Agenda

Minnetonka Economic Development Authority

Monday, Dec. 17, 2018

Following the Regular Meeting

Council Chambers

1. Call to Order
2. Roll Call: Acomb-Happe-Schack-Calvert-Bergstedt-Ellingson-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
5. Business Items:
   - A. Resolution approving contract for private development with the City of Minnetonka and Marsh Development, LLC and the Issuance of a tax increment revenue note

     Recommendation: Adopt the resolution (4 votes)
6. Adjourn

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EDA Agenda Item #5A
Meeting of Dec. 17, 2018

Brief Description	Resolution approving contract for private development with the City of Minnetonka and Marsh Development, LLC and the issuance of a tax increment revenue note
Recommendation	Adopt the resolution

Background

Doran formally submitted an application and plans for the redevelopment of the property that was introduced at the city council meeting on Nov. 5, 2018. As currently proposed, the office buildings would be removed in order to construct a 175-unit apartment building. The proposal includes a request for Tax Increment Financing (TIF) for affordable housing.

Financing Request

The developer is requesting that the city consider providing up to $4.8 million in Tax Increment Financing (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) that would be available to households earning up to 50% of the Area Median Income (AMI). Under the TIF regulations, households would pay no more than 30% of their income for rent. This would equate to a maximum of $885 for an alcove or one-bedroom unit and a maximum of $1,061 for a two-bedroom unit. The developer has committed to providing the 35 affordable units for a term of 30 years.

PRIOR MEETING REVIEW AND SUMMARY

Economic Development Advisory Commission (EDAC) Subcommittee Review – Oct. 15

On Oct. 15, EDAC Commissioners Luke, Jacobsohn and Hromatka met as a subcommittee to review the financing request using Council Policy 2.14, the council's policy on TIF and Tax Abatement as a guide for the assistance request. The city's financial consultant, Stacie Kvilvang of Ehlers and Associates, and Minnetonka staff Julie Wischnack and Alisha Gray were also present at the meeting.

The EDAC subcommittee reviewed the financing request and provided the following feedback on the TIF and Tax Abatement policy considerations:

- The project is compatible with the Comprehensive Guide Plan as a proposed mixed-use development;
    - The project is identified in the 2030 comprehensive guide plan as guided for service commercial. The applicant is requesting an amendment to the land use designation to mixed use (which is recommended in the draft 2040 comprehensive guide plan). Additionally, the applicant is requesting that the property is rezoned to Planned Unit Development (PUD).

- Priority will be given to projects which:
    - The project would not occur "but for" the assistance;

- The developer has committed to providing 5% of the units affordable at 60% AMI and has requested tax abatement in the amount of $1.76 million over a term of 20 years as the preferred financing tool.
    - The city's financial advisor, Ms. Kvilvang, analyzed this request and is of the opinion that no assistance is required if only 5% of the units are affordable. Additional information regarding this analysis is provided in the attached memo from Ms. Kvilvang.
- In past projects, such as Tonka on the Creek and Chase at 9-mile Creek (Rowland), a TIF District was established to provide 20% of the units at 50% AMI (the minimum amount of affordable units required to qualify for a TIF Housing District). The developer has not indicated that it is interested in this approach, however, the EDAC subcommittee favored this approach over 5% of the units affordable at 60% AMI (without assistance from the city).
    - The financing required to accommodate 20% of the units at 50% of the Area Median Income (AMI) is approximately $4.8 million over 18 years. The total of assistance per unit per year would equal approximately $4,705 for a term of 30 years. This amount is slightly higher than the assistance provided for Tonka on the Creek ($3,805) and At Home Apartments ($3,968). However, construction costs have increased over time which could explain the increased cost of construction on a per unit basis. Refer to the attached Affordable Housing Assistance Chart for project assistance comparisons.
        - Rents for units available at 60% AMI would range between $1,062 - $1,273 for a two person household earning up to $45,300 annually.
        - Rents for units available at 50% AMI would range between $885 -$1,061 for a two person household earning up to $37,750 annually
- In 2004, the Economic Development Authority (EDA) for the city of Minnetonka adopted a resolution recommending the inclusion of 10%-20% of the total units in multi-family developments as affordable housing.

- The project is in a high priority "village area" as identified in the Comprehensive Guide Plan;
    - The project is located near West Ridge Market and was identified as a site for housing in in the draft 2040 comprehensive plan.

- The project includes affordable housing units, which meets the city's affordable housing standards;
    - The request to include 5% of the units at 60% AMI with tax abatement assistance does not meet the intent of the 2004 resolution that recommends a minimum of 10%-20% of the units as affordable in multi-family housing developments.
    - If the developer considered increasing the affordable units to 20% of the units at 50% AMI, the project would be eligible for TIF Housing assistance and would meet the intent of the 2004 resolution.

- The proposed project amenities will benefit a larger area than identified in the development; and
    - The developer would provide affordable housing opportunities.
- The project will maximize and leverage the use of other financial resources.

EDAC Meeting Review – Nov. 26

On November 26, the developer requested that the city consider providing tax abatement up to $1,760,000 for a term of 20 years to assist with providing nine affordable units (a mix of one alcove studio unit, six one-bedroom units, and two two-bedroom units) that would be available to households earning 60% AMI for a period of 30 years. At the time, this request represented five percent of the 168 units that were being proposed in the revised concept plan. The staff report recommended that the EDAC consider requiring 20% of the units affordable at 50% AMI. There was general discussion as the 20% being the preferred approach for any assistance that would be provided to the project. The commissioners unanimously voted to recommend that the council consider approval of a project with a minimum of 20% of the units affordable that would meet the TIF Housing district affordability guidelines with a maximum assistance of up to $4.8 million.

CONTRACT FOR PRIVATE DEVELOPMENT

In December, 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, Ms. Kvilvang, analyzed the request and prepared the attached memo detailing the analysis of the request for financing. The city's legal counsel, Julie Eddington at Kennedy & Graven, drafted the attached Contract for Private Development that was developed based upon the requests for city assistance by the developer with feedback from the EDAC and city council.

Highlights of the Contract for Private Development are listed below:

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 for the project. Interest rate on the TIF Note will be set at the lesser of 5% or the developer's actual interest rate.

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 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 Dominium).

The declaration also requires the developer to accept tenants who are recipients of 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.

Minimum Improvements

Construction of a varied three-to-six story building with approximately 175-units (subject to affordability requirements) with approximately 236 underground parking spaces and seven first floor parking spaces.

Commencement and Completion of Construction

The development must commence construction by June 30, 2019 and substantially complete construction by June 30, 2021.

Minimum Assessment Agreement

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

Project Financing Schedule

- Feb. 11, 2019 - EDA and city council hold public hearing on establishment of the Marsh Tax Increment Financing District and consider approving a Redevelopment Plan and TIF Plan

Recommendation

The multifamily housing project proposed by Doran will help meet the city's affordable housing goals outlined in the draft 2040 Comprehensive Guide Plan and the city's 2011-2020 affordable housing goals.

Staff recommends the EDA adopt the resolution approving the contract for private development with the City of Minnetonka and Marsh Development, LLC and the issuance of a tax increment revenue note; and authorize EDA officials to approve non-substantive changes to the contract for private development.

Submitted through:
Julie Wischnack, AICP, Community Development Director

Geralyn 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 Stacie Kvilvang - Ehlers

TIF Policy

2005 EDA Resolution

History of Affordability and Assistance

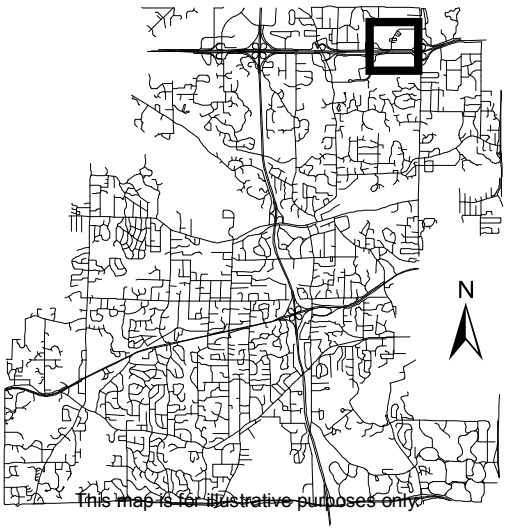
Minnetonka Housing Action Plan (2011-2020 Affordable Housing Goals)

Nov. 26, 2018 – EDAC Unapproved Meeting Minutes

CITY OF MINNETONKA

Location Map

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



Memo

To: Alisha Gray, Economic Development and Housing Manager

From: Stacie Kvilvang - Ehlers

Date: December 17, 2018

Subject: Marsh Run Project Proposal Review

The City of Minnetonka requested that Ehlers review the development pro forma and Tax Increment Financing (TIF) request from Doran for their proposal 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 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

Doran requested the City to establish a housing TIF district and requested $5.5 million in pay-as-you-go TIF Assistance over 21 years.

Analysis

We have reviewed the development pro formas based on general industry standards for construction, land, and project costs; affordable rental rates and operating expenses; developer fees; available funding sources; underwriting criteria; and, project cash flow. Overall, we have found these to fall within reasonable industry standards, with the exception of land costs, which are higher due to existing structures on the site (typical land costs for vacant land is $8,000 to $15,000/unit dependent upon location within the Metropolitan Area).

SOURCES	Amount	Pct.	Per Unit
First Mortgage	28,450,000	63%	162,571
TIF Loan	4,800,000	11%	27,429
Equity	12,043,103	27%	68,818
TOTAL SOURCES	**45,293,103**	**100%**	**258,818**

USES	Amount	Pct.	Per Unit
Acquisition Costs	3,741,250	8%	21,379
Construction Costs	33,346,686	74%	190,552
Professional Services	3,503,001	8%	20,017
Financing Costs	3,177,166	7%	18,155
Developer Fee	1,525,000	3%	8,714
TOTAL USES	**45,293,103**	**100%**	**258,818**

Recommendation

In 2014 and 2015, the City provided TIF assistance to Rowland and Tonka on the Creek, both of which were affordable housing projects that had 20% of the units affordable to persons at or below 50% of the AMI. As noted in the table below, total development costs per unit for Marsh Run are approximately 25% to 30% higher than when the other two projects were completed.

Project	Units	Average Per Sq/Ft Rents of Market	Total Development Cost	Total Development Cost Per Unit	City Assistance	Per Unit City	Assistance Per Unit Per Year	Term of Assistance
Rowland	106	$1.90	$20,360,885	$192,084	$2,500,000	$23,585	$3,968	18 Years
Tonka on The Creek	100	$1.60	$19,852,383	$198,524	$2,283,000	$22,830	$3,805	18 Years
Marsh Run	**175**	**$2.04**	**$43,385,040**	**$247,915**	**$4,800,000**	**$27,429**	**$4,571**	**17 Years**

We recommend providing TIF assistance on a “pay-as-you-go” basis in the amount of $4.8 million over a 17-year term. This is similar in assistance on a per unit or term basis as to Rowland and Tonka on the Creek (based upon 3% annual inflation on a per unit assistance basis since these developments received assistance in 2014 and 2015).

Overall, even with the TIF assistance, it is projected that the year 18 (first year without TIF) cumulative return on equity (cash-on-cash return) is only 8.5% which is below typical industry standards of 10%.

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

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

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	*Crown Ridge*—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI
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 - estimate	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 mention 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 Dominium 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. 2018-

Resolution approving contract for private development with the City of Minnetonka, Minnesota and Marsh Development, LLC and the issuance of a tax increment revenue note

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

Section 1. Background.

1.01. The Authority 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. Marsh Development, 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").

1.05. There has been presented before this Board a Contract for Private Development (the "Agreement") proposed to be entered into between the Authority, the City, and the Developer setting forth the terms of the development of the Minimum Improvements.

Section 2. The Agreement.

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

their discretion, shall determine, and the execution thereof by the President and the Executive Director shall be conclusive evidence of such determination.

Section 3. Effective Date.

3.01. This resolution shall be effective upon the establishment of the TIF District and the execution in full of the Agreement.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on Dec. 17, 2018.

_____

Brad Wiersum, President

ATTEST:

_____

David E. Maeda, Secretary

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on Dec. 17, 2018.

_____

Secretary

Second Draft
December 12, 2018

CONTRACT

FOR

PRIVATE DEVELOPMENT

between

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

CITY OF MINNETONKA, MINNESOTA,

and

MARSH DEVELOPMENT, LLC

Dated: _____, 20___

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

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CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the _____ day of _____, 20___ (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 MARSH DEVELOPMENT, 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 redevelopment project known as Redevelopment Project No. _____ (hereinafter referred to as the "Redevelopment Project") 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 Project the _____ 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 Redevelopment Project 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 (the "Minimum Improvements"); 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 of the TIF District 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 Redevelopment Project 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.

"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 Marsh Development, LLC, a Minnesota limited liability company, or its permitted successors and assigns.

"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.

"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 236 underground parking spaces and approximately 7 first-floor parking spaces.

"Minimum Market Value" means a minimum market value for real estate tax purposes of $12,863,500 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.

"Public Improvements" means the improvements to be constructed by the Developer described in Section 4.7 hereof.

"Redevelopment Plan" means the Redevelopment Plan for the Redevelopment Project approved and adopted by the Board of the Authority and the City Council of the City.

"Redevelopment Project" means the Redevelopment Project No. _____.

"Redevelopment Project Area" means the real property located within the boundaries of the Redevelopment Project.

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

"Site Improvements" means the improvements described in EXHIBIT H.

"State" means the State of Minnesota.

"Tax Credit Law" means Section 42 of the Internal Revenue Code of 1986, as amended.

"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 _____Tax Increment Financing District.

"Tax Increment Plan" or "TIF Plan" means the _____ Tax Increment Financing Plan for Tax Increment Financing District, as approved _____, 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. 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 Redevelopment 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 Redevelopment 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).

(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 Redevelopment Project Area may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it 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.

(e) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Developer did not obtain a building permit for any portion of the Minimum Improvements before _____, 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 must promptly advise the City and the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting Developer or its business which may delay or require changes in construction of the Minimum Improvements.

(i) The Developer represents that 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 constructed for use by the tenants of the Minimum Improvements constitutes a residential use.

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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 Public 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 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 Public 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 $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 the costs of land acquisition, site preparation, remediation, and any public improvements that are constructed within the TIF District and are eligible for reimbursement with tax increment, which are incurred by the Developer in at least the principal amount of the TIF Note.

The Authority shall issue the TIF Note on the date of closing on the financing for the Minimum Improvements 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;

(ii) the Developer has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof;

(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; and

(iv) the Developer has executed and delivered to the Authority the Minimum Assessment Agreement substantially in the form attached hereto as EXHIBIT G.

(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.

Section 3.5. Payment of Administrative Costs. The Authority acknowledges that the Developer has deposited with the City and the Authority $15,000. The City and the Authority will use such deposit to pay "Administrative Costs," which term means out-of-pocket costs incurred by the Authority together with staff costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Development Property. At the Developer's request, but no more often than monthly, the Authority and the City will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority and the City determine that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice from the Authority and the City containing evidence of the unpaid costs. If any balance of funds deposited remains upon the issuance of the Certificate of Completion pursuant to Section 4.4 hereof, the Authority shall promptly return such balance to the Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by the Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs incurred through the effective date of termination.

Section 3.6. Records. The Authority and its representatives will have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to 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.

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ARTICLE IV

Construction and Maintenance of Minimum Improvements and Public Improvements

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property substantially in accordance with the approved Construction Plans. The Developer 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 Redevelopment Plan, this Agreement, and all applicable State and local laws and regulations. The Authority Representative will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan; (iii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer from all sources (including the Developer's equity) for construction of the Minimum Improvements; and (vi) no Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the Authority Representative will relieve the Developer of the obligation to comply with the terms of this Agreement or of the Redevelopment Plan, applicable federal, State and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority Representative will constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, the Construction Plans will be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. The rejections must set forth in detail the reasons therefor, and must be made within twenty (20) days after the date of their receipt by the Authority. If the Authority Representative rejects any Construction Plans in whole or in part, the Developer must submit new or corrected Construction Plans within twenty (20) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans will continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative's approval will not be unreasonably withheld, delayed or conditioned. Said approval will constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

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

must be made within twenty (20) days after receipt of the notice of such change. 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 Project by June 30, 2019 and will substantially complete construction of the Minimum Improvements by June 30, 2021. Construction is considered to be commenced upon the beginning of physical improvements 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 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 satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. 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 thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain the certification.

(c) The construction of the Minimum Improvements will be considered substantially complete when the Developer has received a certificate of occupancy from the City for all 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 affordable to families at or below fifty percent (50%) of the area median income and to be rent-restricted in accordance with the Tax Credit Law, all as further described in the Declaration attached hereto as EXHIBIT D. Notwithstanding anything to the contrary in the Tax Credit Law, 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; at least 21 Rental Housing Units must be one-bedroom units or a larger unit; and at least 7 Rental Housing Units must be two-bedroom units a larger unit.

(c) The Developer intends to rent parking spaces in the underground garage to tenants of the Minimum Improvements for approximately $____ to $____ per parking space per month. The tenants in the income and rent-restricted Rental Housing Units will not be required to rent underground parking spaces; however, if such tenants do rent an underground parking space, the Developer will provide a ten percent (10%) discount of the rental charge for the underground parking space.

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

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

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

(g) The Authority and its representatives will have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice to inspect, examine and copy all books and records of 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 Project tenant incomes and rents, showing that the Minimum Improvements meet the income and rent 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, the Developer or the property manager shall commence termination of the tenancy of all occupants of that unit. The Developer shall not enter into a new lease agreement with the evicted tenant(s) for at least one (1) year after the effective date of the eviction.

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

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

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-_____ and Resolution No. 2018- ____.

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

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

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

Section 4.9. 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. The park dedication fee is calculated at a rate of $5,000 per unit.

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 eighteen months from the date of damage, 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 termination of this Agreement.

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 Assessor's Minimum Market Value or prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in any increase 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 Assessor's 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 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; 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 intention 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 may 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. The amount of Tax Increment to be derived from the TIF District during the term of the TIF District was estimated by the City and the Authority's financial advisor based on a "class 4a" property classification rate for rental properties under Minnesota Statutes, Section 273.13, subdivision 25(a). The Developer acknowledges and understands that if it changes the property tax classification of all or any portion of the Project to a "class 4d" property classification rate for affordable rental properties under Minnesota Statutes, Section 273.13, the amount of Available Tax Increment derived from the TIF District and used to pay the principal of and interest on the TIF Note will decrease.

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.

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 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, 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 twenty (20) 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 Authority agrees to subordinate its rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing, under terms and conditions reasonably acceptable to the Authority.

(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 on 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 if it obtains the prior written consent of the City and the Authority (which consent will not be unreasonably withheld) and the 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 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; or

(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.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty 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) 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 for 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, within thirty (30) days after written demand by the Authority to do so; or

(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 rent and income restrictions or to deliver annual rent and 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 rent and 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.

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 Marsh Development, LLC, [ADDRESS], _____, Minnesota _____, Attention: _____;

(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 Termination Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Termination Date.

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

IN WITNESS WHEREOF, 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 _____, 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

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 _____, 20____, 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 _____, 20____, 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)

MARSH DEVELOPMENT, LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____, the _____ of Marsh Development, 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 Marsh Development, 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 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," which will mean, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Development Property (defined in the Agreement) 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 Owner. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement.

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 Redevelopment Project 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 Developer 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
	Marsh Development, LLC [Address] 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 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.

MARSH DEVELOPMENT, LLC

By _____
Its _____

EXHIBIT D

FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") dated as of _____, 20___, by MARSH DEVELOPMENT, 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 and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of 175 housing units of rental housing on the property described in EXHIBIT A attached hereto (the "Property"), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

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

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

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

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

1. Term of Restrictions.

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

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

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

2. Project Restrictions.

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

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

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

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

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

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, at least twenty percent (20%) (i.e., 35) 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. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the "Next Available Unit Rule") must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the 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 Low Income 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 as to qualifying as low or moderate income. In addition, such person shall be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that such tenant continues to be a Qualifying Tenant within the meaning of Section 3(a)(i) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year.

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

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

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

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

4. [Reserved].

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 Rental Restrictions and 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 Rental Restrictions and Occupancy Restrictions provided herein (the "Assumption Agreement"). The Developer shall deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [Intentionally omitted.]

7. Enforcement.

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

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

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements (as defined in the Contract) on the Property, hereby agrees and consents that the Authority shall be entitled, upon any breach of the provisions of this Declaration, and 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: Marsh Development, LLC
[ADDRESS]
_____, MN _____
Attention: _____

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

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

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

15. Relationship to Tax Credit Law Requirements. Notwithstanding anything to the contrary, during any period while at least 35 units in the Property are subject to income and rent limitations under the Tax Credit Law, evidence of compliance with such Tax Credit Law requirements filed with the Authority at least annually will satisfy any requirements otherwise imposed under this Declaration. During any portion of the Qualified Project Period as defined herein when the Tax Credit Law income and rent restrictions do not apply to the Property, this Declaration controls.

Drafted by:

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

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

MARSH DEVELOPMENT, LLC

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20___, by _____, the _____ of Marsh Development, LLC, a Minnesota limited liability company, on behalf of the Developer.

_____
Notary Public

This Declaration is acknowledged and consented to by:

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 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: Marsh Development, 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. Rent:

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

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

4. Number of apartment unit assigned: _____.

5. This apartment unit was ____ was not ____ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to 50% of Median Income in the area.

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

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

Marsh Development, LLC,
a Minnesota limited liability company

By _____
Its_____

EXHIBIT C
to Declaration of Restrictive Covenants

Certificate of
Continuing Program Compliance

Date: _____, _____.

The following information with respect to the Project located at _____, Minnetonka, Minnesota (the "Project"), is being provided by Marsh Development, 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	Rent
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
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33							
34							
35							
36							
37							
38							
39							
40							

41							
42							
43							
44							
45							
46							
47							
48							
(Additional units)							

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

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

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

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

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

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

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

Marsh Development, LLC,
a Minnesota limited liability company

By _____

Its _____

EXHIBIT E

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Marsh Development, LLC (the "Developer"), has fully complied with its obligations under Articles III and 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 Articles III and 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

Unit Type	**Number of Units in Minimum Improvements**
Alcove Studios:	_____ units
One Bedroom	_____ units
Two Bedroom	_____ 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,

MARSH DEVELOPMENT, 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 MARSH DEVELOPMENT, 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. 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 $12,863,500 as of January 2, 2020, notwithstanding the progress of construction by such date, and as of each January 2 thereafter until January 1, 2021.

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 $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.

3. 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. The Maturity Date has the meaning given to it under the Agreement.

4. 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.

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

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

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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

MARSH DEVELOPMENT, LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____, the _____ of Marsh Development, LLC, a Minnesota limited liability company, on behalf of the Developer.

_____
Notary Public

(Signature Page of Owner to Minimum Assessment Agreement)

CERTIFICATION BY ASSESSOR

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

_____
City Assessor for Minnetonka, Minnesota

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the City Assessor, City of Minnetonka, Hennepin County, Minnesota.

_____
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;
- Street signs; and
- _____