FOR PRIVATE DEVELOPMENT (MARSH RUN HOUSING DEVELOPMENT)

This Construction Addendum, made as of the ____ day of _____, 2019 (the “Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “City”), and DC-OV MINNETONKA, LLC, a Minnesota limited liability company (the “Developer”) and supplements Sections 4.8, 4.9, and 4.10 of the Contract for Private Development, dated _____, 2019 (the “Development Contract”), between the City, the Authority, and the Developer.

Section 1. Improvements; Engineering Services

1.1. The Developer must provide the necessary engineering services for the completion of the development project contemplated under the terms of the Development Contract (the “Project”), including: construction supervision, construction staking and surveying, and on-site inspection of grading, streets, and utilities, as applicable. The Developer’s engineer will be the official representative of the Developer for all engineering and construction matters.

1.2. The City Engineer or a designated representative will make periodic inspection of work and may require certain tests be made, which in the reasonable judgment of the City Engineer or the designated representative are necessary to ensure compliance with City standards and the approved plans and specifications. However, the City will not exercise any direct supervision or inspection of work during construction operations. If any material or labor supplied is rejected by the City Engineer or designated representative as defective or unsuitable, the Developer must remove such rejected material and replace it with approved material to the reasonable satisfaction and approval of the City Engineer or designated representative, at the sole cost and expense of the Developer.

Section 2. Performance, including timelines.

2.1. **Erosion Control.** Prior to commencement of any site work, including demolition or tree removal, the erosion control plan (to be placed on file with the City’s Engineer), must be implemented, inspected, and approved by the City. All aspects of the erosion control plan must be maintained throughout the course of development and construction on the real property on which the Project will be constructed (the “Subject Property”). In addition, the Developer is responsible for keeping streets adjoining the Subject Property swept clean of dirt and debris resulting from construction on the Subject Property. No construction will be allowed, and no building permits will be issued, unless the Subject Property is in full compliance with erosion control plan and street sweeping requirements.

The parties to this Agreement recognize that time is critical in controlling erosion. If Developer does not comply with the erosion control plan and schedule, or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will attempt to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer’s or City’s rights or obligations hereunder. If the Developer does not reimburse the City for any costs the City incurred for such work within thirty (30) days, the City may draw upon the Security (as defined herein) as required under Section 5 of this Agreement.

2.2. **Grading.** A grading permit is required. All grading must be completed by the Developer at its cost and as approved under the grading permit. Grading activity must be coordinated with installation of

utilities. If installation of utilities is occurring simultaneously with the grading, the utility contractor will have preference over grading activities. No substantial grading activities can be completed over installed utilities unless otherwise protected.

2.3. **Utilities.**

- a) All utilities must be installed by the Developer at its cost, constructed in accordance with city standards and specifications, and as approved under the grading permit.
- b) Private utilities must be entirely accommodated underground.
- c) When the street section consists only of bituminous base course and the Developer wishes to connect buildings to the utility systems, the following conditions must be met: (1) all manholes and catch basins must be accessible; (2) all water system valves must be accessible; (3) all manholes and valves must be set 0.25 inches below the existing bituminous base course level; and (4) Developer must post signs at project limits indicating load restrictions to maximum 4 ton per axle. Signs may be removed as such time as bituminous wear course is placed.

2.4. **Streets.** The City Engineer or designated representative will evaluate the conditions of the publicly maintained portion of Wayzata Boulevard prior to commencement of any site work to determine pre-development conditions. Following construction of the public street and utilities within the Project, the City Engineer or designated representative will re-evaluate the condition of the publicly maintained portion of Wayzata Boulevard. The Developer is responsible for any repairs necessary to bring the roadway back to, at a minimum, pre-development conditions, subject to ordinary wear and tear during the course of development.

2.5. **Landscaping.** All landscaping must be installed by the Developer at its cost, and in accordance with the requirements of City Code §300.27 Subdivision 15.

Section 3. City Acceptance.

3.1. **Acceptance.** After completion of required street and utility work, the City Engineer or designated representative, a City Public Works Department representative, a representative of the contractor, and a representative of the Developer's engineer, will make a final inspection of the Project. The Developer's engineer must submit a written statement attesting that all required work has been satisfactorily completed in accordance with the approved plans and specifications. When both the City Engineer, or designated representative, and Public Works Department representative are satisfied with the written statement, they will acknowledge acceptance of the work in writing in the form attached as Exhibit C. Acceptance of the work must be provided in writing.

3.2. **Ownership.** Upon completion, City acceptance of the work and construction required by this Agreement (collectively, the "Site Improvements"), and release of the Security, the Improvements lying within public rights-of-way and easements will become City property without further notice or action, except for private improvements as noted in the approved grading permit plans.

3.3. **Warranty.** The Developer warrants all work on Site Improvements against poor material and faulty workmanship for a period of two years after its completion and acceptance by the City or such longer period as is specified in the plans and specifications.

Section 4. Timelines

4.1. The Developer must obtain written approval and authorization to proceed from the City Engineer or designated representative prior to each of the following construction operations:

- Rough grading;
- Geotechnical testing for design and during construction;
- Construction of sanitary sewer mains, sewer services, water mains, water services, stormwater facilities, and all necessary appurtenances thereto;
- Construction of streets, curb and gutter, and driveway aprons; and
- Turf establishment and landscaping.

4.2. All underground utilities and stormwater facilities must be completed by December 31, 2019.

4.3. The Developer must install all required improvements enumerated in Section 2 hereof by December 31, 2021, subject to delay due to inclement weather, labor strikes, material shortages or other circumstance not within the Developer’s reasonable control. The Developer may, however, request an extension of time from the City. If an extension is granted, it will be conditions upon updating the Security posted by the Developer to reflect cost increases and the extended completion date.

Section 5. Securities, Costs, Fees, Charges, and Assessments.

5.1. **Security to be Provided.** To guarantee compliance with the terms of this Agreement and obligations hereunder, the Developer must furnish the City with a cash deposit or irrevocable letter of credit (“Security”) in the amount of \$ _____ [AMOUNT TO BE INSERTED BY DEVELOPER]. This amount was calculated as follows:

[amounts to be inserted when Developer receives final bids]

	AMOUNT
Erosion Control	
Removal of Erosion Control	
Grading	
Landscaping	
Surface Improvements (Parking Lot, Sidewalks, Trails)	
Water Main Improvements	
Sanitary Improvements	\$26,250.00
Storm Sewer Improvements	\$564,562.50
TOTAL	
Refer to Exhibit B for an explanation of each item	

A letter of credit must be a standby, not commercial, letter of credit issued by a financial institution that is insured by the FDIC and must provide for disbursement of funds from an office in the Twin Cities

seven-county metropolitan area. The letter of credit must be automatically renewable until the City release the Developer from responsibility under this Agreement. In the event of default under this Agreement by the Developer, the City will furnish the Developer with written notice by certified mail of Developer's default(s) under the terms of this Agreement. If the Developer does not correct said default(s) within two (2) weeks of receiving notice, the City may draw upon the cash escrow or may draw on the letter of credit and take such steps as its deems reasonably necessary to remedy the default.

5.2. **Release of Security.** Requests for reduction or release of a cash deposit or letter of credit must be made in writing. Requests for reduction and release will only be accepted during the construction season, generally March to November, and only as follows:

	Reduction	Release*
Erosion Control	n/a	Project Completion
Removal of Erosion Control	n/a	Upon removal
Grading	n/a	Project Completion
Landscaping	50% reduction at full installation	One full growing season following installation
Surface Improvements (Parking Lot, Sidewalks, Trails)	First lift of bituminous laid and all curbing installed and backfilled.	Upon acceptance
Water Main Improvements	n/a	Upon testing, inspection, and acceptance
Sanitary Improvements	n/a	Upon testing, inspection, and acceptance
Storm Sewer Improvements	n/a	Upon inspection and acceptance
Stormwater Management Facilities	n/a	Upon full functionality
* In the case of grading, surface improvement, watermain, sanitary and storm sewers, and stormwater management, submission of as-built surveys or record drawings is also required prior to release.		

5.3. **Responsibility for Costs.**

a) Except as otherwise specified herein, the Developer must pay all costs incurred by it or the City in conjunction with development of the Subject Property and all costs incurred by the City in monitoring and inspecting development of the Subject Property.

b) The Developer agrees to hold the City and its officers and employees harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from development of the Subject Property, except for any costs or expenses arising from the negligence or other wrongful acts or omission of the City, its agents, employees or contractors. The Developer agrees to indemnify the City and its officers and employees for all costs, damages, or expenses the City may incur in consequence of such claims, including attorney's fees.

c) The Developer will pay in full all bills submitted to the City of obligations incurred under this Agreement within thirty (30) days after receipt. If the bills are not paid on time, the City may halt work and construction including, but not limited to, the issuance of building permits for lots

that the Developer may or may not have sold, until the bills are paid in full. Bills not paid within thirty (30) days will accrue interest at a rate of ten percent (10%) per year.

5.4. Fees and Charges.

a) The Developer agrees to pay fees, charges, and assessments set forth in this section as follows prior to release of the final plat for recording:

Fee/Charge	Amount*
Park Dedication Fee	\$875,000
Outstanding Assessments	
Outstanding Utility Bills	
* Depending on the date of release of the plat, amounts may differ. Refer to Exhibit B.	

b) The Developer agrees to pay fees and charges set forth in this section as follows prior to release of the grading permit:

Fee/Charge	Amount*
Engineering Inspection Fee	
Street Sign Fee	
* Depending on the date of release of the permit, amounts may differ. Refer to Exhibit B.	

c) The Developer understands that builders will be required to pay for Subject Property fees and charges in effect at the time of issuance of building permits. The rates for these items will be set according to the current rate structure at the time the building permit application is received. The fees and charges in effect as of the date of this Agreement are:

Fee/Charge	Amount
Sanitary Sewer Availability Charge (SAC)	\$2,485 per SAC unit
Residential Equivalency Charge (REC)	\$2,943.09 per SAC unit

Section 6. Default.

6.1. In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option perform the work and the Developer must promptly reimburse the City for any expense incurred by the City, provided the Developer is first given notice of the default, not less than 48 hours in advance. This Agreement is a license for the City to act, and it is not necessary for the City to seek a court order for permission to enter onto the Subject Property. When the City does any such work, the City may, in addition to its other remedies, draw on the Security, or levy the cost in whole or in part as a special assessment against the Subject Property. Developer waives its right to notice of hearings and hearing on such assessment and its right to appeal such assessments pursuant to Minnesota State Statutes, Section 429.081, up to an assessment amount of the remaining securities as described in Section 5.1.

Section 7. Miscellaneous.

- 7.1. Third parties have no recourse against the City under this Agreement.
- 7.2. Any breach by Developer of terms of this Agreement is grounds for denial of building permits, including permits on lots sold to third parties.
- 7.3. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid, such decision does not affect the validity of the remaining portions of this Agreement.
- 7.4. If building permits are issued prior to completion and acceptance of Improvements, the Developer assumes all liability and costs resulting from delays in completion of Improvements and damage to Improvements caused by the City, the Developer, its contractors, subcontractors, materialmen, employees, agents, or third parties.
- 7.5. The action or inaction of the City does not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers must be in writing and signed by the parties. The City's failure to take legal action to enforce this Agreement is not waiver or release.
- 7.6. This Agreement will run with the Subject Property and may be recorded against its title. The Developer must take such steps, including execution of amendments to this Agreement, as necessary to effect the recording thereof. After the Developer has completed the work required of it under this Agreement, at the Developer's request, the City will execute and deliver to the Developer a release.
- 7.7. Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

Section 8. Notices.

- 8.1. Required notices to the Developer must be in writing, and be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by registered or certified mail at the following address:

DC-OV Minnetonka, LLC
7803 Glenroy Road
Suite 200
Bloomington
Minnesota 55439
Attention: Legal Department

with a copy to:
Brian S. McCool
Fredrikson & Byron P.A.
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402

8.2. Notices to the City must be in writing and be either hand delivered to the City Planner, or mailed to the City by registered or certified mail in care of the City Planner at the following address:

City Planner
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55369

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first written above.

Authority Signature Page

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

By _____
Brad Wiersum
Its President

By _____
Geraldyn Barone
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 2019, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 2019, by Geraldyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

City Signature Page

CITY OF MINNETONKA, MINNESOTA

By _____
Brad Wiersum
Its Mayor

By _____
Geraldyn Barone
Its City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Geraldyn Barone, the City Manager of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the City.

Notary Public

Developer Signature Page

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC, a Minnesota limited liability company
Its: Manager

By: _____
Name: Anne T. Behrendt
Its: President

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Anne T. Behrendt, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer.

Notary Public

THIS INSTRUMENT DRAFTED BY:
City of Minnetonka
Community Development
14600 Minnetonka Blvd.
Minnetonka, MN 55345
952-939-8200

EXHIBIT A

Legal Description

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]

EXHIBIT B

The following clarifies the items guaranteed by required cash deposit or letter of credit for Developer Improvements as outlined in this Agreement.

Erosion Control: An amount equal to 125% of a bid, or 150% of an estimate, of the cost of materials and labor to install a rock driveway and silt fence or equivalent sediment control measures as per the approved grading permit.

Erosion Control Removal: An amount equal to 125% of a bid, or 150% of an estimate, estimated cost to remove erosion control measures.

Grading: An amount equal to 125% of a bid, or 150% of an estimate, of the cost to restore and stabilize the Subject Property.

Landscaping: An amount equal to 125% of the cost to complete minimum required landscaping.

Surface Improvements: An amount equal to 125% of a bid, or 150% of an estimate, of the cost of materials and labor to install parking lots, sidewalks, and trails.

Water Main Improvements: An amount equal to 125% of the cost of materials and labor to install water main.

Sanitary Sewer Improvements: An amount equal to 125% of the cost of materials and labor to install sanitary sewer.

Storm Sewer Improvements: An amount equal to 125% of the cost of materials and labor to install storm sewer.

EXHIBIT B – continued

Developer Improvements [amounts to be inserted when Developer receives final bids]

No.	Item	Cost	% required	Guarantee Amount
1	Erosion Control		125-150	
2	Removal of Erosion Control		125-150	
3	Grading		125-150	
4	Landscaping		125-150	
5	Surface Improvements		125-150	
6	Water Main Improvements		125-150	
7	Sanitary Sewer Improvements		125-150	
8	Storm Sewer Improvements		125-150	
	TOTAL			\$ -

City Fees (due with signed agreement)

No.	Item	Infrastructure Value	Fee Calculation	Total Fee
1	Engineering Inspection Fee	\$1–\$150,000	\$4,000	
		\$150,001–\$300,000	\$4,000 for first \$150,000 plus 1.5% of each additional \$1	
		Over \$300,000	\$6,250 for first \$300,000 plus 0.5% of each additional dollar	
2	Street Signs	street name signs	\$130	
		all other signs	\$120	
	TOTAL			

Development Fees (due at release of plat)

No.	Item	Cost	Due
1	Park Dedication Fee		at release of plat
2	Outstanding Assessments		
3	Outstanding Utility Bills		
	TOTAL	\$ -	

General Construction Fees (due at release of building permit)

No.	Item	Cost
1	Sanitary Sewer Availability Charge	\$2,485 per SAC unit as determined by Met Council
2	Residential Equivalency Charge	\$2,943.09 per SAC unit as determined by Met Council



EXHIBIT C

14600 Minnetonka Boulevard
Minnetonka, MN 55345
Telephone: (952) 939-8292
Fax: (952) 939-8244

DATE:

SUBJECT:

This memorandum serves as acknowledgment that:

1. Street and utility work required under the Construction Addendum dated _____, 2019, between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, Minnesota and DC-OV Minnetonka, LLC. has been satisfactorily completed in accordance with approved plans and specifications; and
2. Said streets and utilities are accepted by the City of Minnetonka.

City of Minnetonka Engineering Department

Date

City of Minnetonka Public Works Department

Date

**COLLATERAL ASSIGNMENT
OF CONTRACT FOR PRIVATE DEVELOPMENT**

THIS COLLATERAL ASSIGNMENT OF CONTRACT FOR PRIVATE DEVELOPMENT (this "Assignment") is made and entered into as of the ____ day of March, 2019, by and among the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the "Authority"), the CITY OF MINNETONKA, MINNESOTA, a municipal corporation organized and existing under the laws of the State of Minnesota (the "City"), DC-OV MINNETONKA, LLC, a Minnesota limited liability company (the "Developer"), and BREMER BANK, NATIONAL ASSOCIATION, a national banking association (the "Lender").

Recitals

WHEREAS, the City, the Authority and the Developer have entered into that certain Contract for Private Development dated as of _____, 2019 (the "Development Agreement"), pertaining to, among other things, the construction of an apartment complex with approximately 175 units, including underground and structured first floor parking (the "Project"), all located on property legally described on Exhibit A attached hereto and hereby made a part hereof (the "Property"); and

WHEREAS, the Development Agreement has been filed of record in the Office of the _____, Hennepin County, Minnesota on _____, as Document No. _____; and

WHEREAS, pursuant to the Development Agreement, the City shall issue a Tax Increment Revenue Note in the amount of up to \$4,800,000 (the "TIF Note") to the Developer if the Developer satisfies certain terms and conditions set forth therein; and

WHEREAS, the Developer and the Lender have entered into that certain Construction Loan Agreement of even date herewith (the "Loan Agreement"), pursuant to which the Lender has agreed to make a construction loan to the Developer in the principal amount of up to \$32,500,000 (the "Loan"), and the Developer's obligation to repay such Loan is evidenced by that certain Real Estate Note dated March __, 2019 (the "Lender Note"), executed in favor of the Lender in the original principal amount of \$32,500,000; and

WHEREAS, the Lender Note is secured by that certain Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents of even date herewith (the "Mortgage"), executed by the Developer in favor of the Lender and encumbering the Property; and

WHEREAS, the Mortgage has been filed of record in the Office of the _____, Hennepin County, Minnesota on _____, as Document No. _____; and

WHEREAS, the Lender has required, as an express condition to entering into the Loan Agreement, that the Developer assign its rights under the Development Agreement to the Lender to secure the obligations of the Developer under the Lender Note, the Loan Agreement and the Mortgage.

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer hereby agrees as follows:

1. Capitalized terms used herein but not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

2. The Developer hereby collaterally assigns to the Lender all of its right, title and interest in and to the Development Agreement, together with all documents and agreements attached as exhibits thereto, and all amendments, addenda and modifications thereof, whether made now or hereafter, to secure the obligations of the Developer under the Lender Note, the Loan Agreement and the Mortgage.

3. The Developer hereby represents and warrants that there have been no prior assignments of its rights under the Development Agreement (other than to Lender), that the Development Agreement is a valid and enforceable agreement, that neither the City, the Authority nor the Developer is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. The Developer agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development Agreement as long as this Assignment is in effect. The Developer irrevocably appointed the Lender as its attorney-in-fact to demand, receive and enforce the Developer's rights under the Development Agreement for and on behalf of and in the name of the Developer or, at the option of the Lender, in the name of the Lender, with the same force effect as the Developer could do if this Assignment had not been made, but only to be exercised by the Lender following the occurrence and during the continuance of an Event of Default.

4. This Assignment shall constitute a perfected, absolute and present assignment, provided that the Lender shall have no right under this Assignment to enforce the provisions of the Development Agreement or the TIF Note or exercise any rights or remedies under this Assignment until an Event of Default (as defined in the Loan Agreement) shall occur and be continuing.

5. Upon the occurrence and during the continuance of an Event of Default, without affecting any of the Lender's rights or remedies against the Developer under any other instrument or agreement, the Developer shall be deemed to have irrevocably appointed the Lender as the Developer's attorney-in-fact to exercise any or all of the Developer's rights in, to and under this Assignment and to give appropriate receipts, releases and satisfactions on behalf of the Developer in connection with the performance by any party to the Development Agreement and to do any or all other acts in the Developer's name or in the Lender's own name that the Developer could do under the Development Agreement with the same force and effect as if this Assignment had not been made. In addition, the Lender shall have the right to exercise and enforce any and all rights and remedies available after and during the continuance of a default to a secured party under the Uniform Commercial Code as adopted in the State of Minnesota. If notice to the Developer of any intended disposition of collateral or of any intended action as required by law in any particular instance, such notice shall be deemed commercially reasonable if given in writing at least ten (10) days prior to the intended disposition or other action. The Developer hereby authorizes the Lender to deliver a copy of this Assignment to any other party to the Development Agreement to verify the rights granted to the Lender hereunder. The City and the Authority are authorized and directed by the Developer to tender performance of its obligations under the Development Agreement to the Lender upon presentation of a copy of this Assignment.

6. The City and the Authority hereby consent and agree to the terms and conditions of this Assignment. The City and the Authority further represent and warrant to the Lender that the Development Agreement is a valid agreement enforceable in accordance with its terms, that neither the City nor the Authority is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof. To the best knowledge of the City and the Authority, the Developer is not in default under the Development Agreement and all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof.

7. Promptly upon the issuance thereof, the Authority shall deliver the original TIF Note to the Lender to be held as collateral security for this Assignment.

8. The City and the Authority agree to provide the Lender with copies of any notice of default given under the Development Agreement, and agree that the Lender shall have the right, but not the obligation, to cure such default within the time period set forth in the Development Agreement.

9. The parties agree that no change or amendment that would materially and adversely affect the amount or timing of receipt of Available Tax Increment, as defined in the Development Agreement, shall be made to the terms of the Development Agreement without the prior written consent of the Lender.

10. The City and the Authority hereby acknowledge and agree that, pursuant to Article IV of the Development Agreement, the City and the Authority have approved the Construction Plans (as that term is defined in the Development Agreement) in connection with the construction of the Project.

11. The City and the Authority acknowledge that the rights of the City and the Authority with respect to receipt and application of any proceeds of insurance as set forth in Article V of the Development Agreement shall, in all respects, be subject and subordinate to the rights of the Lender under the Mortgage.

12. Notwithstanding the provisions of Article VI of the Development Agreement, the City and the Authority acknowledge that the agreement by the Developer to pay real estate taxes as set forth in Section 6.1 of the Development Agreement is not the personal obligation of, nor shall any such provision of Article VI impose any personal obligation upon, the Lender, except to the extent the Lender assumes the Developer's obligations under the Development Agreement and seeks to enforce the Developer's rights thereunder after an Event of Default as described in Section 5 hereof.

13. Pursuant to Section 7.1 of the Development Agreement, the City and the Authority hereby agree that the foregoing commitments provided by Developer are approved.

14. Pursuant to Section 7.3 of the Development Agreement, the City and the Authority hereby agree that all of their respective rights under the Development Agreement shall be subject and subordinate to the Mortgage. Notwithstanding the foregoing, the City and the Authority shall continue to have the right to exercise all of their rights and remedies under Article IX of the Development Agreement, the Declaration (as defined in the Development Agreement), and the Minimum Assessment Agreement (as defined in the Development Agreement).

15. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the Lender. A waiver by the Lender shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and shall be exercised singularly or concurrently, at the Lender's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

16. No provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the City or the Authority against the Developer as set forth and contained in the Development Agreement.

17. Any notice, request, demand or other communication hereunder shall be deemed duly given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the City:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345
Attention: City Manager

If to the Authority:

Economic Development Authority in and for the City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345
Attention: Community Development Director

If to the Developer:

DC-OV Minnetonka, LLC
7803 Glenroy Road, Suite 200
Bloomington, Minnesota 55439
Attention: Legal Department

With a copy to:

Brian S. McCool
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402

If to the Lender:

Bremer Bank, National Association
225 South Sixth Street, Suite 200
Minneapolis, Minnesota 55402

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

IN WITNESS WHEREOF, the Developer has caused this Assignment to be duly executed as of March __, 2019.

8608.413
16964652v2

[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF CONTRACT FOR DEVELOPMENT]

AUTHORITY:

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

By: _____
Name: _____
Its: President

By: _____
Name: _____
Its: Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, 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 _____, 2019, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

**[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF CONTRACT FOR
DEVELOPMENT]**

CITY:

CITY OF MINNETONKA, MINNESOTA

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of the City of Minnetonka, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota, for and on behalf of said municipal corporation.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of the City of Minnetonka, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota, for and on behalf of said municipal corporation.

Notary Public

[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF CONTRACT FOR DEVELOPMENT]

DEVELOPER:

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC, a Minnesota
limited liability company
Its: Manager

By: _____
Name: Anne T. Behrendt
Its: President

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of March, 2019, by Anne T. Behrendt, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, for and on behalf of said limited liability company.

Notary Public

EXHIBIT A

(Legal Description)



*As of February 6, 2019
Draft for EDA and Council review*

Tax Increment Financing Plan
for the establishment of
the Marsh Run Tax Increment Financing District
(a housing district)
within
Development District No. 1

Economic Development Authority in and for the City of Minnetonka
City of Minnetonka
Hennepin County
State of Minnesota

Public Hearing Opened: February 11, 2019
Public Hearing Continued: February 25, 2019
Adopted:



Prepared by: EHLERS & ASSOCIATES, INC.
3060 Centre Pointe Drive, Roseville, Minnesota 55113-1105
651-697-8500 fax: 651-697-8555 www.ehlers-inc.com

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Section 1 - Tax Increment Financing Plan for the Marsh Run Tax Increment Financing District

Subsection 2-1. Foreword

The Economic Development Authority in and from the City of Minnetonka (the "EDA"), the City of Minnetonka (the "City"), staff and consultants have prepared the following information to expedite the establishment of the Marsh Run Tax Increment Financing District (the "District"), a housing tax increment financing district, located in Development District No. 1.

Subsection 2-2. 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 469.090 to 469.1082, inclusive, as amended, and *M.S.*, Sections 469.174 to 469.1794, inclusive, as amended (the "Tax Increment Financing Act" or "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.

Subsection 2-3. Statement of Objectives

The District currently consists of two parcels of land and adjacent and internal rights-of-way. The District is being created to facilitate the construction of a 175-unit apartment complex with 20% of the units being affordable in the City (the "Project"). Please see Appendix A for further Project information. The EDA anticipates entering into an agreement with Doran Companies as the developer, and construction is expected to commence in 2019. 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.

Subsection 1-4. Development Program Overview

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.

Subsection 1-5. Description of Property in the District and Property To Be Acquired

The District encompasses all property and adjacent rights-of-way and abutting roadways identified by the parcels listed in Appendix C of this TIF Plan. Please also see the map in Appendix B for further information on the location of the District.

Subsection 1-6. Classification of the District

The EDA and City, in determining the need to create a tax increment financing district in accordance with *M.S., Sections 469.174 to 469.1799*, as amended, inclusive, find that the District, to be established, is a housing district pursuant to *M.S., Section 469.174, Subd. 11 and M.S., Section 469.1761* as defined below:

M.S., Section 469.174, Subd.11:

"Housing district" means a type of tax increment financing district which consists of a project, or a portion of a project, intended for occupancy, in part, by persons or families of low and moderate income, as defined in chapter 462A, Title II of the National Housing Act of 1934, the National Housing Act of 1959, the United States Housing Act of 1937, as amended, Title V of the Housing Act of 1949, as amended, any other similar present or future federal, state, or municipal legislation, or the regulations promulgated under any of those acts, and that satisfies the requirements of M.S., Section 469.1761. Housing project means a project, or portion of a project, that meets all the qualifications of a housing district under this subdivision, whether or not actually established as a housing district.

M.S., Section 469.1761:

Subd. 1. Requirement imposed.

(a) In order for a tax increment financing district to qualify as a housing district:

(1) the income limitations provided in this section must be satisfied; and

(2) no more than 20 percent of the square footage of buildings that receive assistance from tax increments may consist of commercial, retail, or other nonresidential uses.

(b) The requirements imposed by this section apply to property receiving assistance financed with tax increments, including interest reduction, land transfers at less than the authority's cost of acquisition, utility service or connections, roads, parking facilities, or other subsidies. The provisions of this section do not apply to districts located within a targeted area as defined in Section 462C.02 Subd 9, clause (e).

(c) For purposes of the requirements of paragraph (a), the authority may elect to treat an addition to an existing structure as a separate building if:

(1) construction of the addition begins more than three years after construction of the existing structure was completed; and

(2) for an addition that does not meet the requirements of paragraph (a), clause (2), if it is treated as a separate building, the addition was not contemplated by the tax increment financing plan which includes the existing structure.

Subd. 2. Owner occupied housing.

For owner occupied residential property, 95 percent of the housing units must be initially purchased and occupied by individuals whose family income is less than or equal to the income requirements for qualified mortgage bond projects under section 143(f) of the Internal Revenue Code.

Subd. 3. Rental property.

For residential rental property, the property must satisfy the income requirements for a qualified residential rental project as defined in section 142(d) of the Internal Revenue Code. The requirements of this subdivision apply for the duration of the tax increment financing district.

Subd. 4. Noncompliance; enforcement.

Failure to comply with the requirements of this section is subject to M.S., Section 469.1771.

In meeting the statutory criteria the EDA and City rely on the following facts and findings:

- The District consists of two parcels.
- The development will consist of 175- units of multi-family rental housing
- 20% of the units will be occupied by person with incomes less than 50% of median income

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., Sections 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.

Subsection 1-7. Duration and First Year of Tax Increment of the District

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 or City (a total of 26 years of tax increment). The EDA or City elects to receive the first tax increment in 2021, 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 2046, or when the TIF Plan is satisfied. The EDA or City reserves the right to decertify the District prior to the legally required date.

Subsection 1-8. Original Tax Capacity, Tax Rate and Estimated Captured Net Tax Capacity Value/Increment and 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 2018 for taxes payable 2019.

Pursuant to *M.S., Section 469.177, Subs. 1 and 2*, the County Auditor shall certify in each year (beginning in the payment year 2020) 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 2019, assuming the request for certification is made before June 30, 2019. 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, Subd. 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 and City request 100 percent of the available increase in tax capacity for repayment of its obligations and current expenditures, beginning in the tax year payable 2021. The Project Tax Capacity (PTC) listed is an estimate of values when the projects within the District are completed.

Project Estimated Tax Capacity upon Completion (PTC)	\$1,481,530	
Original Estimated Net Tax Capacity (ONTC)	\$22,063	
Estimated Captured Tax Capacity (CTC)	\$1,459,467	
Original Local Tax Rate	1.14644	Preliminary Pay 2019
Estimated Annual Tax Increment (CTC x Local Tax Rate)	\$1,673,191	
Percent Retained by the EDA	100%	

Tax capacity includes a 5% 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 25. The tax capacity of the District in year one is estimated to be \$160,781.

Pursuant to *M.S., Section 469.177, Subd. 4*, the EDA shall, after a due and 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 determined no building permits have been issued during the 18 months immediately preceding approval of the TIF Plan by the City.

Subsection 1-9. Sources of Revenue/Bonds to be Issued

The costs outlined in 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 or other indebtedness as a result of the TIF Plan. As presently proposed, the projects within the District will be financed by a pay-as-you-go note and interfund loan. Any refunding amounts will be deemed a budgeted cost without a formal TIF Plan Modification. 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 City.

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

<u>SOURCES OF FUNDS</u>	<u>TOTAL</u>
Tax Increment	\$24,573,196
<u>Interest</u>	<u>\$2,457,320</u>
TOTAL	\$27,030,516

The EDA or City may issue bonds (as defined in the TIF Act) secured in whole or in part with tax increments from the District in a maximum principal amount of \$27,030,516. 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.

Subsection 1-10. Uses of Funds

Currently under consideration for the District is a proposal to facilitate the construction of a 175-unit apartment complex with 20% of the units being affordable. The EDA and City have determined that it will be necessary to provide assistance to the project for certain District costs, as described. 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.

<u>USES OF TAX INCREMENT FUNDS</u>	<u>TOTAL</u>
Land/Building Acquisition	\$3,000,000
Site Improvements/Preparation	\$1,500,000

Utilities	\$500,000
Affordable Housing	\$5,000,000
Other Qualifying Improvements	\$4,343,022
<u>Administrative Costs (up to 10%)</u>	<u>\$2,457,320</u>
PROJECT COST TOTAL	\$16,800,342
<u>Interest</u>	<u>\$10,230,174</u>
PROJECT AND INTEREST COSTS TOTAL	\$27,030,516

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 Subsection 2-9.

Estimated costs associated with the District are subject to change among categories without a modification to this 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. The EDA may expend funds for qualified housing activities outside of the District boundaries.

Subsection 1-11. Fiscal Disparities Election

Pursuant to *M.S., Section 469.177, Subd. 3*, the City may elect one of two methods to calculate fiscal disparities. If the calculations pursuant to *M.S., Section 469.177, Subd. 3, clause a*, (outside the District) are followed, the following method of computation shall apply:

- (1) *The original net tax capacity and the current net tax capacity shall be determined before the application of the fiscal disparity provisions of Chapter 276A or 473F. Where the original net tax capacity is equal to or greater than the current net tax capacity, there is no captured net tax capacity and no tax increment determination. Where the original net tax capacity is less than the current net tax capacity, the difference between the original net tax capacity and the current net tax capacity is the captured net tax capacity. This amount less any portion thereof which the authority has designated, in its tax increment financing plan, to share with the local taxing districts is the retained captured net tax capacity of the authority.*
- (2) *The county auditor shall exclude the retained captured net tax capacity of the authority from the net tax capacity of the local taxing districts in determining local taxing district tax rates. The local tax rates so determined are to be extended against the retained captured net tax capacity of the authority as well as the net tax capacity of the local taxing districts. The tax generated by the extension of the lesser of (A) the local taxing district tax rates or (B) the original local tax rate to the retained captured net tax capacity of the authority is the tax increment of the authority.*

The City will choose to calculate fiscal disparities by clause b. It is not anticipated that the District will contain commercial/industrial property. As a result, there should be no impact due to the fiscal disparities provision on the District.

According to *M.S., Section 469.177, Subd. 3*:

- (c) *The method of computation of tax increment applied to a district pursuant to paragraph (a) or (b) shall remain the same for the duration of the district, except that the governing body may elect to change its election from the method of computation in paragraph (a) to the method in paragraph (b).*

Subsection 1-12. Business Subsidies

Pursuant to *M.S., Section 116J.993, Subd. 3*, the following forms of financial assistance are not considered a business subsidy:

- (1) A business subsidy of less than \$150,000;
- (2) Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria;
- (3) Public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;
- (4) Redevelopment property polluted by contaminants as defined in *M.S., Section 116J.552, Subd. 3*;
- (5) Assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50% of the total cost;
- (6) Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services;
- (7) Assistance for housing;
- (8) Assistance for pollution control or abatement, including assistance for a tax increment financing hazardous substance subdistrict as defined under *M.S., Section 469.174, Subd. 23*;
- (9) Assistance for energy conservation;
- (10) Tax reductions resulting from conformity with federal tax law;
- (11) Workers' compensation and unemployment compensation;
- (12) Benefits derived from regulation;
- (13) Indirect benefits derived from assistance to educational institutions;
- (14) Funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501 (c) (3) of the Internal Revenue Code of 1986, as amended through December 31, 1999;
- (15) Assistance for a collaboration between a Minnesota higher education institution and a business;
- (16) Assistance for a tax increment financing soils condition district as defined under *M.S., Section 469.174, Subd. 19*;
- (17) Redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value;
- (18) General changes in tax increment financing law and other general tax law changes of a principally technical nature;
- (19) Federal assistance until the assistance has been repaid to, and reinvested by, the state or local government agency;
- (20) Funds from dock and wharf bonds issued by a seaway port authority;
- (21) Business loans and loan guarantees of \$150,000 or less;
- (22) Federal loan funds provided through the United States Department of Commerce, Economic Development Administration; and
- (23) Property tax abatements granted under *M.S., Section 469.1813* to property that is subject to valuation under Minnesota Rules, chapter 8100.

The EDA will comply with *M.S., Sections 116J.993 to 116J.995* to the extent the tax increment assistance under this TIF Plan does not fall under any of the above exemptions.

Subsection 1-13. County Road Costs

Pursuant to *M.S., Section 469.175, Subd. 1a*, the county board may require the EDA or City to pay for all or part of the cost of county road improvements if the proposed development to be assisted by tax increment will, in the judgment of the county, substantially increase the use of county roads requiring construction of road improvements or other road costs and if the road improvements are not scheduled within the next five years under a capital improvement plan or within five years under another county plan.

If the county elects to use increments to improve county roads, it must notify the EDA or City within forty-five days of receipt of this TIF Plan. In the opinion of the EDA and City and consultants, the proposed development outlined in this TIF Plan will have little or no impact upon county roads, therefore the TIF Plan was not forwarded to the county 45 days prior to the public hearing. The EDA and City are aware that the county could claim that tax increment should be used for county roads, even after the public hearing.

Subsection 1-14. 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 or City 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			
	Preliminary 2018/Pay 2019 Total Net Tax Capacity	Estimated Captured Tax Capacity (CTC) Upon Completion	Percent of CTC to Entity Total
Hennepin County	1,827,697,633	1,459,467	0.0799%
City of Minnetonka	101,805,477	1,459,467	1.4336%
Hopkins ISD No. 270	121,361,538	1,459,467	1.2026%

IMPACT ON TAX RATES				
	Preliminary Pay 2019 Extension Rates	Percent of Total	CTC	Potential Taxes
Hennepin County	0.416610	36.34%	1,459,467	608,029
City of Minnetonka	0.365390	31.87%	1,459,467	533,275
Hopkins ISD No. 270	0.270660	23.61%	1,459,467	395,019

Other	<u>0.093780</u>	<u>8.18%</u>	<u>1,459,467</u>	<u>136,869</u>
Total	1.146440	100.00%		1,673,191

The estimates listed above display the captured tax capacity when all construction is completed. The tax rate used for calculations is the estimated Pay 2019 rate. The total net capacity for the entities listed above are based on estimated Pay 2019 figures. The District will be certified under the actual Pay 2019 rates, which were unavailable at the time this TIF Plan was prepared.

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 \$24,573,196;
- (2) Probable impact of the District on city provided services and ability to issue debt. An impact of the District on police protection is not expected. The City police department does track all calls for service including property-type calls and crimes. 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.

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 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. The development in the District is expected to contribute to sanitary sewer (SAC) and water (WAC) connection fees.

The probable impact of any District general obligation tax increment bonds on the ability to issue debt for general fund purposes is expected to be minimal. 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 \$5,801,732;
- (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 \$8,929,899;
- (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 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.

Subsection 1-15. Supporting Documentation

Pursuant to *M.S. Section 469.175, Subd. 1 (a), clause 7* the 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. Following is a list of reports and studies on file at the City that support the EDA and City's findings:

- 2030 Comprehensive Plan Guide
- SWLRT Housing Gaps analysis (2014)

Subsection 1-16. Definition of Tax Increment Revenues

Pursuant to *M.S., Section 469.174, Subd. 25*, tax increment revenues derived from a tax increment financing district include all of the following potential revenue sources:

1. Taxes paid by the captured net tax capacity, but excluding any excess taxes, as computed under *M.S., Section 469.177*;
2. The proceeds from the sale or lease of property, tangible or intangible, to the extent the property was purchased by the authority with tax increments;
3. Principal and interest received on loans or other advances made by the authority with tax increments;
4. Interest or other investment earnings on or from tax increments;
5. Repayments or return of tax increments made to the Authority under agreements for districts for which the request for certification was made after August 1, 1993; and
6. The market value homestead credit paid to the Authority under *M.S., Section 273.1384*.

Subsection 1-17. Modifications to the District

In accordance with *M.S., Section 469.175, Subd. 4*, any:

1. Reduction or enlargement of the geographic area of the District, if the reduction does not meet the requirements of *M.S., Section 469.175, Subd. 4(e)*;
2. Increase in amount of bonded indebtedness to be incurred;
3. A determination to capitalize interest on debt if that determination was not a part of the original TIF Plan;
4. Increase in the portion of the captured net tax capacity to be retained by the EDA or City;
5. Increase in the estimate of the cost of the District, including administrative expenses, that will be paid or financed with tax increment from the District; or
6. Designation of additional property to be acquired by the EDA or City,

shall be approved upon the notice and after the discussion, public hearing and findings required for approval of the original TIF Plan.

Pursuant to *M.S. Section 469.175 Subd. 4(f)*, the geographic area of the District may be reduced, but shall not be enlarged after five years following the date of certification of the original net tax capacity by the county auditor. If a housing district is enlarged, the reasons and supporting facts for the determination that the addition to the district meets the criteria of *M.S., Section 469.174, Subd. 11* must be documented. The requirements of this paragraph do not apply if (1) the only modification is elimination of parcel(s) from the

District and (2) (A) the current net tax capacity of the parcel(s) eliminated from the District equals or exceeds the net tax capacity of those parcel(s) in the District's original net tax capacity or (B) the EDA agrees that, notwithstanding *M.S., Section 469.177, Subd. 1*, the original net tax capacity will be reduced by no more than the current net tax capacity of the parcel(s) eliminated from the District.

The EDA or City must notify the County Auditor of any modification to the District. Modifications to the District in the form of a budget modification or an expansion of the boundaries will be recorded in the TIF Plan.

Subsection 1-18. Administrative Expenses

In accordance with *M.S., Section 469.174, Subd. 14*, administrative expenses means all expenditures of the EDA or City, *other than*:

1. Amounts paid for the purchase of land;
2. Amounts paid to contractors or others providing materials and services, including architectural and engineering services, directly connected with the physical development of the real property in the District;
3. Relocation benefits paid to or services provided for persons residing or businesses located in the District;
4. Amounts used to pay principal or interest on, fund a reserve for, or sell at a discount bonds issued pursuant to *M.S., Section 469.178*; or
5. Amounts used to pay other financial obligations to the extent those obligations were used to finance costs described in clauses (1) to (3).

For districts for which certification was requested after July 31, 2001, no tax increment may be used to pay any administrative expenses for District costs which exceed ten percent of total estimated tax increment expenditures authorized by the TIF Plan or the total tax increments, as defined in *M.S., Section 469.174, Subd. 25, clause (1)*, from the District, whichever is less.

Pursuant to *M.S., Section 469.176, Subd. 4h*, tax increments may be used to pay for the County's actual administrative expenses incurred in connection with the District and are not subject to the percentage limits of *M.S., Section 469.176, Subd. 3*. The county may require payment of those expenses by February 15 of the year following the year the expenses were incurred.

Pursuant to *M.S., Section 469.177, Subd. 11*, the County Treasurer shall deduct an amount (currently .36 percent) of any increment distributed to the EDA or City and the County Treasurer shall pay the amount deducted to the State Commissioner of Management and Budget for deposit in an account in the special revenue fund to be appropriated to the State Auditor for the cost of financial reporting of tax increment financing information and the cost of examining and auditing authorities' use of tax increment financing. This amount may be adjusted annually by the Commissioner of Revenue.

Subsection 1-19. Limitation of Increment

The tax increment pledged to the payment of bonds and interest thereon may be discharged and the District may be terminated if sufficient funds have been irrevocably deposited in the debt service fund or other escrow account held in trust for all outstanding bonds to provide for the payment of the bonds at maturity or redemption date.

Pursuant to *M.S., Section 469.176, Subd. 6*:

if, after four years from the date of certification of the original net tax capacity of the tax increment financing district pursuant to M.S., Section 469.177, no demolition, rehabilitation or renovation of property or other site preparation, including qualified improvement of a street adjacent to a parcel but not installation of utility service including sewer or water systems, has been commenced on a parcel located within a tax increment financing district by the authority or by the owner of the parcel in accordance with the tax increment financing plan, no additional tax increment may be taken from that parcel, and the original net tax capacity of that parcel shall be excluded from the original net tax capacity of the tax increment financing district. If the authority or the owner of the parcel subsequently commences demolition, rehabilitation or renovation or other site preparation on that parcel including qualified improvement of a street adjacent to that parcel, in accordance with the tax increment financing plan, the authority shall certify to the county auditor that the activity has commenced and the county auditor shall certify the net tax capacity thereof as most recently certified by the commissioner of revenue and add it to the original net tax capacity of the tax increment financing district. The county auditor must enforce the provisions of this subdivision. The authority must submit to the county auditor evidence that the required activity has taken place for each parcel in the district. The evidence for a parcel must be submitted by February 1 of the fifth year following the year in which the parcel was certified as included in the district. For purposes of this subdivision, qualified improvements of a street are limited to (1) construction or opening of a new street, (2) relocation of a street, and (3) substantial reconstruction or rebuilding of an existing street.

The EDA or City or a property owner must improve parcels within the District by approximately February 2023 and report such actions to the County Auditor.

Subsection 1-20. Use of Tax Increment

The EDA or City hereby determines that it will use 100 percent of the captured net tax capacity of taxable property located in the District for the following purposes:

1. To pay the principal of and interest on bonds issued to finance a project;
2. to finance, or otherwise pay the cost of redevelopment of the Development District No. 1 pursuant to *M.S., Sections 469.090 to 469.1082*;
3. To pay for project costs as identified in the budget set forth in the TIF Plan;
4. To finance, or otherwise pay for other purposes as provided in *M.S., Section 469.176, Subd. 4*;
5. To pay principal and interest on any loans, advances or other payments made to or on behalf of the EDA or City or for the benefit of Development District No. 1 by a developer;
6. To finance or otherwise pay premiums and other costs for insurance or other security guaranteeing the payment when due of principal of and interest on bonds pursuant to the TIF Plan or pursuant to *M.S., Chapter 462C, M.S., Sections 469.152 through 469.165*, and/or *M.S., Sections 469.178*; and
7. To accumulate or maintain a reserve securing the payment when due of the principal and interest on the tax increment bonds or bonds issued pursuant to *M.S., Chapter 462C, M.S., Sections 469.152 through 469.165*, and/or *M.S., Sections 469.178*.

Revenues derived from tax increment from a housing district must be used solely to finance the cost of housing projects as defined in *M.S., Sections 469.174, Subd. 11 and 469.1761*. The cost of public improvements directly related to the housing projects and the allocated administrative expenses of the EDA or City may be included in the cost of a housing project.

These revenues shall not be used to circumvent any levy limitations applicable to the City nor for other

purposes prohibited by *M.S., Section 469.176, Subd. 4.*

Tax increments generated in the District will be paid by Hennepin County to the EDA for the Tax Increment Fund of said District. The EDA or City will pay to the developer(s) annually an amount not to exceed an amount as specified in a developer's agreement to reimburse the costs of land acquisition, public improvements, structured parking, demolition and remediation, site preparation, and administration. Remaining increment funds will be used for EDA or City administration expenses (up to 10 percent) and for the costs of public improvement activities outside the District.

Subsection 1-21. Excess Increments

Excess increments, as defined in *M.S., Section 469.176, Subd. 2,* shall be used only to do one or more of the following:

1. Prepay any outstanding bonds;
2. Discharge the pledge of tax increment for any outstanding bonds;
3. Pay into an escrow account dedicated to the payment of any outstanding bonds; or
4. Return the excess to the County Auditor for redistribution to the respective taxing jurisdictions in proportion to their local tax rates.

The EDA or City must spend or return the excess increments under paragraph (c) within nine months after the end of the year in which the District must be decertified. In addition, the EDA or City may, subject to the limitations set forth herein, choose to modify the TIF Plan in order to finance additional public costs in Development District No. 1 or the District.

Subsection 1-22. Requirements for Agreements with the Developer

The EDA or City will review any proposal for private development to determine its conformance with the Development Program and with applicable municipal ordinances and codes. To facilitate this effort, the following documents may be requested for review and approval: site plan, construction, mechanical, and electrical system drawings, landscaping plan, grading and storm drainage plan, signage system plan, and any other drawings or narrative deemed necessary by the EDA or City to demonstrate the conformance of the development with City plans and ordinances. The EDA or City may also use the Agreements to address other issues related to the development.

Pursuant to *M.S., Section 469.176, Subd. 5,* no more than 10 percent, by acreage, of the property to be acquired in the project area as set forth in the TIF Plan shall at any time be owned by the EDA or City as a result of acquisition with the proceeds of bonds issued pursuant to *M.S., Section 469.178* to which tax increments from property acquired is pledged, unless prior to acquisition in excess of 10 percent of the acreage, the EDA or City concluded an agreement for the development of the property acquired and which provides recourse for the EDA or City should the development not be completed.

Subsection 1-23. Assessment Agreements

Pursuant to *M.S., Section 469.177, Subd. 8,* the EDA or City may enter into a written assessment agreement in recordable form with the developer of property within the District which establishes a minimum market value of the land and completed improvements for the duration of the District. The assessment agreement shall be presented to the County Assessor who 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, the County Assessor shall also certify the minimum market value agreement.

Subsection 1-24. Administration of the District

Administration of the District will be handled by the Community Development Director.

Subsection 1-25. Annual Disclosure Requirements

Pursuant to *M.S., Section 469.175, Subds. 5, 6, and 6b* the EDA or City must undertake financial reporting for all tax increment financing districts to the Office of the State Auditor, County Board and County Auditor on or before August 1 of each year. *M.S., Section 469.175, Subd. 5* also provides that an annual statement shall be published in a newspaper of general circulation in the City on or before August 15.

If the City fails to make a disclosure or submit a report containing the information required by *M.S., Section 469.175 Subd. 5 and Subd. 6*, the Office of the State Auditor will direct the County Auditor to withhold the distribution of tax increment from the District.

Subsection 1-26. Reasonable Expectations

As required by the TIF Act, in establishing the District, the determination has been made that the anticipated development 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 the District permitted by the TIF Plan. In making said determination, reliance has been placed upon written representation made by the developer to such effects and upon EDA and City staff awareness of the feasibility of developing the project site(s) within the District. A comparative analysis of estimated market values both with and without establishment of the District and the use of tax increments has been performed as described above. Such analysis is included with the cashflow in Appendix D, 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.

Subsection 1-27. Other Limitations on the Use of Tax Increment

1. General Limitations. All revenue derived from tax increment shall be used in accordance with the TIF Plan. The revenues shall be used to finance, or otherwise pay the cost of redevelopment of the Development District No. 1 pursuant to *M.S., Sections 469.090 to 469.1082*.

Tax increments may not be used to circumvent existing levy limit law. No tax increment may be used for the acquisition, construction, renovation, operation, or maintenance of a building to be used primarily and regularly for conducting the business of a municipality, county, school district, or any other local unit of government or the state or federal government. This provision does not prohibit the use of revenues derived from tax increments for the construction or renovation of a parking structure.

2. Housing District Exceptions to Restriction on Pooling; Five Year Limit. Pursuant to *M.S., Section 469.1763*. At least 80% of revenues derived from tax increments paid by properties in the District must be expended on Public Costs incurred within said district, and up to 20% of said tax increments may be spent on public costs incurred outside of the District but within Development District No. 1; provided

that in the case of a housing district, a housing project, as defined in *M.S., Section 469.174, Subd. 11*, is deemed to be an activity in the District, even if the expenditure occurred after five years.

Subsection 1-28. Summary

The Minnetonka Economic Development Authority is establishing the District to provide an impetus for residential development and provide safe and decent life cycle housing in the City. The TIF Plan for the District was prepared by Ehlers & Associates, Inc., 3060 Centre Pointe Drive, Roseville, Minnesota 55113-1105, telephone (651) 697-8500.

Appendix A

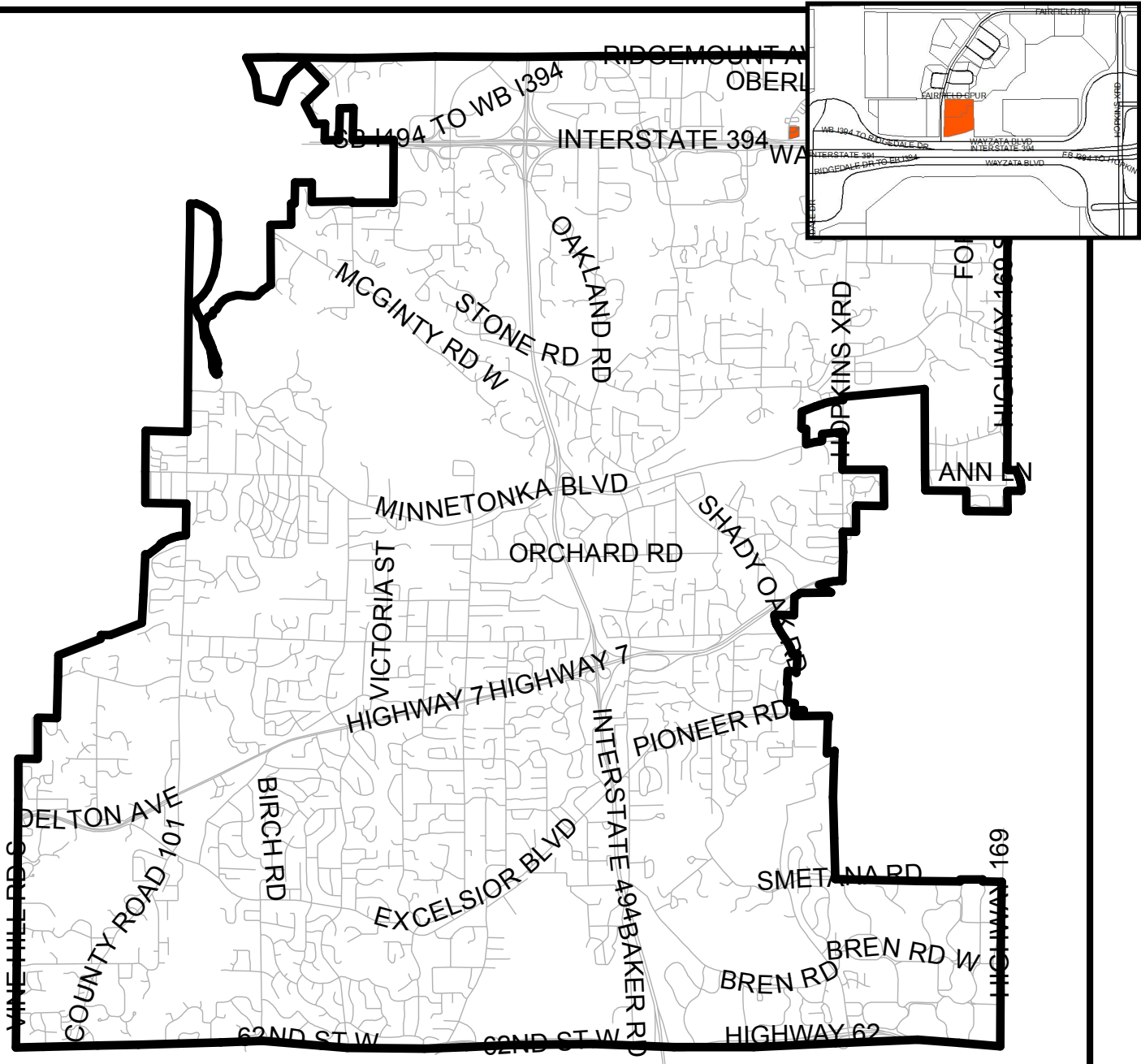
Project Description

Doran Companies is acquiring the three (3) Marsh Run office buildings located on two (2) parcels at 11650 and 11706 Wayzata Boulevard for redevelopment. They intend to demolish the existing structures and construct a 175-unit apartment complex in which 20% of the units will be affordable to persons at or below 50% of the area median income. They anticipate commencing with construction in 2019 and the EDA will provide them a pay-as-you-go TIF note.

Parcels are being removed from the Boulevard Gardens TIF District (County # 1460) for establishment of the Marsh Run TIF District.

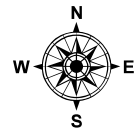
Appendix B

Map of Development District No. 1 and the District



Marsh Run TIF District

- Marsh Run Tax Increment Financing District
- Development District No. 1



Appendix C

Description of Property to be Included in the District

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

<u>Parcel Numbers*</u>	<u>Address</u>	<u>Owner</u>
02.117.22.13.0062	11706 Wayzata Blvd.	Carpenter Land Company
02.117.22.13.0050	11650 Wayzata Blvd.	KMP LLC

*All of the parcels are currently in the Boulevard Gardens Tax Increment Financing District and will be removed for inclusion in the District.

Appendix D

Estimated Cash Flow for the District



Marsh Run (Doran)

City of Minnetonka

175 Apartments

ASSUMPTIONS AND RATES

DistrictType:	Housing
District Name/Number:	
County District #:	
First Year Construction or Inflation on Value	2019
Existing District - Specify No. Years Remaining	
Inflation Rate - Every Year:	5.00%
Interest Rate:	4.00%
Present Value Date:	1-Aug-20
First Period Ending	1-Feb-21
Tax Year District was Certified:	Pay 2019
Cashflow Assumes First Tax Increment For Development:	2021
Years of Tax Increment	26
Assumes Last Year of Tax Increment	2046
Fiscal Disparities Election [Outside (A), Inside (B), or NA]	Inside(B)
Incremental or Total Fiscal Disparities	Incremental
Fiscal Disparities Contribution Ratio	36.8960% Pay 2019 Prelim
Fiscal Disparities Metro-Wide Tax Rate	143.9920% Pay 2019 Prelim
Maximum/Frozen Local Tax Rate:	114.644% Pay 2019 Prelim
Current Local Tax Rate: (Use lesser of Current or Max.)	114.644% Pay 2019 Prelim
State-wide Tax Rate (Comm./Ind. only used for total taxes)	41.0000% Pay 2019 Prelim
Market Value Tax Rate (Used for total taxes)	0.16104% Pay 2019 Prelim

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 \$139,000	0.75%
Over \$139,000	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 Market Value	Tax Year Original Market Value	Property Tax Class	Current Original Tax Capacity	Class After Conversion	After Conversion Orig. Tax Cap.	Area/Phase
1	0211722130062	Carpenter Land Co	11706 Wayzata Blvd	890,000	7,000	897,000	100%	897,000	Pay 2019	C/I	17,940	Rental	11,213	1
2	0211722130050	KMP LLC	11650 Wayzata Blvd	617,000	251,000	868,000	100%	868,000	Pay 2019	C/I Pref.	16,610	Rental	10,850	1
				1,507,000	258,000	1,765,000		1,765,000			34,550		22,063	

Note:

- 1. Base values are for Pay 2019 per Hennepin County website on 5-10-18.
- 2. Located in SD #270 and WS #7


Marsh Run (Doran)
 City of Minnetonka
 175 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 2019	Percentage Completed 2020	Percentage Completed 2021	Percentage Completed 2022	First Year Full Taxes Payable
1	Apartments	210,000	210,000	175	36,750,000	Rental	459,375	2,625	35%	100%	100%	100%	2022
TOTAL					36,750,000		459,375						
Subtotal Residential				175	36,750,000		459,375						
Subtotal Commercial/Ind.				0	0		0						

Note:

1. Market value estimate provided by assessor on 5-11-18.

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	459,375	0	459,375	526,646	0	0	59,182	585,828	3,347.59
TOTAL	459,375	0	459,375	526,646	0	0	59,182	585,828	

Note:

1. 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	585,828
less State-wide Taxes	0
less Fiscal Disp. Adj.	0
less Market Value Taxes	(59,182)
less Base Value Taxes	(25,293)
Annual Gross TIF	501,353



**Marsh Run (Doran)
City of Minnetonka
175 Apartments**

TAX INCREMENT CASH FLOW														
% of OTC	Project Tax Capacity	Original Tax Capacity	Fiscal Disparities Incremental	Captured Tax Capacity	Local Tax Rate	Annual Gross Tax Increment	Semi-Annual Gross Tax Increment	State Auditor 0.36%	Admin. at 10%	Semi-Annual Net Tax Increment	Semi-Annual Present Value	PERIOD ENDING Yrs.	Tax Year	Payment Date
100%	160,781	(22,063)	-	138,719	114.644%	159,033	79,516	(286)	(7,923)	71,307	68,538	0.5	2021	02/01/21
100%	459,375	(22,063)	-	437,313	114.644%	501,353	79,516	(286)	(7,923)	71,307	135,732	1	2021	02/01/22
100%	482,344	(22,063)	-	460,281	114.644%	527,685	250,676	(902)	(24,977)	224,796	343,410	1.5	2022	08/01/22
100%	506,461	(22,063)	-	484,398	114.644%	555,334	250,676	(902)	(24,977)	224,796	547,015	2	2022	02/01/23
100%	531,784	(22,063)	-	509,721	114.644%	584,365	263,842	(950)	(26,289)	236,603	757,112	2.5	2023	08/01/23
100%	558,373	(22,063)	-	536,311	114.644%	614,848	263,842	(950)	(26,289)	236,603	963,089	3	2023	02/01/24
100%	586,292	(22,063)	-	564,229	114.644%	646,855	277,667	(1,000)	(27,667)	249,001	1,175,609	3.5	2024	08/01/24
100%	615,606	(22,063)	-	593,544	114.644%	680,463	277,667	(1,000)	(27,667)	249,001	1,383,961	4	2024	02/01/25
100%	646,387	(22,063)	-	624,324	114.644%	715,750	292,183	(1,052)	(29,113)	262,018	1,598,907	4.5	2025	08/01/25
100%	678,706	(22,063)	-	656,644	114.644%	752,802	292,183	(1,052)	(29,113)	262,018	1,809,638	5	2025	02/01/26
100%	712,641	(22,063)	-	690,579	114.644%	791,707	307,424	(1,107)	(30,632)	275,686	2,027,014	5.5	2026	08/01/26
100%	748,273	(22,063)	-	726,211	114.644%	832,557	307,424	(1,107)	(30,632)	275,686	2,240,128	6	2026	02/01/27
100%	785,687	(22,063)	-	763,625	114.644%	875,450	323,428	(1,164)	(32,226)	290,037	2,459,940	6.5	2027	08/01/27
100%	824,971	(22,063)	-	802,909	114.644%	920,487	323,428	(1,164)	(32,226)	290,037	2,675,441	7	2027	02/01/28
100%	866,220	(22,063)	-	844,158	114.644%	967,776	340,231	(1,225)	(33,901)	305,106	2,897,694	7.5	2028	08/01/28
100%	909,531	(22,063)	-	887,469	114.644%	1,017,429	340,231	(1,225)	(33,901)	305,106	3,115,590	8	2028	02/01/29
100%	955,008	(22,063)	-	932,945	114.644%	1,069,566	357,875	(1,288)	(35,659)	320,928	3,340,290	8.5	2029	08/01/29
100%	1,002,758	(22,063)	-	980,696	114.644%	1,124,309	357,875	(1,288)	(35,659)	320,928	3,560,585	9	2029	02/01/30
100%	1,052,896	(22,063)	-	1,030,833	114.644%	1,181,789	376,401	(1,355)	(37,505)	337,542	3,787,741	9.5	2030	08/01/30
100%	1,105,541	(22,063)	-	1,083,478	114.644%	1,242,143	376,401	(1,355)	(37,505)	337,542	4,010,443	10	2030	02/01/31
100%	1,160,818	(22,063)	-	1,138,755	114.644%	1,305,515	395,854	(1,425)	(39,443)	354,986	4,240,062	10.5	2031	08/01/31
100%	1,218,859	(22,063)	-	1,196,796	114.644%	1,372,055	395,854	(1,425)	(39,443)	354,986	4,465,178	11	2031	02/01/32
100%	1,279,802	(22,063)	-	1,257,739	114.644%	1,441,922	416,279	(1,499)	(41,478)	373,302	4,697,268	11.5	2032	08/01/32
100%	1,343,792	(22,063)	-	1,321,729	114.644%	1,515,283	416,279	(1,499)	(41,478)	373,302	4,924,807	12	2032	02/01/33
100%	1,410,981	(22,063)	-	1,388,919	114.644%	1,592,312	437,725	(1,576)	(43,615)	392,534	5,159,377	12.5	2033	08/01/33
100%	1,481,530	(22,063)	-	1,459,468	114.644%	1,673,192	437,725	(1,576)	(43,615)	392,534	5,389,348	13	2033	02/01/34
							460,243	(1,657)	(45,859)	412,728	5,626,408	13.5	2034	08/01/34
							460,243	(1,657)	(45,859)	412,728	5,858,821	14	2034	02/01/35
							483,888	(1,742)	(48,215)	433,931	6,098,382	14.5	2035	08/01/35
							483,888	(1,742)	(48,215)	433,931	6,333,245	15	2035	02/01/36
							508,715	(1,831)	(50,688)	456,195	6,575,317	15.5	2036	08/01/36
							508,715	(1,831)	(50,688)	456,195	6,812,643	16	2036	02/01/37
							534,783	(1,925)	(53,286)	479,572	7,057,238	16.5	2037	08/01/37
							534,783	(1,925)	(53,286)	479,572	7,297,038	17	2037	02/01/38
							562,154	(2,024)	(56,013)	504,117	7,544,168	17.5	2038	08/01/38
							562,154	(2,024)	(56,013)	504,117	7,786,452	18	2038	02/01/39
							590,894	(2,127)	(58,877)	529,890	8,036,130	18.5	2039	08/01/39
							590,894	(2,127)	(58,877)	529,890	8,280,911	19	2039	02/01/40
							621,071	(2,236)	(61,884)	556,952	8,533,150	19.5	2040	08/01/40
							621,071	(2,236)	(61,884)	556,952	8,780,442	20	2040	02/01/41
							652,757	(2,350)	(65,041)	585,367	9,035,255	20.5	2041	08/01/41
							652,757	(2,350)	(65,041)	585,367	9,285,071	21	2041	02/01/42
							686,027	(2,470)	(68,356)	615,202	9,542,472	21.5	2042	08/01/42
							686,027	(2,470)	(68,356)	615,202	9,794,826	22	2042	02/01/43
							720,961	(2,595)	(71,837)	646,529	10,054,830	22.5	2043	08/01/43
							720,961	(2,595)	(71,837)	646,529	10,309,736	23	2043	02/01/44
							757,642	(2,728)	(75,491)	679,423	10,572,358	23.5	2044	08/01/44
							757,642	(2,728)	(75,491)	679,423	10,829,831	24	2044	02/01/45
							796,156	(2,866)	(79,329)	713,961	11,095,087	24.5	2045	08/01/45
							796,156	(2,866)	(79,329)	713,961	11,355,143	25	2045	02/01/46
							836,596	(3,012)	(83,358)	750,226	11,623,049	25.5	2046	08/01/46
							836,596	(3,012)	(83,358)	750,226	11,885,702	26	2046	02/01/47
Total							24,661,979	(88,783)	(2,457,320)	22,115,876				
	Present Value From 08/01/2020		Present Value Rate		4.00%		13,254,051	(47,715)	(1,320,634)	11,885,702				

Appendix E

Housing Qualifications for the District

Income Restrictions- Adjusted for Family Size (Housing District) - Hennepin County Hennepin County Median Income: \$94,300		
No. of Persons	50% of Median Income	60% of Median Income
1-person	\$33,050,	\$39,660
2-person	\$37,750	\$45,300
3-person	\$42,450	\$50,940
4-person	\$47,150	\$56,580

Source: Department of Housing and Urban Development and Minnesota Housing Finance Agency

The two options for income limits on a standard housing district are 20% of the units at 50% of median income or 40% of the units at 60% of median income. There are no rent restrictions for a housing district.

***PLEASE NOTE: THESE NUMBERS ARE ADJUSTED ANNUALLY. ALL INCOME FIGURES REPORTED ON THIS PAGE ARE FOR 2018. UPDATED NUMBERS FOR THE YEAR 2019 WILL BE AVAILABLE IN MARCH.

Appendix F

Findings for the District

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan for Marsh Run Tax Increment Financing District, as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. *Finding that the Marsh Run Tax Increment Financing District is a housing district as defined in M.S., Section 469.174, Subd. 11.*

Marsh Run Tax Increment Financing District consists of two parcels. The development will consist of 175-units of rental housing. At least 20 percent of the units receiving assistance will have incomes at or below 50 percent of statewide median income. Appendix E of the TIF Plan contains background for the above finding.

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.*

The proposed development, in the opinion of the 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 development proposed in this plan is a housing district that meets the City's objectives for development and redevelopment. The cost of land acquisition, site and public improvements and utilities makes this housing development infeasible without City assistance. Due to decreased rental income from affordable units, there is insufficient cash flow to provide a sufficient rate of return, pay operating expenses, and service the debt. This leaves a gap in the funding for the project and makes this housing development feasible only through assistance, in part, from tax increment financing. The developer was asked for and provided a letter and a proforma 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 TIF District permitted by the TIF Plan: This finding is justified on the grounds that the cost of land acquisition, site and public improvements, utilities and construction of affordable housing add to the total development cost. Historically, the costs of site and public improvements as well as reduced rents required for affordable workforce housing in the City have made development infeasible without tax increment assistance. The City reasonably determines that no other development of similar scope is anticipated on this site without substantially similar assistance being provided to the development.

3. *Finding that the TIF Plan for Marsh Run Tax Increment Financing District conforms to the general plan for the development or redevelopment of the municipality as a whole.*

The Planning Commission reviewed the TIF Plan on February 7, 2019 and found that the TIF Plan conforms to the general development plan of the City.

4. *Finding that the TIF Plan for Marsh Run 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.*

Through the implementation of the TIF Plan, the EDA or City will provide an impetus for residential development, which is desirable or necessary for increased population and an increased need for life-cycle housing within the City.

Policy Number 2.18
Tax Increment Financing and Tax Abatement

Purpose of Policy: This policy establishes criteria which guide the economic development authority and the city council when considering the use of tax increment financing and tax abatement tools in conjunction with proposed development.

Introduction

Under the Minnesota Statutes Sections 469.152 to 469.1799, the city of Minnetonka has the authority to establish tax increment financing districts (TIF districts). Tax increment financing is a funding technique that takes advantage of the increases in tax capacity and property taxes from development or redevelopment to pay public development or redevelopment costs. The difference in the tax capacity and the tax revenues the property generates after new construction has occurred, compared with the tax capacity and tax revenues it generated before the construction, is the captured value, or increments. The increments then go to the economic development authority and are used to repay public indebtedness or current costs the development incurred in acquiring the property, removing existing structures or installing public services. The fundamental principle that makes tax increment financing viable is that it is designed to encourage development that would not otherwise occur.

Under Minnesota Statutes, Sections 469.1812 to 469.1815, the city of Minnetonka has the right to abate property taxes. A city may grant an abatement of some or all of the taxes or the increase in taxes it imposes on a parcel of property if the city expects the benefits of the proposed abatement agreement to at least equal the costs of the proposed agreement. Abatement would be considered a reallocation or rededication of taxes for specific improvements or costs associated with development rather than a "refund" of taxes.

It is the judgment of the city council that TIF and abatement are appropriate tools that may be used when specific criteria are met. The applicant is responsible for demonstrating the benefit of the assistance, particularly addressing the criteria below. The applicant should understand that although approval may have been granted previously by the city for a similar project or a similar mechanism, the council is not bound by that earlier approval. Each application will be judged on the merits of the project as it relates to the public purpose.

TAX INCREMENT FINANCING

The Economic Development Authority (EDA), as authorized by the city, will be responsible to determine that (1) a project would not occur "but for" the assistance provided through tax increment financing; and (2) no other development would occur on the relevant site without tax increment assistance that could create a larger market value increase than the increase expected from the proposed development (after adjusting for

the value of the tax increment). At the time of any application for a Comprehensive Guide Plan amendment, rezoning or site plan approval for a project, whichever occurs first, the applicant must divulge that TIF financing will be requested.

Projects eligible for consideration of tax increment financing include but are not limited to the following:

- Projects must be compatible with the Comprehensive Guide Plan (or acquire an amendment) and the development and redevelopment objectives of the city.
- Priority will be given to those projects which:
 - are within the “village areas” identified in the city’s most recently adopted Comprehensive Guide Plan;
 - are mixed use or residential in nature, and include affordable housing units which meet the city’s affordable housing standards;
 - contain amenities or improvements which benefit a larger area than the identified development;
 - improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions; or
 - maximize and leverage the use of other financial resources.

Costs Eligible for Tax Increment Financing Assistance

The EDA will consider the use of tax increment financing to cover project costs as allowed for under Minnesota Statutes. The types of project costs that are eligible for tax increment financing are as follows:

Utilities design	Site related permits
Architectural and engineering fees directly attributable to site work	Soils correction
Earthwork/excavation	Utilities (sanitary sewer, storm sewer, and water)
Landscaping	Street/parking lot paving
Streets and roads	Curb and gutter
Street/parking lot lighting	Land acquisition
Sidewalks and trails	Legal (acquisition, financing, and closing fees)
Special assessments	Surveys
Soils test and environmental studies	Sewer Access Charges (SAC) and Water Access Charges (WAC)

Title insurance	Landscape design
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Forms of Assistance

Tax increment financing will generally be provided on a “pay-as-you-go” basis wherein the EDA compensates the applicant for a predetermined amount for a stated number of years. The EDA will have the option to issue a TIF Note with or without interest, where the principal amount of the TIF Note is equal to the amount of eligible project costs incurred and proven by the developer. In all cases, semi-annual TIF payments will be based on available increment generated from the project. TIF payments will be made after collection of property taxes.

Fiscal Disparities

TIF Districts will generally be exempt from the contribution to fiscal disparities. Tax revenues for fiscal disparities, generated by the TIF project, will be the responsibility of properties inside the district. The exception to this policy is when MN Statutes require that fiscal disparities be paid from within a TIF District, as is the case with Economic Development Districts.

TAX ABATEMENT

The tax abatement tool provides the ability to capture and use all or a portion of the property tax revenues within a defined geographic area for a specific purpose. Unlike TIF, tax abatement must be approved by each major authority under which the area is taxed, and therefore, usually only city property taxes will be abated. In practice, it is a tax “reallocation” rather than an exemption from paying property taxes. Tax abatement is an important economic development tool that, when used appropriately, can be useful to accomplish the city’s development and redevelopment goals and objectives. Requests for tax abatement must serve to accomplish the city’s targeted goals for development and redevelopment, particularly in the designated village center areas. At the time of any application for a Comprehensive Guide Plan amendment, rezoning or site plan approval for a project, whichever occurs first, the applicant must divulge that tax abatements will be requested.

Projects Eligible for Tax Abatement Assistance

Projects eligible for consideration of property tax abatement include but are not limited to the following:

- Projects must be compatible with the Comprehensive Guide Plan (or acquire an amendment) and the development and redevelopment objectives of the city; and
- Priority will be given to those projects which:
 - increase or preserve the tax base
 - provide employment opportunities in the City of Minnetonka;

- provide, help acquire or construct public facilities;
- finance or provide public infrastructure;
- improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions; or
- produce long-term affordable housing opportunities.

Fiscal Disparities

Tax revenues for fiscal disparities, generated by the abatement project, will be the responsibility of properties inside the district.

REVIEW PROCESS

All applications for TIF and tax abatement will be reviewed by city's community development director. After review by the city's financial consultant, the community development director may refer the request to the EDA. The EDA will hold appropriate public hearings and receive public input about the use of the financial tools. The EDA will provide a recommendation regarding the assistance to the city council.

The city council must consider, along with other development decisions, the request for assistance and will make the final decision as to the amount, length, and terms of the agreement.

Adopted by Resolution No. 2014-074
Council Meeting of July 21, 2014

RESOLUTION 2004-002

**RESOLUTION APPROVING THE ECONOMIC DEVELOPMENT AUTHORITY'S
RECOMMENDATION ON THE INCLUSION OF 10% TO 20% OF THE TOTAL
UNITS IN MULTI-FAMILY DEVELOPMENTS AS AFFORDABLE HOUSING**

BE IT RESOLVED by the Economic Development Authority of the City of Minnetonka, Minnesota as follows:


Section 1. Background.

- 1.01. The City of Minnetonka and Metropolitan Council have worked together to create affordable housing goals for the development of new affordable housing units within the city.
- 1.02. The Economic Development Authority has been working to accomplish these goals and include affordable housing in new housing developments by recommending that 10% to 20% of the total units in a housing development be made affordable.

Section 2. Economic Development Authority Action.

- 2.01. The Economic Development Authority of the City of Minnetonka hereby affirms their recommendation that 10% to 20% of the total units in new multi-family housing developments be sold at an affordable price as set forth by the Metropolitan Council.

Adopted by the Economic Development Authority of the City of Minnetonka, Minnesota on February 3, 2004.



Peter St. Peter, President

ATTEST:



Ronald Rankin, Secretary

ACTION ON THIS RESOLUTION:

Motion for adoption: Duffy

Seconded by: Larson

Voted in favor of: Duffy, Larson, Robinson, St. Peter, Thomas, Wagner, Walker

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Economic Development Authority of the City of Minnetonka, Minnesota, at a duly authorized meeting held on February 3, 2004, as shown by the minutes of the said meeting in my possession.



Ronald Rankin, Secretary

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
Newport Partners (Mariner)	55	194	\$556,179 (est)	30	\$337	60% AMI
Dominium	482	0	\$7,809,000	30	\$540	60% AMI
Homes Within Reach (2004-2012 grant years)	35	0	\$1,740,000	99	\$502	80% AMI
The Ridge	52	0	\$1,050,000	30	\$673	60% AMI
Shady Oak Redevelopment	49	0	\$1,209,000 (est)	30	\$822	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	20	80	\$2,283,000	30	\$3,805	50% AMI
At Home (Rowland)	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
Doran (Marsh) - TIF Housing	35 (20% of units)	175	\$4,800,000	30	\$4,571	50% AMI

updated 12/6/2018

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

Introduction

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

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

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

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

Overview of Minnetonka Housing Trends

Development Conditions

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

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

Aging of the Population

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

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

Preservation and Rehabilitation of the Existing Housing Stock

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

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

Current Housing Conditions

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

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

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

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

Housing Goals

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

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

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

Tools and Implementation Efforts to Provide Affordable and Lifecycle Housing

Housing Assistance Programs

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

Section 8 Voucher Program

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

Shelter Plus Care

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

Minnesota Housing Finance Agency Programs

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

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

Homes Within Reach

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

City of Minnetonka First Time Homebuyer Assistance Program

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

Employer Assisted Housing

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

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

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

Housing Development Programs

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

Public Housing

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

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

HOME Program

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

Other Federal Programs

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

Minnesota Housing Finance Agency Programs

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

Metropolitan Council Programs

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

Twin Cities Habitat for Humanity

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

Tax Increment Financing

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

Housing Revenue Bonds

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

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

Housing and Redevelopment Authority (HRA) Levy

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

Community Development Block Grant (CDBG) funds

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

Livable Communities Fund

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

Housing Maintenance and Rehabilitation

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

Minnesota Housing Finance Agency Programs--Rental

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

Minnesota Fix-up Fund

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

Community Fix-up Fund

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

Home Energy Loan

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

Emergency Repair Loan

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

City of Minnetonka Home Renovation Program

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

H.O.M.E. program

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

Home Remodeling Fair

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

Local Official Controls and Approvals

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

Density Bonus

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

Planned Unit Developments

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

Mixed Use

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

Transit Oriented Development (TOD)

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

Authority for Providing Housing Programs

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

**Unapproved
Minnetonka Economic Development Advisory Commission
Meeting Minutes**

**Nov. 8, 2018
6 p.m.**

1. Call to Order

Chair Yunker called the meeting to order at 5 p.m.

2. Roll Call

EDAC commissioners present: Jay Hromatka, Lee Jacobsohn, Melissa Johnston, Jerry Knickerbocker, and Charlie Yunker were present. Jacob Johnson was absent.

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

Councilmember present: Deb Calvert.

Consultant present: financial consultant Stacie Kvilvang of Ehlers and Associates.

3. Approval of Aug. 9, 2018 Minutes

Knickerbocker moved, Hromatka seconded a motion to recommend that the EDAC approve the minutes from the Aug. 9, 2018 meeting as included in the agenda. Hromatka, Jacobsohn, Johnston, Knickerbocker, and Yunker voted yes. Johnson was absent. Motion passed.

4. Doran Apartments

Gray reported.

Ryan Johnson, Doran Companies Chief Financial Officer, stated that:

- Staff encouraged the applicant to include affordable units. The first proposal of 235 units included 20 percent of the units being affordable with 50 percent AMI. Through that analysis, the applicant established that \$3.95 million would be the TIF request. That would have been about \$2,800 per unit, per year. After receiving feedback from the city council, planning commission, and neighbors, the proposal was scaled down to 190 units with 10 percent of those being affordable units. The calculation for those 10 percent was tax abatement versus TIF. That proposal would equal \$2.4 million and \$4,000 per unit.
- The current proposal is at \$1.760 million which would be just over \$6,500 per unit.
- The projects around Ridgedale, including The Island and Redstone, do not have affordability requirements. This would be the first Class A within that submarket that would contribute to the affordability requirements set by the city in 2004.

- Tonka on the Creek and At Home Apartments were projects mentioned in the staff report. One was approved four years ago and the other two and a half years ago. The world has changed since then. Construction costs are up over 15 percent and interest rates have increased. Those are not proper comparisons to what is happening today on the economic side.
- He provided a report showing return parameters. He agreed with Kvilvang's analysis on the cash on cost return included in the staff report of roughly six percent for market-rate units. Another metric is cash on cash return which is cash flow divided by the initial equity investment. Significant drivers are interest rates, debt leverage, and reduced equity. Less equity equals a higher cash-on-cash return. Higher costs and interest rates equal less equity and cash-on-cash return.
- He provided a couple different options with different interest rates that moved the leverage point (Increase debt, lower equity) to stabilize cash flow. As the interest rate is reduced, there is a big difference and impact to the project. Mezzanine financing and leveraging higher (more debt) could be considered, but that is not the applicant's intent.
- He explained how lost income relates to affordable units and lower value. He calculated that there would be \$87,000 in lost income at five percent which would equal \$1.752 million in lost value. The proposal request is for \$1.760 million in assistance.
- He provided a report on cap rates and a report from a local appraiser who confirms that as affordability is added, then cap rates go up, values go down.
- He estimates that the lost value of the building with 20 percent of the units affordable would be \$9.8 million.
- He then goes on to mention that the \$4.8 million in proposed TIF assistance would not come close to making up the difference of having 20 percent of affordable housing because the value reduction would be so significant. The illustration is based on a 5.25 cap rate with 20 percent affordable units.
- The proposal should be looked at on its own rather than compared to past projects.
- He was available for questions.

Knickerbocker asked if the applicant considered going from 50 percent AMI to 60 percent AMI, or going from 10 percent affordable units rather than 20. Mr. Johnson answered in the affirmative. He explained that 5 percent units affordable at 60 percent AMI were requested because if the applicant would go to 10 percent units affordable and 50 percent AMI, then the gap would grow. Tax abatement over 20 years would not fill that gap. The loss in valuation would not be recovered. As density has shrunk, everything has been compressed.

Knickerbocker understood the argument of looking at the project on its own rather than comparing it to past projects. The two projects referenced in the staff report were constructed on undeveloped land. Asked where does this all get resolved and how can this satisfy the developer's needs. Mr. Johnson said that the applicant felt good about the 168-unit project. There are a 100 different reasons why the current proposal's cost basis is different from previous projects, but, at the same time, he did not know if the assistance per unit should be tied directly to the city's previous project approvals. Perhaps projects in the future would be higher because of the construction-cost market and interest rate hikes.

Jacobsohn asked if the project would be built with no affordable housing component and no assistance. Mr. Johnson answered that numbers would work to move forward with a project that doesn't include affordable housing or city assistance.

Hromatka asked Kvilvang if five percent is a reasonable cap rate to use for a project like this. Kvilvang said that there is currently a cap rate range of five percent to six percent for similar projects.

Kvilvang reminded commissioners that the city is not required to give tax abatement or tax increment financing to a developer. Public assistance may be provided in return for something to help the city reach a goal such as redevelopment of a blighted property or affordable housing. She gave a presentation that reviewed the affordability requirements for similar projects. Overall, the projects she reviewed were done with even higher development costs and lower rent structures, but were able to be done with a smaller amount of assistance from the city. The projects shown had 20 percent affordable units and 50-60 percent AMI. That is staff's recommendation for this project. She provided the background information for the comparison projects. Her example of Marsh Run showed the project at 20 percent affordable at 50% AMI and included 16 years of tax increment, which would be \$4.4 million. After the 17th year when TIF is finished. The cash on cash return works out to be 11.7%, well within the parameters of typically what investors like to see (10 percent cash on cash). Doran likes to see an 11 percent return. Kvilvang saw a viable project with 20 percent affordable units with 4.8 million in assistance through TIF.

Chair Yunker invited anyone in the audience to provide comments.

Pam Lewis, 980 Fairfield Court, stated that she is concerned with the wildlife, traffic, safety, and livability of the neighborhood.

No one else present chose to speak.

Hromatka stated that he, Jacobsohn, and Luke were on a subcommittee that reviewed the proposal in depth. Five percent of the units being affordable would be low. The proposal is requesting to receive 50 percent more than the high-water mark of assistance per unit.

Jacobsohn agreed that 5 percent of the units, 9 units, would not have enough of a significant impact for the city and creates a high cost per unit. The cost per unit at 20 percent of units, 34 units, would be at the high end. It would be acceptable for approval. It could also be considered if the property is one that the city would like to change from the existing office buildings. The proposal could be built without assistance and no affordable housing. He did not think that 5 percent of the units would be enough.

Johnston asked if the comprehensive guide plan includes any specifics for the area regarding affordable housing. Wischnack explained that there is an entire section of the comprehensive guide plan dedicated to the housing goals of the city. It is available on **eminnetonka.com**.

Calvert stated that a majority of councilmembers want to make an effort to reach the city's affordable housing goals and make sure that the affordable housing units would not be segregated to a specific area of the city. This proposal would provide an opportunity to provide

more affordable housing. There are quite a few affordable housing units located in the first ward. The proposed site would be located close to the transit station, retail, and other amenities. She was worried that if the city offered TIF for a small number of units that a bad precedent would be set for future developments. The other luxury apartment complexes mentioned by Mr. Johnson were ones that the city was not able to offer assistance. This is the wave of the future. Affordable housing units have more consistent residency than market rate units. Affordable units are a guaranteed income stream much more so than a market rate unit. She did not want to lose the opportunity to have affordable units, but she did want to impress upon the applicant that she thought 20 percent would be the goal. It is written into the goals for the city and she would be supporting that amount.

Knickerbocker moved, there was no second, to recommend that the city council approve a proposal with 5 percent of the units meeting affordability guidelines. Motion failed.

Knickerbocker moved, Jacobsohn seconded a motion to recommend that the city council approve a proposal with 20 percent of the units meeting affordability guidelines and offering assistance of up to \$4.8 million. Hromatka, Jacobsohn, Johnston, Knickerbocker, and Yunker voted yes. Johnson was absent. Motion passed.

5. Fair Housing Policy

Gray reported.

In response to Hromatka's question, Gray explained that the policy would have been adopted eventually. It is included in the 2040 comprehensive guide plan as a recommendation. Given that the grant funding is tied to it, the city is taking action now rather than next year.

Hromatka asked if it made sense to include a specific number of years in which to review the policy. Gray answered that the specific time period was left out because there is fair housing work that is currently being amended. Wischnack said that a reminder could be added as a project page in the EIP so that it would be reviewed every year.

Johnston asked if the classifications change at the federal level, then could the city still maintain the protected classes as a municipality. Gray responded that the protected classes could be listed in the policy. Johnston supports that being done. Wischnack will add language to the policy before the city council's review.

Knickerbocker liked seeing all of the language changes over time. Gray clarified that the policy mainly relates to projects that receive city financing. The policy is a guide to referral services. Hanson explained that the city would refer someone with a fair housing complaint to the Department of Housing and Urban Development or the Minnesota Department of Human Rights. Wischnack clarified that the requirements are not new.

Jacobsohn noted that the rules already apply to a homeowner selling his or her house. The policy says that the city serves as a clearing house for those complaints. The rules that apply to a single-family homeowner would not change, there would be an additional communication vehicle now available. Gray agreed.

Wischnack explained that if a seller of a house based his or her decision to not sell to a buyer because the buyer was a member of one of the protected classes that would be a violation of

law the same as it has been since the Fair Housing Policy was enacted in 1968. The city attorney did review the proposed policy.

Hromatka understood that the city is adopting the federal Fair Housing Policy similar to other cities that have already done the same thing.

Chair Yunker saw it as restating the Fair Housing Policy.

Hromatka moved, Jacobsohn seconded a motion to recommend that the city council approve the Fair Housing Policy. Hromatka, Jacobsohn, Johnston, Knickerbocker, and Yunker voted yes. Johnson was absent. Motion passed.

This item is scheduled to be reviewed by the city council on Dec. 3, 2018.

6. Staff Report

Gray and Wischnack gave the staff report:

- Megan Luke left the EDAC to serve on the planning commission.
- There is one remaining bidder for the SWLRT. There is an extension until Nov. 15, 2018 to accept additional bids. Construction could begin this year with a completion date of 2023.
- Staff continues to meet with Metro Transit on a quarterly basis. Routes 614 and 671 are being looked at to be cut unless there would be an increase in ridership.
- An application for The French Academie on Whitewater Drive is being reviewed.
- A concept plan is being reviewed for Highcroft Meadows on Orchard Road.
- The sign ordinance update has been adopted.
- The Mariner project is under review this month.
- An application for Williston Heights, a four-lot subdivision, is being reviewed.
- The public safety facility application will be reviewed this month.
- Villas of Glen Lake is under review.
- The Renneke property application for market-rate apartments is being reviewed.
- The building permit for Dominion is being reviewed.
- A grading permit is being reviewed for Ridgedale Executive Apartments.
- Grading and building permits are being reviewed for Ridgedale Active Adult Apartments.
- The grading is being done for Solbekken Villas.
- Minnetonka Hills Apartments are under construction.
- Havenwood of Minnetonka is under construction.
- Crest Ridge Senior Housing is nearing completion.
- The RiZe at Opus is under construction.
- LISC is working on creating a visioning process for a site on Shady Oak Road. That work will begin in Feb.
- There are five loans in process. Two Home Enhancement loans have closed. The two-bid process was slowing things up because contractors were not showing up to bid a project, so the requirement was changed to one bid.
- CDBG has approved one loan since Aug. and five others are going through the approval process.

7. Other Business

The SLUC lunch entitled “Harstad versus City of Woodbury: What’s Next” is scheduled for Nov. 28, 2018 at 11:30 a.m. in Golden Valley.

The ULI MN 10th Annual Housing Summit is scheduled to be held from 8 a.m. to 11 a.m. on Dec. 14, 2018 at Dorsey and Whitney in Minneapolis.

The next EDAC meeting is scheduled for Jan. 24, 2018 at 6 p.m.

8. Adjournment

Knickerbocker moved, Yunker seconded a motion to adjourn the meeting at 7:40 p.m. Motion passed unanimously.

EDA Resolution No. 2019-

Resolution adopting a modification to the development program for Development District No. 1, establishing the Marsh Run Tax Increment Financing District therein, and adopting a tax increment financing plan therefor

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. It has been proposed by the Board and the City Council of the City of Minnetonka (the "City") that the Authority adopt a Modification to the Development Program (the "Development Program Modification") for Development District No. 1 (the "Development District") and establish Marsh Run Tax Increment Financing District (the "District") and adopt a Tax Increment Financing Plan (the "TIF Plan") therefor (the Development Program Modification and the TIF Plan are referred to collectively herein as the "Program and Plan"), all pursuant to and in conformity with applicable law, including Minnesota Statutes, Sections 469.090 to 469.1082, and Sections 469.174 to 469.1794, inclusive, as amended (the "Act"), all as reflected in the Program and Plan and presented for the Board's consideration.
- 1.02. The Authority has investigated the facts relating to the Program and Plan and has caused the Program and Plan to be prepared.
- 1.03. The Authority has performed all actions required by law to be performed prior to the adoption of the Program and Plan. The Authority has also requested the City Planning Commission to provide for review of and written comment on Program and Plan and that the Council schedule a public hearing on the Program and Plan upon published notice as required by law.

Section 2. Authorizations.

- 2.01. The Authority hereby finds that the District is in the public interest and is a "housing district" under Section 469.174, Subd. 11 of the Act, and finds that the adoption of the proposed Program and Plan conform in all respects to the requirements of the Act and will help fulfill a need to develop an area of the State of Minnesota for affordable and high-quality housing.
- 2.02. The Authority further finds that the Program and Plan will afford maximum opportunity, consistent with the sound needs for the City as a whole, for the development or redevelopment of the Project Area by private enterprise in that the intent is to provide only that public assistance necessary to make the private developments financially feasible.
- 2.03. The boundaries of the Development District are being expanded to be coterminous with the City boundaries.

- 2.04. The reasons and facts supporting the findings in this resolution are described in the Program and Plan.
- 2.05. The Authority elects to calculate fiscal disparities for the District in accordance with Section 469.177, Subd. 3, clause b of the Act, which means the fiscal disparities contribution would be taken from inside the District. It is not anticipated that the District will contain commercial/industrial property. As a result, there should be no impact due to the fiscal disparities provision on the District.
- 2.06. The Program and Plan, as presented to the Authority on this date, are hereby approved, established and adopted and shall be placed on file in the office of the Executive Director of the Authority.
- 2.07. The staff, the Authority's advisors and legal counsel are authorized and directed to proceed with the implementation of the Program and Plan and for this purpose to negotiate, draft, prepare and present to this Board for its consideration all further plans, resolutions, documents and contracts necessary for this purpose. Approval of the Program and Plan does not constitute approval of any project or a Development Agreement with any developer.
- 2.08. Upon approval of the Program and Plan by the City Council, the Executive Director of the Authority is authorized and directed to forward a copy of the Program and Plan to the Minnesota Department of Revenue and the Office of the State Auditor pursuant to 469.175, Subd. 4a of the Act.
- 2.09. The Executive Director of the Authority is authorized and directed to forward a copy of the Program and Plan to the Hennepin County Auditor and request that the Auditor certify the original tax capacity of the District as described in the Program and Plan, all in accordance with Section 469.177 of the Act.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on March 18, 2019.

Brad Wiersum, President

ATTEST:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting Secretary

EDA Resolution No. 2019-

Resolution approving the elimination of parcels from Redevelopment Tax Increment Financing District No. 2 – Boulevard Gardens within Development District No. 1 of the City of Minnetonka

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. On December 11, 1995, the Authority created its Redevelopment Tax Increment Financing District No. 2 – Boulevard Gardens (the "TIF District") within its Development District No. 1 (the "Project") by approval of a tax increment financing plan (the "TIF Plan") for the TIF District.
- 1.02. The following properties, by property identification numbers, were included in the TIF District:
- 02-11-722-13-0062
02-11-722-13-0050
- 1.03. The Authority desires by this resolution to amend the TIF Plan to remove the above-described parcels from the TIF District, thereby reducing the size thereof.
- 1.04. The total current net tax capacity of the parcels to be eliminated from the TIF District equals or exceeds the net tax capacity and, therefore this amendment to the TIF Plan is accomplished pursuant to *Minnesota Statutes, Section 469.175, Subdivision 4, clause (e)(2)(A) by action of the City without the need for public hearing and other notice and processing which would otherwise apply to substantial amendments to tax increment financing districts.*

Section 2. Authorization.

- 2.01. The TIF Plan for the TIF District is hereby amended to remove the described parcels and the City Manager is authorized and directed to notify the County Auditor thereof pursuant to *Minnesota Statutes, Section 469.175, Subdivision 4, clause (e).*

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on March 18, 2019.

Brad Wiersum, President

ATTEST:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Secretary

EDA Resolution No. 2019-

Resolution authorizing an interfund loan for advance of certain costs in connection with the Marsh Run 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 Board has heretofore approved the establishment of the Marsh Run Tax Increment Financing District (the "TIF District") within Development District No. 1 (the "Project") and has adopted a Tax Increment Financing Plan (the "TIF Plan") for the purpose of financing certain improvements within the Project.
- 1.02. The Board has determined to pay for certain costs identified in the TIF Plan consisting of land/building acquisition, demolition, remediation, site improvements/preparation, public utilities, public parking facilities, streets and sidewalks, other housing improvements, interest and administrative costs (collectively, the "Qualified Costs"), which costs may be financed on a temporary basis from City funds available for such purposes.
- 1.03. Under Minnesota Statutes, Section 469.178, Subd. 7, the Board is authorized to advance or loan money from the Board's general fund or any other fund from which such advances may be legally authorized, in order to finance the Qualified Costs.
- 1.04. The Board intends to reimburse itself for the Qualified Costs from tax increments derived from the TIF District in accordance with the terms of this resolution (which terms are referred to collectively as the "Interfund Loan").

Section 2. Terms of Interfund Loan.

- 2.01. The Board hereby authorizes the advance of up to \$50,000 from the Development Fund or so much thereof as may be paid as Qualified Costs. The Board shall reimburse itself for such advances 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 or 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 4% and will not fluctuate.
- 2.02. Principal and interest ("Payments") on the Interfund Loan shall be paid annually on each December 31 (each a "Payment Date"), commencing on the first Payment Date on which the Authority has Available Tax Increment (defined

below), or on any other dates determined by the Finance Director, 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 Finance Director generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the City by Hennepin County, all in accordance with Minnesota Statutes, Sections 469.174 to 469.1794, all inclusive, as amended. Payments on this Interfund Loan may be subordinated to any outstanding or future bonds, notes or contracts secured in whole or in part with Available Tax Increment, and are on parity with any other outstanding or future interfund loans secured in whole or in part with Available Tax Increment.
- 2.04. The principal sum and all accrued interest payable under this Interfund Loan are pre-payable in whole or in part at any time by the City 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 City in accordance with Minnesota Statutes, Section 469.178, Subd. 7, 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 City. 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. The City shall have no obligation to pay any principal amount of the Interfund Loan or accrued interest thereon, which may remain unpaid after the final Payment Date.
- 2.06. The Board may amend the terms of this Interfund Loan at any time by resolution of the City Council, including a determination to forgive the outstanding principal amount and accrued interest to the extent permissible under law.
- Section 3. Effective Date.
- 3.01. This resolution is effective upon the date of its approval.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on March 18, 2019.

Brad Wiersum, President

ATTEST:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting Secretary

EDA Resolution No. 2019-

Resolution approving contract for private development and a construction addendum with the City of Minnetonka, Minnesota and DC-OV, LLC

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 a housing tax increment financing district (the "TIF District") within the City pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended.
- 1.04. DC-OV Minnetonka, LLC, a Minnesota limited liability company (the "Developer"), proposes to acquire certain property (the "Development Property") within the TIF District and construct an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking (the "Minimum Improvements"). The Authority, the City, and the Developer propose to enter into a Contract for Private Development (the "Development Agreement") to set forth the terms of the development of the Minimum Improvements.
- 1.05. In order to make the Minimum Improvements economically feasible for the Developer to construct, the Authority proposes to reimburse the Developer 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 Development Property. The Authority intends to issue to the Developer a Tax Increment Revenue Note (the "TIF Note") in the maximum principal amount of \$4,800,000 to reimburse the Developer for qualified costs of the Minimum Improvements.
- 1.06. Bremer Bank, National Association, a national banking association (the "Lender"), has agreed to make a loan to the Developer in the amount of approximately \$32,500,000 (the "Lender Loan") to finance a portion of the costs of the Minimum Improvements, pursuant to a Construction Loan Agreement between the Developer and the Lender. To secure the repayment of the Lender Loan, the Developer will

execute and deliver to the Lender a Real Estate Note in the amount of \$32,500,000 and a Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents.

- 1.07. As a condition for providing the Lender Loan, the Lender requires that the Developer assign to the Lender all of its right, title, and interest in and to the Development Agreement (including any documents and agreements attached to the Development Agreement). The Lender also requires that the Authority deliver the TIF Note, upon issuance, to the Lender to be held as collateral security for the Lender Loan.
- 1.08. In addition to the Development Agreement, there has been presented before this Board a Construction Addendum (the "Construction Addendum") proposed to be entered into between the Authority, the City, and the Developer containing (i) timeframes for the construction of certain site improvements described in the Development Agreement (the "Site Improvements"); (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; and (vi) final design details.
- 1.09. There has also been presented before this Council a Collateral Assignment of Contract for Private Development (the "Collateral Assignment") proposed to be entered into between the Authority, the City, the Developer, and the Lender, pursuant to which the Developer will assign to the Lender all of the Developer's right, title, and interest in and the Development Agreement (including any documents and agreements attached to the Development Agreement) and the Authority will deliver the TIF Note to the Lender as collateral security for the Lender Loan. The Collateral Assignment also subordinates the City's and the Authority's interests in the Development Agreement to the Lender's mortgage. The City and the Authority maintain their ability to exercise their rights and remedies under the Development Agreement.

Section 2. Approvals.

- 2.01. The Board approves the Development Agreement, the Construction Addendum, and the Collateral Assignment in substantially the forms on file in City Hall. The President and Executive Director are hereby authorized and directed to execute and deliver the Development Agreement, the Construction Addendum, and the Collateral Assignment. All of the provisions of the Development Agreement, the Construction Addendum, and the Collateral Assignment, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Development Agreement, the Construction Addendum, and the Collateral Assignment shall be substantially in the forms on file with the Authority which are 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 Developer any and all documents deemed necessary to carry out the intentions of this resolution, the Development Agreement, the Construction Addendum, and the Collateral Assignment.

Section 3. Effective Date.

3.01. This resolution shall be effective upon the establishment of the TIF District and the execution in full of the Development Agreement, the Construction Addendum, and the Collateral Assignment.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on March 18, 2019.

Brad Wiersum, President

ATTEST:

Becky Koosman, Acting 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 March 18, 2019.

Becky Koosman, Acting Secretary